

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

Postal Rate and Fee Changes

Docket No. R2006-1

PRESIDING OFFICER'S RULING
DENYING POSTAL SERVICE MOTION FOR BLANKET WAIVERS
OF LIBRARY REFERENCE FILING REQUIREMENTS

(Issued June 15, 2006)

On May 3, 2006, the Postal Service filed a motion requesting waiver of certain Commission rules with respect to Category 1, 2, 3 and 5 Library References.¹ The Postal Service's Motion is general in that it requests that to the extent that it could be argued that its filing does not actually or substantially comply with all of the requirements of Rule 31(b)(2) with respect to any of these library references, that those requirements be waived. Motion at 1. The Postal Service follows its general request with specific discussions, by library reference categories, of why its filings comply with or otherwise justify waiver of specific subsections of rule 31(b)(2). The underlying concern rests on the requirement to file notice providing certain library reference foundation material contemporaneously with the filing of each library reference. The library references have not been accompanied by the required notice.

It is noteworthy, however, that the Postal Service has filed a notice providing a master list of library references, contemporaneous with the filing of the library

¹ Motion of the United States Postal Service Requesting Waiver of the Commission Rules with Respect to Category 1, 2, 3 and 5 Library References (Motion).

The Commission's rules with respect to Library References appear at 39 C.F.R. §3001.31(b)(2) (Rule 31). The Postal Service's Motion concerns the following Library Reference categories: Category 1—Reporting Systems Material; Category 2—Witness Foundational Material; Category 3—Reference Material; Category 5—Disassociated Material.

references.² The master list indicates the relevant category for each library reference submitted. For all Category 2 library references the list also indicates, by witness name or number, the testimony with which the library reference is associated.

Valpak filed a pleading in opposition to the Postal Service's Motion on the grounds that the Postal Service is seeking a general waiver without indicating the particulars on which it has deviated from the requirements of rule 31.³ It also objects to the Motion because granting relief could be considered as a preemptive ruling that would authorize the Postal Service to decline to provide witnesses to be orally cross-examined regarding the witness sponsorship and substance of certain library references. Valpak further discusses its concerns with specific references to USPS-LR-L-1 and USPS-LR-L-77.⁴

The Postal Service filed a reply to Valpak's Opposition which focuses on the specific issues raised by Valpak in regard to USPS-LR-L-1 and USPS-LR-L-77, and otherwise contends that Valpak's objection is without merit.⁵ The Postal Service appears to be in agreement with Valpak in that it is appropriate to address specific issues regarding specific library references as they arise, albeit the Postal Service first desires relief from the filing requirements.

The Postal Service's Motion is denied without prejudice. Although the Postal Service has attempted to comply with the spirit of rule 31(b)(2) with the information provided within the library references, the master library reference list, and testimony, it

² Notice of the United States Postal Service of Filing of Master List of Library References, May 3, 2006.

³ Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Opposition to the Postal Service's Motion Requesting Waiver of the Commission Rules with Respect to Category 1, 2, 3 and 5 Library References, June 5, 2006 (Opposition).

⁴ Valpak, in passing, questions whether or not USPS-LR-L-77 is properly filed as a Category 1 library reference. This issue is outside the scope of this Ruling.

⁵ Reply of the United States Postal Service to Valpak's Opposition to the Postal Service's Motion for Waiver Regarding its Library References, June 9, 2006 (Reply). The Postal Service also filed Motion of the United States Postal Service for Leave to Reply to Valpak's Opposition to the Postal Service's Motion for Waiver Regarding its Library References, June 9, 2006. The Postal Service's motion for leave to reply is granted.

may have inadvertently provided insufficient information. The extent to which noncompliance, if any, may impact the participants' ability to review and understand the Postal Service's Request and supporting materials is not known at this time. This makes it premature to grant a general waiver.⁶ Participants shall be permitted to bring up concerns on a case-by-case basis in regard to library references, at which time the Postal Service is free to argue, if appropriate, that it has substantially complied with the applicable filing requirements.

RULING

1. The Motion of the United States Postal Service for Leave to Reply to Valpak's Opposition to the Postal Service's Motion for Waiver Regarding its Library References, filed June 9, 2006, is granted.
2. The Motion of the United States Postal Service Requesting Waiver of the Commission Rules with Respect to Category 1, 2, 3 and 5 Library References, filed May 3, 2006, is denied without prejudice.

George Omas
Presiding Officer

⁶ A request for waiver of the rule 31(b)(2) filing requirements might be appropriate in less complex cases where the full extent of granting a waiver may be understood. However, in complex cases where the full impact of granting a waiver is not well understood, or where a participant has raised arguable concerns, a waiver may unnecessarily hinder a participant's ability to have its concerns addressed.