

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

**RATE AND SERVICE CHANGES TO
IMPLEMENT BASELINE NEGOTIATED
SERVICE AGREEMENT WITH BOOKSPAN**

DOCKET NO. MC2005-3

**ANSWER TO THE OCTOBER 18 MOTION OF
THE OFFICE OF THE CONSUMER ADVOCATE**

(October 25, 2005)

Bookspan hereby answers the Office of the Consumer Advocate's (OCA's) motion requesting "that the Presiding Officer direct Bookspan to provide a set of volume figures requested in the Presiding Officer's Information Request No. 1, issued July 26, 2005, question 4.a" ("October 18 Motion"), That motion should be denied.

1. Bookspan Filed a Complete Response to the POIR

The POIR at issue is as follows:

4. Bookspan witness Epp states that the significant drop in the before rates volume forecast for the first year of the agreement is "primarily due to the anticipated 5.4% increase in postage rates." Bookspan-T-2, page 11, lines 12-13.

a. Please provide a set of before and after rates volume estimates (separately for letters and flats) for each year of the agreement assuming that rates remain at current levels.

Bookspan filed a complete and timely response to POIR No. 1, Question 4.a on August 9, 2005. Moreover, Bookspan also filed a complete response to the OCA's follow-up question concerning the same POIR on September 22, 2005.

The issue concerning the completeness of Bookspan's response to the POIR arises because the OCA interprets that question as requiring Bookspan to submit a set of volume estimates that assume "No rate hike/NSA". Bookspan disputes this interpretation of the question. The question asked Bookspan to "assume that rates remain at current levels." At the time of the interrogatory request, counsel for Bookspan reasonably interpreted these words as a request for a set of volume estimates for the "No rate hike/NSA" scenario. Consistent with his understanding of the question, faced with the above request of the Presiding Officer, Witness Epp respectfully offered his "current best estimate of volumes to which the NSA would apply on the artificial assumption that there is no rate increase". Tr. 3/424.

Even if the question is correctly interpreted as requesting "No rate hike/NSA" volume estimates, Mr. Epp's August 9 response describes the difficulty with providing any volume estimate based on the assumption of "No rate hike". Witness Epp stated, "[w]hen the company's budgeting process for 2006 began, the company already knew that there would be, or would highly likely be, a postal rate increase at some time during the company's fiscal year, and therefore, we did not prepare hypothetical budgets or volume forecasts." Tr. 3/424. Mr. Epp thus also made plain in his August 9 response that no company budget or volume forecasts that assumed no rate increase were available,¹ and that he was offering his "best estimate". Tr. 3/424.

¹ In response to examination during the October 20, 2005 hearing, Mr. Epp further explained that the budgeting process for 2006 began in May, 2005, and at that time, the company's best judgment was to plan for 2006 under the assumptions of a rate increase. See Tr. #4/507-8.

2. Bookspan's Responses to the OCA's Follow-up Interrogatory OCA/BOOKSPAN-T2-13 and To OCA Oral Cross-Examination Questions Moot Any Issue Concerning the Completeness of the Response to the POIR

On September 7, the OCA filed an interrogatory following up on the same POIR, as follows:

OCA/BOOKSPAN-T2-13. Please refer to your response to Presiding Officer's Information Request Number 1, Question 4A. You provided an estimate of volumes based on the assumption of no rate increase and no NSA. Please provide similar estimates for letters and flats for the same years on the assumption of no rate increase plus availability of the proposed NSA.

On September 22, 2005, Witness Epp responded to this interrogatory.² He referred to his response to the earlier POIR, and further explained that response as follows:

My response to POIR No. 1, Question 4(a) states that our estimate of the No Rate Hike/No NSA scenario was our "current [i.e., as of August 12, 2005] best estimate" based on an "artificial assumption." By that date, a rate hike early in 2006 was quite apparent. In these circumstances, we are unable to form any reasonable estimate of what would happen if the Postal Service were to withdraw the pending rate case.

Tr. 4/413. It is evident from this response, (and obvious, when considered together with Witness Epp's earlier response to the POIR, and the complete and detailed description of his company's internal budgeting and planning process in his testimony), that Bookspan had not performed any budgeting or planning for the scenario of "No Rate Hike/NSA", and that therefore, in his business judgment, he was not comfortable offering a quantitative assessment of New Member Solicitation volumes under that scenario.

² In light of this question and response, the OCA's October 18 Motion is more properly characterized as an out-of-time motion to compel a more responsive answer to the OCA's follow-up, and may be denied on those grounds. (Under the Commission's rules, 39 C.F.R. §3001.27, motions to compel a more responsive answer to OCA/Bookspan-T2-13 would have been due on October 6; the motion at issue here was filed October 18.)

Instead, Mr. Epp provided a qualitative response to this question

(OCA/Bookspan-T2-13):

In general, under circumstances of No Rate Hike/NSA" it would appear easier for Bookspan to reach the volume commitments necessary to earn the discounts.

...

I am entirely unable to speculate as to what might happen in 2007 or 2008 on an assumption about withdrawal of the pending case. I am informed however, that the Postal Service may file for a further increase to take effect in those years, and if that were to occur, it would be more difficult for Bookspan to meet its volume commitments.

Tr. 3/413-414.

During the hearing, Mr. Epp further explained that he was able to offer his "best estimate" of expected New Membership volumes under the "No rate hike, No NSA" scenario because in his business judgment, he was able to assess the effect of changing one assumption ("No rate hike") in his earlier baseline ("Rate hike/No NSA"). However, to provide volume estimates under the "No rate hike/NSA" scenario would have involved a judgmental assessment of the impact of changing *two* assumptions (*No Rate Hike/NSA*) in his earlier baseline ("Rate Hike/No NSA"). Tr. at 4/513. It is now abundantly evident that he cannot offer such an assessment; therefore, any issue concerning the completeness of the response to the POIR is moot.

The OCA 's position seems to be that all of Witness Epp's forecasts are speculative, and that he should therefore be able to provide an equally speculative response to the "No Rate Hike/NSA" scenario. That argument completely ignores the witness' description of Bookspan's marketing and budgeting planning process (Exhibit Bookspan-T-2 at p. 5-9, Tr. 3/379-383) that supported the development of his baseline

forecast, and the reason that he was able to provide volume estimates under the equally arbitrary "No Rate Hike/No NSA" scenario.

3. Conclusion

In conclusion, the Presiding Officer should deny the OCA's October 18 Motion the because the response to his POIR No. 1, Question 4.a was complete. Alternatively, even if the Presiding Officer determines that Witness Epp's response was not complete, both Witness Epp's subsequent response to the OCA's follow-up question, OCA/BOOKSPAN-T2-13, and his discussion during the hearing of why he cannot offer a three year volume forecast under the assumptions of "No rate hike/NSA" moot the issue of whether a complete response was provided.

THEREFORE, for the reasons described above, the October 18 Motion of the Office of the Consumer Advocate should be denied.

Respectfully submitted,

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