

DOCKET SECTION

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Docket No. R97-1

POSTAL RATE AND FEE CHANGES, 1997

RESPONSE OF THE UNITED STATES POSTAL SERVICE IN OPPOSITION TO
OCA MOTION REGARDING LIBRARY REFERENCES
H-148 AND H-149 AND INTERROGATORIES
OCA/USPS-107-119
(November 18, 1997)

On November 12, 1997, the OCA filed a "Motion On Ascertainment of Library References Requiring Sponsorship and Designation as Evidence," as well as interrogatories OCA/USPS-107-118. On November 14, the OCA filed related interrogatory OCA/USPS-119. All of these materials relate, at some level, to the mail processing testimony of Postal Service witness Bradley, USPS-T-14. The OCA moves that the Postal Service be required to produce "a witness or witnesses" to sponsor Library References H-148 and H-149, and that the Presiding Officer permit further written discovery and, if necessary, oral cross-examination on these library references. The Postal Service hereby responds in opposition.

The motivation behind the OCA's motion is readily transparent. The OCA seeks another opportunity to probe Professor Bradley's analysis of the volume variability of mail processing costs. The time period established by the Presiding Officer's procedural schedule required such testing, if conducted in writing, to be initiated no later than September 17th. Approximately two months later, the OCA has apparently determined that it failed to ask Professor Bradley all of the questions that it now wishes had been asked. Rather than suffer the consequences of its own lack of diligence, the OCA has launched a strategy by which it hopes to be allowed to

reopen discovery (and perhaps oral cross-examination) regarding Dr. Bradley's analysis. The Postal Service strongly objects.

The OCA readily concedes that Library References H-148 and H-149 are electronic versions of the input data and econometric programs employed by Dr. Bradley. In fact, according to the OCA, they are central to Dr. Bradley's analysis. See Motion at 3-4. Yet the OCA nevertheless characterizes this material as "not sponsored by any witness." *Id.* at 3. This surprising postulation totally ignores the fact that Dr. Bradley filed those library references with his testimony and workpapers on July 10, that they are referred to throughout his testimony and workpapers, that Dr. Bradley answered numerous interrogatories concerning those library references, and that Dr. Bradley withstood oral cross-examination regarding those library references. Moreover, it totally ignores the fact that, as electronic data files, there is no other way for the material to be provided except as library references.¹ It is perfectly obvious that these library references have already been "sponsored" by Dr. Bradley in every meaningful sense of the term.²

On the other hand, the OCA's contention that it is important that these materials be part of the evidentiary record³ is flatly contradicted not only by past Commission

¹ LR-H-149 is virtually nothing more than an electronic version of Dr. Bradley's hard-copy workpapers. Yet in all the OCA's extensive discussion of its alleged need to put that library reference into evidence, it fails utterly to acknowledge this simple fact. If there were any legitimate need to put anything more into evidence -- which there is not -- it would make much more sense for that to be the workpapers, not the library references.

² In its response to the Notice of Inquiry, the OCA itself stated that "[s]ponsorship, properly understood, merely allows participants to ask questions about the information filed." OCA Response to NOI No. 1 (October 3, 1997) at 7.

³ The OCA states that "[u]nless [H-148 and H-149] are now put into evidence, the OCA is placed in the position of rebutting not the direct case of the Postal Service but the non-evidentiary computer programs in library reference material which bring to life

practice, but by the Commission's rules as well. The Commission has never required that a magnetic tape or floppy disk be handed to the reporter and moved into evidence. In fact, in its rule regarding testimony based on computer analyses -- Rule 31(k)(3) -- the Commission does not even include electronic versions of input data (such as H-148) or source code (such as H-149) within its list of items that must be furnished to establish a foundation. Instead, those items need only be furnished upon request.⁴ Most importantly, however, their function under the Commission's rules clearly is to serve as the "foundation" for evidence, not as evidence themselves. The OCA in its motion offers absolutely no reason why the treatment contemplated by the Commission's rules of practice for such foundational material is no longer appropriate.

Of course, as long as the OCA gets its wish for further discovery, chances are remote that it cares one iota about the evidentiary status of the two library references. By all appearances, the gravamen of the OCA motion is OCA interrogatories 107-119 to the Postal Service.⁵ The true significance of the motion is that if it is granted, the Postal Service may be required to respond to those interrogatories, and if it is denied, the Postal Service is unlikely to be so required. Therefore, it is necessary to discuss the issues raised by those interrogatories in this opposition.

the econometric models of witness Bradley because that is where the essence of their case is on this issue." Motion at 4. In reality, however, the "direct case of the Postal Service" is found in testimony, workpapers and, certainly in the instance of electronic information, library references.

⁴ Thus, in this as in many other similar instances, the Postal Service's filing of the electronic versions of these materials on July 10 exceeded the requirements of the Commission's rules.

⁵ Although these interrogatories are not referenced by number in the motion (and 119 was not actually filed until two days later), their significance is discussed at pages 5-6 of the OCA motion.

Attempting to hedge its bets on the instant motion, or at least purport to operate behind an existing facade while the motion is pending, the OCA has ostensibly filed 107-119 under Special Rule of Practice 2.E. That rule, however, does not authorize such interrogatories. They are not proper as Special Rule 2.E discovery because they concern issues that are addressed by the Postal Service's direct case. See Presiding Officer's Ruling No. R87-1/138, at 4-5 (granting a motion to compel a response to an interrogatory "because it is limited to areas not addressed in the Postal Service's direct case"). In fact, the OCA's motion goes to some lengths to establish the importance of these library references for understanding and responding to the Postal Service's direct case. See Motion at 4.⁶ At little risk of exaggeration, the Postal Service submits that if these interrogatories are proper under Rule 2.E, then there is no tangible distinction between discovery that was scheduled to be completed on September 17, and discovery that will be permitted until February 17.

Judging from the motion at page 5, the OCA apparently appreciates the weakness of its Special Rule 2.E argument. On that page, however, it does assert that the information sought in its interrogatories can only be obtained from the Postal

⁶ The function and importance of these library references has been, of course, obvious since July 10. Yet, other than to observe that Commission Order No. 1201 opened the door for parties to identify further library references they believe might need to be sponsored into evidence, the OCA motion contains no explanation of why the OCA suddenly realized on November 12th that H-148 and H-149 had to be evidence. Unlike most parties, the OCA has filed several pleadings regarding the library reference issue, including a response to the Notice of Inquiry. In none of these pleadings is there any hint that H-148 and H-149 might need to be admitted into evidence. Moreover, if the OCA is suddenly concerned that all input data and source code used in the Postal Service case but currently submitted as library references now need to be sponsored into evidence, there are many other instances besides H-148 and H-149. These facts merely underscore the obvious: the true motivation behind the OCA motion is to obtain the opportunity for further, untimely, discovery, and has nothing to do with the evidentiary status of those two library references.

Service. This is a peculiar claim in the context of these interrogatories. The majority of the questions refer to attempts made by the OCA to run the models on a personal computer, with the results of those attempts provided as attachments to the questions. Yet Dr. Bradley did not run his models on a personal computer, and may actually have no basis to interpret or otherwise comment on the OCA's attempts to do so. It is the OCA, not the Postal Service, that has chosen to attempt to conduct its analysis on personal computers. To claim that only the Postal Service can provide information regarding such an exercise is fundamentally baseless. For example, it may be the case that reference to a relevant SAS manual might be much more fruitful than questions to Dr. Bradley about a SAS version he did not utilize.

Moreover, the OCA's lack of diligence in pursuing its inquiries earlier, and its failure to mitigate that shortcoming by carefully examining the record that has already been developed, is best illustrated by OCA/USPS-119. In that question, which comes with 25 pages of attachments, the OCA attempts to explore what amounts to the ramifications of omitting one letter "B" from a variable name (HSPPRIO instead of HSPBPRIO). Yet this matter was fully covered in a interrogatory filed by UPS (UPS/USPS-T14-23) long ago, the response to which appears in the transcript at Tr. 11/5466. It is difficult to believe that information which was furnished in an interrogatory response filed many weeks earlier is uniquely available to the Postal Service.

It is clear that the interrogatories in question are not authorized by Special Rule 2.E. Instead, the OCA would just like yet another opportunity to question Dr. Bradley, and has, alternatively, tried to get a free ride by virtue of unrelated recent events regarding the utilization of library references. As discussed above, there is no way to reconcile this request either with past practice, or the Commission's rules.

The Postal Service's opposition to this rather blatant attempt to abuse the Commission's procedures is based on much more than abstract principle. The Presiding Officer established a schedule for discovery and hearings on the testimony of Professor Bradley. Despite a flood of questions on what has been from the beginning a high-profile issue, Dr. Bradley conscientiously and consistently filed detailed and thoughtfully-written interrogatory responses on a timely basis.⁷ He has committed an extraordinary amount of time to the development of the record in this proceeding. Having completed hearings and been excused, however, Professor Bradley has had to make substantial commitments of time to his other non-postal responsibilities. Matters which had to be put off to accommodate the procedural schedule in this case demand immediate attention. Yet the OCA's request would put Dr. Bradley squarely back in the middle of a process which was intended to be (and by all appearances was) completed last month. This includes the possibility of preparation for and participation in additional hearings at a time when the semester is ending, one of the most demanding periods in the academic year.⁸

⁷ Not only was Dr. Bradley addressing mail processing matters, but he had a separate piece of testimony regarding purchased transportation, which also generated substantial discovery, to which he also responded in a timely manner.

⁸ Even if the OCA later confirms that cross-examination is not necessary, there would be substantial and unjustified burden in attempting to respond to the interrogatories. Interrogatories 107-118 actually contain almost 100 questions spread over 15 pages. Most would require additional computer runs to provide (generally unnecessary) information on intermediate calculations and data manipulations. Using a quite conservative estimate of 20 minutes per question, this converts to approximately 33 hours, or four solid workdays of addressing the substance of the questions. An additional day would be required to prepare and format the questions and answers, to conduct preliminary and final review with other study team members, and to deliver the material for filing. In other words, just to respond to questions 107-118 would require of Professor Bradley a complete work week totally dedicated to that effort. In the context of questions which relate not to the substance of Dr. Bradley's analysis, but instead to the OCA's peculiar desire to convert that analysis to

All parties and all witnesses make sacrifices to participate in these proceedings. It is important to realize, however, that what was apparently convenient for the OCA (to delay submission of questions to Dr. Bradley regarding his econometric models) is distinctly inconvenient for the Postal Service and its witness. There is, moreover, no reason why the Commission and the other parties should be burdened with the prospect of having to deal with the OCA's lack of diligence at this late date.

WHEREFORE, for the above reasons, the Postal Service respectfully requests that the OCA motion to require the Postal Service to provide a witness to sponsor H-148 and H-149, and to reopen discovery and cross-examination on those materials, be denied in its entirety.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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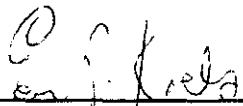
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a format which can be run on a personal computer, such a burden would have been undue even during the appropriate discovery period. Coming almost two months after the end of that period, the OCA's attempt to impose this unwarranted burden upon Dr. Bradley should be rejected.

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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