

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

POSTAL RATE AND FEE CHANGES, 2006

Docket No. R2006-1

REPLY OF THE UNITED STATES POSTAL SERVICE TO VALPAK'S
OPPOSITION TO THE POSTAL SERVICES'S MOTION FOR
WAIVER REGARDING ITS LIBRARY REFERENCES
(June 9, 2006)

The United States Postal Service hereby replies to Valpak's Opposition to the Postal Service's Motion Requesting Waiver of the Commission Rules with Respect to Category 1, 2, 3, and 5 Library References, filed on June 5, 2006 ("Opposition").¹ The Motion for Waiver that Valpak opposes is that filed by the Postal Service on May 3, 2006, along with the rest of the materials submitted on that date to initiate this proceeding. It discusses the four library reference categories encompassed by the 132 library references filed with the case, explaining generally how the rules covering submission of such library references have been met, and seeking waiver of such rules in any instances in which they might not have been met. Order No. 1464 (May 5, 2006) set June 5th as the due date for answers to the Motion for Waiver. Apparently no other party was troubled by the Motion for Waiver, as none but Valpak chose to respond on that date. Valpak's Opposition to the Motion for Waiver is without merit.

In one fundamental respect, however, the Postal Service does not disagree with Valpak. The Opposition (at pages 5-6 and 10) suggests that, rather than necessarily attempting to resolve all possible issues concerning all library references, it may be

¹ By separate pleading, the Postal Service is also filing today a motion for leave to file this reply, which would otherwise be unauthorized.

preferable to address specific issues regarding specific library references as they arise. This approach makes sense. If a specific problem were found, it could then be addressed. The focus of Valpak's immediate concerns clearly rests on the two library references discussed in the Opposition – USPS-LR-L-1 and USPS-LR-L-77. Therefore, the Postal Service will in general likewise attempt to focus this Reply on the issues raised by Valpak particularly with respect to those two items.²

The root of Valpak's discontent appears to be two interrogatory responses filed by the Postal Service on May 26, 2006, although Valpak does not get around to referring to either one of them until nearly the last page of its Opposition. Each interrogatory (VP/USPS-T47-1 and 2) addresses one of the two library references in question, L-1 and L-77. On the one hand, the Postal Service applauds Valpak for pursuing its concerns about two library references by actually filing specific interrogatories about them, before promulgating what are couched as broader complaints about the Postal Service's library reference practice in general. On the other hand, having asked the questions, it seems like it also would have been useful for Valpak to have paid some attention to the answers. Judging from its Opposition,

² One exception to this focus will be to respond to the inquiry posed by Valpak on page 6 of its Opposition regarding why the Postal Service simply does not file a separate notice for each library reference, as would be required by the rule in the absence of a request for waiver. One would have thought that the response to this question would be self-evident. On the day of filing, when the Postal Service is straining its own resources and those of the Commission docket section, the additional burden of (in this case) 132 separate notices for each of the submitted library references (i.e., 132 separate electronic filings) would only be warranted if no viable alternative were available. A viable alternative is available, and has been successfully utilized in Docket Nos. R2000-1, R2001-1, R2005-1, and R2006-1. The substance of the concerns raised by Valpak would be the same regardless of whether the functional information at issue were provided in the form of separate notices, or in prefaces to library references. Valpak is suggesting the needless elevation of form over function.

however, Valpak simply chose to ignore everything in the answers which did not support its misguided arguments.

For example, Valpak twice asserts that witness Davis, to whom its interrogatories were directed, “relied” on USPS-LR-L-1. Opposition at 9. This claim borders on the farcical. Witness Davis is the roadmap witness, he presents no substantive testimony or analysis, and he therefore does not “rely” on anything. Solely for purposes of making the roadmap document more useful to rate case participants, however, in each of the two cases in which the roadmap rule has been in effect, the Postal Service has appended to the roadmap testimony a copy of the master list of library references. Therefore, in each of its two institutional interrogatory responses, the Postal Service carefully noted why the list including the two library references of interest to Valpak happens to be reproduced within the attachments to the testimony of witness Davis. Nevertheless, Valpak in its opposition still erroneously maintains that witness Davis “relied” on LR-L-1.³

Second, Valpak again misstates the facts when it claims that LR-L-77, which presents the billing determinants, “is a unique document containing data expressly compiled for use in this docket.” Opposition at 9. Yet, as clearly stated in the Postal Service’s response to VP/USPS-T47-2, the billing determinants report is compiled on an annual basis, with or without a rate case. (It must be, in order to comply with

³ Not only does witness Davis not rely on USPS-LR-L-1, but the Postal Service has already informed Valpak in response to VP/USPS-T47-1(d) that no other postal witnesses directly rely on the Appendices H and I either:

Therefore, while these appendices may provide useful background for a variety of costing witnesses in this case, there are no witnesses who rely, per se, on those appendices.

Commission Rule 102 on periodic reporting.) A report which is produced every year, with or without a rate case, cannot be construed to be “expressly compiled for use in this docket.” Once again, to construct a spurious argument, Valpak has conveniently ignored information in the interrogatory response regarding the true nature of the library references in question.

Even more surprisingly, Valpak blatantly misstates facts regarding the interrogatory responses themselves. On page 10, the Opposition states that, with respect to authorship, the Postal Service in its response to VP/USPS-T47-1 “made no effort to address Appendices H and I, the only portions of USPS-LR-L-1 addressed by Valpak’s interrogatories.” In reality, however, the response to VP/USPS-T47-1 stated:

With respect to the particular Appendices addressed in this question, however, the fundamental source documents upon which these presentations are grounded are clearly set forth in the footnotes, as are the authors of those documents.

Valpak may contend (albeit with no apparent justification) that it is not satisfied with that response, but it certainly has no grounds to claim that the Postal Service made no effort specifically to address Appendices H and I.

Valpak is particularly fanciful in its characterization of the Postal Service’s intent with respect to the billing determinants. The Opposition at 8 and 9 appears to suggest that the Postal Service is attempting to “stymy [sic] intervenors” and “effectively shield itself from inquiry” about billing determinants. It bases these accusations largely on the fact that, in the last case (i.e., Docket No. R2005-1), Valpak waited until oral cross-examination and then decided that the RPW witness was the one to whom it should direct questions on the billing determinants. Of course, Valpak neglects to mention any basis on which it was led to believe that the RPW witness was appropriate for detailed

inquiry on that topic, and therefore why anyone else should share its dismay that the RPW witness was unable to speak definitively on questions outside the scope of his testimony.

More relevantly, in this case, Valpak did pursue the matter through discovery, and, although one would never discern it from reading the Opposition, Valpak was given adequate information regarding the witnesses to whom inquiries on billing determinants should be directed. The response to VP/USPS-T47-2(a) noted that:

In practical terms, when there is a rate case, most of the final work on base year billing determinants relating to individual classes and services is performed by the same individuals who conduct and present the rate design for those classes and services.

Granted that this response does not explicitly state in exact terms that the rate design witnesses are the appropriate witnesses to receive questions about billing determinants, but then again, Valpak did not directly ask the question in those terms. Had it done so, (either through formal discovery or informally), it would have been even less ambiguously informed that questions about billing determinants with respect to any particular class or service are initially best directed to the rate design witness for that class or service. In any event, it is ridiculous to suggest that the Postal Service has intentionally failed to disclose sufficient information about the billing determinants in order to preclude relevant inquiry to the appropriate witnesses. Valpak's indignation (Opposition at 8) about being required "to settle for institutional responses" and "losing the right to conduct oral cross-examination" is grossly premature.⁴

This is not to suggest, of course, that a particular designated postal witness will

⁴ With all its fuss about what happened in the last case, the Opposition does not even mention the response to VP/USPS-T47-2 in this case.

be able to answer any and all questions that Valpak can come up with during written or oral cross-examination regarding billing determinants (or any other subject, for that matter). These topics are complex, and do require massive hand-offs of information through a wide variety of postal personnel. There are overlaps between the RPW system and the billing determinants, and the rate design witnesses cannot possibly understand all of the constituent details regarding the intricacies of RPW data collection and processing, and the RPW witness cannot possibly be versed in all the possible ways in which downstream users employ the data his system produces. As seasoned rate case veterans are well aware, exploration of these types of issues frequently involves redirection of questions and partial questions back and forth between particular witnesses and, in some instances, the Postal Service as an institution. None of these well-entrenched complexities, however, are ultimately affected in any material way by the format of library reference notices, or any of the other issues ostensibly at issue with respect to the Postal Service's Motion for Waiver. What is abundantly implicit in the Postal Service's response to VP/USPS-T47-2, however, is that trails to inquiries regarding billing determinants at least start with the rate design witnesses.⁵

In some respects, the situation with respect to Appendices H and I to USPS-LR-L-1 is even more curious. These documents present summaries of the theoretical economic framework upon which the Postal Service's costing presentations are grounded. Since those presentations are required every year, regardless of whether a rate case is pending or under preparation, those appendices appear in the Summary

⁵ Which, in essence, is what was suggested to Valpak in the last case by the RPW witness, in the very transcript pages that Valpak has now cited on page 8 of its Opposition. See, Docket No. R2005-1, Tr. 7/2560-61.

Description every year. There is no question that basic familiarity with the conceptual frameworks summarized in the Appendices is important to understanding the Postal Service's costing presentations. Valpak is correct in its assertion (Opposition at 10, note 2) that these concepts are primary components of the Postal Service's entire rate filing. But what Valpak somehow seems to ignore in its Opposition is that the Postal Service, in addition to providing the Summary Description as a Category 1 library reference essentially for background purposes, also has multiple witnesses sponsoring direct testimony on volume variable and incremental costs. In other words, while Valpak is certainly free to pose institutional interrogatories to the Postal Service specifically on the contents of Appendices H and I, those appendices are far from the exclusive source of information on these subjects. Valpak has already promulgated a slew of interrogatories on volume variable and incremental costs to a variety of postal witnesses, to which answers have been filed or are forthcoming. It is distinctly unclear on what basis Valpak hangs out the specter (Opposition at 10) of being precluded from conducting oral cross-examination. Moreover, it perhaps also bears mention here that the right to oral-cross-examination is far from absolute, as the APA requires only "such cross-examination as may be required for a full and true disclosure of the facts." See 5 U.S.C. § 556(d).⁶

⁶ Commission Rule 30(f) is in accord with the APA in this regard. Moreover, Rule 30(e)(2) requires that written cross-examination be utilized as a substitute for oral cross-examination whenever possible, and Rule 30(e)(3) limits oral cross-examination to clarifying written cross-examination, and to testing assumptions, conclusions, or other opinion evidence. In retrospect, therefore, the inability of the Postal Service's RPW witness in the last case to respond orally to new questions about the billing determinant library reference, about which Valpak complains on page 8 of the Opposition, was a manifestation of Valpak's patent failure to comply with the portions of Rule 30 regarding cross-examination, rather than any supposed deficiencies of the Postal Service with

It could be that the current postal witnesses applying the conceptual economic framework may not be as proficient in explaining the theoretical basis for the framework as were the original progenitors of that framework, whose testimony from previous dockets is summarized in Appendices H and I. Yet if Valpak is suggesting that the Postal Service must continue to make available for cross-examination renowned outside experts in every case in which it wishes to continue to apply the principles espoused by those witnesses in previous cases, the result would be no appearances by such experts, to the detriment of the Postal Service, the Commission, and ultimately all rate case participants (including Valpak). Other than that untenable result, it is unclear to the Postal Service exactly what Valpak seeks by focusing on the Appendices to LR-L-1, rather than the direct testimony submitted by the Postal Service on the same topics. If Valpak has concerns about how the Postal Service handles particular interrogatories it has posed or wished to pose on volume variable or incremental costs, those concerns would seem better addressed in some context other than extraneous consideration of the Motion for Waiver regarding library references.

In conclusion, Valpak alone has alleged problems, and its discussion cites only 2 of the 132 library references covered by the Motion for Waiver. Valpak has already availed itself of one of the most direct avenue to remedy any perceived deficiencies – formal discovery regarding those 2 library references. (Informal inquiry might perhaps have been an even more direct avenue.) Valpak’s suggestion that favorable action by the Presiding Officer on the requested waiver would (or might) preclude further attempts by Valpak to probe library reference material is baseless. Whether material is filed as a

respect to the library reference portions of Rule 31.

Category 1 reference (without a sponsor) or as Category 2 (with a sponsor), parties have equal opportunity to file discovery exploring that material. If subsequent controversy evolves over whether a witness must be produced to sponsor any resulting discovery responses, the Presiding Officer would not be constrained in resolving such a dispute merely by virtue of previous favorable action on the Postal Service's Motion for Waiver with respect to the underlying library reference. On the other hand, if what Valpak really wants to challenge is the ability of the Postal Service to file any Category 1 library reference without a sponsor, then Valpak is not opposing the Motion for Waiver, it is simply refusing to accept the flexibility built into the existing library reference rules.

But, as even Valpak appears to acknowledge, the most prudent course of action at this time may be to refrain from attempting to resolve larger issues in the abstract, and focus more directly on the concrete matters at hand. As indicated above, there are witnesses available to whom questions on the topics of volume variable and incremental costs, as well as billing determinants, can be posed. Unless and until Valpak has concerns about how such interrogatories are handled, questions regarding impediments to its limited right to conduct oral cross-examination are premature. Valpak's Opposition

fails to identify any credible basis for the Postal Service's Motion for Waiver to be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document in accordance with Section 12 of the Rules of Practice and Procedure.

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June 9, 2005