

BEFORE THE
POSTAL RATE COMMISSION

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 2000

DOCKET NO. R2000-1

REPLY COMMENTS OF UNITED PARCEL SERVICE
CONCERNING BASE YEAR DATA
PURSUANT TO NOTICE OF INQUIRY NO. 2
(May 15, 2000)

Pursuant to the Commission's Notice of Inquiry No. 2 Concerning Base Year Data ("NOI No. 2"), United Parcel Service ("UPS") hereby provides its reply comments on the appropriate use of actual FY1999 cost data contained in the FY1999 CRA, Cost Segments and Components report, and billing determinants. Following review and consideration of the comments provided by other participants in this case, UPS continues to maintain that the Commission should use the more accurate and more recent actual FY1999 data for the base year, and that doing so will not infringe on the due process rights of any participant.

**Participants' Due Process Rights Will Not
Be Violated by Use of FY1999 as the Base Year.**

The Postal Service argues that due process prevents all but the most limited use of the FY1999 data. Initial Comments of the United States Postal Service in Response to Notice of Inquiry No. 2 (May 8, 2000) ("Postal Service Comments") at 5-7. The Postal Service would restrict use of the FY1999 data to the limited purpose of

evaluating the Postal Service's estimates for both the interim year and the test year. It asserts that any attempt at more extensive use of the FY1999 data would risk violation of the due process rights of the Postal Service and the participants because there is not enough time remaining in this proceeding to evaluate the FY1999 data, prepare testimony based on its content, and conduct cross-examination. Postal Service Comments at 5-7.

The Postal Service estimates that it would take "between six to ten weeks" to develop new test year estimates. Postal Service Comments at 5. It further estimates that "at least one additional month after test year estimates become available might be required for an adequate opportunity to scrutinize these estimates." Postal Service Comments at 6. Assuming these estimates are accurate, there is still sufficient time remaining in this proceeding to incorporate the FY1999 data into the participants' analyses and the Commission's recommended decision without denying due process.

First, the data has actually been available since almost six weeks ago, when the Postal Service filed the 1999 CRA on April 4, 2000. At that time, there were still more than seven months remaining in the statutory ten month period. Even in the absence of a Commission order specifically establishing how the FY1999 data would be used, the Postal Service and the participants should reasonably have assumed that the 1999 data would be used in some way. The fact that a number of participants have already conducted discovery regarding FY1999 data reveals that no one will be forced to start over from scratch. See, e.g., interrogatories UPS/USPS-38 (FY1999 quarterly BRPW estimates for); UPS/USPS-T10-18 (Parcel Post volume for FY1999); APMU/USPS-T34-49 (FY1999 delivery confirmation usage data by A/P for Priority Mail); APMU/USPS-

T34-52 (FY1999 ODIS data for First Class Mail and Priority Mail); MPA/USPS-T21-2(a) (FY1999 billing determinants for Periodicals Regular Rate); PSA/USPS-T32-10(g) (FY1999 cost coverage for Standard (B) parcel post); and MH/USPS-T21-1(d) (1999 unit mail processing costs).

Furthermore, the possible use of FY1999 data in this case has been a very real possibility at least since February 25, 2000, when the Presiding Officer issued Ruling No. R2000-1/4 (POR No. 4) establishing deadlines for discovery regarding 1999 operating results. POR No. 4 effectively put all parties on notice that the FY1999 data would play some role in this proceeding. The Commission has provided due process safeguards by permitting the parties to amend their testimony, Notice of Inquiry No. 2 Concerning Base Year Data (April 21, 2000) at 2, and by allowing discovery on the 1999 data through July 11, 2000, POR No. 4 at 2, and the Presiding Officer has already built some flexibility into the procedural schedule to accommodate the need for additional time, if necessary, POR No. 4 at 2.¹

Finally, even if the Postal Service needs eight weeks -- the midpoint between its estimate of six to ten weeks to roll forward the 1999 data, Postal Service Comments at 6 -- to prepare its rollforward calculations, its work would be completed by mid-July. This leaves more than enough time for participants to revise their testimony, if necessary, with an opportunity for cross-examination as part of the rebuttal hearings,

¹ "I have not extended these dates to the fullest extent suggested . . . in order to retain an adequate time for the preparation of briefs and reply briefs, and to allow the possibility for accommodating requests for oral arguments and *other contingencies*." POR No. 4 at 2 (emphasis added).

perhaps, beginning on August 9. If some additional time is needed, the existing schedule does, as noted above, have some room to accommodate that need. See footnote 1, above.

Although the Postal Service will be required to perform additional work to roll forward the FY1999 data, that is outweighed by the benefits of the increased accuracy of the rates the Commission ultimately proposes to the Governors in its recommended decision.

Differences between Actual and Estimated FY1999 Data Are Substantial.

OCA and the Postal Service further argue that the use of actual FY1999 cost data is unnecessary because the differences in the estimated FY1999 data and the actual FY1999 data are not significant. *Postal Service Comments at 7; Office of the Consumer Advocate Comments in Response to Notice of Inquiry No. 2 Concerning Base Year Data (May 8, 2000) ("OCA Comments") at 2.* OCA asserts that the FY1999 data have only a "relatively minor impact . . . upon *most* of the classes and subclasses of service," and that "in only a very few instances might [it] have any measurable impact on the ultimate rate design." OCA Comments at 2 (emphasis added).

However, as NAA rightly notes, "some of the older estimates are materially off the mark." NAA Comments at 2. It must be remembered that the underestimates are underestimates of attributable costs only. After attributable costs are marked up to arrive at proposed rates, the actual rate changes resulting from the understated cost estimates would be significantly greater.

Thus, at the very least, the Commission must use FY1999 data "to address variances for specific subclasses" where those variances are significant. Postal Service Comments at 7.² A "significant" variance occurs at least where the Postal Service underestimated attributable costs by 2% or more using the Commission's methodology, since an understatement of that magnitude largely eliminates the 2.5% contingency built into the Postal Service's rate proposal. The classes and subclasses of mail for which there was a material understatement of costs under this criteria are Priority Mail (6.39%), Express Mail (2.07%), Periodicals In County (10.68%), Standard A Enhanced Carrier Route (4.60%), Nonprofit Regular (2.46%), Standard (B) Bound Printed Matter (4.93%), Standard (B) Special Rate (17.53%), and Standard (B) Library Rate (10.76%). Therefore, at the very least, FY1999 data should be used for those classes and subclasses.

**Use of FY1999 as the Base Year Does
Not Require Rejection of All Evidence under Rule 54(f).**

The Association for Postal Commerce ("PostCom") argues that if the Commission were to adopt FY1999 as the base year, it could do so only by ruling that

² All of the participants that filed comments in response to NOI No. 2 agree that **some** use of the actual FY1999 cost data is appropriate. See OCA Comments at 3 ("There may be a few instances where the deviation of the actuals from the estimates warrants special consideration."); Comments of the Newspaper Association of America on Notice of Inquiry No. 2 Concerning Base Year Costs (May 8, 2000) at 2 ("Actual 1999 cost and billing data are far too relevant, and available sufficiently early in this proceeding, to be discarded in favor of older estimates."); Association for Postal Commerce Response to NOI No. 2 (May 8, 2000) ("PostCom Comments") at 2 ("Fiscal Year 1999 data are available and they must not be ignored.").

the Postal Service had violated Commission Rule 54(f) when it originally selected FY1998 as the base year in this case. PostCom Comments at 1. That is not the case.

Rule 54(f) provides that:

“every formal request shall set forth the total actual accrued costs during the most recent fiscal year for which they are reasonably available. In the event final total actual accrued costs are not yet available for the fiscal year immediately preceding the fiscal year in which the filing is made, a preliminary or pro forma statement of such actual accrued costs shall be furnished.”

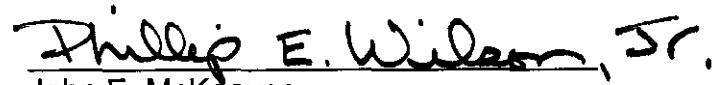
39 C.F.R. § 3001.54(f)(1). If FY1998 was “the most recent fiscal year for which [total accrued costs were] reasonably available” when the Postal Service filed its Request, then it did not violate the rule. Moreover, Rule 54(f) imposes a requirement on the contents of the Postal Service’s filing; it does not restrict the basis that may be used by the Commission to arrive at its decision.

Contrary to PostCom’s interpretation, Rule 54(f) does not preclude the Commission from looking to other record evidence in making its decision. Rather, the Commission is entitled to rely on “such relevant evidence as a reasonable mind might accept as adequate” *United Parcel Service, Inc. v. United States Postal Service*, 184 F.3d 827, 835 (D.C. Cir. 1999), quoting *Mail Order Ass’n of America v. United States Postal Service*, 2 F.3d 408, 420 (D.C. Cir. 1993). Indeed, Rule 54(f)(1) explicitly contemplates that data which becomes available after the Postal Service files its Request should be made available for the Commission’s use, by requiring the Postal Service to file a preliminary statement of total accrued costs “for the fiscal year immediately preceding the fiscal year in which the filing is made,” and then requiring that a “final statement should be substituted for any preliminary statement when the

former becomes available." And as we have indicated, failure to use the most recent actual data in place of estimates could very well amount to arbitrary action that leads to reversible error. See Comments of United Parcel Service Concerning Base Year Data in Response to Notice of Inquiry No. 2 (May 8, 2000) at 2, and cases cited therein.

In short, the Commission may -- indeed, it should use the FY1999 data as long as that data is properly in the record.

Respectfully submitted,



John E. McKeever
William J. Pinamont
Phillip E. Wilson, Jr.
Attorneys for United Parcel Service

Piper Marbury Rudnick & Wolfe LLP
3400 Two Logan Square
18th & Arch Streets
Philadelphia, PA 19103-2762
(215) 656-3310
(215) 656-3301 (FAX)


and

1200 Nineteenth Street, NW
Washington, DC 20036-2430
(202) 861-3900

Of Counsel.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document by first class mail, postage prepaid, in accordance with Section 12 of the Commission's Rules of Practice.


Phillip E. Wilson, Jr.
Phillip E. Wilson, Jr.
Attorney for United Parcel Service

Dated: May 15, 2000
Philadelphia, Pa.

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