

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

Proposed Amendments to
Filing Requirements

Docket No. RM2003-1

REPLY COMMENTS OF THE UNITED STATES POSTAL SERVICE

(February 26, 2003)

The Postal Service filed its initial comments in this rulemaking on February 12, 2003. Two other sets of comments were filed on that date, and two sets had been filed previously. Although there is some overlap, it appears that it would be most useful to reply to each set of comments directly. At the end of these reply comments, the Postal Service has included one minor clarification regarding the language of its preferred version of the new rules, as previously presented in the attachment to the Postal Service's initial comments.

American Postal Workers Union, AFL-CIO (APWU)

APWU filed brief comments on January 15, 2003. Those comments focused solely on the issue of whether the roadmap document should be testimony. Consistent with views later expressed by the Postal Service, APWU recommended that the roadmap document should be submitted as an institutional document, rather than as testimony of a single witness. APWU shared the view that requiring the document to be testimony would place a constraint on its contents, because a witness would be unwilling to sponsor material he or she did not fully comprehend. The Postal Service agrees with APWU that the pitfalls associated with roadmap testimony strongly favor

abandoning an approach under which the roadmap document would be afforded evidentiary status.

United Parcel Service (UPS)

UPS filed its comments on February 11, 2003. Therein, UPS took issue with APWU on the question of roadmap testimony versus a roadmap document. UPS asserts that the roadmap would lose much of its value unless it is in the form of testimony filed by a single witness. UPS Comments at 3. According to UPS, “[n]ot only would the parties be better able to rely on the accuracy of information sponsored by a witness who is prepared to vouch for it, but the parties would also know how to direct discovery requests seeking further direction or clarification.” Both of these points are misguided.

First, it is difficult to conceive that UPS would be seriously concerned about the “accuracy” of the information in the roadmap. The roadmap will serve to identify matters addressed in detail elsewhere. There is no incentive to include inaccurate information in the roadmap, as any discrepancy between the roadmap and the substantive testimony and proposals would quickly become manifest.¹ The more realistic concern is the scope of the roadmap. Forcing one individual to be in a position to “vouch” for all of the information in the roadmap creates obvious incentives for that individual to carefully limit what gets included. The equally obvious result is a roadmap that would be much less

¹ Surely, for example, UPS would not expect the Postal Service to try to slip one by in the roadmap by indicating that Parcel Post rates are increasing, if, in fact, the actual proposal were to *reduce* Parcel Post rates. Farfetched examples aside, affirmatively inaccurate information would create just as many problems in a roadmap document as in roadmap testimony, and would therefore be equally diligently avoided in either.

comprehensive than one assembled from the input of numerous individuals. APWU clearly has the better of this argument.

Second, one of the primary functions of the roadmap would be to provide parties with the information they need in order to appropriately direct discovery requests seeking additional information on a particular topic. Those requests should be directed to the substantive witness whose testimony addresses the topic in question. As envisioned by the Postal Service, the roadmap document would facilitate such links by identifying which witnesses address which topics. In contrast, under circumstances in which there were to be a roadmap witness, the Postal Service would strongly expect that the role of any such witness in discovery would essentially be limited to redirecting questions to the appropriate substantive witness. The potential for mishaps and delays associated with the need to redirect discovery requests alone provides sufficient grounds to favor a roadmap document over a roadmap witness. Parties may need to read the roadmap document and direct their discovery requests appropriately, but that hardly seems to be asking too much of them. In contrast, providing a witness only encourages parties not to read the roadmap closely, and simply to direct all of their requests to the roadmap witness. The potential inefficiency of this process is apparent.

The UPS comments, moreover, appear to be based on a totally unrealistic notion of the complexities of rate case preparation. UPS states:

But the point is that the single witness *should* be required to “fully comprehend” how the various pieces of the Postal Service’s testimony fit together. Certainly, there is *someone* at the Postal Service responsible for making sure that its proposals constitute a coherent whole that makes sense.

UPS Comments at 3 (emphasis in original). The biggest flaw in these statements may

be that they presume that the Postal Service's proposals are intended to constitute a "coherent whole." In reality, the Postal Service in a rate case puts forth a series of proposals that collectively display varying degrees of interrelationship. Depending on where they fit in, individual proposals may be added or dropped very late in the preparation process. To expect such an amalgam to constitute a "coherent whole" is simply asking too much.

The inherent premise of the development of a rate case is that each functional group has done their part properly. The pricing staff relies on the expertise of the costing staff. The costing staff relies on the expertise of the data systems staff. Some individuals focus on policy issues, while others focus on technical issues. Some witnesses, such as rate policy, roll-forward, and volume forecasting witnesses, consider issues that necessarily relate to virtually the entire spectrum of rate proposals. Other witnesses focus on very specific costing proposals, classification proposals, or rate design proposals. All witnesses directly coordinate very closely with the colleagues upstream and downstream from them in the case development process. Extensive coordination of that type, however, produces the result that no one individual even attempts to comprehend fully how every single piece of the case fits together. While management, obviously, maintains control over each of the component parts of the case, that control is not unified in any single individual.

In any event, the degree of "coherence" of the Postal Service's case is not the real issue in this rulemaking. What matters is the best way to present summary information that will allow parties quickly to grasp the nature of all significant proposals, and will direct them where to look to find the complete details of the proposals of

interest to them. As explained in its initial comments, the Postal Service is convinced that far greater progress towards the achievement of these objectives is likely to result from an institutional roadmap document, rather than from individual roadmap testimony. Therefore, the Postal Service does not agree with the comments of UPS advocating the retention of the proposed requirement for a roadmap witness.

The Postal Service does not agree with either of the two minor wording changes proposed by UPS. The first suggestion is that the roadmap “describe” rather than “highlight” changes in methodology. UPS Comments at 4. The function of the roadmap does require sufficient description so that readers understand the nature of the change, but excessive detail can readily hinder the utility of the document. Therefore, while use of the word “describe” may not be utterly inappropriate, the Postal Service believes that use of the term “highlight” better conveys the appropriate level of detail. The Postal Service opposes the UPS proposal to substitute “describe” for “highlight.”

Likewise, the Postal Service does not agree with the suggestion, made in the UPS Comments at 4-5, to add the phrase “for each affected subclass.” The impact of some changes cannot be presented at the subclass level. Specifically, to use an example from the Postal Service’s initial comments, when Dr. Bozzo presented new mail processing cost pool variabilities, the results of his analysis did not relate directly to subclasses. (The subsequent distribution of mail processing costs to subclass was instead presented, in the last case, by witness Van-Ty-Smith.) In addition, certain cost studies are done below the subclass level (i.e., at the rate category level). While it is the intention of the Postal Service to show impacts by subclass when that is appropriate, the inclusion of the additional language suggested by UPS is not

necessary.

ABA and NAPM

The American Bankers Association (ABA) and the National Association of Presort Mailers (NAPM) filed joint comments on February 12, 2003. Although there are other topics discussed in the filing, two comments actually relate to the proposed rules.

The first is a suggestion that the Commission quantify its intentions with regard to what constitutes a “material effect.” Although the phrase “material effect” does not seem to appear in the proposed rule, the Postal Service assumes the comment is directed at the term “material change” in proposed Rule 53(c). ABA/NAPM seem to suggest that a material change is one that, on its own, or in conjunction with other changes, could affect an individual rate cell by as little as a few hundredths of a cent. The Postal Service suggests such a standard would be meaningless. While tenths of a cent might be material with respect to certain rate schedules (e.g., First-Class, Standard), they are unlikely to seem material with respect to others (e.g., Express Mail, Priority Mail). Moreover, the impact of a costing change at the subclass level can be considered in terms of the amount of change in total subclass costs, but changes in total subclass costs cannot easily be translated into effects on individual rate cells, because it is impractical to predict how changes in overall subclass costs would be handled in the rate policy and rate design processes.

Fundamentally, it is unclear why ABA/NAPM are concerned about this issue. Under current practice, even without the proposed rules, the Postal Service’s testimonies routinely address changes in methodology that are viewed as material. After thirty years of postal ratemaking, most aspects of the Postal Service’s rate filings

are not original. The outline of the testimony in these instances tends to be to explain the historical context of the analysis (e.g., “I am updating the study conducted by witness X in the last case”), and to discuss material differences. Unless there have been systematic failures by postal witnesses to identify changes which ABA/NAPM believe were material, there would not seem to be much point to devoting substantial effort towards the exact quantification of “material.” (As discussed in the Postal Service’s initial comments at page 14, the example of a material omission from a postal testimony in the last case cited in the notice of proposed rulemaking was certainly not the result of any difference of opinion regarding materiality, but, rather, was simply an inadvertent oversight.) While, in some respects, one might be tempted to characterize this portion of the ABA/NAPM comments as “a solution in search of a problem,” in fact, no specific solution is actually proposed. Therefore, the Postal Service is effectively limited to suggesting that it does not share ABA/NAPM’s concern that the lack of any further specificity regarding the term “material” is a weakness in the proposed rules.

The second germane portion of the ABA/NAPM comments consists of a suggestion that postal witnesses be required to sponsor PRC versions of costing materials. As will surely come as no surprise to ABA/NAPM or anyone else, the Postal Service vehemently disagrees with this suggestion. Postal witnesses should not be forced to sponsor cost estimates which they do not believe are based on the best, most accurate, analytic methodologies. Parties whose witnesses disagree are, of course, free to have their own witnesses sponsor the PRC versions. Alternatively, they are free to attempt to convince the Commission to provide Commission witnesses to sponsor such versions.

The ABA/NAPM comments acknowledge that the Postal Service has been providing PRC versions as Category 5 library references, and that those presentations “have revealed” that the Postal Service’s estimated cost avoidances are lower than those generated using PRC methodology. ABA/NAPM Comments at 3. Inconsistently, however, the comments next claim that the use of Category 5 library references “has allowed the Postal Service to hide from the results of such materials, and avoid cross-examination upon them.” Obviously, however, what is “revealed” is not “hidden.” Moreover, the Postal Service’s witnesses withstand cross-examination on their own methodologies, and there is no reason why they should be cross-examined on other methodologies. If the use of Category 5 library references is not totally satisfactory to ABA/NAPM, neither is it totally satisfactory to the Postal Service. In recent cases, however, it appears to be a compromise procedure that has provided most parties what they apparently feel they need. Although ABA/NAPM have not provided specific draft language showing how their proposal could be incorporated into the proposed rules, their suggestion to compel sponsorship of PRC versions by postal witnesses is not one which would facilitate litigation of rate cases, and accordingly should be rejected.

Multi-Party Comments

A consortium of parties submitted joint comments on February 12, 2003. The parties participating were the Alliance of Nonprofit Mailers, American Business Media, AOL Time Warner, Dow Jones, Magazine Publishers of America, McGraw-Hill, and the National Newspaper Association. These comments raised no specific issues with regard to the proposed rules, but expressed support for the objective of facilitating litigation through better focused discovery. The comments, however, do compare the

potential utility of a Postal Service roadmap to the trial brief that some of the parties submitted in previous rate cases. Although these comments do not appear to intend to address the roadmap document versus roadmap testimony issue, it bears noting that such trial briefs, which the comments are claiming were intended to play the same functional role as would the roadmap, were legal pleadings, were not sponsored by any witness, and were not part of the evidentiary record. Indirectly, therefore, these comments offer support for the Postal Service's position that a sponsoring witness is unnecessary to achieve the intended objectives of the roadmap.

Office of the Consumer Advocate

The OCA also filed its comments on February 12. Of 15 pages of OCA comments, less than 4 pages relate to the Commission's proposed rules. Of the issues addressed on the remaining pages, only one seems to be even tangentially related to the focus of the rulemaking. The majority of the remaining pages (pages 8-15) consist of OCA proposals regarding the Commission's periodic reporting rules, notwithstanding the fact that comments in a separate Commission rulemaking devoted to periodic reporting (Docket No. RM2003-3) were due two days prior to the initial comments in the instant rulemaking. There would seem to be little point in attempting to debate whether the OCA can appropriately redirect a rulemaking initiated for one purpose to other purposes apparently more consistent with its own interests. While the Postal Service certainly sees no merit in the new proposals put forth by the OCA, it will (with one exception) reserve comment on them until such time as the Commission formally requests such comments.

With respect to the rules actually proposed by the Commission, the OCA's

comments are all directed at quantification of the impact of methodological changes. First, the OCA would apparently prefer that language in the text of the proposed rules be modified to more stringently require quantification, rather than merely discussion of “impact.” OCA Comments at 3. The comments, however, include no alternative language proposal. The Postal Service believes that the rule should not be altered to require quantification of impact under all circumstances. As indicated in its initial comments, however, in instances in which the PRC version and the Postal Service version can be directly compared, the Postal Service believes that the most relevant type of quantification would routinely be provided in the roadmap document it envisions.

The OCA is likewise concerned that quantification of impact becomes more difficult if several methodological changes are operating simultaneously. OCA Comments at 3. The reality is, however, that in complex analyses typical of postal ratemaking, almost any material methodological change could be characterized as a set of discrete individual methodological changes. One could argue, for example, that a single new study incorporates several, if not dozens (or in some instances, even hundreds), of small procedural alterations, each of which could arguably constitute a methodological change. In the vast majority of instances, it is only the cumulative effect of these changes that is likely to be of interest to parties. That is particularly the case with respect to a roadmap document, which parties are reading to quickly identify significant issues, not to understand every last nuance of every piece of testimony.

Perhaps of equal importance in this respect, the OCA is essentially ignoring the tremendous amount of time, resources, and effort the Postal Service is compelled to devote to comprehensive rate case documentation. Under the Commission’s rules,

sufficient materials must be provided to allow complete replication of virtually every analysis, starting with input data and ending with outputs. These rules make it possible for participants to pull analyses apart and put them back together any way they wish. Using the documentation the Postal Service provides, a party wishing to identify what it considers to be each discrete “change” in methodology can do so, and can replicate the analysis to isolate and quantify the impact of each such change. Yet the OCA erroneously claims that “[o]nly the Postal Service, in the first instance, can reasonably be expected to calculate such information in a timely manner” and that the Postal Service “alone is best able to calculate those impacts.” OCA Comments at 3-4. In reality, the Postal Service cannot outguess what every party may consider to be an “individual” change in methodology. It is far more sensible for the Postal Service to focus on the cumulative effects of new analyses, and let participants themselves determine what they consider to be the significant components of each new analysis, and use available documentation to investigate the impacts of those components as best suits their purposes. Alternatively, if the OCA is suggesting that parties lack the capability to utilize the documentation the Postal Service provides, the rules should be revised to delete the requirements that the Postal Service provide that documentation.

Of the remaining portions of the OCA’s comments, only one topic is sufficiently closely related to the subject of the Commission’s rulemaking to sensibly merit a response in these reply comments. On pages 4-5, the OCA suggests that Rules 26 and 27 be amended to prohibit redirection of discovery questions to the institution when the nature of the question is to seek clarification of the responding party’s proposals. The OCA further suggests that the prohibition not be extended to discovery requests

submitted solely for the purposes of obtaining information needed to support the requesting party's proposals. The Postal Service believes that this suggestion does not deserve further consideration.

The most obvious shortcoming of the suggestion is that it would potentially give rise to vigorous controversy regarding whether discovery requests relate to the responding party's case or not. While there may be some instances in which institutional responses are provided even though the responding party recognizes the relevance of the information in question to its direct case, in most cases, redirection occurs because the responding party does not perceive a direct connection between the question posed and the direct case it has submitted through its witnesses. Experience shows that there is ample basis for difference of opinion in these matters.²

What is most fundamentally lacking from the OCA's comments, however, is any basis to believe that institutional responses have created problems in recent dockets. Parties dissatisfied with an institutional response have always had the option to request a witness be provided. Such a request could be submitted to the Postal Service informally, or, assuming an inability to obtain relief through that process, as a formal motion to the Commission. To the best of the knowledge of the Postal Service, if there were such issues in recent dockets (and none come to mind), the parties have been

² For example, the OCA in the last case took the view that, because the Postal Service was requesting a contingency intended to protect against unforeseen revenue shortfalls as well as cost increases, anything the OCA believed might relate to volume and revenue forecasting was relevant to the Postal Service's case, even if the Postal Service was not relying on such information for forecasting. Under this and similar approaches, it would be difficult to identify anything that did not arguably relate to the Postal Service's direct case.

able to work things out without resort to motions practice.³ Therefore, substantial amounts of information that recipients apparently believed were useful have been provided through the mechanism of institutional discovery responses by the Postal Service, the record has thereby been enhanced, and yet there has been little (if any) claim of even alleged harm relating to this process. In contrast, the OCA's suggestion could have the (presumably) unintended effect of unnecessarily driving the number of postal witnesses even higher. The OCA's comments have provided no concrete examples of instances in which institutional responses have purportedly created deficiencies in the record. Under these circumstances, the verdict of "solution in search of a problem" once again seems appropriate.

Clarification of the Postal Service's Proposed Rule Changes

Attached to the Postal Service's initial comments were changes in the language of the proposed rules which the Postal Service believes to be appropriate. While the body of the Postal Service's initial comments hopefully made quite clear the Postal Service's view that the roadmap document should not be in the form of testimony, and should not be part of the evidentiary record, that view might not have come through as clearly in the proposed changes in the actual language of the rules. Specifically, the Postal Service neglected to suggest a change where proposed Rule 53(b) begins "As part of its direct evidence," In retrospect, in order to better align with the Postal Service's views as expressed above, the Postal Service now suggests that Rule 53(b)

³ In this context, "recent dockets" means since the adoption of the new library reference rule provisions following Docket No. R97-1, prior to which there were some related issues that became contentious.

instead begin “As part of the filing of its formal request, ...” Note, however, that the identical language (“As part of its direct evidence”) at the beginning of proposed Rule 53(c) is satisfactory, as in that subsection it relates to materials that the Postal Service would be filing as testimony. This suggested clarification in Rule 53(b) would perhaps minimize potential confusion in the future regarding whether the “single document that provides an overview of its filing” should or should not be part of the evidentiary presentation.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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CERTIFICATE OF SERVICE

I hereby certify that, in accordance with section 12 of the Rules of Practice, I have this day served the foregoing document upon all participants of record.

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