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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

ORDER NO. 1284

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

Before Commissioners: Edward J. Gleiman, Chairman;
George A. Omas, Vice Chairman;
Dana B. Covington; Ruth Y. Goldway;
and W.H. "Trey" LeBlanc, III

General Review of the Rules of Practice

Docket No. RM98-3

NOTICE AND ORDER ON PROPOSED CHANGES TO THE COMMISSION'S
RULES OF PRACTICE AND PROCEDURE

(February 3, 2000)

The Commission initiated this rulemaking to amend its Rules of Practice and Procedure to improve the efficiency and effectiveness of proceedings conducted pursuant to 39 U.S.C. § 3624. See Order No. 1218 (63 Fed. Reg. 46732 (1998)). The initial Order encouraged comments on any topic covered in 39 C.F.R. § § 3001.1-92, with the exception of library references and confidential information, which were to be addressed in separate rulemakings. In particular, comments were solicited regarding the extent to which electronic filing requirements or options could be added to the current rules, and on the incorporation of all (or most) of the special rules of practice into the Rules of Practice and Procedure. The special rules were originally designed for use in omnibus rate proceedings and recently have been employed in several classification and complaint dockets. These rules encompass five discrete areas: evidence, discovery, service, cross-examination and "general," which in part addresses

the use of library references. The rules generally provide both detailed procedures designed for complex omnibus rate cases with numerous participants, and pleading deadlines which are more accelerated than those in the existing Rules of Practice and Procedure.

Five sets of comments suggesting improvements were received. Commenters generally supported the integration of the special rules into the current Rules of Practice and Procedure, but gave a mixed response to the possibility of electronic filing requirements. Some commenters suggested that several technical and procedural rules were outdated in light of current technology and practice. Certain "streamlining" measures also were proposed.

In Order No. 1274, the Commission proposed specific changes in the Rules of Practice and Procedure which address the aforementioned areas of interest, as well as commenters' remarks. See Order No. 1274 (64 Fed. Reg. 72622 (1999)). Proposed modifications include the incorporation of most of the special rules and minor updates of several current rules to reflect internal Commission changes since the rules were first promulgated. The proposed rules generally have been tested in numerous Commission proceedings, and have proven to be effective and efficient.

The Commission narrowed the scope of the rulemaking by limiting its consideration to Subpart A—Rules of General Applicability (Rules 1-43). Thus, to the extent commenters' remarks encompassed Subparts B through F (Rules 51-92), which include regulations pertaining to the initiation of dockets, they were deferred for consideration to a later rulemaking.

Three sets of comments were received in response to Order No. 1274. The comments are available for public inspection in the Commission's docket section, and can be accessed electronically at www.prc.gov. The comments essentially support the proposed revisions as reasonable and appropriate. However, there are some concerns with regard to the revised filing deadlines for various pleadings in Commission

proceedings. Also, commenters suggest that clarification of some rules may be necessary. Finally, several minor technical amendments to the Commission's Rules of Practice and Procedure are proposed. Each comment will be addressed in turn.

Reversion of the proposed seven-day deadline to the current 10-day deadline for objections to interrogatories, requests for production of documents or things, and requests for admissions (Rules 26(c), 27(c) and 28(c), respectively). One commenter maintains that the shortened deadline for objections to discovery requests which the Commission proposes in Rules 26(c), 27(c) and 28(c) is too severe and may result in "increased motions practice and other inefficiencies." According to the commenter, a backlog of responses to interrogatories during extensive discovery in an omnibus rate case has been experienced frequently under the current 10-day deadline. This situation would be exacerbated if the period for responses was shortened. Moreover, the proposed seven-day deadline does not reflect incorporation of the special rules, but rather is an untested proposal.

The commenter presents a valid argument. The shortened time period for objections to discovery was proposed in conjunction with the abbreviated pleading periods prescribed by the special rules. However, the Commission recognizes that the special rules have been tested and proven successful in numerous Commission proceedings, whereas the proposal at issue is untried. As such, the Commission will not implement this shortened deadline as a final rule, and the current 10-day deadline will remain in effect. The proposed abbreviated deadline may instead be considered for implementation as a special rule during the R2000-1 omnibus rate case or other Commission proceeding.

Implementation of a shortened time period for filing motions to compel responses to discovery in revised Rules 26(d), 27(d) and 28(d). One commenter suggests that the period for participants to file motions to compel responses to discovery be shortened from the current 14 days to 10 days. The commenter argues that the abbreviated time

period will effectively reduce those outstanding discovery disputes pending against a participant both during and after the hearing stage of its case-in-chief. Further, the shortened deadline would be consistent with the current, somewhat analogous 10-day period for response to a motion provided by Rule 21(b).

The Commission declines to modify Rules 26(d), 27(d) and 28(d) as proposed by the commenter. While the commenter's proposal has merit, the shortened time frame has never been tested as a special rule to gauge its effectiveness. The Commission therefore would be inclined to direct that the proposal first be applied in a particular case to determine its feasibility prior to any promulgation of a rule.

Reversion of the proposed seven-day deadline for responses to motions in Rule 21 to the current 10-day deadline. One commenter argues against the adoption of the Commission's proposal to shorten the deadline for responses to motions from 10 to seven days. According to the commenter, this abbreviated period is not a special rule and has not been tested in the course of a major rate proceeding. The commenter maintains that the shortened deadline would be difficult to meet and would likely result in numerous filings for extension of time to reply.

While not a special rule, the abbreviated time frame nonetheless has been imposed in a number of instances where motions have been seriously contested, and met with success. Additionally, the special rules require responses to motions to compel discovery in seven days, and applying this time period to all motions practice will eliminate confusion. In light of these considerations, the Commission is not persuaded by the commenter's arguments. The Commission's proposal will be implemented.

Inclusion of Special Rule 1.B. Exhibits. One commenter notes that the Commission did not incorporate the special rule addressing exhibits in its revised Rules of Practice and Procedure. That special rule specifies what information must be included in each exhibit, such as cross-references for multi-part exhibits. The

commenter maintains that the special rule on exhibits ensures the provision of those citations and references to sources necessary for a meaningful review of a particular exhibit, and therefore should be a part of the Commission's Rules of Practice and Procedure. It is suggested that the special rule be inserted after the first sentence of Rule 31(b), which pertains to documentary materials.

The Commission agrees that the special rule on exhibits merits inclusion in the Rules of Practice and Procedure. That rule was not proposed for incorporation in Order No. 1274 based on the Commission's assessment that the current Rules of Practice and Procedure and the revised rule on library references sufficiently addressed the filing of exhibits. See Order No. 1273 (64 Fed. Reg. 67487 (1999)). However, it is possible that the special rule on exhibits would provide more comprehensive guidance on the matter. As suggested, this special rule is incorporated in current Rule 31(b), Documentary material.

Clarification of proposed Rule 10 (Form and number of copies of documents).

One commenter questions whether it is the intention of the Commission to amend Rule 10 to allow pleadings to be filed either in hardcopy form or on computer diskettes on a *document-by-document* basis.

The proposed amendment to Rule 10 does allow participants to select the medium of filing on a document-by-document basis. Under the proposed rule, a participant is *not* required to select only one form of filing for all of that participant's documents in a given proceeding.

Reduction in the number of hardcopy documents requested for filing under Rule 10(d). Under Rule 10, any participant filing a hardcopy document must present an original and 24 copies of the document. One commenter proposes that the number of required hard copies be reduced, given the availability of such documents on the Commission's web site and the potential time savings associated with a reduced filing requirement.

The Commission declines to amend Rule 10 as requested, but notes that an alternative option was proposed by the Commission in Order No. 1274. The proposed Rule 10 allows for the electronic filing of documents, with a reduced number of hard copies. Thus, participants may submit a filing on computer diskette (in compliance with Rule 10(c) specifications), accompanied by only one printed original and three hard copies of that filing.

Clarification of Rule 12(d) regarding the appropriate service list for compliance with service requirements. One commenter suggests that Commission Rule 12(d) (Service list) be modified to designate the service list on the Commission's web site as the current service list for effective service of documents. Such a modification would decrease the likelihood of participants utilizing out-of-date service lists, as is possible with reliance on a hardcopy service list, particularly in complex, multi-party cases.

The Commission finds this proposal reasonable, and will so amend Rule 12(d). Each participant is responsible for ensuring that its listing on the Commission's web site (<http://www.prc.gov>) is accurate, and should promptly notify the Commission of any errors.

Inclusion of Postal Service street address in Rule 12(e). The Postal Service suggests that Rule 12(e), which describes the method of service of documents, be amended to include the Postal Service's street address. The Commission finds this proposal reasonable, and therefore amends Rule 12(e) to read, in relevant part, " ... Chief Counsel, Rates and Classification, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Room 6536, Washington, DC 20260-1137."

Amendment of Rule 18 regarding participants' right to request a hearing. One commenter notes that the current Rule 18 (Nature of proceedings) essentially allows participants the right to request a hearing without specifying the grounds for the request. In this regard, Rule 18 is inconsistent with other Commission rules which require that the underlying purpose for a hearing request be cited. The commenter

suggests that the phrase "Except as otherwise provided in these Rules" be added to Rule 18 to eliminate this inconsistency.

The Commission is in favor of eliminating any perception of inconsistency in its Rules of Practice and Procedure. To this end, Rule 18(a) (Proceedings to be set for hearing) will be modified essentially as proposed.

Modification of Rule 21(b) regarding answers to motions. A commenter suggests that language be added to the rule to better signal the reader that the deadline imposed for responses to motions to strike, in the new Rule 21(c), varies from the deadlines otherwise imposed in Rule 21.

The Commission finds no compelling reason to add such language to Rule 21(b). In the first instance, the same seven day deadline is imposed for responses to motions to strike in Rule 21(c) and for answers to motions in Rule 21(b). Furthermore, the potential for different deadlines for responses already is highlighted, as the revised Rule 21(b) provides, in relevant part: "Within seven days after a motion is filed, or such other period as the rules provide or the Commission or presiding officer may fix, any participant to the proceeding may file and serve an answer"

Renumbering of proposed new Rule 25. One commenter suggests that the new Rule 25 be renumbered as "25a," thereby eliminating the need to renumber the current discovery rules. In this manner, confusion regarding the renumbered rules may be avoided in future cases, when the rules pertaining to discovery are researched, and past Commission documents referring to the current rule numbers are cited.

While the Commission understands this concern, it declines to act on this suggestion, as the Federal Register Document Drafting Handbook states that numbers with alpha characters (such as part 25a) are not permitted in designating units within the CFR system. See Federal Register Document Drafting Handbook, Section 1.12 Numbering of rules, at 1-22 (October 1998 Revision). The Commission is confident that

the renumbering of the discovery rules, as proposed in Order No. 1274, will not significantly impact either the Commission or the participants in future proceedings.

Clarification of proposed Rule 25 with regard to the extended period of discovery on the Postal Service. The proposed Rule 25 provides, in relevant part, that “[d]iscovery requests of this nature are permissible for the purpose of the development of rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony.” One commenter suggests that the Commission’s intent to limit the extended discovery period for the sole purpose of rebuttal testimony development may be more fully realized by adding the word “only” to the provision.

It is agreed that modification of Rule 25 as suggested is consistent with the intent of the rule and Commission precedent. The Commission therefore modifies Rule 25 to read as follows, in relevant part: “[d]iscovery requests of this nature are permissible only for the purpose of the development of rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony.”

Additional modifications by the Commission. Several minor technical amendments to the Commission’s proposed Rules of Practice and Procedure are now made. In Rule 12(d), the phrase “by each participating with the address” is changed to “by each participant with the address.” In Rule 12(e), which provides for the method of service of documents in Commission proceedings, the word “persons” is changed to “individuals” to conform with the inserted special rules. In Rule 26(c), the phrase “service of interrogatories” is substituted for the phrase “the request for production,” as that rule addresses interrogatories for the purpose of discovery. In Rule 26(g), the word “party” is changed to “participant,” in accordance with Commission terminology. Likewise, in Rule 27(c), all references to “party” are changed to “participant.” In Rule 27(e), “[s]uch compelled documents or things shall be made available to the participants making the motion ...” is changed to “[s]uch compelled documents or things shall be made available to the participant making the motion” In Rule 30(e)(1), the

phrase "including the Postal Service" is deleted, as the term "participant" used in the sentence in question encompasses the Postal Service. Finally, the Commission notes that a minor typographical error and some superfluous text in Order No. 1274 which was highlighted by a commenter was, in fact, corrected in the associated Federal Register notice. See 64 Fed. Reg. 72622 (1999).

Text of amended revisions. For the reasons discussed above, the Commission hereby amends Subpart A of its Rules of Practice and Procedure as set forth in the Attachment to this order.

It is ordered:

1. The Commission adopts the provisions set out in the attachment as the final rules amending 39 C.F.R. § § 3001.1-43.
2. The rules are effective upon publication in the *Federal Register*.
3. The Secretary shall cause this order to be published in the *Federal Register*.

By the Commission.

(S E A L)

A handwritten signature in black ink, reading "Margaret P. Crenshaw". The signature is written in a cursive, flowing style.

Margaret P. Crenshaw,
Secretary

Subpart A—Rules of General Applicability

* * * * *

§ 3001.4 Method of citing rules.

This part shall be referred to as the "rules of practice." Each section, paragraph, or subparagraph shall include only the numbers and letters to the right of the decimal point. For example, "3001.24 *Prehearing conferences*" shall be referred to as "section 24" or "Rule 24."

§ 3001.5 Definitions.

* * * * *

(e) "Presiding officer" means the Chairman of the Commission in proceedings conducted by the Commission en banc or the Commissioner or employee of the Commission designated to preside at hearings or conferences.

* * * * *

(q) "Office of the Consumer Advocate" or "OCA" means the officer of the Commission designated to represent the interests of the general public in a Commission proceeding.

§ 3001.7 Ex parte communications.

* * * * *

(d) *Violations of ex parte rules.* (1) Upon notice of a communication knowingly made or knowingly caused to be made by a participant in violation of paragraph (b) of this section, the Commission or presiding officer at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the participant to show cause why his/her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

§ 3001.9 Filing of documents.

* * * * *

(b) *Acceptance for filing.* Only such documents as conform to the requirements of this part and any other applicable rule, regulation or order of the Commission shall be accepted for filing. Unacceptable filings will be rejected by the Secretary and will not be included in the file in the proceeding involved. The Secretary shall notify the sender of

any unacceptable document and the presiding officer in the proceeding in which such document was tendered that such document was rejected. Acceptance for filing shall not waive any failure to comply with the rules, and such failure may be cause for subsequently striking all or any part of any document.

§ 3001.10 Form and number of copies of documents.

* * * * *

(c) *Computer diskette.* Participants capable of submitting documents stored on computer diskettes may use an alternative procedure for filing documents with the Commission. Provided that the stored document is a file generated in either Acrobat (pdf), Word, or WordPerfect, in lieu of the other requirements of section 10 of the rules, a participant may submit a diskette containing the text of each filing simultaneously with the filing of 1 (one) printed original and 3 (three) hard copies. Attachments will be accepted in their native format (i.e., Excel, Lotus, etc.). Documents must be submitted in Arial 12pt Font, or such program, format, or font as the presiding officer may designate to assist with optical character recognition (OCR).

(d) *Number of copies.* Except for correspondence, computer diskette filing as provided for in section (c) of this rule, or as otherwise permitted by the Commission, the Secretary or the presiding officer in any proceeding, all persons shall file with the Secretary an original and 24 fully conformed copies of each document required or permitted to be filed under this part. The copies need not be signed but shall show the full name of the person signing the original document and the certificate of service attached thereto.

§ 3001.12 Service of documents.

* * * * *

(b) *Service by the participants.* Every document filed by any person with the Commission in a proceeding shall be served by the person filing such document upon the participants in the proceeding individually or by such groups as may be directed by the Commission or presiding officer except for discovery requests governed by §§ 3001.26(a) and (c), 3001.27(a) and (c), and 3001.28(a) and (c), and except for designations for written cross-examination, notices of intent to conduct oral cross-examination and notices of intent to participate in oral argument, which need be served only on the Commission, the OCA, the Postal Service, and the complementary party (as applicable), as well as on participants filing a special request for service. Also, discovery requests and pleadings related thereto, such as objections, motions for extensions of time, motions to compel or for more complete answers, and answers to such pleadings, must be served only on the Commission, the OCA, the Postal Service,

the complementary party, and on any other participant so requesting, as provided in sections 26-28 of the rules of practice. Special requests relating to discovery must be served individually upon the party conducting discovery and state the witness who is the subject of the special request.

* * * * *

(d) *Service list.* The Secretary shall maintain a current service list in each proceeding which shall include the participants in that proceeding and up to two individuals designated for service of documents by each participant with the address and, if possible, a telephone number and facsimile number designated in the participant's initial pleading in such proceeding or a notice of appearance as provided in § 3001.6(c). The service list shall show the participants actively participating in the hearing and representative groups established pursuant to paragraph (c) of this section. The Secretary's current service list for a particular proceeding may be found on the Commission's web site, <http://www.prc.gov>. Each participant is responsible for ensuring that its listing on the Commission's web site is accurate, and should promptly notify the Commission of any errors. Service on the Secretary's service list in any proceeding, as directed by the Commission or the presiding officer, shall be deemed service in compliance with the requirements of this section.

(e) *Method of service.* Service may be made by First-Class Mail or personal delivery to the address shown for the individuals designated on the Secretary's service list. Service of any document upon the Postal Service shall be made by delivering or mailing six copies thereof to the Chief Counsel, Rates and Classification, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Room 6536, Washington, DC 20260-1137. Service via electronic filing may be available under circumstances prescribed by the Commission or the presiding officer.

§ 3001.17 Notice of proceeding.

* * * * *

(b) *Appellate proceedings under 39 U.S.C. § 404(b).* The Commission shall issue a notice of proceeding to be determined on a record compiled by the Postal Service whenever:

(1) An appeal of a determination of the Postal Service to close or consolidate a post office is taken to the Postal Rate Commission pursuant to Subpart H of this part; or

(2) An application to suspend the effective date of a determination of the Postal Service to close or consolidate a post office pending appeal to the Postal Rate Commission is made pursuant to Subpart H of this part.

(c) *Publication and service of notice.* Each notice of proceeding shall be published in the FEDERAL REGISTER and served on the Postal Service, the complainant in a complaint proceeding, and the appellant in the appeal of a Postal Service determination to close or consolidate a post office.

(d) *Contents of notice.* The notice of a proceeding shall include the following:

* * * * *

§ 3001.18 Nature of proceedings.

(a) *Proceedings to be set for hearing.* Except as otherwise provided in these rules, in any case noticed for a proceeding to be determined on the record pursuant to § 3001.17(a), the Commission may hold a public hearing if a hearing is requested by any party to the proceeding or if the Commission in the exercise of its discretion determines that a hearing is in the public interest. The Commission may give notice of its determination that a hearing shall be held in its original notice of the proceeding or in a subsequent notice issued pursuant to paragraph (b) of this section and § 3001.19.

* * * * *

§ 3001.19 Notice of prehearing conference or hearing.

In any proceeding noticed for a proceeding on the record pursuant to § 3001.17(a) the Commission shall give due notice of any prehearing conference or hearing by including the time and place of the conference or hearing in the notice of proceeding or by subsequently issuing a notice of prehearing conference or hearing. Such notice of prehearing conference or hearing shall give the title and docket designation of the proceeding, a reference to the original notice of proceeding and the date of such notice, and the time and place of the conference or hearing. Such notice shall be published in the FEDERAL REGISTER and served on all participants in the proceeding involved. Notice of the time and place where a hearing will be reconvened shall be served on all participants in the proceeding unless announcement was made thereof by the presiding officer at the adjournment of an earlier session of the prehearing conference or hearing.

§ 3001.20 Formal intervention.

(a) *Who may intervene.* A notice of intervention will be entertained in those cases that are noticed for a proceeding pursuant to § 3001.17(a) from any person

claiming an interest of such nature that intervention is allowed by the Act, or appropriate to its administration.

* * * * *

§ 3001.20a Limited participation by persons not parties.

Notwithstanding the provisions of § 3001.20, any person may appear as a limited participator in any case that is noticed for a proceeding pursuant to § 3001.17(a), in accordance with the following provisions;

* * * * *

§ 3001.21 Motions.

* * * * *

(b) *Answers.* Within seven days after a motion is filed, or such other period as the rules provide or the Commission or presiding officer may fix, any participant to the proceeding may file and serve an answer in support of or in opposition to the motion pursuant to §§ 3001.9 to 3001.12. Such answers shall state with particularity the position of the participant with regard to the ruling or relief requested in the motion and the grounds and basis and statutory or other authority relied upon. Unless the Commission or presiding officer otherwise provides, no reply to an answer or any further responsive document shall be filed.

(c) *Motions to Strike.* Motions to strike are requests for extraordinary relief and are not substitutes for briefs or rebuttal evidence in a proceeding. All motions to strike testimony or exhibit materials are to be submitted in writing at least 14 days before the scheduled appearance of the witness, unless good cause is shown. Responses to motions to strike are due within seven days.

§ 3001.25 Discovery- general policy.

Rules 26 through 28 allow discovery reasonably calculated to lead to admissible evidence during a noticed proceeding. Generally, discovery against a participant will be scheduled to end prior to the receipt into evidence of that participant's direct case. An exception to this procedure shall operate in all proceedings brought under 39 U.S.C. §§ 3622, 3623, 3661 and 3662 when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature are permissible only for the purpose of the development of

rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony.

The discovery procedures set forth in rules 26 through 28 are not exclusive. Participants are encouraged to engage in informal discovery whenever possible to clarify exhibits and testimony. The results of these efforts may be introduced into the record by stipulation, by supplementary testimony or exhibit, by presenting selected written interrogatories and answers for adoption by a witness at the hearing, or by other appropriate means. In the interest of reducing motion practice, parties also are expected to use informal means to clarify questions and to identify portions of discovery requests considered overbroad or burdensome.

If a participant or an officer or agent of a participant fails to obey an order of the Commission or the presiding officer to provide or permit discovery pursuant to §§ 3001.26 to 3001.28, the Commission or the presiding officer may make such orders in regard to the failure as are just, and among others, may direct that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the participants obtaining the order, or prohibit the disobedient participant from introducing designated matters in evidence, or strike the evidence, complaint or pleadings or parts thereof.

§ 3001.26 Interrogatories for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve upon any other participant in a proceeding written, sequentially numbered interrogatories, by witness, requesting nonprivileged information relevant to the subject matter in such proceeding, to be answered by the participant served, who shall furnish such information as is available to the participant. A participant through interrogatories may require any other participant to identify each person whom the other participant expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify. The participant serving the interrogatories shall file a copy thereof with the Secretary pursuant to § 3001.9 and shall also serve the Postal Service and the OCA. Special requests for service by other participants shall be honored. Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the initial discovery period ends. They must be served within seven days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown.

(b) *Answers.* Answers to discovery requests shall be prepared so that they can be incorporated as written cross-examination. Each answer shall begin on a separate page, identify the individual responding, the participant who asked the question, and the number and text of the question. Each interrogatory shall be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection shall be stated in the manner prescribed by paragraph (c) of this section. The participant responding to the interrogatories shall serve the answers on the participant who served the interrogatories within 14 days of the service of the interrogatories or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Participants may submit responses with a declaration of accuracy from the respondent in lieu of a sworn affidavit. Answers are to be signed by the person making them. If the person responding to the interrogatory is unavailable to sign the answer when filed, a signature page must be filed within 10 days thereafter with the Commission, but need not be served on participants. Copies of the answers to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon other participants pursuant to § 3001.12(b).

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an interrogatory, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the interrogatory, providing estimates of cost and work hours required, to the extent possible. An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact, but the Commission or presiding officer may order that such an interrogatory need not be answered until a prehearing conference or other later time. Objections are to be signed by the attorney making them. Copies of objections to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon the proponent of the interrogatory, the Postal Service, and the OCA within 10 days of service of interrogatories. Special requests for service by other participants shall be honored.

(d) *Motions to compel responses to discovery.* Motions to compel a more responsive answer, or an answer to an interrogatory to which an objection was interposed, should be filed within 14 days of the answer or objection to the discovery request. The text of the discovery request, and any answer provided, should be provided as an attachment to the motion to compel. Participants who have objected to interrogatories which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) *Compelled answers.* The Commission, or the presiding officer, upon motion of any participant to the proceeding, may compel a more responsive answer, or an answer to an interrogatory to which an objection has been raised if the objection is found not to be valid, or may compel an additional answer if the initial answer is found to be inadequate. Such compelled answers shall be served on the participant who moved to compel the answer within seven days of the date of the order compelling an answer or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Copies of the answers shall be filed with the Secretary pursuant to § 3001.9 and on participants pursuant to § 3001.12(b).

(f) *Supplemental answers.* The individual or participant who has answered interrogatories is under the duty to seasonably amend a prior answer if he/she obtains information upon the basis of which he/she knows that the answer was incorrect when made or is no longer true. Participants shall serve supplemental answers to update or to correct responses whenever necessary, up until the date the answer could have been accepted into evidence as written cross-examination. Participants filing supplemental answers shall indicate whether the answer merely supplements the previous answer to make it current or whether it is a complete replacement for the previous answer.

(g) *Orders.* The Commission or the presiding officer may order that any participant or person shall answer on such terms and conditions as are just and may for good cause make any protective order, including an order limiting or conditioning interrogatories, as justice requires to protect a participant or person from undue annoyance, embarrassment, oppression, or expense.

§ 3001.27 Requests for production of documents or things for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve on any other participant to the proceeding a request to produce and permit the participant making the request, or someone acting in his/her behalf, to inspect and copy any designated documents or things which constitute or contain matters, not privileged, which are relevant to the subject matter involved in the proceeding and which are in the custody or control of the participant upon whom the request is served. The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place and manner of making inspection. The participant requesting the production of documents or things shall file a

copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon the Postal Service and the OCA. Special requests for service by other participants shall be honored.

(b) *Answers.* The participant upon whom the request is served shall serve a written answer on the participant who filed the request within 14 days after the service of the request, or within such other period as may be fixed by the presiding officer. The answer shall state, with respect to each item or category, that inspection will be permitted as requested unless the request is objected to pursuant to paragraph (c) of this section. The participant answering the request shall sign and file a copy of the answer with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon other participants pursuant to § 3001.12(b).

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item or category, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and work hours required, to the extent possible. Objections are to be signed by the attorney making them. The participant objecting to requests shall serve the objections on the participant requesting production of documents or things, upon the Secretary pursuant to § 3001.9 and upon the Postal Service and the OCA, within 10 days of the request for production. Special requests for service by other participants shall be honored.

(d) *Motions to compel requests for production of documents or things for purposes of discovery.* Motions to compel shall be filed within 14 days of the answer or objection to the discovery request. The text of the discovery request, and any answer provided, should be provided as an attachment to the motion to compel. Participants who have objected to requests for production of documents or things which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) *Orders.* Upon motion of any participant to the proceeding to compel a response to discovery, as provided in paragraph (d) of this section, the Commission or the presiding officer may compel production of documents or things to which an objection has been raised if the objection is found not to be valid. Such compelled documents or things shall be made available to the participant making the motion within seven days of the date of the order compelling production or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Documents or things ordered to be produced also shall be filed pursuant to § 3001.9

and served pursuant to § 3001.12(b). The Commission or the presiding officer may, on such terms and conditions as are just and reasonable, order that any participant in a proceeding shall respond to a request for inspection, and may make any protective order of the nature provided in § 3001.26(g) as may be appropriate.

§ 3001.28 Requests for admissions for purpose of discovery.

(a) *Service and content.* In the interest of expedition, any participant may serve upon any other participant a written request for the admission, for purposes of the pending proceeding only, of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing. The participant requesting the admission shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon the Postal Service and the OCA. Special requests for service by other participants shall be honored.

(b) *Answers.* Each matter of which an admission is requested shall be separately set forth and is admitted unless within 14 days after service of the request, or within such other period as may be fixed by the presiding officer, the participant to whom the request is directed serves upon the participant requesting the admission a written answer or files an objection pursuant to paragraph (c) of this section. A participant who answers a request for admission shall file a copy of the answer with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon other participants pursuant to § 3001.12(b).

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and work hours required to the extent possible. Objections are to be signed by the attorney making them. The participant objecting to requests for admissions shall serve the objections on the participant requesting admissions, upon the Secretary pursuant to § 3001.9 and upon the Postal Service and the OCA, within 10 days of the request. Special requests for service by other participants shall be honored.

(d) *Motions to compel responses to requests for admissions.* Motions to compel a more responsive answer, or an answer to a request to which an objection was interposed, shall be filed within 14 days of the answer or objection to the request for admissions. The text of the request for admissions, and any answer provided, should be provided as an attachment to the motion to compel. Participants who have objected

to requests for admissions which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) *Orders.* Upon motion of any participant to the proceeding the Commission or the presiding officer may compel answers to a request for admissions to which an objection has been raised if the objection is found not to be valid. Such compelled answers shall be served on the participants who moved to compel the answers within seven days of the date of the order compelling production or within such other period as may be fixed by the Commission or the presiding officer, but before the conclusion of the hearing. Copies of the answers shall be filed upon the Secretary pursuant to § 3001.9 and served upon other participants pursuant to § 3001.12(b). If the Commission or presiding officer determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served.

§ 3001.30 Hearings.

* * * * *

(e)(1) *Presentations by participants.* Any participant shall have the right in public hearings of presentation of evidence, cross-examination (limited to testimony adverse to the participant conducting the cross-examination), objection, motion, and argument. The case-in-chief of participants other than the proponent shall be in writing and shall include the participant's direct case and rebuttal, if any, to the initial proponent's case-in-chief. It may be accompanied by a trial brief or legal memoranda. (Legal memoranda on matters at issue will be welcome at any stage of the proceeding.) There will be an opportunity for participants to rebut presentations of other participants and for the initial proponent to present surrebuttal evidence. New affirmative matter (not in reply to another participant's direct case) should not be included in rebuttal testimony or exhibits. When objections to the admission or exclusion of evidence before the Commission or the presiding officer are made, the grounds relied upon shall be stated. Formal exceptions to rulings are unnecessary.

(2) *Written cross-examination.* Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence. Designations of written cross-examination should be served no later than three working days before the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the participant who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be

included in the record. (For example, "OCA-T1-17 to USPS witness Jones, answered by USPS witness Smith (March 1, 1997) as updated (March 21, 1997))." When a participant designates written cross-examination, two copies of the documents to be included shall simultaneously be submitted to the Secretary of the Commission. The Secretary of the Commission shall prepare for the record a packet containing all materials designated for written cross-examination in a format that facilitates review by the witness and counsel. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel may object to written cross-examination at that time, and any designated answers or materials ruled objectionable will be stricken from the record.

(3) *Oral cross-examination.* Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions or other opinion evidence. Notices of intent to conduct oral cross-examination should be delivered to counsel for the witness and served three or more working days before the announced appearance of the witness and should include (a) specific references to the subject matter to be examined and (b) page references to the relevant direct testimony and exhibits. Participants intending to use complex numerical hypotheticals, or to question using intricate or extensive cross-references, shall provide adequately documented cross-examination exhibits for the record. Copies of these exhibits should be delivered to counsel for the witness at least two calendar days (including one working day) before the scheduled appearance of the witness.

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§ 3001.31 Evidence.

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(b) *Documentary material.* (1) *General.* Documents and detailed data and information shall be presented as exhibits. 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. 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. Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant or not intended to be put in evidence, the participant offering the same shall plainly designate the matter offered excluding the immaterial or irrelevant parts. If other matter in such document is in such bulk or extent as would unnecessarily encumber the record, it may be marked for identification, and, if properly authenticated, the relevant and material parts may be read into the record, or, if the Commission or presiding officer so directs, a true copy of such matter in proper form shall be received in evidence as an exhibit. Copies of documents shall be delivered by the participant offering the same to the other participants or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the entire document and to offer in evidence in like manner other material and relevant portions thereof.

* * * * *

(c) *Commission's files.* Except as otherwise provided in § 3001.31(e), in case any matter contained in a report or other document on file with the Commission is offered in evidence, such report or other document need not be produced or marked for identification, but may be offered in evidence by specifying the report, document, or other file containing the matter so offered.

* * * * *

(e) *Designation of Evidence from other Commission Dockets.* Participants may request that evidence received in other Commission proceedings be entered into the record of the current proceeding. These requests shall be made by motion, shall explain the purpose of the designation, and shall identify material by page and line or paragraph number. Absent extraordinary justification, these requests must be made at least 28 days before the date for filing the participant's direct case. Oppositions to motions for designations and/or requests for counter-designations shall be filed within 14 days. Oppositions to requests for counter-designations are due within seven days. At the time requests for designations and counter-designations are made, the moving participant must submit two copies of the identified material to the Secretary of the Commission.

* * * * *

(f) *Form of prepared testimony and exhibits.* Unless the presiding officer otherwise directs, the direct testimony of witnesses shall be reduced to writing and offered either as such or as an exhibit. All prepared testimony and exhibits of a documentary character shall, so far as practicable, conform to the requirements of § 3001.10(a) and (b).

* * * * *

(k) *Introduction and reliance upon studies and analyses.*

* * * * *

(3) *Computer analyses.* (i) In the case of computer studies or analyses which are being offered in evidence, or relied upon as support for other evidence, a foundation for the reception of such materials must be laid by furnishing a general description of the program that includes the objectives of the program, the processing tasks performed, the methods and procedures employed, and a machine readable copy of the input and output data and source codes (or a showing pursuant to paragraph (k)(3)(iii) of this section as to why such codes cannot be so furnished). For the purpose of completing such foundation, the following additional items shall be deemed presumptively necessary and shall be furnished upon the request of a participant, the Commission, or the presiding officer, unless the presumption is overcome by an affirmative showing.

(a) For all input data, designations of all sources of such data, and explanations of any modifications to such data made for use in the program;

(b) Definitions of all input and output variables or sets of variables;

(c) A description of input and output data file organization;

(d) A hard copy of all data bases;

(e) For all source codes, documentation sufficiently comprehensive and detailed to satisfy generally accepted software documentation standards appropriate to the type of program and its intended use in the proceeding;

(f) The source code in hardcopy form;

(g) All pertinent operating system and programming language manuals; and

(h) If the requested program is user interactive, a representative sample run, together with any explanation necessary to illustrate the response sequence.

(i) An expert on the design and operation of the program shall be provided at a technical conference to respond to any oral or written questions concerning information that is reasonably necessary to enable independent replication of the program output. Machine-readable data files and program files shall be provided in the form of a compact disk or other media or method approved in advance by the Administrative Office of the Postal Rate Commission. Any machine-readable data file or program file

so provided must be identified and described in accompanying hardcopy documentation. In addition, files in text format must be accompanied by hardcopy instructions for printing them. Files in machine code must be accompanied by hardcopy instructions for executing them.

* * * * *

(4) *Expedition.* The offeror shall expedite responses to requests made pursuant to this section. Responses shall be served on the requesting party, and notice thereof filed with the Secretary in accordance with the provisions of § 3001.12, no later than 14 days after a request is made.

§ 3001.43 Public attendance at Commission meetings.

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(e) *Scheduling and public announcement.*

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(4) The public announcement required by this section may consist of the Secretary:

(i) Publicly posting a copy of the document in the office of the Secretary of the Commission at 1333 H Street, NW, Suite 300, Washington, D.C. 20268-0001;

* * * * *

(g) *Requests to open or close Commission meetings.* (1)(i) Any person may request in writing that the Commission open to public observation discussion of a matter which it has earlier decided to close.

(ii) Such requests shall be captioned "Request to open _____(date) Commission meeting on item _____(number or description)." The request shall state the reason(s) therefor, the name and address of the person making the request and, if desired, a telephone number.

(iii) Ten copies of such requests must be received by the office of the Secretary no later than three working days after the issuance of the Notice of Meeting to which the request pertains. Requests received after that time will be returned to the requestor with a statement that the request was untimely received and that copies of any nonexempt portions of the transcript or minutes for the meeting in question will ordinarily be available in the office of the Secretary 10 working days after the meeting.

(2)(i) Any person whose interests may be directly affected may request in writing that the Commission close to public observation discussion of a matter which it had earlier decided to open as provided for in paragraph (d)(2) of this section.

(ii) Such requests shall be captioned "Request to Close _____(date) Commission meeting on item _____(number or description)," shall state the reason(s) therefore, the name and address of the person making the request and, if desired, a telephone number.

(iii) Ten copies of such requests should be filed with the office of the Secretary as soon as possible after the issuance of the Notice of Meeting to which the request pertains. However, a single copy of the request will be accepted. Requests to close meetings must be received by the office of the Secretary no later than the time scheduled for the meeting to which such a request pertains.