

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Retail Access Optimization Initiative

Docket No. N2011-1

PRESIDING OFFICER'S RULING ON APWU
MOTIONS TO COMPEL

(Issued October 4, 2011)

On September 22 and 23, 2011, the American Postal Workers Union, AFL-CIO (APWU) filed motions to compel the Postal Service's response to interrogatories.¹

Interrogatory APWU/USPS-9 requests information concerning the Postal Service's response to customer concerns for facilities under review in the Retail Access Optimization Initiative (RAOI). Motion No. 1 at 2-3. The interrogatory also seeks information on how responses to customer concerns are formulated. *Id.* Interrogatory APWU/USPS-10 seeks information on the removal of several Alaskan post offices from the RAOI list, as discussed at the hearing on the Postal Service's direct case. Motion No. 2 at 5. Interrogatory APWU/USPS-11 seeks information on the removal of approximately 80 facilities from the RAOI list. *Id.*

On September 30, 2011, the Postal Service filed its reply in opposition to Motion No. 1 and Motion No. 2.² The Postal Service contends that the period for written discovery had concluded, and the APWU motions should be denied. *Id.* at 1-4.

¹ American Postal Workers Union, AFL-CIO, Motion to Compel USPS to Respond to Interrogatory APWU/USPS-9, September 22, 2011 (Motion No. 1); American Postal Workers Union, AFL-CIO, Motion to Compel USPS to Respond to Interrogatories APWU/USPS-10-11, September 23, 2011 (Motion No. 2).

² Reply of the United States Postal Service in Opposition to American Postal Workers Union, AFL-CIO, Motions to Compel Responses to Interrogatories APWU/USPS-T-9 through 11, September 30, 2011 (Postal Service Reply).

Discovery on the Postal Service's direct case closed on August 30, 2011.³ The hearing on the Postal Service's direct case was held September 8, 2011. Close of discovery for purpose of developing intervenors' direct case closed September 9, 2011. *Id.* Commission rules permit follow-up written interrogatories filed within 7 days of receipt of the answer to the previous interrogatory. See Rule 3001.26(a).

The procedural schedule in this docket imposed ambitious deadlines on all parties involved in the case. Some discovery responses from the Postal Service have extended beyond the timeframe envisioned when the procedural schedule was implemented. Follow-up interrogatories based on delayed discovery responses from the Postal Service would be appropriate within 7 days of the filing of the answers. However, Motion No. 1 and Motion No. 2 do not seek to compel the responses to interrogatories based on recent written discovery answers of the Postal Service.

Motion No. 1 seeks to compel the response of an interrogatory based on testimony received in the September 8, 2011 hearing. Motion No. 1 at 1-3. APWU stated at the conclusion of the hearing that it had no questions for the witness. Tr. 1/624. Motion No. 2 seeks to compel the responses of interrogatories based on an answer dated August 31, 2011 (for APWU/USPS-10) and an exchange at the hearing between the Presiding Officer and witness Boldt (for APWU/USPS-11). Motion No. 2 at 1-3.

APWU references the Presiding Officer directing parties that they may file cross examination for witness Granholm the following day. See Tr. 1/601. APWU contends that it relied upon the Presiding Officer allowing the Public Representative to submit questions in writing. See Tr. 1/624.

Neither excerpt from the transcript indicates that the Presiding Officer was holding the record open indefinitely, nor adjusting the procedural schedule to allow for further discovery. In fact, APWU's counsel affirmatively stated, "[w]e have no questions." Tr. 1/624.

³ See Notice and Order Concerning Request for an Advisory Opinion Regarding the Consideration for Closure of Approximately 3,650 Postal Retail Locations, July 28 2011, at 6.

APWU elected not to submit a follow-up written interrogatory before the hearing for the information it ultimately sought in APWU/USPS-10, believing that the hearing would be a more appropriate avenue to pursue the information. Motion No. 2 at 1. APWU, along with all the other parties at the hearing, was given the opportunity to cross-examine or conduct follow-up cross-examination of witness Boldt. APWU elected not to pursue oral cross-examination concerning any of the issues it raised in APWU/USPS-9 through 11. See Tr. 1/624.

APWU elected to file interrogatory APWU/USPS-9, 5 days after the hearing and APWU/USPS-10-11 7 days after the hearing. APWU/USPS-10 was filed 15 days after the answer on which it was based was filed.

There are no extraordinary circumstances that justify the delay in filing APWU/USPS-10, and there is no exception that allows for written follow-up to material in the transcript for APWU/USPS-9 and APWU/USPS-11. Therefore, both Motion No. 1 and Motion No. 2 are denied.

RULING

1. The American Postal Workers Union, AFL-CIO, Motion to Compel USPS to Respond to Interrogatory APWU/USPS-9, filed September 22, 2011, is denied.
2. The American Postal Workers Union, AFL-CIO, Motion to Compel USPS to Respond to Interrogatories APWU/USPS-10-11, filed September 23, 2011, is denied.

Ruth Y. Goldway
Presiding Officer