

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

Before Commissioners:

Michael Kubayanda, Chairman;
Ann C. Fisher, Vice Chairman;
Mark Acton;
Ashley E. Poling; and
Robert G. Taub

Amendment to Rules Regarding Rate
Incentives for Market Dominant Products

Docket No. RM2020-5

ORDER DENYING PUBLIC REPRESENTATIVE MOTION FOR
INFORMATION REQUEST

(Issued December 1, 2022)

I. INTRODUCTION

This Order considers the Public Representative's November 17, 2022, motion requesting the issuance of an information request to the Postal Service in connection with the Commission's issuance of a notice of proposed rulemaking on November 14, 2022.¹ For the reasons discussed below, the Motion is denied without prejudice.

¹ Public Representative Motion for Issuance of Information Request, November 17, 2022, at 1 (Motion) (citing Notice of Proposed Rulemaking to Amend Rules Regarding Rate Incentives for Market Dominant Products, November 14, 2022 (Order No. 6325)).

II. MOTION

The Public Representative asks for the issuance of an information request “to obtain additional clarifying information from the Postal Service concerning the proposed amendments to Commission regulations concerning rate incentives for Market Dominant products” Motion at 1. The Motion contains seven questions (each referred to herein as a Question), each with multiple subparts. See *id.* at 1-4. Subparts of Question 1 through Question 4 seek information related to Postal Service library references filed in prior Commission rate proceedings. In addition, Question 1.a. and Question 1.b. seek explanations regarding, respectively, the mechanics of, and basis for, the Postal Service’s inclusion of rate incentives in the percentage change in rates calculation. See *id.* at 1-2. Question 2.b. seeks confirmation from the Postal Service regarding the content of Commission orders issued in prior rate proceedings. See *id.* at 2. Question 5 and Question 6 seek “the Postal Service’s best estimate of the magnitude and direction of the effect of including discounts associated with” certain rate incentives “in the percentage change in rates calculation” in past Commission rate proceedings. *Id.* at 3. Question 7 seeks information about the proportion and magnitude of mail sent by mailers under the Personalized Color Transpromo Promotion. See *id.* at 3-4.

The Public Representative states that the Questions “seek information that will allow participants to provide more constructive comments and evaluate whether the proposal meets the applicable legal and regulatory requirements.” *Id.* at 1. Further, the Public Representative also states that “[o]btaining this information will also contribute to a better understanding of how the Postal Service has interpreted Commission rules and allow the Commission to make a fully informed, reasoned determination on adopting the proposed amendments.” *Id.*

III. COMMISSION ANALYSIS

Legal Standard. In informal rulemaking (notice-and-comment) proceedings before the Commission such as the instant docket, the practice for obtaining information

is by means of an informal mechanism known as an information request (pursuant to 39 C.F.R. § 3010.170) rather than through the more formal discovery mechanisms used in traditional litigation, such as depositions, requests for admissions, interrogatories, and requests for production. See 39 C.F.R. § 3010.202(b). The Commission, the Chairman of the Commission, or a presiding officer has discretion to issue an information request “to obtain information that is likely to materially assist the Commission in the conduct of its proceedings, in the preparation of its reports, or in the performance of its functions under title 39 of the United States Code.” 39 C.F.R. § 3010.170(a). In addition, the Commission’s rules provide a process by which any person may request the issuance of an information request.² Section 3010.170(e) provides:

Any person may request the issuance of an information request by motion. The motion shall list the information, documents, or things sought; shall explain the reasons the information request should be issued; and shall demonstrate why the information sought is relevant and material to the Commission’s duties under title 39 of the United States Code. Upon consideration of the motion and any responses, the Commission, the Chairman of the Commission, or presiding officer may issue an information request that includes some or all of the proposed questions or modified versions of some or all of the proposed questions. Motions that do not result in the issuance of an information request prior to the Commission’s final decision in the docket shall be deemed denied.

39 C.F.R. § 3010.170(e).

In issuing information requests to the Postal Service, the Commission, the Chairman of the Commission, or a presiding officer aims to seek information that is in the Postal Service’s possession or control, or that can be obtained by the Postal Service through reasonable effort and expense. See 39 C.F.R. § 3010.170(b)(1). “Information that can be sought by information request includes, but is not limited to, explanations,

² Rather than allow a person to propound an information request on another person directly, the Commission, Chairman of the Commission, or a presiding officer acts as a gatekeeper to resolve concerns such as burden, duplication, relevance, and/or confidentiality. See Docket No. RM2008-1, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, March 20, 2009 (Order No. 194).

confirmations, factual descriptions, data, documents, and other materials.” See 39 C.F.R. § 3010.170(c).

Consideration of Motion. All motions for the issuance of an information request are required to “explain the reasons the information request should be issued” and “demonstrate why the information sought is relevant and material to the Commission’s duties under title 39 of the United States Code.” 39 C.F.R. § 3010.170(e). The Motion offers general reasons for issuing an information request to the Postal Service.³ However, the identified general reasons are not expressly tied to information sought through the Questions. Moreover, the Motion does not demonstrate why the information sought by the Questions is relevant and material to the Commission’s duties under title 39 of the United States Code. Because this demonstration was not included in the Motion, the Motion does not comply with the requirements of 39 C.F.R. § 3010.170(e).

Notwithstanding the Motion’s omission of the demonstration required by 39 C.F.R. § 3010.170(e), the Commission is permitted under 39 C.F.R. § 3010.170(a) to issue an information request “to obtain information that is likely to materially assist the Commission in the conduct of its proceedings[.]” 39 C.F.R. § 3010.170(a). Thus, information requests have been issued in various dockets irrespective of the sufficiency of movants’ demonstrations (under 39 C.F.R. § 3010.170(e)) of the relevance and materiality of the information sought.

However, at this juncture, the Commission has not been convinced that the information sought through the Questions is likely to assist the Commission materially in the resolution of this rulemaking proceeding. With certain exceptions, the Questions seek information about historical rate incentives, including information about specific library references (Question 1.c., Question 1.d., Question 2.a., Question 2.b., Question

³ See Motion at 1 (“The proposed questions seek information that will allow participants to provide more constructive comments and evaluate whether the proposal meets the applicable legal and regulatory requirements. Obtaining this information will also contribute to a better understanding of how the Postal Service has interpreted Commission rules and allow the Commission to make a fully informed, reasoned determination on adopting the proposed amendments.”).

2.c., Question 3.a., Question 3.b., Question 4.a., Question 4.b.), estimates regarding the effect of having included historical rate incentives in the percentage change in rates calculation (Question 5 and Question 6), and estimates of the proportion and volume of mail sent by specified customer types under the Personalized Color Transpromo Promotion (Question 7). See Motion at 1-4. Because rule changes proposed in Order No. 6325 are proposed to be effective only on a prospective basis (see Order No. 6325 at 29-30, 36), the Commission has not been convinced that the historical information sought by the Questions would materially assist the Commission in this docket. Further, Question 1.a., Question 1.b., and Question 2.b. seek other information that appears unlikely to assist the Commission materially in this docket because this information appears to be available in Commission rules and orders⁴ (and other information sought through the Questions may be available in public material filed in Commission dockets, which are accessible using the Commission's public website located at <https://www.prc.gov>).⁵ Consequently, the Commission denies the Motion.

Further Commission Guidance. The Commission's denial of the Motion is without prejudice. The Commission will entertain a motion (whether from the Public Representative or another person) seeking issuance of an information request containing some or all of the Questions, provided that such motion complies with 39 C.F.R. § 3010.170(e) and provides sufficient explanation of the reasons for the request and sufficient demonstration of the relevance and materiality of the requested

⁴ For example, "a high-level explanation of the mechanics by which rate incentives are included in the percentage change in rates" appears in 39 C.F.R. part 3030. Motion at 2. Similarly, whether "the Commission took no issue with the calculations in the referenced cells in its determinations of price adjustments in Orders No. 4215 and 4875, respectively" is discernable from those Orders, without any confirmation from the Postal Service. *Id.*

⁵ For example, information regarding the labelling of certain inputs and calculations made by the Postal Service and the Postal Service's "best estimate of the magnitude and direction of the effect of including discounts associated with" certain rate incentives in the percentage change in rates calculation may be discernable from Postal Service workpapers and/or preface files supplied in the Postal Service's library references in the identified rate proceedings. See Motion at 2-3.

information. Without prejudging any such motion, the Commission offers the following guidance about the explanation and demonstration contained therein.

First, the motion should explain the reasons for which the specific requested information request should be issued. If requested information is readily available from information accessible in the Commission's rules, orders, or dockets, in explaining these reasons, the motion should explain why, considering the information's availability, the request should be issued and why the request is consistent with 39 C.F.R. § 3010.170(b). For example, it is not clear, without more explanation, why an information request would "allow participants to provide more constructive comments" when they may already be able to access the requested information and why the Postal Service should be required to bear the effort and expense of locating and assembling such information. Motion at 1.

Second, the motion should demonstrate why the specific requested information is relevant and material. At a minimum, this demonstration should show that the requested information "is likely to materially assist the Commission in the conduct" of the instant proceeding. 39 C.F.R. § 3010.170(a). Again, the Commission will not prejudge any such motion that may be filed; however, it expects that any such motion would sufficiently explain the bearing on Order No. 6325's forward-looking proposal of any requested historical information. For example, a motion should explain in detail how any requested information about historical rate proceedings is relevant to Order No. 6325's proposal, in light of the forward-looking nature of that proposal.

Finally, if any Questions appear to seek legal conclusions or interpretation of legal documents, including Commission orders, or other information not readily apparently described in 39 C.F.R. § 3010.170(c), the motion should explain why the request for such information is consistent with 39 C.F.R. § 3010.170(c).

IV. ORDERING PARAGRAPH

It is ordered:

The Public Representative Motion for Issuance of Information Request, filed November 17, 2022, is denied without prejudice.

By the Commission.

Erica A. Barker
Secretary