

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

Rate and Service Changes to
Implement Baseline Negotiated
Service Agreement with Bookspan

Docket No. MC2005-3

PRESIDING OFFICER'S RULING DENYING WITHOUT
PREJUDICE MOTION TO COMPEL

(Issued November 2, 2005)

On October 18, 2005, the Office of the Consumer Advocate (OCA) filed a motion to compel Bookspan to completely respond to Presiding Officer's Information Request No. 1, Question 4.a.¹ Bookspan filed a response to the Motion asserting that it has completely responded to the question, or alternatively, that the Motion is moot.²

Presiding Officer's Information Request No. 1³, Question 4.a. states:

Bookspan witness Epp states that the significant drop in the before rates volume forecast for the first year of the agreement is 'primarily due to the anticipated 5.4% increase in postage rates.' Bookspan-T-2, page 11, lines 12-13.

- a. Please provide a set of before and after rates volume estimates (separately for letters and flats) for each year of the agreement assuming that rates remain at current levels.

¹ Office of Consumer Advocate Motion Requesting Presiding Officer to Direct Bookspan to Furnish a Complete Answer to Question 4a of POIR No. 1, October 18, 2005 (Motion).

² Answer to the October 18 Motion of the Office of the Consumer Advocate, October 25, 2005, (Response), at 4.

³ Presiding Officer's Information Request No. 1, July 26, 2005, (POIR No. 1), at 3.

OCA interprets Question 4.a. to ask Bookspan to provide two tables of volume estimates: (1) a table of estimates with the NSA in effect but assuming that there is no rate increase due to Docket No. R2005-1; and (2) a table of estimates without the NSA in effect but assuming that there is no rate increase due to Docket No. R2005-1. Bookspan interprets Question 4.a. to ask for one table of volume estimates with the NSA in effect but assuming that there is no rate increase due to Docket No. R2005-1.

Information requests must be read in context because a phrase gathers meaning from the other phrases and words around it. Sentence phrases are interpreted so as to give each word meaning, rather than rendering some words superfluous. The confusion apparently results from the two different meanings of the word “rates” as used in subsection a. In the first part of the sentence, the first “rates” is used to refer to the rates due to the Bookspan NSA. In the second part of the sentence, the word “rates” is used to refer to those proposed in Docket No. R2005-1. If the sentence is read in the way Bookspan suggests, such an interpretation would strip the words “after rates” of any meaning and conflict with the principle that sentences should not be construed in such a way as to render words superfluous.

Participants familiar with Commission practice should understand that “before and after rates” asks for two sets of rates — one set assuming the rate change at issue did not occur and one set assuming the rate change at issue does occur as planned. Accordingly, OCA’s interpretation of the question is correct; Bookspan should have also provided “after [NSA] rates ... assuming that [all the other Postal Service] rates remain at current levels.”⁴

Bookspan asserts that Question 4.a. is moot because witness Epp responded to follow-up interrogatory OCA/Bookspan-T2-13 and stated on oral cross-examination that he was not comfortable in offering a quantitative assessment of New Member solicitation volumes under a “No Rate Hike/NSA” scenario.⁵ Accordingly, Bookspan argues, since witness Epp already answered other questions seeking the same type of

⁴ *Ibid.*

⁵ Response at 3; Response of Witness Epp to Interrogatories of the Office of the Consumer Advocate (OCA/BOOKSPAN-T2-13), September 22, 2005, at 2-3; Tr. 3/413-14.

data as Question 4.a., he should be excused from fully answering POIR No. 1, Question 4.a.

The responses provided by witness Epp⁶ do not appear to fully answer the question asked in POIR No. 1, Question 4.a. Under normal circumstances, OCA's Motion would be granted since responses to Presiding Officer Information Requests should always be completely answered to the best of the witness's ability. However, here, intervening factors have produced circumstances that may significantly reduce any probative value of POIR No. 1, Question 4.a. In particular, the Commission has recently issued its Opinion and Recommended Decision in Docket No. R2005-1.⁷ Since the Presiding Officer's rationale behind asking POIR No. 1, Question 4.a. was to understand the NSA's impact under a withdrawal of the R2005-1 rate case due to the possibility of Congressional action, the completion of Docket No. R2005-1 appears to render a complete response to POIR No. 1, Question 4.a. moot.

OCA has not offered any additional rationale for seeking this information and therefore a complete response to POIR No. 1, Question 4.a. appears to be unnecessary. However, if OCA still has a legitimate need for this data and believes that a complete response to POIR No. 1, Question 4.a. could produce information relevant to this case, it may file a supplemental motion by November 7, 2005, demonstrating how it seeks to use this data given that Docket No. R2005-1 is now completed.

⁶ Response of Bookspan to Presiding Officer's Information Request No. 1, August 10, 2005, at 2-4; Response of Witness Epp to Interrogatories of the Office of the Consumer Advocate (OCA/BOOKSPAN-T2-13), September 22, 2005, at 2-3; Tr. 3/413-14.

⁷ Docket No. R2005-1, Opinion and Recommended Decision, November 1, 2005.

RULING

1. The Office of Consumer Advocate Motion Requesting Presiding Officer to Direct Bookspan to Furnish a Complete Answer to Question 4.a. of POIR No. 1 filed on October 18, 2005, is denied without prejudice.

2. OCA may file a supplemental motion by November 7, 2005.

George Omas
Presiding Officer