

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

RECEIVED
OCT 20 4 28 PM '99
POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

REVISIONS TO LIBRARY REFERENCE RULE

Docket No. RM98-2

COMMENTS OF THE UNITED STATES POSTAL SERVICE
ON THIRD SET OF PROPOSED REVISIONS TO LIBRARY
REFERENCE PRACTICE
(October 20, 1999)

On September 23, 1999, the Commission issued Order No. 1263, containing the Commission's third set of proposed revisions to its Rule 31(b) pertaining to library references, which were published at 64 FR 52725-31 (September 30, 1999). The second set of proposed revisions had been issued on December 17, 1998, in Order No. 1223 (63 FR 71251, Dec. 24, 1998). The original proposals had been promulgated on August 27, 1998, in Order No. 1219 (63 FR 47456, Sept. 8, 1998). The Postal Service submits the following comments in response to Order No. 1263.

Overall, the Postal Service maintains the view that an informal conference among the interested parties (i.e., the usual rate case participants) would have provided a useful opportunity to share information regarding perceived problems and potential solutions with regard to library references and other documentary materials. Nevertheless, the Commission has crafted new proposed rules which, depending on how they are applied in specific proceedings, may prove generally satisfactory in most salient respects. The next rate case will provide opportunity to evaluate the new rules and their application in very concrete fashion. If the results of such experience prove disappointing, the Postal Service may seek to revisit the matter at some later date, with

the benefit of whatever wisdom has been gained. For current purposes, however, section-by-section analysis of the most recently proposed rules follows.

Section 31(b)(1): With the addition of the proposed new second sentence, the first two sentences of this subsection would read as follows:

Documents and detailed data and information shall be presented as exhibits. Testimony, exhibits and supporting workpapers prepared for Commission proceedings that are premised on data or conclusions developed in a library reference shall provide the location of that information within the library reference with sufficient specificity to permit ready reference, such as the page and line, or the file and the worksheet or spreadsheet page or cell.

While the Postal Service has very serious reservations about the second sentence, which will be discussed below, it also must note that these two sentences are now mutually inconsistent. If all detailed data and information were included within exhibits, there would be no role for workpapers or library references. To be reconciled, the first sentence should be amended to read "Documents and detailed data and information shall be presented within testimony, exhibits, supporting workpapers, or library references, as appropriate." Not only would this addition reconcile the two sentences, but it would also bring the section into conformance with the reality of current practice.

The new second sentence proposed by the Commission for insertion in section 31(b)(1) is apparently a response to an OCA proposal regarding the need for specificity in citations provided within exhibits. The language of the OCA's proposal, which was limited to exhibits, is quoted in Order No. 1263 at page 9:

Exhibits prepared for Commission proceedings shall cite with specificity the page and, if necessary for comprehension, the line number, of specific portions of testimony, exhibits, library references or other referenced material.

In its comments supporting this proposal, the OCA alleged that:

In the past, references provided by the Postal Service have not been precise. To avoid delays in reviewing documentation, documents must include comprehensive citation references to the appropriate page and, where necessary, line numbers of other materials filed in the proceeding.

OCA Comments at 7-8 (Feb. 1, 1999). It is obvious that the problem perceived by the OCA, whether real or illusory, was the lack of specificity in the citations provided by the Postal Service. It likewise appears that the intent of the Commission's proposal is to remedy the alleged "specificity" problem. Order No. 1263 referred to the "expectation that testimony and exhibits presented in Commission proceedings should contain adequate citation for specifically referenced source material." *Id.* at 6 (emphasis added).

In attempting to address that alleged problem, however, the Commission may have inadvertently created a much more serious problem. The Commission has expanded the scope of the provision, beyond that proposed by the OCA, to include testimony as well as exhibits. Yet, by its nature, testimony often presents numerical figures and results which are accompanied by no citations, specific or otherwise. The primary function of testimony is usually to present a narrative explanation of the analysis conducted and the conclusion reached. In contrast, complete documentation of the analysis, with full cross-references and the like, is the function of supporting workpapers and library references. Imposing on testimony cross-referencing requirements identical to those applicable to workpapers would be counterproductive. The flow of the narrative, which is what distinguishes testimony from workpapers, would become bogged down with unnecessary citations.

Consider the volume forecasting presentation of long-time Postal Service

witness Tolley. The Commission complimented the quality of his presentation in the last rate case as follows:

As the Commission has come to expect, the Postal Service and its volume witnesses have complied at the outset with every aspect of the Commission's rules relating to statistical studies and evidence requirements for general rate proceedings. Postal Service documentation is not only complete, it is also a well-organized and highly understandable description of subjects that are often quite technical. The high standards adopted by the Postal Service has facilitated the task of evaluating the Service's econometric studies and volume forecasts and has eased the burden on its own witnesses of responding to interrogatories and questions in hearings from other parties.

PRC Op. R97-1, App. H at 2. Yet throughout its hundreds of pages, which include myriad tables, charts, graphs, and tables, to say nothing of the thousands of numbers sprinkled throughout the text, Prof. Tolley's testimony includes virtually no citations or cross-references. See USPS-T-6, Docket No. R97-1. The technical reviewer, as the Commission's comments make clear, was readily able to find that type of information in the supporting documentation, which comprehensively tracks every step of the analysis from start to finish. On the other hand, the non-technical reviewer could focus on the substance of the presentation. In confining exhaustive documentation to supporting materials, Dr. Tolley's testimony is far from unique, and, in fact, is typical of testimonies which present this type of quantitative analysis.

It appears, however, that the new language of section 31(b)(1) could be misinterpreted to suggest that every time testimony includes a number which originates in a library reference, the testimony must include a cross-reference to that source. While the Postal Service does not understand that to be the intent of the proposed change, that could be its effect. (The Postal Service submits that the correct

interpretation of the intent of the new language would be that anyplace where a citation to a library reference is provided, that citation must be sufficiently specific to allow the reviewer to readily find the source within the cited library reference.) The Postal Service is especially concerned that parties displeased with the substance of the Postal Service's proposals (or, subsequently, with the Commission's recommendations) would attempt to utilize the proposed language literally to argue that the supporting evidence was defective. While the Postal Service is willing to seek improvement in the specificity of its citations, it sees no constructive purpose to a massive restructuring of its testimonies to add citations, when there has been absolutely no showing by anyone that any testimonies have been materially deficient in this respect, or that the utility of the testimonies would be enhanced by the imposition of such an onerous and redundant requirement.¹

Because the Commission's proposed language has strayed beyond the scope of the OCA's proposal to improve the specificity of citations within exhibits, the Postal Service proposes two alternative solutions. Most directly, the reference to testimony could be stricken, which would be consistent with the OCA's proposal, and the sentence could simply begin "Exhibits," Alternatively, the middle part of the sentence could be rewritten to read:

Testimony, exhibits and supporting workpapers prepared for Commission proceedings that are premised on data or conclusions developed in a library reference shall, whenever providing the location of that information within the library reference, do so with sufficient specificity to permit ready reference, such

¹ Whether any party has ever actually been harmed by the lack of exhaustive citations in testimony, when complete documentation has been presented elsewhere, is perhaps an issue that could fruitfully have been discussed at an informal conference.

as the page and line, or the file and the worksheet or spreadsheet page or cell. Such a modification would clarify that the intent of the new provision would be to improve the specificity of citations, not to expand the scope of instances in which citations are required.²

As a final comment, the Postal Service notes that the Commission has clearly stated that its interest in this rulemaking is to pursue relatively narrow improvements in the administration of the library reference practice. See, for example, Order No. 1223 at page 3. To the extent that the proposed revision to Rule 31(b)(1) could be interpreted to have serious implications for matters essentially unrelated to library reference practice, such as the requisite level of documentation that must be included within the testimony document, the Postal Service submits that such a proposal could expand the scope of the rulemaking beyond the limits established early on.

Section 31(b)(2)(ii). In the opening sentence of this subsection, there is reference to “the physical characteristics of the material, such as number of pages or bulk” which would render unduly burdensome an obligation to serve a copy upon every party. It might be useful to add “or electronic format” to the list of potential physical

² These comments should certainly not be read to suggest that specific cross-references are never appropriately included within testimony. Some witnesses have no workpapers or other supporting background material, because the nature of their analyses lend themselves to a presentation that is self-contained within the testimony document (i.e., the text of the testimony and any attachments). In such cases, those testimonies should include any necessary citation to source documents. If those citations have perhaps on occasion in the past lacked sufficient specificity, the proposed new rule, even if revised as suggested above, would operate to remedy that potential deficiency. The important point to remember, however, is that not all testimony is the same, and for those testimonies which effectively summarize analyses which are comprehensively documented elsewhere, rigid format specifications could be counterproductive.

characteristics which would impede service upon every party. Many library references are filed as such because they consist of one or more diskettes or CDs -- the electronic media most currently in vogue -- and there certainly is no intention (nor should there be) to serve copies of such items on every party. Such an addition, while not crucial to the functioning of the rule, would also more accurately capture the actual role of library references in the typical Commission proceeding.

REPLY TO THE OCA'S COMMENTS

On October 13, 1999, the OCA filed its comments in response to Order No. 1263. For purposes of convenience, the Postal Service includes its comments in response within this pleading. These reply comments are organized by section.

Section 31(b)(1): The OCA proposes to expand the new "specificity" provision to include citation to testimony, exhibits, and workpapers, in addition to the citations to library references encompassed by the Commission's current proposal. As noted above, the Postal Service is concerned that the language proposed by the Commission could be misinterpreted. This concern is only exacerbated by the OCA's proposal. To the extent that the OCA's proposal appears to be premised only on a perceived need by the OCA to maintain literal symmetry, rather than to alleviate any identified problems, it elevates form over function. The OCA's suggestion manifests no awareness of the difficulties inherent in preparing a postal rate filing. Specifically, the witnesses are constantly revising their testimonies up to the printing deadline.³ Such

³ While the same potential problem can be experienced with library references, those documents generally tend to stabilize earlier in the production process. Of

revisions change pagination. Yet under the OCA's proposal, any repagination of one testimony would have ripple effects through the cross-references contained within the testimony of other witnesses. (For obvious reasons, the Postal Service won't even bother to discuss the magnitude of the problem if application were to focus on line numbers.) The burden this would create would arise at the worst possible time in the preparation process -- right at the end when all hands are scrambling to meet their obligations under the case preparation schedule.

What seems to be singularly lacking from the OCA's quixotic pursuit of utopian documentation is any coherent attempt to focus at a practical level on identifying and resolving real problems the parties might be experiencing under existing practices. As noted earlier, the primary function of an informal conference would have been to get a better handle on situations which warrant the expenditure of real resources to remedy, in contrast with those which are more cosmetic and lack true substance. As best as can be determined, the OCA is once again proposing a solution in search of a problem, and the Postal Service opposes its suggestion.⁴

Section 31(b)(2)(iii): The OCA suggests that the "other applicable requirements" language of this section might not clearly incorporate the "unduly burdensome"

course, under the proposed rules, it can also be expected that more last-minute changes will need to be made in library references, as insertions are made in order to achieve compliance with the new procedures.

⁴ Moreover, it is obvious the OCA's proposed addition could impose obligations in situations with absolutely no connection to library reference practice whatsoever. For example, no nexus to library reference practice exists if the testimony of one witness merely cites data appearing in the testimony of another witness, yet the OCA's new version of the rule would nonetheless apply. In this respect, the OCA's proposal clearly exceeds the scope of the rulemaking as established by the Commission.

condition of section (b)(2)(ii). Given that the function of (b)(2)(iii) is to deal with exceptional circumstances, and it provides ample limitations against abuse, the Postal Service sees no reason to further burden its provisions as suggested by the OCA. Specifically, it seems much wiser to leave intact the flexibility afforded by the proposed rules regarding the “unduly burdensome” condition, which, as the Postal Service pointed out in earlier comments, would be of dubious applicability to the many library references for which no underlying service obligation exists.

Sections 32(b)(2)(iv)(H) & (vi): The Postal Service has no objections to the OCA’s suggestions regarding these two provisions.

Section 31(b)(2)(vii): It is not totally clear exactly what the OCA is seeking here:

OCA suggests a revision to require that where the notice is submitted to the Commission in an electronic format, and when it is not feasible to include the notice within the electronic file of the library reference, that the notice instead be included electronically with, but not within, the electronic version of the library reference.

OCA Comments at 5. While the Postal Service is unsure exactly how something can “be included electronically with, but not within, the electronic version” of something else, the root of the OCA’s concern appears to be that someone who gains access to a library reference on the Commission’s web page might not be able to benefit fully from this access if he or she does not similarly have access to the information provided with the notice. Under current practice, however, the Commission is scanning pleadings and posting them on the web already. So, whether or not an electronic version of the notice is submitted, as long as the notice is scanned, parties will have access to that information on the web. Consequently, the actual basis for the OCA’s concern is not apparent, and the rule as proposed seems entirely adequate.

Conclusion

In comments submitted previously, the Postal Service summarized what it hoped would be the result of this rulemaking as follows:

- 1) Useful new procedures that will not unnecessarily impair the Postal Service's ability to complete preparations for submission of a request for a recommended decision in the most expeditious manner possible; and
- 2) Useful new procedures that will not unnecessarily impair the Postal Service's ability to maintain a smooth and timely flow of information in response to discovery requests.


With the exceptions discussed above, and depending in very large measure on how they are applied, the most recently proposed rules may be consistent with these objectives.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking



Eric P. Koetting

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2992; Fax -5402
October 20, 1999

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.



Eric P. Koetting

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2992; Fax -5402
October 20, 1999