

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

POSTAL RATE AND FEE CHANGES, 2006

Docket No. R2006-1

MOTION OF THE UNITED STATES POSTAL SERVICE
REQUESTING WAIVER OF THE COMMISSION RULES
WITH RESPECT TO CATEGORY 1, 2, 3 AND 5 LIBRARY REFERENCES
(May 3, 2006)

By separate pleading, the Postal Service has submitted with its Request a notice regarding the master list of library references included with the filing. The instant motion is a request for waiver, where necessary, of the Commission's procedures governing library reference practice, with respect to all Category 1 (Data Reporting Systems), Category 2 (Witness Foundational Material), Category 3 (Reference Material), and Category 5 (Disassociated Material) library references. (The category pertaining to each library references have been identified as such in the master list in the lefthand "Category" column.)

Generally, the Postal Service requests that to the extent that it could be argued that its filing does not actually or substantially comply with all of the requirements of Rule 31(b)(2) with respect to the any of these library references, that those requirements be waived.

The intended primary purposes of the revisions to Rule 31(b)(2) after Docket No. R97-1 were to limit library references to appropriate circumstances and categories of material, and to ensure that adequate information is provided to identify the contents of library references and to indicate how they relate to the case. See Order No. 1263 at 3. Experience from recent cases demonstrates

that those purposes have been met. In the last case, for example, the complete lack of controversy on these matters strongly suggests that all participants were satisfied with how library references were handled in that case. Since the Postal Service has employed the same policies and procedures with respect to library references in this case, what worked before should work again. To whatever extent deemed necessary, however, a more complete discussion of why this motion should be granted with respect to each separate category of library reference follows.

Category 1

In the context of its Category 1 library references, the purposes identified in Order No. 1263 are achieved by virtue of the historical practice regarding these types of library references, and by the information included on the master list, within this motion, and within the library references themselves. Most specifically, the nature of Category 1 library references is such that there has never been a genuine issue that these materials are most appropriately filed as library references, and their nature is also such that there is no need for the filing of a separate notice for each library reference, as might otherwise appear to be required by Rule 31(b)(2)(iv).

Primarily in response to earlier amendments to Rules 31(k) and 54 regarding required background documentation, the Postal Service over many cases has included with its filing a large number of library references relating to its data reporting systems. (By definition, as these materials relate to the Postal Service's data reporting systems, they now constitute Category 1 material under

the library reference groupings adopted in the new Rule 31(b)(2)(i).) This practice has generated no controversy, and has thus implicitly been deemed an acceptable vehicle for providing massive amounts of information of generally little interest to most rate case participants.¹ Presumably, those parties that have been interested have been able to satisfy their needs by their own examination of this material, or with the assistance of minimal formal or informal discovery requests to the Postal Service. Based on past practice, it would thus appear to be beyond cavil that reference to, identification of, and use of this material has been and will be facilitated if it is made available as Category 1 library reference material. Therefore, the Postal Service seeks a waiver of the portion of Rule 31(b)(2)(iv) that would otherwise appear to require a separate notice for each Category 1 reference,² and the portion of Rule 31(b)(2)(iv)(A) that would

^{1/} While in Docket No. R2000-1 there was controversy surrounding the scope of the foundational material necessary to support reliance on RPW data, there was no contention that the documentation which actually was furnished should have been provided in some format other than as library reference material. UPS in that case sought additional material, not resubmission of the same material under some other format. Moreover, the factors cited by the Presiding Officer in denying UPS much of the relief requested are factors which are applicable to other reporting systems as well, and underscore the unique nature of Category 1 material. Those factors are the long-established nature of the reporting systems, their use as a basic source of business information routinely collected and employed by the Postal Service in contexts other than ratemaking, and their use over many years by both the Postal Service and the Commission to support specific rate and classification cases, and for purposes of periodic reporting. See Presiding Officer's Ruling No. R2000-1/72 (May 30, 2000) at 2, 7.

^{2/} In general, consistent with practice in the last rate case, the types of information that Rule 31(b)(2)(iv) appears to contemplate would be provided in the library reference notice are instead being included within the preface, summary, or introduction of the library reference itself. In the context of the Postal Service's initial filing, with its myriad Category 1, 2, 3, and 5 references,

otherwise appear to require more extensive discussion of why these materials are being submitted as library references.³

Among the distinguishing features of Category 1 material is the fact that its content and/or format tend to be relatively stable from case to case. While stability enhances confidence in the systemic nature of this material, it also leads to difficulties in complying with one aspect of the new rules -- identification of the persons who contributed to its creation. Generally speaking, all Category 1 material is produced by combinations of individuals who at one time or another were responsible for the development, operation, and maintenance of the particular system in question. Those individuals may have been on the Postal Service's internal technical staff, or may have been consultants. Over the years, given the massive nature of the material in question, and the scope of the joint production teams who have assisted in its preparation, awareness of the identity of its creators may not have survived as long as the documentation itself.

Moreover, with respect to documents which present or summarize the quarterly or annual outputs of a data system, the range of individuals involved would conceivably cover the Postal Service's entire data collection and data processing staffs. Given the presumption of regularity and trustworthiness that is accorded business practice records material, however, attempting to identify individuals in

that approach seems most efficient, and does not appear to have created any problems in the past.

^{3/} There is no apparent need to seek a waiver of the portion of Rule 31(b)(iv)(B) regarding an indication of the category in which the reference is included, as complete information on categories is included in the Master List. Similarly, with regard to that same subparagraph, Category 1 references tend not to include survey results.

this context is neither necessary nor particularly useful. Therefore, the Postal Service seeks a waiver of the portion of Rule 31(b)(2)(iv)(D) that might otherwise perhaps require a more extensive discussion of the authors of, or principal contributors to, the Category 1 library references.

In terms of other purposes of the rules, past experience provides no reason to question the ability of parties to understand (to whatever extent has been necessary for their purposes) how the contents of Category 1 references relate to the rest of the case. Moreover, the Postal Service believes that most (if not all) of the Category 1 references include information regarding predecessor materials filed as references in previous cases, and that therefore no waiver of Rule 31(b)(2)(iv)(G) should be necessary. In response to perceived concerns (see Presiding Officer's Ruling No. R2000-1/13 at 4-5) regarding the provisions of Rule 31(b)(2)(iv)(C), (E), and (F), however, the Postal Service has endeavored to expand the information contained within each reference regarding how it relates to the overall case and to individual testimonies.

With respect to Rule 31(b)(2)(vii), the Postal Service has made additional efforts to provide copies of electronic versions of Category 1 references. All of the Category 1 references in this case include materials in electronic format. With respect to Rule 31(b)(2)(vi), the Postal Service has sought to augment the optional preface or summary included within the Category 1 references. With respect to Rule 31(b)(2)(iv)(H), the Postal Service does not expect that any portions of its Category 1 references will be entered into evidence. Were that not the case, the references involved would have been filed as Category 2 instead of

Category 1. Lastly, with respect to Rule 31(b)(2)(v), each of the Category 1 library references should already be labeled in accordance with proper notation standards.

Category 2

The Postal Service submits that, in the context of its Category 2 library references, the purposes of Order No. 1263 are achieved by virtue of the historical practice regarding these types of library references, and by the information included on the master list, within this motion, within the library references themselves, and, most importantly, within the testimonies associated with these library references. Specifically, the nature of Category 2 library references is such that any need for the filing of a separate notice for each library reference, as might otherwise appear to be required by Rule 31(b)(2)(iv), is better satisfied by a comprehensive discussion, within each relevant testimony, identifying all library references relating to that testimony. Therefore, the Postal Service seeks a waiver of the portion of Rule 31(b)(2)(iv) that would otherwise appear to require a separate notice for each Category 2 reference.⁴

In terms of notice, both this document and the master list allow ready identification of the testimony with which each Category 2 library reference is associated. In this case, as in the last case, the Postal Service has sought to ensure that all testimony includes a prominently-featured discussion which

^{4/} In general, consistent with practice in the last rate case, the types of information that Rule 31(b)(2)(iv) contemplates would be provided in the library reference notice are instead being included within the preface or summary of the library reference itself. In the context of the Postal Service's initial filing, with its myriad Category 1, 2, 3, and 5 references, that approach seems most efficient, and does not appear to have created any problems in the past.

identifies and explains all of the related foundational material. (The exceptions are witnesses whose testimonies are more systems-oriented, who may only have a list in their table of contents that indicate the library references associated with their testimonies.) Since parties understand the Postal Service's case by reading the testimonies of its witnesses (rather than randomly selected library references or library reference notices), it is much more useful to consolidate information regarding the contents of related library references within each testimony, rather than include it as part of a series of separate library reference notices.

Obviously, the Postal Service's roadmap presentation will also assist the understanding of the parties regarding the interrelationships among the totality of materials filed, including library references.

Moreover, there has never been a genuine issue that these materials are appropriately filed as library references. Category 2, witness foundational material, consists of material that relates directly to the testimony of a specific witness, but which is not physically attached to the testimony. In Docket No. R2000-1, however, the practice was initiated by the Presiding Officer of requiring that all Category 2 library references be sponsored into evidence by a witness. See, P.O. Ruling No. R2000-1/13 (March 14, 2000). Presumably, that will be the practice in this proceeding as well, and the direct testimonies of Postal Service witnesses have been prepared to facilitate that practice.

Generally speaking, witness foundational material can be filed as workpapers, or as library references. In either format, its function is the same -- to provide the appropriate foundation for receipt into evidence of the witness'

testimony. In earlier years of postal ratemaking, workpapers were the predominant format used to present such background material. In more recent years, library references have gradually become more prevalent as reliance on electronic data analysis has increased, and as the Commission amended Rules 31 and 54 to require more specific and more extensive types of foundational material. For purposes of achieving the intended purpose of the rules, however, the important point is that if questions were raised whether witness foundational material were appropriately filed as library references, the obvious fallback would be to file the material as workpapers. Given the functional similarity of the two formats, it is unclear why any ratemaking participant would have a strong preference for either workpapers or library references. But, for example, when foundational material includes or consists of information in a machine-readable format, it is obvious that use of that material is facilitated if it is filed as a library reference. Therefore, the Postal Service seeks a waiver of the portion of Rule 31(b)(2)(iv)(A) that otherwise might appear to require more extensive discussion of why these materials are being submitted as library references.⁵

Since Category 2 library references will be sponsored by the witnesses at the time they adopt the associated testimony, any potential issue of the identity of the individual taking responsibility for the material will already have been put to rest. Therefore, the Postal Service believes it unnecessary to seek a waiver of

^{5/} There is no apparent need to seek a waiver of the portion of Rule 31(b)(iv)(B) regarding an indication of the category in which the reference is included, as complete information on categories is included in the Master List. Similarly, with regard to that same subparagraph, the few Category 2 references that include survey results would tend to have that fact reflected in the title provided in the Master List.

the portion of Rule 31(b)(2)(iv)(D) that might otherwise require a more extensive discussion of the authors of, or principal contributors to, the Category 2 library references. By virtue of having witnesses sponsor all Category 2 references, the purposes of Rule 31(b)(2)(iv)(H) are likewise fulfilled. Moreover, the direct association between the testimony and the library reference obviates the utility of the notice information that would otherwise be required pursuant to subsections 31(b)(2)(iv)(E) and (F). Nevertheless, the Postal Service has endeavored to explain, either in the text of the testimony, or in preface to the reference itself, or in both places, how the reference relates to the overall testimony and the materials of other witnesses. Moreover, the Postal Service believes that most (if not all) of the applicable Category 2 references include information regarding predecessor materials filed as references in previous cases, and that therefore no waiver of Rule 31(b)(2)(iv)(G) should be necessary. In this case, all Category 2 references include electronic versions, and therefore are in compliance with Rule 31(b)(2)(vii). Lastly, with respect to Rule 31(b)(2)(v), each of the Category 2 library references should already be labeled in accordance with proper notation standards.

Category 3

The Postal Service submits that, in the context of its Category 3 library references, the purposes of Order No. 1263 are achieved by virtue of the historical practice regarding these types of library references, and by the information included on the master list, within this motion, and within the library

references themselves. Most specifically, the nature of Category 3 library references is such that there has never been a genuine issue that these materials are most appropriately filed as library references, and their nature is such that there is no need for the filing of a separate notice for each library reference, as might otherwise appear to be required by Rule 31(b)(2)(iv).

In many respects, reference material is the quintessential library reference material. Filing reference material as a library reference is a simple and effective way to make available to the parties background material that they otherwise might wish to track down at their own time and expense. It is, therefore, a practice which exists primarily for the convenience of the parties and the Commission. The Commission rules clearly contemplate that reference material is appropriate to be filed as a library reference, because not only is there a special category for it under subsection (b)(2)(i)(Category 3), but it also falls squarely within the provisions of subsection (b)(2)(ii)(B), as “secondary source” material.

The practical effect of granting the requested waiver for Category 3 library references is to eliminate the need for individual notices for each reference. Each of the Category 3 library references should already be labeled in accordance with proper notation standards, and each has an electronic version. The source of the material (i.e., its authors, or the institutional entity that created it) should be self-evident from the material itself.

In some instances, it may be difficult to identify exactly how the material relates to the Postal Service’s case. This is because certain reference materials,

such as collective bargaining agreements and rate and volume histories, are put on the library reference list because experience has shown that, over the course of the case, both postal and nonpostal witnesses will have occasion to refer to their contents. Therefore, while it may not yet be clear exactly how the material will be used in the case, it may be safe to assume that creating the library reference and making the material available in a format that can be referred to and cited by all parties is nevertheless worthwhile. Of course, to the extent that any postal witness makes use of a Category 3 library reference, that fact will be amply reflected in the testimony or documentation of that witness.

Category 5

The Postal Service submits that, in the context of its Category 5 library references, the purposes of Order No. 1263 are achieved by virtue of the past practice regarding these types of library references, and by the information included on the master list, within this motion, and within the library references themselves. Specifically, the nature of Category 5 library references is such that there has not in the past been any issue that these materials are appropriately filed as library references. Moreover, there appear to be no viable alternative means to file them other than as library references, and there is no apparent need for the filing of a separate notice for each library reference, as might otherwise appear to be required by Rule 31(b)(2)(iv).

While there may have been earlier instances of the submission of material in rate cases from which the submitting party wished to be disassociated, the need for separate recognition of the unique role of this type of material in a rate cases

first became clear in Docket No. R97-1. That proceeding was the first which followed promulgation of new language within Rule 54(a)(1) which requires the Postal Service to present an alternative cost presentation applying the costing methodologies used by the Commission in the immediately preceding rate case. The position taken by the Postal Service in the rulemaking leading to that requirement had been that if the Postal Service were to be required to furnish the results of costing methodologies which it believes to be analytically inferior to those sponsored by its expert witnesses, it should be allowed to do so in such a way that no party wishing to rely on those results could claim that the Postal Service had provided the evidentiary basis to do so. As Rule 31 states that a document may be submitted as a library reference without conferring any evidentiary status upon it, library references were the natural vehicle by which such alternative costing material could be made available while protecting the due process interests of the Postal Service. That practice was followed in Docket Nos. R97-1, R2000-1, R2001-1 and R2005-1, to the apparent satisfaction of all concerned. On that basis, it follows in this case that reference to, identification of, and use of these materials will be facilitated if they are filed as Category 5 library references.

The intent of this motion for waiver is to allow disassociated materials to be handled in this case with procedures essentially equivalent to those under which they were successfully handled in the last case. What that boils down to, as a practical matter, is a waiver of any requirement that a separate notice be filed for each Category 5 library reference. Such a waiver is justified because, from the

information in the master list and in this motion, parties will have no difficulty recognizing Category 5 library references as such. Parties should be generally aware that this material, as alternative Commission versions of material presented by postal witnesses, tends to be prepared by the same individuals and organizations that prepare the Postal Service versions. Parties should also be aware that this material has no relationship to the case prepared by the Postal Service, but instead was previously provided to comply with Rule 54(a)(1), and now serves the same function with respect to Rule 53(c). Moreover, because these library references are fundamentally an update of the Commission's cost model (or similar material) from the previous case, parties should be familiar with the general structure and format of the presentation, and how the various components interrelate. Overall, given these features of Category 5 material, separate notices would provide little, if any, useful additional information beyond that which is already known.

In terms of other purposes of the new rules, all Category 5 library references will already include, or consist entirely of, electronically-formatted material. Many also include a preface or summary, or parallel a Postal Service version library reference which includes such a preface or summary. Lastly, each of the Category 5 library references should be labeled in accordance with proper notation standards.

Wherefore, for all of the above reasons, the Postal Service respectfully requests that to whatever extent it could be argued that its filing does not actually or substantially comply with all of the requirements of Rule 31(b)(2) with

respect to its Category 1, Category 2, Category 3, and Category 5 library references, that those requirements be waived.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney:

Eric P. Koetting

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.

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