

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

Postal Rate and Fee Changes

Docket No. R2006-1

PRESIDING OFFICER'S RULING ON VALPAK'S
PROPOSED DESIGNATION OF EVIDENCE FROM OTHER CASES

(Issued September 22, 2006)

This ruling addresses a Valpak Motion proposing that certain evidentiary material from two other dockets be entered into the evidentiary record of this proceeding.¹ Commission rule 31(e), which allows participants to request such designations, is premised on the expectation that this practice fosters convenience, expedition and efficiency. Guidelines have been developed over a number of cases to provide a framework for rulings on such proposals.² These guidelines generally favor factual material over opinion evidence, prefer current evidence over stale or outdated material, and preclude attempts to relitigate old issues. They also discourage designation of library references and testimony in their entirety. Valpak's proposed designations have been evaluated in terms of these guidelines and related considerations.

¹ Motion of Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. to Designate Evidence from Other Commission Dockets, August 9, 2006 (Valpak Motion).

² See, for example, Presiding Officer's Ruling Nos. R97-1/68 (November 21, 1997) and R2000-1/62 (May 18, 2000).

I. DOCKET NO. N2006-1 MATERIAL

In pending Docket No. N2006-1, Postal Service witness Shah's responses to Valpak interrogatories VP/USPS-T1-6, 14(d) and 15(a) and (b) were entered into the evidentiary record at Tr. 2/131-32, 143 and 144. Valpak seeks to have these responses included in the record of this case on grounds that they address Postal Service definitions of various service-related terms relating to coverages Postal Service witness O'Hara (USPS-T-31) has proposed in this case. Valpak Motion at 1-2. It notes that the responses were made on April 25, 2006, and thus close to the May 3, 2006 filing date in this case. *Id.* at 2. No oppositions or counter-designations to this set of proposed designations have been received.

This material is generally timely and quite limited in scope.³ Accordingly, the Valpak Motion with respect to designating the referenced material from Docket No. N2006-1 is granted.

II. DOCKET NO. R2005-1 MATERIAL

Valpak proposes that selected material pertaining to the detached address label (DAL) volume estimate adopted in Docket No. R2005-1 (based on the record in that case) be admitted into the evidentiary record of this case. This includes:

Advo Cross-examination Exhibit ADVO-XE-11 (appearing at Tr. 9/5678, admitted into evidence at Tr. 9/5667);

Advo Library Reference ADVO-LR-1, worksheets '1.VP Table A-8 Modified' and '2.ADVO XE-11' of workbook ADVO-LR-1.xls (admitted into evidence at Tr. 10/5770); and

³ Shah's response to VP/USPS-T1-6(a)(i) states: "Please review the definition of 'service standard' already provided in USPS Library Reference N2006-1/1 at (hard copy) page 107." That library reference is USPS Publication 32, Glossary of Postal Terms. Therein, the definition of "service standard" reads as follows: "A stated goal for service achievement for each mail class."

Valpak Oral Cross-examination of Advo Witness Crowder, Sept. 14, 2005 (appearing at Tr. 10/5779, line 24 through Tr. 10/5782, line 24).

Valpak states that the information is timely because it deals with data from FY 2004. *Ibid.* It further asserts that having this information in the record of this case “will avoid the need to replicate in this docket the process by which this DAL estimate was made in the last omnibus rate case.” *Ibid.* No oppositions to these designations were received, nor were any counter-designations filed.

This material constitutes a somewhat attenuated description of the development of the Docket No. R2005-1 DAL volume estimate, but appears to suffice given the apparently limited purpose Valpak intends and the very high likelihood that parties following this issue are already quite familiar with how the estimate was developed. The portion of the designated cross-examination of witness Crowder appearing at Tr. 10/5782, lines 17 through 24 (Docket No. R2005-1) reflects conjecture and observations (by counsel and the witness) about the outcome of a then-nascent data collection effort, rather than discussion of the Docket No. R2005-1 DAL estimate. This material is beyond the scope of Valpak’s rationale for the proposed designation.⁴ Accordingly, the Valpak Motion with respect to designating the referenced material related to DAL volume estimation from Docket No. R2005-1 is granted in part. Specifically, the designations of referenced Advo cross-examination exhibit and the library reference worksheets are allowed; the designation of Tr. 10/5779, line 24 through Tr. 10/5782, line 16 is allowed and Tr. 10/5782 lines 17 through 24 is not allowed.

⁴ The designated material, as revised, is entered into the record for the limited purpose Valpak identifies, which is to avoid the need to replicate the process by which the DAL estimate was made in Docket No. R2005-1. It is not entered into the record of this proceeding for the purpose of re-litigating issues that surfaced in that case related to the method itself.

III. TRANSCRIPTION

There are several other pending requests related to designation of material from other proceedings, which should be resolved shortly. For ease of reference, the Valpak designations authorized by this ruling and any subsequent designations of material from other proceedings that are allowed to be entered into the record of this proceeding will be bound collectively in a separate volume of the transcript. No further action on Valpak's part is necessary with respect to the inclusion of the authorized material in the evidentiary record of this proceeding.

RULING

1. The Valpak Motion referred to in the body of this ruling is granted in full with respect to the following designations from Docket No. N2006-1: Valpak interrogatories VP/USPS-T1-6, 14(d) and 15(a) and (b).
2. The Valpak Motion referred to in the body of this ruling is granted in full with respect to the following designations from Docket No. R2005-1:
 - a. Advo cross-examination exhibit ADVO-XE-11 (Tr. 9/5678) admitted into evidence at Tr. 9/5667; and
 - b. Advo Library Reference ADVO-LR-1, worksheets '1.VP Table A-8' as modified and '2.ADVO-XE-11' of workbook ADVO-LR-1.xls (admitted into evidence at Tr. 10/5770).
3. The Valpak Motion referred to in the body of this ruling is granted in part with respect to the proposed designation of an excerpt from witness Crowder's Docket No. R2005-1 cross-examination, with the authorized designation reading as follows:

Valpak Oral Cross-Examination of Advo Witness Crowder,
September 14, 2005 at Tr. 10/5779, line 24 through Tr. 10/ 5782,
line 16.

4. The Valpak designations referred to above are hereby entered into the evidentiary record of this proceeding and will be transcribed in a separate volume of the transcript along with any similar type of designations authorized in this case.

George Omas
Presiding Officer