

ORDER NO. 1380

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

Before Commissioners:

George Omas, Chairman;
Dana B. Covington, Sr., Vice Chairman;
Ruth Y. Goldway; and Tony Hammond

Proposed Amendments to
Filing Requirements

Docket No. RM2003-1

NOTICE AND ORDER ADOPTING FINAL RULE

(August 7, 2003)

In Order No. 1355, the Commission proposed to amend its Rules of Practice in two principal ways.¹ First, the proposed rulemaking would require the Postal Service to submit testimony of a single witness providing an overview (or roadmap) of its request, which, among other things, would both explain the interrelationship of the testimony submitted in support of the filing and highlight all methodological changes. See proposed Rule 53(b). Second, the rules would be clarified regarding the Postal Service's obligation to submit testimony addressing material methodological changes affecting costing, volume projections, or rate design. See proposed Rules 53(c) and 54(a). Interested persons were invited to comment on the proposed rules.

¹ See Notice of Proposed Rulemaking Concerning Evidence Supporting Rate and Classification Changes, PRC Order No. 1355, December 13, 2002.

Six sets of initial comments were received,² plus four sets of reply comments.³ Aside from the Postal Service, all initial commenters supported the proposed rule. For its part, the Postal Service, while expressing concerns about the proposed rule changes, characterizes itself as “generally sympathetic to the proclaimed need for a better overview of its case[.]”⁴

Its principal concern lay with the form of the roadmap, favoring an institutional document over testimony. *Id.* at 3-6. To that end, the Postal Service offers an alternative version of the proposed rules. It also outlines its concept of the roadmap document as well as expressing concerns regarding the details associated with reporting methodological changes. *Id.* at 6-25.

Other commenters also suggest revisions to the proposed rule. For example, OCA suggests that the Postal Service be required to quantify the impact of every methodological change. In a similar vein, ABA/NAPM urge the Commission to quantify the meaning of material changes. See OCA Comments at 3-6 and ABA/NAPM Comments at 2. UPS suggests revisions to the proposed rules regarding details reported by the Postal Service. UPS Comments at 4.

² See Comments of Alliance of Nonprofit Mailers, American Business Media, AOL Time Warner, Inc., Dow Jones & Company, Inc., Magazine Publishers of America, Inc., The McGraw-Hill Companies, and National Newspaper Association, February 12, 2003, (Joint Comments); Letter on Behalf of American Bankers Association and National Association of Presort Mailers, February 12, 2003, (ABA/NAPM Comments); Comments of American Postal Workers Union, AFL-CIO Regarding Notice of Proposed Rulemaking Concerning Evidence Supporting Rate and Classification Changes, January 15, 2003, (APWU Comments); Office of the Consumer Advocate Comments on Notice of Proposed Rulemaking Concerning Evidence Supporting Rate and Classification Changes, February 12, 2003, (OCA Comments); Comments of United Parcel Service in Support of Proposed Rule, February 11, 2003, (UPS Comments); and Initial Comments of the United States Postal Service, February 12, 2003, (Postal Service Comments).

³ See Letter on Behalf of American Bankers Association and National Association of Presort Mailers, February 26, 2003, (ABA/NAPM Reply Comments); Office of the Consumer Advocate Reply Comments on Notice of Proposed Rulemaking Concerning Evidence Supporting Rate and Classification Changes, February 26, 2003, (OCA Reply Comments); Reply Comments of PostCom, February 20, 2003, (PostCom Reply Comments); and Reply Comments of the United States Postal Service, February 26, 2003, (Postal Service Reply Comments).

⁴ Postal Service Comments at 1.

This rulemaking grew out of the Ratemaking Summit, jointly sponsored by the Commission and the Postal Service during the spring of 2002 to consider potential improvements in the ratemaking process. The conferences provided a useful public forum to discuss various alternatives intended to make the current process more efficient. In Order No. 1355, the Commission addressed the alternatives suggested. Based on participants' written and oral comments, the Commission proposed to amend its rules of practice to require that the Postal Service file roadmap testimony as well as testimony explaining each material methodological change in its filing when submitting formal requests under subparts B and C of the Commission's rules.

The proposed rule is widely supported by mailer-participants, and the OCA. The Postal Service opposes the form of the proposed rule, if not (entirely) its substance. Among other things, the Postal Service expresses concern over any burden that may be associated with the proposed rule. In concluding that the proposed rule, with a minor modification, will facilitate the ratemaking process, the Commission has been particularly mindful of the relative burdens borne by all participants during omnibus rate proceedings. Based on a thorough consideration of the comments received in this proceeding, the Commission concludes that the rules adopted herein represent a reasonable balance among competing interests and will improve the ratemaking process.

Participants are commended for their comments. The Commission has found them useful during its deliberations. The merit of the various suggestions to modify the proposed rule is addressed below. The discussion begins with consideration of the Postal Service's comments.

1. POSTAL SERVICE COMMENTS

Roadmap testimony. The Postal Service advances several reasons for its preference that the roadmap be an institutional document rather than testimony. As the

“most obvious reason to eschew sponsorship by a witness,”⁵ the Postal Service questions whether an individual could be sufficiently familiar with the various testimonies to be able to explain them and their interrelationship. Even if such a witness were available, the Postal Service questions the usefulness of the undertaking, including the need to respond to discovery and possibly stand cross-examination. Expanding on this point, the Postal Service expresses concern that there may be confusion as to the proper scope of the roadmap testimony and that of the substantive witnesses, and further that there may be an increased need to redirect questions among witnesses.⁶

An additional concern voiced by the Postal Service is that a witness would be required to present evidence regarding Commission methodologies. This result, the Postal Service contends, would be inappropriate since the witness would not be sponsoring the PRC version.⁷

The Commission is not persuaded that an institutional roadmap is preferable to testimony. For several reasons, testimony, as opposed to an institutional document, is a more appropriate vehicle for providing an overview of the Postal Service’s filing.

A witness is directly responsible for the substance of his or her testimony. Thus, there is a direct accountability that does not attach to an institutional roadmap. Form in this instance matters. Testimony from a single witness is more likely to present the Postal Service’s filing as a coherent whole. Furthermore, discovery can be directed to

⁵ Postal Service Comments at 4.

⁶ *Ibid.*

⁷ *Id.* at 5. In its comments, APWU also asserts that the roadmap might best be an institutional document, as some information may be beyond the witness’s ken. APWU also expresses concern that roadmap testimony would be subject to discovery and possible oral cross-examination. In urging the use of an institutional roadmap, APWU advocates using informal discovery to clarify matters related to the roadmap. APWU Comments at 1. In its reply comments, PostCom also endorses the Postal Service’s position. PostCom Reply Comments at 1.

the roadmap witness, an option not available if the roadmap were an institutional document.⁸

Requiring the roadmap to be in the form of testimony does not mean that the witness could not rely on others for assistance in producing the testimony. Rather, as with any testimony, it must be prepared by or under the supervision of the sponsoring witness. This should put to rest any concerns that a single witness would be unable to understand the elements of the Postal Service's filing. Moreover, that an institutional document could be produced belies the suggestion that an individual would be incapable of providing the same information in the form of testimony.

Testimony by a roadmap witness is analogous to that of a policy witness. Each speaks on behalf of the proponent, providing a focal point for its proposal. Thus, including the roadmap testimony as part of the evidentiary record is appropriate. The Postal Service compares the testimony to documents such as the list of library references or of the attorney-witness assignments.⁹ Unlike those documents, which simply identify certain organizational features of the filing, the testimony has substantive value that warrants its treatment as record evidence.

Streamlining the administrative process is central to the proposed rule. The roadmap testimony is intended to provide an overview of the Postal Service's filing by, among other things, explaining the interrelationship of the testimony submitted with the request and describing material methodological changes. This testimony is likely to be the participants' starting point in attempting to understand the Postal Service's filing. Participants will benefit because the testimony will provide a means to quickly grasp the essential elements of the Postal Service's filing and focus on issues of principal concern. Being able to direct clarifying questions to the roadmap witness should facilitate the process, and questions going to the substance of particular matters should

⁸ Questions to the roadmap witness should be of a "where" or "who" nature. Questions of a "why" or "how" nature should be directed to subject matter witnesses.

⁹ Postal Service Comments at 6.

more readily be addressed to the witness sponsoring that proposal. This should produce a more focused and comprehensive evidentiary record in the limited time available for § 3624 cases, and lead to more informed and cogent decisions by the Commission.

In its comments, the Postal Service notes that it has and is willing to make reasonable efforts to better explain its rate case presentations.¹⁰ In any rate proceeding, the burden initially lies with the proponent. The Commission is sensitive to the issue and recognizes the Postal Service's considerable efforts in rate cases, particularly as relates to discovery. Omnibus rate cases are complex and subject to a very expedited schedule. As a consequence, the burdens imposed on participants are not insignificant. The roadmap testimony attempts to reasonably balance these relative burdens, while also facilitating the ratemaking process. As several comments note, the testimony should help participants focus more quickly on substantive issues.¹¹ This, in turn, should reduce the Postal Service's burden of responding to discovery, particularly that of an exploratory nature. These efficiencies will redound to the benefit of all stakeholders.

The Postal Service's related contentions that participants may be confused about the scope of the roadmap testimony and that this may cause them to direct interrogatories to the wrong witness are largely makeweights. As set forth in the proposed rule, the roadmap testimony simply provides an overview of the Postal Service's filing. Participants are unlikely to confuse that purpose with the role played by witnesses sponsoring the more substantive aspects of the testimony on point. However, even if on occasion an interrogatory is directed to the wrong witness, the solution is simple. The Postal Service is well practiced at redirecting interrogatories to the appropriate witness, and the roadmap witness should be especially familiar with

¹⁰ Postal Service Comments at 2.

¹¹ See Joint Comments at 2; UPS Comments at 2.

which witness addresses a particular topic. Hence, the Postal Service's argument provides no basis to reject the roadmap testimony.

The Postal Service expresses concern that the roadmap witness would, in effect, be sponsoring testimony regarding PRC methodologies when addressing material changes to the preexisting PRC versions proposed by the Postal Service in that proceeding.¹² The comparison required by this exercise cannot be equated with sponsoring the preexisting methodology. It merely identifies and gives context to the proposed change, serving as a benchmark so that the impact can be assessed. Testimony by the roadmap witness describes the areas of change. This does not amount to sponsoring the preexisting methodology. Similarly, witnesses submitting testimony under Rule 53(c) sponsor the proposed methodological changes, not the preexisting methodology. That they may be compelled to reference the preexisting methodology does not mean they are sponsoring it.¹³

Interrelationships among testimonies. The Postal Service suggests the format and level of detail that would, in its view, satisfy the intent of the proposed rule to provide an overview of its filing.¹⁴ For example, the Postal Service states that a roadmap explaining the functional components of the case, including identifying testimonies that addressed each component, would appear to provide a sufficient overview of its filing in conformance with the proposed rule, except as relates to methodological changes.¹⁵ While it states that one might quibble over whether such a document would adequately explain how the testimonies interrelate, it believes that "the description of the functional organization of the filing would encapsulate the

¹² Postal Service Comments at 4-5.

¹³ As the OCA notes, "The Postal Service witness is obviously not deemed to be sponsoring the PRC version; only explaining how the Postal Service's presentation relates to the Commission's methodologies." OCA Reply Comments at 5.

¹⁴ See Postal Service Comments at 6-12.

¹⁵ *Id.* at 7-8.

informational flows that define the interrelationships [among] the testimonies.”¹⁶

Further, it indicates that it would have no difficulty summarizing sources of material inputs, including outputs used as inputs, employed by its various witnesses.¹⁷

In Order No. 1355, the Commission, illustratively citing the testimony of witness Van-Ty-Smith in Docket No. R2001-1, observed that she briefly notes that certain witnesses use her mail processing volume-variable costs. The Order concludes that “something more” would be required of the roadmap witness.¹⁸

Quoting an excerpt from Van-Ty-Smith’s testimony, the Postal Service questions what more would be required of it to satisfy this facet of the proposed rule.¹⁹ Order No. 1355, as pointed out by the OCA, expands on the statement:²⁰

Specifically, the roadmap witness’s overview of the Postal Service’s filing would identify the subject matter of each witness’s testimony, explain how the testimony of the various witnesses interrelates, and highlight changes in cost methodology, volume estimation and rate design. See proposed § 3001.53(b). Thus, with reference to Van-Ty-Smith’s testimony, the roadmap witness would, among other things, explain the linkage between her analysis and the testimony of those witnesses who rely on it.

The roadmap testimony should provide a coherent overview of the Postal Service’s filing. To be sure, the excerpt from Van-Ty-Smith’s testimony does identify some interrelationship between her testimony and that of other witnesses. Certain interrelationships are reasonably clear, *e.g.*, the description regarding witness Kay’s development of incremental costs and Meehan’s base year costs. It is less clear, however, regarding the “updates [of] other types of information coming out of the methodology for mail processing costs which are used by other witnesses, such as

¹⁶ *Id.* at 8.

¹⁷ *Ibid.*

¹⁸ PRC Order No. 1355, December 13, 2002, at 7.

¹⁹ Postal Service Comments at 7-8.

²⁰ PRC Order No. 1355, December 13, 2002, at 7-8.

[Smith, Mayes, Eggleston, and Miller], as the source of inputs for some of their cost studies.”²¹ While the statement would alert the reader that some relationship exists between Van-Ty-Smith’s and the referenced testimony, it lacks specifics other than a general reference to cost studies. Moreover, the statement is somewhat qualified, referring to witnesses “such as” Smith, et al., and that the inputs are used in “some of their cost studies.”²²

As written, that testimony falls short of explaining the linkage between Van-Ty-Smith’s analysis and the testimony of those witnesses who rely on it. The Commission recognizes, of course, that the testimony was not written with the proposed rule in mind. Moreover, as the Postal Service suggests, the foregoing description might be sufficient “[i]n the context of a comprehensive roadmap . . . because any potential questions with respect to the more specific purposes of, for example, the testimony of witness Miller, could be quickly resolved by other information within the roadmap document discussing Mr. Miller’s cost study testimony.”²³ Thus, if the linkages to Van-Ty-Smith’s testimony are adequately detailed in the portion of the roadmap testimony that addresses, for example, witness Miller’s testimony, the proposed rule would be satisfied.

The description in the roadmap testimony is not a surrogate for the underlying testimony of the witness referenced, e.g., Miller’s testimony in Docket No. R2001-1, USPS-T-22. It should, however, be sufficiently detailed to explain linkages between the two testimonies. This does not mean that the roadmap testimony is to function as a cross-referencing vehicle. That function, as the Postal Service notes, is “fulfilled by the complete documentation submitted by each witness.”²⁴

In sum, the roadmap testimony is intended to facilitate consideration of complex rate and classification requests by providing participants with an overview of the filing,

²¹ Postal Service Comments at 9, quoting USPS-T-13 at 1.

²² *Ibid.*

²³ *Id.* at 9.

²⁴ *Id.* at 10.

including identifying changes in methodology. It should enable participants to focus more quickly on issues affecting rates (or service) of concern to them. The level of detail to be included in the roadmap testimony undoubtedly will evolve over time. Based on its comments, the Postal Service appears committed to making a good faith effort to comply with the rules. The Commission would expect no less and, based on experience, believes that Postal Service adheres to that standard in matters before the Commission.

Changes in methodology. Under the proposed rule, the roadmap testimony would highlight changes in cost methodology, volume estimation, and rate design. In addition, the witness sponsoring the methodological changes would be required to explain each material change and quantify its impact. The Postal Service raises concerns about each of these obligations.

First, the Postal Service states its assumptions regarding the term “cost methodology,” correctly noting that the term extends to subclass costs (CRA costs) and cost study costs.²⁵ The Postal Service then outlines what it characterizes as an appropriate response to address changes in cost methodology under proposed Rule 53(b) and (c). Under its suggested approach, the roadmap document would contain a summary of each witness’s testimony, identifying material changes in cost methodology.²⁶ The summaries could include a comparison of results under the proposed methodology with those obtained under that used by the Commission in the most recent rate proceeding. Generally, such comparisons would simply present the relevant material from PRC-version library references along with the results of the witness sponsoring the change.²⁷

Perhaps because it would prefer the roadmap be an institutional document, the Postal Service pays scant attention to proposed Rule 53(c), suggesting that the rule be

²⁵ *Id.* at 13.

²⁶ *Id.* at 14.

²⁷ *Ibid.*

revised in two ways. The Postal Service proposes that any discussion of the impact of material changes be removed to its proposed Rule 53(b), the institutional roadmap document.²⁸ In addition, because of its concern over sponsoring PRC versions, the Postal Service suggests modifying proposed Rule 53(c) to eliminate any reference to the Commission.²⁹

These suggested revisions reflect the Postal Service's preference for an institutional roadmap document in lieu of testimony. Since that approach has been rejected, these suggestions will not be adopted. Furthermore, under the Postal Service's proposal, any distinctions between Rule 53(b) and (c) are lost. The distinctions are not insignificant.

Proposed Rule 53(b) requires the filing of a single piece of testimony providing an overview of the request, including, among other things, highlighting methodological changes. Proposed Rule 53(c) directs the Postal Service to file testimony addressing the details of material methodological changes, including the impact of such changes. The rule assures that testimony will be filed by a witness sponsoring and explaining each relevant methodological change.

Aside from reiterating its advocacy of an institutional roadmap document in lieu of testimony, the Postal Service, in a rather extensive discussion, compares the proposed rule to what is required under current Rule 54(a).³⁰ The discussion is useful to the extent it points out that, as a practical matter, judgment must be exercised in reporting on various types of changes, *e.g.*, those due to updates, operational changes, or new analytical approaches. In the context of current Rule 54(a), the Postal Service indicates that it has attempted "to employ a rule of reason" in responding to the requirements of that rule.³¹ The larger point of the discussion, however, is concern that

²⁸ *Id.* at 15-16.

²⁹ *Id.* at 16, n.6; *see also* attachment to Postal Service Comments.

³⁰ *Id.* at 16-20.

³¹ *Id.* at 18, n.8.

the proposed rule not undermine the Postal Service's ability to develop, support, and present its case.³² The Commission has carefully evaluated this potential risk. While the Commission is not adopting the Postal Service's suggestion that the roadmap take the form of an institutional document, the end result nonetheless strikes a reasonable balance between competing interests. The roadmap testimony will facilitate litigation of Postal Service rate requests by helping to assure that all material changes are identified and explained. This should be doable without significantly increasing burdens borne by the Postal Service. Moreover, should they not work as intended, the rules may be revisited in the future.

Second, the Postal Service expresses a preference for eliminating any discussion of volume forecasting from the roadmap, arguing, for example, that the issue is uncontroversial and that there are no appreciable differences between its approach to forecasting volume and the Commission's.³³ Nonetheless, the Postal Service does not foresee any major difficulties in complying, and this aspect of the proposed rule will be retained. While the volume estimates currently are perhaps less controversial than other rate issues, they remain important in determining an overall revenue requirement and methodological changes should be identified clearly at the outset of any rate proceeding.

Finally, the Postal Service addresses changes in rate design. It questions the need for any extensive discussion within the roadmap, finding it unlikely that any participant interested in rates for a particular subclass would not turn to the testimony of the relevant rate design witness. Thus, it suggests that the rule would be satisfied if the subclasses or services addressed by each rate design witness plus any material rate design changes were identified in the roadmap.³⁴

³² *Id.* at 19-20.

³³ *Id.* at 21.

³⁴ *Id.* at 24-25. The latter, the Postal Service observes, may cause the summaries of rate design testimonies to be more detailed than those for other witnesses. *Id.* at 25.

Systems for developing rates for some subclasses rival the complexity of those used to develop costs, and changes may be difficult to identify easily. The Postal Service's interpretation might appear to be a reasonable first cut in complying with this facet of the proposed rule in some instances, but it should be borne in mind that the purpose of these amendments is to facilitate immediate awareness of changes and their impact. Rate design is an undeniably important ratemaking function. To the extent that the Postal Service incorporates changes, whether as a classification change or in the development of proposed rates, the discussion of rate design changes is part of the coherent whole that the roadmap testimony is designed to present. Whether the level of detail provided in the testimony is adequate or not can best be assessed after experience with the rule is gained. Thereafter, changes, if any, can be considered. It bears emphasizing, however, that the proposed rule attempts to reasonably balance litigation burdens among all participants. It makes more sense to specifically identify changes in one place than to assume that all intervenors can, without help, identify the testimony most relevant to their specific interest areas. Accordingly, the Commission will adopt Rule 53(c) as initially proposed. In the Commission's view, the rules adopted will improve the process and thus benefit all concerned.

2. OCA COMMENTS

In Order No. 1355, the Commission stated that “[p]ursuant to proposed Rule 53(c), it would fall to the sponsoring witness to provide details of the change, including estimating (or quantifying) its effects.”³⁵ The responsibility of the sponsoring witness is clear. The Commission recognized, however, that quantifying a material change was subject to some ambiguity. Accordingly, it invited interested parties to comment on the benefits of imposing the requirement.

OCA urges the Commission to modify proposed Rule 53(c) to make more explicit the requirement that the Postal Service quantify the impact of material changes in cost

³⁵ PRC Order No. 1355, December 13, 2002, at 9.

methodology, volume estimation, and rate design.³⁶ OCA contends that the proposed rule does not specifically require the Postal Service to quantify such effects, as, in its view, the text of Order No. 1355 suggests is required. Thus, OCA suggests that proposed Rule 53(c) employ specific language to require quantitative estimates of the impact of each methodological change.³⁷

The Postal Service opposes this suggestion, asserting that the rule should not be altered to require quantification in all circumstances.³⁸ Reiterating its initial comments, the Postal Service states that, when comparisons between the PRC and Postal Service versions can be made, the most relevant type of quantification would be routinely provided in the roadmap document it envisions.³⁹ It asserts that in most instances parties will be interested in only the cumulative effect of the changes, particularly as relates to the roadmap document. The Postal Service also criticizes the suggestion as overlooking the extensive documentation that it files in support of its requests. The Postal Service concludes that its focus should be on the cumulative effects of new analyses, with participants free to investigate whatever components they believe to be most significant.⁴⁰

To some degree, OCA and the Postal Service appear to be talking at cross-purposes. OCA's comments address proposed Rule 53(c), which directs the Postal Service to file testimony addressing the details of material methodological changes, including the impact of such changes. For its part, however, the Postal Service's

³⁶ OCA Comments at 2-4.

³⁷ *Id.* at 3. ABA/NAPM appear to raise a similar concern in their comments that the rule should require the Postal Service to identify situations when several small changes "all going in the same direction" have a material effect even if taken individually the changes may not. ABA/NAPM Comments at 2.

³⁸ Postal Service Reply Comments at 10.

³⁹ *Ibid.*

⁴⁰ *Id.* at 11.

response is based on “the roadmap document it envisions[,]”⁴¹ an approach, as noted, that ignores distinctions between proposed Rules 53(b) and (c).

As proposed, Rule 53(c) requires the Postal Service to submit testimony that identifies and explains each material change in cost methodology, volumes, and rate design. That testimony shall also discuss the impact of each such change on the levels of attributable costs, volumes, and rate levels. In Order No. 1355, the Commission recognized that quantifying the effects of methodological changes may, in some instances, prove difficult. The Commission further noted that the proposed rules are not intended to require the Postal Service to address each change regardless of its consequences.

The Commission appreciates the OCA’s suggestions. OCA’s comments, however, gloss over any difficulties associated with quantifying interrelated methodological changes. OCA’s suggestion that the Commission’s rules be revised to require the Postal Service to quantify the impact of each separate methodological change overreaches. Furthermore, while OCA’s basic point that the proposed rule does not hew explicitly to the discussion in Order No. 1355 is not in dispute, the intent of the proposed rule is nonetheless reasonably clear.

As the Postal Service indicates, quantification becomes more difficult when several changes operate jointly.⁴² To be sure, the cumulative effect of these changes is important. It remains to be seen whether parties will, for the most part, be interested only in the cumulative effect as the Postal Service contends. In any event, parties wanting more detail can avail themselves of discovery. Moreover, as the Postal Service notes, as part of its filing it provides comprehensive rate case documentation that permits replication of its analyses. Consequently, the Commission declines to adopt the OCA’s suggestion.

⁴¹ *Id.* at 10.

⁴² *Id.* at 10.

The OCA also suggests that the rules be amended to bar institutional responses to interrogatories seeking to clarify a proponent's proposal(s) and evidence.⁴³ In support, OCA notes that responses to Presiding Officer Information Requests are sponsored by witnesses. In addition, OCA argues that timing may become an issue with written discovery.⁴⁴ The Postal Service opposes this suggestion, arguing, principally, that OCA fails to demonstrate that institutional responses have caused problems in recent dockets.⁴⁵

The expedition required in omnibus rate cases puts a premium on attempting to quickly understand the Postal Service's filing. Written discovery is the principal means for clarifying the Postal Service's proposals. Informal discussions with the Postal Service and technical conferences may supplement this process. While timing can be an issue with respect to written discovery, cross-examination remains available to participants as well. The rationale offered by OCA for the suggestion does not warrant its adoption. It is well understood that participants submitting institutional responses to discovery requests must be prepared to provide a sponsoring witness if follow-up oral cross-examination is required. OCA has failed to demonstrate that institutional responses have caused participants problems in understanding the Postal Service's case in recent proceedings. Should it become a problem, however, the Commission's rules provide means for seeking redress.

OCA also proposes that the Commission should, as a matter of practice, formally notice in the *Federal Register* participants' alternative proposals in any case set for hearing.⁴⁶ OCA believes that such notice would apprise interested persons of any new

⁴³ OCA Comments at 4-6. Alternatively, OCA would permit institutional responses provided a witness is identified at the time and is available to stand cross-examination should it be requested. *Id.* at 6.

⁴⁴ *Id.* at 5.

⁴⁵ Postal Service Reply Comments at 11-13.

⁴⁶ OCA Comments at 6-8.

proposals and preempt any due process claims that adequate notice was not given. No commenter addressed this suggestion.

The Commission declines to adopt this suggestion. OCA does not advocate codifying this practice in the Commission's rules.⁴⁷ Thus, for purposes of this rulemaking, the suggestion is essentially a nullity. The Commission could, were it so inclined, adopt the practice irrespective of this rulemaking. Moreover, as OCA notes, generally the original notice issued by the Commission is sufficient to apprise interested persons of the nature of the proceeding, including the possibility that its recommendations may differ from the Postal Service's request.

Finally, OCA incorporates its comments from Docket No. RM2003-3 to the extent they may be more appropriately considered in this proceeding.⁴⁸ The Commission finds those comments more relevant to Docket No. RM2003-3.

3. UPS COMMENTS

UPS proposes two modifications to the proposed rules. The Postal Service opposes both. First, UPS suggests revising Rule 53(b) by substituting the word "describing" for "highlighting." The intent of this proposal is to have the roadmap witness generally explain the change and the reason for it.⁴⁹ The Postal Service opposes the wording change. While acknowledging that the word describe may not be "utterly inappropriate," it contends that the use of "highlighting" better conveys the appropriate level of detail.⁵⁰

The Commission adopts this UPS suggestion. On reflection, the term "highlighting" is perhaps too ambiguous in the context of the rule. The roadmap witness should describe changes in cost methodology, volume projections, and rate design in

⁴⁷ *Id.* at 8.

⁴⁸ *Ibid.*

⁴⁹ UPS Comments at 4.

⁵⁰ Postal Service Reply Comments at 5.

sufficient detail to inform the reader of the nature of the change.⁵¹ This should adequately inform the reader of the change and direct him or her to the testimony of the witness sponsoring the proposed change, where the complete details of material methodological changes will be contained. In this fashion, the roadmap testimony will fulfill its intended role. Moreover, this clarifying change appears to be consistent with the Postal Service's understanding of the roadmap's function. Specifically, the Postal Service recognizes that the description of the changes must be sufficient to enable readers to understand the nature of the changes.⁵²

Second, UPS suggests that Rule 53(c) be modified by inserting the phrase "for each affected subclass" at the end of the final sentence to that subsection.⁵³ UPS states that its proposal is intended to make the intent of the proposed rule clear.⁵⁴ In opposing this suggestion, the Postal Service observes, first, that the effect of some changes cannot be presented at the subclass level. In support, it references a study done by witness Bozzo. Second, the Postal Service states that certain cost studies are done below the subclass level. Finally, the Postal Service asserts the change is unnecessary as it intends, where appropriate, to provide the impacts by subclass.⁵⁵

The rule will be adopted as proposed. The testimony required by this subsection directs, first, that material changes in cost methodology, volume projections, and rate design be identified and explained. The intent of this provision is that the relevant witness explain each material change, which may affect the system as a whole or individual classes or subclasses of mail. Rule 53(c) also requires that the impact of each material change on the levels of attributable costs, projected volumes, and rate

⁵¹ It will not be necessary for the roadmap witness to explain the reason for the change, provided that the sponsoring witness does.

⁵² Postal Service Reply Comments at 5.

⁵³ UPS Comments at 5. Thus, as proposed, the sentence would read: "The testimony required in this subsection (c) shall also include a discussion of the impact of each such change on the levels of attributable costs, projected volumes, and rate levels *for each affected subclass*."

⁵⁴ *Ibid*.

⁵⁵ Postal Service Reply Comments at 5-6.

levels be discussed. The nature and impact of the change will dictate the form of the discussion. On occasion, it may involve the system as a whole. More often, however, the discussion of impacts is likely to be at the subclass level or below. The Postal Service appears to acknowledge this possibility with its comment that “certain cost studies are done below the subclass level (i.e., at the rate category level).”⁵⁶

The Postal Service’s contention that the impact of certain changes cannot be presented at the subclass level warrants brief comment, albeit not for its substance. As support for its position, the Postal Service refers to witness Bozzo’s analyses of mail processing cost pool variabilities, stating that his results did not relate directly to subclasses. The Postal Service notes that witness Van-Ty-Smith distributed mail processing costs to subclasses in the last proceeding.⁵⁷ While the Bozzo example may adequately answer UPS’s suggestion, ambiguity may nonetheless persist as to Van-Ty-Smith’s testimony. Under the proposed rule, it would fall to witness Van-Ty-Smith to discuss the impact of any material changes in the distribution of mail processing costs.

4. ABA/NAPM COMMENTS

ABA/NAPM suggest that the Commission should quantify, perhaps by examples, what constitutes “material effect.”⁵⁸ While the phrase “material effect” appears in the text of Order No. 1355 (at 9), it does not, as the Postal Service notes,⁵⁹ appear in the proposed rule. At that point in the text, the phrase is describing the responsibilities of the roadmap witness, which are set forth in proposed Rule 53(b). The details of the change, however, are the responsibility of the witness sponsoring the change. See Order No. 1355 at 9.

In urging the Commission to quantify “material effect,” ABA/NAPM focus on rate changes, noting that changes as small as a few hundreds of a cent are material to

⁵⁶ *Id.* at 5.

⁵⁷ *Ibid.*

⁵⁸ ABA/NAPM Comments at 2.

⁵⁹ Postal Service Reply Comments at 6.

them.⁶⁰ Attempting to quantify “material effect” at the rate cell level, as the commenters appear to suggest, would be impractical and would impose an unwarranted burden on the Postal Service. The central issue is what is material, and that, as the Postal Service recognizes, may vary depending on the circumstances. Thus, while the Postal Service’s observation that small rate changes may be material for one rate schedule but not another may adequately rebut ABA/NAPM’s request for quantification, it also implies the standard of materiality that should govern its response to the rules. As the Postal Service recognizes, small changes, *e.g.*, tenths of a cent, might be material for certain rate schedules, *e.g.*, First-Class, Standard, but unlikely to be for others, *e.g.*, Express Mail, Priority Mail.⁶¹ Accordingly, the issue of materiality fairly answers itself.

In Order No. 1355, the Commission provided guidance concerning the types of changes that fall within the scope of the proposed rule.⁶² In brief, as set forth in proposed Rule 53(c), the “intent is to capture substantive changes.”⁶³ The Postal Service appears to understand the intent of the proposed rule. In opposing ABA/NAPM’s suggestion, it states that in testimonies it routinely addresses methodological changes considered to be material.⁶⁴ The new rules should not impose substantial additional burden on the Postal Service. Inevitably, the rules will require the Postal Service to exercise some judgment. In its initial comments, the Postal Service indicates it employs a rule of reason when addressing the requirements of Rule 54(a). When addressing the requirements of the new rules, the Postal Service would do well to bear that standard in mind. If in doubt, however, it should err on the side of noting the matter in the relevant testimony.

⁶⁰ ABA/NAPM Comments at 2.

⁶¹ Postal Service Reply Comments at 6.

⁶² PRC Order No. 1355, December 13, 2002 at 8-9.

⁶³ *Id.* at 8.

⁶⁴ Postal Service Reply Comments at 6.

ABA/NAPM also request that the Commission require that the “alternate cost presentation” mandated by Rule 54(a)(1) be sponsored by a Postal Service witness rather than simply being submitted as a library reference. ABA/NAPM indicate that sponsorship would be limited essentially to explaining the calculations.⁶⁵ The Postal Service opposes this suggestion.⁶⁶

ABA/NAPM have not shown that the current format fails to provide participants with sufficient information about results under the PRC version to warrant requiring a Postal Service witness to sponsor the results. Institutional discovery and technical conferences remain available to participants. Accordingly, the suggestion will not be adopted at this time.

Finally, ABA/NAPM request that the Commission clarify that the proposed amendment to Rule 54(a)(1) does not change the reporting requirements regarding attribution procedures, but rather that they will now be covered by Rule 53(c).⁶⁷ The Commission clarifies that ABA/NAPM’s understanding is correct.

CONCLUSION

For the reasons discussed above, the Commission hereby amends Subparts B and C of its Rules of Practice and Procedure as set forth below in this order. Any suggestion or request to modify the Commission’s rules raised by any participant not specifically addressed herein is denied.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons stated in the accompanying order, the Commission adopts the following amendments to 39 CFR part 3001 — Rules of Practice and Procedure Subpart B—Rules Applicable to Requests for Changes in Rates or Fees and Subpart

⁶⁵ ABA/NAPM Comments at 3.

⁶⁶ Postal Service Reply Comments at 7-8.

⁶⁷ ABA/NAPM Comments at 2-3.

C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b); 3603; 3622-24; 3661, 3662, 3663.

Subpart B—Rules Applicable to Requests for Changes in Rates or Fees

2. Revise § 3001.53 to read as follows:

§ 3001.53 Filing of prepared direct evidence.

(a) General requirements. Simultaneously with the filing of the formal request for a recommended decision under this subpart, the Postal Service shall file all of the prepared direct evidence upon which it proposes to rely in the proceeding on the record before the Commission to establish that the proposed changes or adjustments in rates or fees are in the public interest and are in accordance with the policies and the applicable criteria of the Act. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits which shall be filed in accordance with § 3001.31.

(b) Overview of filing. As part of its direct evidence, the Postal Service shall include a single piece of testimony that provides an overview of its filing, including identifying the subject matter of each witness's testimony, explaining how the testimony of its witnesses interrelates, and describing changes in cost methodology, volume estimation, or rate design, as compared to the manner in which they were calculated by the Commission to develop recommended rates and fees in the most recent general rate proceeding. This testimony should also identify, with reference to the appropriate testimony, each witness responsible for addressing any methodological change described in paragraph (c) of this section.

(c) Proposed changes. As part of its direct evidence, the Postal Service shall submit testimony that identifies and explains each material change in cost

methodology, volume estimation, or rate design, compared to the method employed by the Commission in the most recent general rate proceeding. This requirement shall not apply to any such change adopted by the Commission in an intervening proceeding. The testimony required in this paragraph (c) shall also include a discussion of the impact of each such change on the levels of attributable costs, projected volumes, and rate levels.

3. Revise § 3001.54 to read as follows:

§ 3001.54 Contents for formal requests.

(a) General requirements. (1) Each formal request filed under this subpart shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance, and impact of the proposed changes or adjustments in rates or fees and to show that the changes or adjustments in rates or fees are in the public interest and in accordance with the policies of the Act and the applicable criteria of the Act. To the extent information is available or can be made available without undue burden, each formal request shall include the information specified in paragraphs (b) through (r) of this section. If a request proposes to change the cost attribution principles applied by the Commission in the most recent general rate proceeding in which its recommended rates were adopted, the Postal Service's request shall include an alternate cost presentation satisfying paragraph (h) of this section that shows what the effect on its request would be if it did not propose changes in attribution principles.

* * * * *

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

4. Revise § 3001.63 to read as follows:

§ 3001.63 Filing of prepared direct evidence.

(a) General requirements. Simultaneously with the filing of the formal request for a recommended decision under this subpart, the Postal Service shall file all of the prepared direct evidence upon which it proposes to rely in the proceeding on the record

before the Commission to establish that the mail classification schedule or changes therein proposed by the Postal Service are in accordance with the policies and the applicable criteria of the Act. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits which shall be filed in accordance with § 3001.31.

(b) Requests affecting more than one subclass. Each formal request filed under this subpart affecting more than one subclass or special service is subject to the requirements of §§ 3001.53(b) and (c).

It is ordered:

1. The Commission adopts the provisions set forth above as final rules amending 39 C.F.R. 3001.53, 54, and 63.
2. These rules will take effect on October 1, 2003.
3. The Secretary shall cause this Notice and Order Adopting Final Rule to be published in the *Federal Register*.

By the Commission.

(SEAL)

Garry J. Sikora
Acting Secretary