

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

Postal Rate and Fee Changes

Docket No. R2006-1

PRESIDING OFFICER'S RULING
CONCERNING MAJOR MAILERS ASSOCIATION'S MOTION TO
STRIKE ERRATA TO LIBRARY REFERENCES AND TO
ORDER THE RECORD BE SUPPLEMENTED

(Issued December 19, 2006)

On December 13, 2006, the Postal Service filed errata to USPS Library References L-34 and L-193 correcting information that changed due to the deletion of duplicate data entries from a file named "alldata2."¹ The Postal Service included Excel versions of the revised "alldata2" file with both Library References.²

The following day, December 14, 2006, Major Mailers Association (MMA) moved to strike the Postal Service's errata to USPS-LR-L-34 and USPS-LR-L-193 and to order that the original "alldata2" file be produced in an Excel version for the record.³ MMA asserts that the Commission should strike the revisions to USPS-LR-L-34 and

¹ United States Postal Service Notice of Errata Regarding USPS Library Reference L-34 [Errata], December 13, 2006; United States Postal Service Notice of Errata Regarding USPS Library Reference L-193 [Errata], December 13, 2006.

² On May 3, 2006, the Postal Service filed USPS-LR-L-34, which included the original "alldata2" file in a format other than Excel and without headings, with its request for a recommended decision on proposed changes in domestic postage rates, fees and classifications. Per its informal request at the end of November, MMA received the original "alldata2" file in an Excel format with headings from the Postal Service the week before cross-examining USPS witness L. Paul Loetscher on his rebuttal testimony. During its cross-examination of witness Loetscher on December 6, 2006, MMA asked that the Postal Service provide the Excel version of the "alldata2" file for the record.

³ Major Mailers Association's Motion to Strike Errata to Library References and Rebuttal Testimony of USPS Witness L. Paul Loetscher and for Order Directing the Public (Postal) Service to Supplement the Record, December 14, 2006 (Motion).

USPS-LR-L-193 because these changes were made over six months after the filing of the original USPS-LR-L-34.⁴ MMA explains that it cross-examined USPS witness Loetscher on December 6, 2006, concerning the duplicate entries in the “alldata2” file to demonstrate that the USPS study was flawed and offered inaccurate results. MMA argues that allowing the errata into the record this late in the proceedings places it at a disadvantage because the revisions affect MMA analyses showing other errors in the data. MMA claims that redoing all its analyses based on the errata is patently unfair and unduly burdensome.

On December 15, 2006, the Postal Service opposed MMA’s Motion and filed an Excel version of the original “alldata2” file.⁵ The Postal Service responds that MMA failed to raise the issue of duplicate data entries through interrogatories and cross-examination on direct testimony within the six months prior to the hearing on December 6, 2006. The Postal Service asserts that it removed six duplicate entries and submitted its revisions less than one week after MMA first raised the issue. The Postal Service contends that not allowing it to correct the record once errors are identified is “overly restrictive and unfair,” and suggests that both the original and revised versions of USPS-LR-L-34 and USPS-LR-L-193 remain on the record. Finally, the Postal Service argues that MMA’s request that the record be supplemented with an Excel version of the “alldata2” file is now moot.

⁴ The Postal Service filed USPS-LR-L-34 on May 3, 2006, and USPS-LR-L-193 on November 20, 2006.

⁵ Opposition of the United States Postal Service to Major Mailers Association Motion to Strike Errata to Library References and Rebuttal Testimony of Postal Service Witness Loetscher, December 15, 2006 (Opposition); Notice of the United States Postal Service of Filing of Library Reference USPS-LR-L-197, December 15, 2006.

MMA replied to the Postal Service's Opposition on December 18, 2006.⁶ MMA challenges the revisions made by the Postal Service asserting that the Postal Service removed 64, not six, duplicate entries from the "alldata2" file. MMA also argues that the Postal Service has the responsibility for reviewing its own work and, thus, the Postal Service misplaced the blame on MMA for not alerting the Postal Service as to the data errors at an earlier date.

The Postal Service filed a response on December 19, 2006, addressing the confusion regarding the number of changes to the "alldata2" file.⁷ The Postal Service explains that each observation or site may contain multiple lines of data. The Postal Service removed six duplicate observations that contained 118 duplicate lines of data. One of the duplicate observations contained the 64 lines of data that MMA referred to in its Reply.

Discussion. MMA's Motion is denied in regard to striking the Postal Service's errata to USPS-LR-L-34 and USPS-LR-L-193 from the record, and is moot in regard to requesting that the Postal Service supplement the record with an Excel version of the original "alldata2" file. The Motion is moot in part because the Postal Service provided the requested file for the record on December 15, 2006.

In denying MMA's Motion with regard to striking the errata, both the original and revised versions of USPS-LR-L-34 and USPS-LR-L-193 will remain on the record. The Commission recognizes that during the December 6, 2006, hearing, MMA raised other challenges to the study and the resulting data presented in the original "alldata2" file.

⁶ Reply of Major Mailers Association to December 15, 2006 Opposition of the United States Postal Service to Major Mailers Association Motion to Strike Errata to Library References and Rebuttal Testimony of Postal Service Witness Loetscher, December 18, 2006 (Reply). MMA concurrently filed Major Mailer Association's Motion for Leave to File Reply to Opposition of the United States Postal Service to Major Mailers Association Motion to Strike Errata to Library References and Rebuttal Testimony of Postal Service Witness Loetscher, December 18, 2006. This motion is granted.

⁷ Response of the United States Postal Service to Major Mailers Association's Reply to Opposition of the Postal Service to Major Mailers Association Motion to Strike Errata to Library References and Rebuttal Testimony of Witness Loetscher, December 19, 2006. The Postal Service concurrently filed Motion of the United States Postal Service for Leave to File Response to Reply of Major Mailers Association to the Postal Service's Opposition to Major Mailers Association Motion to Strike, December 19, 2006. This motion is granted.

Tr. 38/13289-90, 13300-02, 13305-6, 13319-24, 13328-32. Due to the fast approaching deadline for the filing of initial briefs, MMA would be unduly burdened if the original versions were replaced by the revised versions. Alternatively, mistakes in the record must be corrected upon discovery. The Commission believes that maintaining both versions of the library references in the record will enable it to make a more informed recommended decision.

In the future, the Postal Service should ensure that data is initially filed in formats accessible by all parties and with the appropriate headings. The Postal Service has the responsibility of providing data that the parties can examine.

RULING

1. Major Mailers Association's Motion to Strike Errata to Library References and Rebuttal Testimony of USPS Witness L. Paul Loetscher and for Order Directing the Public (Postal) Service to Supplement the Record, filed December 14, 2006, is denied in regard to striking the errata from the record and is moot in regard to ordering the Postal Service to supplement the record.
2. Major Mailer Association's Motion for Leave to File Reply to Opposition of the United States Postal Service to Major Mailers Association Motion to Strike Errata to Library References and Rebuttal Testimony of Postal Service Witness Loetscher, filed December 18, 2006, is granted.
3. Motion of the United States Postal Service for Leave to File Response to Reply of Major Mailers Association to the Postal Service's Opposition to Major Mailers Association Motion to Strike, filed December 19, 2006, is granted.

4. Both the original and revised versions of USPS-LR-L-34, USPS-LR-L-193, and the "alldata2" Excel file will remain on the record and are admitted into evidence.

George Omas
Presiding Officer