

ORDER NO. 1

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

Before Commissioners:

Dan G. Blair, Chairman;
Dawn A. Tisdale, Vice Chairman;
Mark Acton; Ruth Y. Goldway; and
Tony L. Hammond

Postal Rate and Fee Changes

Docket No. R2006-1

ORDER ACCEPTING CERTIFICATION AND SUSTAINING,
IN PART, OBJECTION OF INTERVENORS TO DESIGNATION
OF RESPONSES TO PRESIDING OFFICER'S INFORMATION
REQUESTS FOR INCLUSION IN THE RECORD

(Issued December 22, 2006)

On December 13, 2006, the Presiding Officer designated the responses of OCA witness J. Edward Smith to Presiding Officer's Information Request No. 25 for inclusion in the record. On December 18, 2006, 15 intervenors jointly objected to their inclusion in the record.¹ The Presiding Officer has found that this pleading raises important questions of both law and policy under Rule 23(a) of our rules of practice, and has certified the intervenors' objection to the full Commission for disposition.² The Commission concurs with the Presiding Officer's finding that the Objection raises the important question of law and policy, and accepts certification.

¹ Objection of Alliance of Nonprofit Mailers, Advo, Inc., American Business Media, Association for Postal Commerce, Direct Marketing Association, Inc., Dow Jones & Co., Inc., Growing Family Inc., Magazine Publishers of America, Inc., Mail Order Association of America, Mailing & Fulfillment Service Association, The McGraw-Hill Companies, Inc., National Newspaper Association, Parcel Shippers Association, Saturation Mail Coalition and Time Warner Inc. to Receipt Into Evidence of the Response of OCA Witness Smith to Presiding Officer's Information Request No. 25, December 18, 2006 (Objection).

² P.O. Ruling R2006-1/129.

For decades, the need to develop a robust and reliable model of the volume variability of city delivery carrier street time has not been fully met by the Postal Service and the postal community. The carrier street time estimates employed in Docket No. R2005-1 were the consequence of a settlement agreement. Although a new modeling approach based on new data was undertaken, the issues that it raised were not fully litigated. The Commission listed numerous areas of concern with the new approach in its Opinion in Docket No. R2005-1 and its desire that the research continue.

In this docket, the Postal Service's Request included no new data or analysis of carrier street time costs. Early in this proceeding, to shore up the weaknesses in the record, the Presiding Officer asked the Postal Service to provide more recent CCSTS data and to apply the models that the Postal Service proposed in Docket No. R2005-1 to those data. See Presiding Officer's Information Request No. 4, Questions 4-12, issued June 1, 2006, and Presiding Officer's Information Request No. 16, Questions 13-21, issued September 28, 2006.

It took the Postal Service nearly four months to respond to the first of these requests. These responses raised complex issues because the new CCSTS dataset was not assembled by the same procedures as the previous one, and the models applied to the new data attempted to address some of the Commission's concerns expressed in its Opinion in Docket No. R2005-1. A coalition of parties objected that in view of the issues raised, they would not have sufficient time to prepare rebuttal evidence under the procedural schedule.³ These objections were upheld, and the Postal Service's responses were admitted into evidence only for illustrative purposes. See Order No. 1482, issued November 8, 2006.

³ Objection of Magazine Publishers of America, Inc., American Business Media, Advo, Inc., Alliance of Nonprofit Mailers, Association for Postal Commerce, Direct Marketing Association, Dow Jones and Company, Inc., Growing Family, Inc., Mail Order Association of America, Mailing & Fulfillment Service Association, The McGraw-Hill Companies, Inc., National Association of Presort Mailers, National Postal Policy Council, National Newspaper Association, Parcel Shippers Association, Saturation Mail Coalition, Time Warner Inc. and U.S. News & World Report, L.P., to Receipt Into Evidence of the Response of the United States Postal Service to Presiding Officer's Information Request No. 4, Questions 4-12, and Presiding Officer's Information Request No. 16, Items 13-21, October 17, 2006.

OCA witness Smith filed direct testimony that addressed the merits of the Bradley models that the Postal Service submitted in Docket No. R2005-1, and proposed alternative models for the Commission's consideration. See OCA-T-3.

Presiding Officer's Information Request No. 25 asked the OCA to use 2002 CCSTS data to calculate marginal street times by the delivered mail shapes as defined in Docket No. R2005-1, using a full quadratic model, a quadratic model without small-parcel interaction terms, and to discuss their merits relative to witness Smith's preferred model. Witness Smith filed his response on November 27, 2006. On December 13, 2006, in Presiding Officer's Ruling No. R2006-1/24, the Presiding Officer designated witness Smith's responses for inclusion in the evidentiary record.

A coalition of parties objects to inclusion of witness Smith's responses in the evidentiary record. They note these responses were filed only two days before the beginning of hearings on rebuttal evidence (four days before the appearance of the relevant rebuttal witnesses). They were designated for inclusion in the record on December 13, 2006, eight days before the due date of post-trial briefs. The coalition asserts that there was not sufficient time to address the issues raised by witness Smith's responses. Objection at 3-5. They appear to object primarily to the prospect that the Commission might use what they characterize as witness Smith's "equivocal" endorsement of the use of a quadratic model without small-parcel interaction terms as the record basis for embracing such a model. *Id.* at 6, 9.

It should be noted that the POIR responses provided by witness Smith raise fewer issues than those raised by witness Bradley in the POIR responses at issue in Order No. 1482. They are confined to 2002 CCSTS data, and most of the model variants that witness Smith discusses are closely related to those already discussed in the context of Docket No. 2005-1. Nevertheless, time has essentially run out in this proceeding for further record-based examination of witness Smith's challenged responses. Accordingly, those responses will not be admitted into evidence in this proceeding for purposes of establishing the truth of the matters asserted. The information that they provide shall not serve as substantial evidence supporting any

specific estimate of attributable carrier costs in this docket. Nevertheless, the information in these Presiding Officer's Information Request responses will be included in the record for illustrative purposes, as they will provide useful context for an evaluation of the adequacy of the current state of carrier street time variability research. As the coalition suggests, this information should also prove useful in the informal rulemaking concerning carrier street time variability that the Commission plans to institute after the conclusion of this docket. *Id.* at 14.

IT IS ORDERED:

1. The Commission accepts certification by the Presiding Officer of the issues raised in Objection of Alliance of Nonprofit Mailers, Advo, Inc., American Business Media, Association for Postal Commerce, Direct Marketing Association, Inc., Dow Jones & Company, Inc., Growing Family, Inc., Magazine Publishers of America, Inc., Mail Order Association of America, Mailing & Fulfillment Service Association, The McGraw-Hill Companies, Inc., National Newspaper Association, Parcel Shippers Association, Saturation Mail Coalition and Time Warner Inc. to Receipt Into Evidence of the Response of OCA Witness Smith to Presiding Officer's Information Request No. 25, filed December 18, 2006.
2. The Objection of Alliance of Nonprofit Mailers, Advo, Inc., American Business Media, Association for Postal Commerce, Direct Marketing Association, Inc., Dow Jones & Company, Inc., Growing Family, Inc., Magazine Publishers of America, Inc., Mail Order Association of America, Mailing & Fulfillment Service Association, The McGraw-Hill Companies, Inc., National Newspaper Association, Parcel Shippers Association, Saturation Mail Coalition and Time Warner Inc. to Receipt Into Evidence of the Response of OCA Witness Smith to Presiding Officer's Information Request No. 25, filed December 18, 2006, is sustained to the extent described in the body of this Order. The responses of OCA witness

Smith to Presiding Officer's Information Request No. 25 are included in the record for illustrative purposes only.

By the Commission
(SEAL)

Garry J. Sikora
Acting Secretary