

UNITED STATES OF AMERICA
Before The
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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General Review of the Rules of Practice)

Docket No. RM98-3

OFFICE OF THE CONSUMER ADVOCATE
COMMENTS IN RESPONSE TO ORDER NO. 1274
ON NOTICE AND ORDER ON PROPOSED CHANGES TO
THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE
(January 21, 2000)

The Office of the Consumer Advocate hereby comments upon the Commission's Notice and Order on Proposed Changes to the Commission's Rules of Practice and Procedure issued December 17, 1999, in Order No. 1274. The order proposes incorporating the Commission's special rules of practice into the Rules of Practice and Procedure.¹ It also proposes certain housekeeping amendments to update the Commission's rules, all in Subpart A-Rules of General Applicability (Rules 1-43), 39 CFR § 3001.1-43.² The order invites comments on the proposed revisions no later than January 21, 2000.

OCA has carefully reviewed the proposed revisions. It appears that all but one of the special rules is proposed for inclusion in the Commission's Rules of Practice and Procedure. The proposals would incorporate the special rules at the locations

¹ Special Rules of Practice were implemented, for instance, in Docket No. R97-1, Presiding Officer's ruling R97-1/4, August 1, 1997, Attachment B.

² The Commission specifically deferred to a later rulemaking consideration of suggested revisions to Subparts B through F (Rules 51-92). Order at 2-3.

proposed by OCA with the repositioning of only a few sentences and accept most of the conforming amendments suggested by OCA.³ Therefore, OCA offers only the following limited comments.

Special Rule 1.B. Exhibits

OCA proposed to insert special rule 1.B into the Rules of Practice and Procedure after the first sentence of the current Rule 31(b). Special rule 1.B. *Exhibits* states:

Exhibits should be self-explanatory. They should contain appropriate footnotes or narrative explaining the source of each item of information used and the methods employed in statistical compilations. The principal title of each exhibit should state what it contains or represents. The title may also contain a statement of the purpose for which the exhibit is offered; however, this statement will not be considered part of the evidentiary record. Where one part of a multi-part exhibit is based on another part or on another exhibit, appropriate cross-references should be made. Relevant exposition should be included in the exhibits or provided in accompanying testimony.

The special rule prescribes information that should be included in exhibits such as the nature of the title, sources, methods employed in statistical compilations, and cross-references for multi-part exhibits. Although Order No. 1274 proposes to insert all of the other special rules into the Rules of Practice and Procedure (except those relating to library references disposed of in another rulemaking) in essentially the manner as proposed by OCA with only minor realignments, this special rule is omitted without discussion.

³ See OCA comments, "Office of the Consumer Advocate Suggestions in Response to Order No. 1218 on Improvements in the Commission's Rules of Practice," October 28, 1998. The Attachment to the comments indicates where each special rule should be inserted into the Rules of Practice and Procedure. See also, "Supplement to Office of Consumer Advocate Suggestions in Response to Order No. 1218 on Improvements in the Commission's Rules of Practice," November 2, 1998. It contains pertinent parts of the current Rules of Practice and Procedure with the special rules inserted and underlined, and the deletions bracketed, as proposed by OCA.

OCA believes this special rule regarding exhibits is significant and important as it insures that exhibits contain the necessary references and citations to sources so necessary for their meaningful review in a timely manner. Presently, the provisions of special rule 1.B are for the most part followed by participants in the Commission's proceedings; however, the removal of the requirement from the rules would signal a change in direction of the Commission as to the amount of information required to aid the participants in reviewing exhibit material. The Commission should therefore insert this special rule into the Rules of Practice and Procedure, as OCA proposed, after the first sentence of Rule 31(b).

Proposed new Rule 25

OCA also notes that the Commission proposes to insert a new Rule 25 as Discovery-general policy, in lieu of the current Rule 25 and to renumber the current Rules 25-27 as Rules 26-28. OCA previously proposed that the general policy language should be inserted as a new Rule 24A in order to avoid renumbering the current discovery rules. OCA still would prefer that approach in order to avoid confusion in future cases when the discovery rules are researched and past orders and Commission documents are cited which refer to the current Rule numbers. However, for consistency with the current numbering scheme, the Rule should not be designated "25A" as OCA originally proposed but "25a" which would be consistent with the designation of other current rules that include "a" rules. See, for instance, Rules 20a, 31a, 42a, 57a-c, 67a-d, 57b, 57c, and 69a-c.

Rule 21 (b)

OCA also proposed modifying Rule 21(b) regarding answers to motions by adding after "Within 10 days after a motion is filed" the language "or such other period as provided in this section." This is proposed in order to signal the reader that Rule 21(c) (a new rule) requires responses to motions to strike to be filed within 7 days, a period which varies from the norm. The Commission did not include this language in its proposal. OCA recommends the language to make the rules more user-friendly.

Rule 9

In proposed Rule 9, after "presiding officer" insert the word "for."

Order No. 1274 Attachment

The Attachment to Order No. 1274 includes sections of the rules with proposed changes. However, one current section of the rules is also included, Rule 31(k)(2), and its constituent parts (v)(b) through (d), which are apparently not modified and do not serve any other purpose in the Attachment. The Commission order does not discuss reasons for including those sections in the attachment and it may wish to delete that portion of the Attachment in its final order.

Respectfully submitted,

OFFICE OF THE CONSUMER ADVOCATE



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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice.


STEPHANIE WALLACE

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January 21, 2000