

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

Before Commissioners:

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

Periodic Reporting Procedures

Docket No. RM2005-1

ADVANCE NOTICE OF PROPOSED RULEMAKING

(Issued November 8, 2004)

Summary. The Postal Rate Commission amended its Rules Applicable to the Filing of Reports by the U. S. Postal Service in its Order No. 1386, issued November 3, 2003. That order updated the rules to reflect new data systems and methodologies, and increased the amount of information the Postal Service was to submit to assist the Commission and foster effective public participation in Administrative Procedure Act (APA) hearings pursuant to 39 U.S.C. § 3624.

The Postal Service opposed expansion of its obligations under 39 CFR § 3001.102, Filing of Reports, in the rulemaking docket leading to the adoption of Order No. 1386. Although it initially complied with some of its new obligations, the Postal Service has now informed the Commission that after consideration at the "highest level" of postal management, it has determined that it will not comply with Commission rules that require the reporting of new methodologies and data used in the preparation of its annual Cost and Revenue Analysis (CRA) report.

In support of its action, the Postal Service reiterated several legal contentions fully considered and rejected by the Commission in its rulemaking. However, the

primary motivating factor leading to the Postal Service announcement that it would not comply with the rules seems to be the Commission practice of making materials filed in compliance with its rules available to the public.

The Commission requests that interested persons provide comments on this controversy, including suggestions for adjustments to Commission rules designed to reconcile the conflicting interests outlined in this Notice. Comments should be provided by December 6, 2004. Reply comments may be submitted by January 6, 2005.

Background. Over the years, postal ratemaking has become increasingly complex. The ability to computerize information and apply econometrics to large data bases has led to more sophisticated analyses of postal costs, volumes, and revenues. The Commission, and to an even greater extent mailers and other interested participants in Postal Rate Commission proceedings, have had growing difficulty in reviewing multiple new complex analyses in the context of proceedings that must, by statute, be completed in 10 months. 39 U.S.C. § 3624(c)(1).

The Postal Service supports its requests for rate increases with testimony from 40+ witnesses, a number of whom sponsor technical analyses that have been in preparation for many months. Participants must review this material, develop their criticisms, and present any suggested alternative analyses approximately half way through a case to allow other participants and the Commission to evaluate their views. The Commission is charged with reviewing every analysis presented, getting clarifications as needed, and preparing a technically sound, comprehensive decision.

Commission conclusions must be confined to materials in the evidentiary record. Participants have complained that the process becomes ineffective and one-sided if only the Postal Service has time sufficient to analyze data and prepare persuasive evidence.

Following the most recent rate case, the Postal Service and Postal Rate Commission jointly sponsored a Ratemaking Summit to obtain public input on ways to make the ratemaking process more streamlined and less burdensome for all involved.

The Summit took place in May and June, 2002, and involved written comments followed by two, separate full day discussion sessions.

Attention was given both to how the Postal Service planned and implemented rate changes, and how to improve the current rate case process. The majority of comments addressing the rate case process focused on the difficulty of responding adequately to multiple new complex technical presentations within the 10-month timeframe. Participants emphasized they do not have the resources to address several major technical studies simultaneously.

The most widely supported solution was to find a way to provide participants with more timely access to annual cost and volume data, as well as any changes in the methodologies the Postal Service uses to aggregate and distribute that data in preparing its annual reports. It has been the Postal Service's consistent practice to withhold from the public both the basic cost and volume data underlying its aggregate results, and any changes to its analytic methodologies, until it submits an omnibus rate request.

Recent Amendments to the Periodic Reporting Rules. A short time after the Ratemaking Summit, the Commission issued a notice of proposed rulemaking, in which it sought comments on whether to update and expand its Rules Applicable to the Filing of Reports by the U.S. Postal Service. These rules had not been revised for over a decade and no longer fully reflected existing operating and data collection practices. The Commission is directed by 39 U.S.C. § 3603 to implement such rules as it finds necessary and proper to enable it to carry out its statutory functions. That section specifically provides such rules "shall not be subject to any change or supervision by the Postal Service."

All those who submitted either comments or reply comments, with the exception of the Postal Service, urged the Commission to amend its periodic reporting rules to facilitate analysis between rate cases. The Postal Service has opposed parts of these proposals, raising legal arguments (set forth below) and expressing concern that

compliance would be burdensome, and that it might face time-consuming questions about new analytic methods underlying its published summary reports.

The Commission followed APA processes, resolving every issue raised. It narrowed its initial proposal somewhat in light of the Postal Service's burden arguments, but it retained several proposed amendments to the periodic reporting rules providing access to new data collection systems and estimating methods. The Commission found that updating the periodic reporting rules would result in favor of key improvements:

- (1) help the Commission and the public to evaluate the soundness of the cost, volume and revenue estimates on which existing rates were based;
- (2) inform the Commission and the public about new data sets and estimation techniques incorporated by the Postal Service each year into the Cost and Revenue Analysis (CRA) report it currently provides;
- (3) allow the public to participate more meaningfully in Commission cases; and
- (4) enable the Commission to expedite the processing of rate, classification, and complaint cases.

In November, 2003 the Commission amended its periodic reporting rules. The Postal Service has complied with some parts of the new rule, but it now has refused to provide data and methodologies used to develop the majority of the cost attributions reported in its Cost Revenue Analysis. The Attachment to this Order lists the information the Postal Service has not provided.

The Postal Service Position. The Postal Service explained its views in detailed filings in Docket RM2003-3. All of these filings may be accessed on the Commission website, www.prc.gov. The most recent Postal Service statement, in which it announced it would not provide required information, may also be found there on the "Daily Listing" for September 17, 2004.

The Postal Service advances two main arguments in support of its position that the Commission is not authorized to require periodic reports of this nature. First, it

contends that Commission authority is limited to acting in response to Postal Service requests for rate or classification decisions, and other strictly limited specific functions set forth in the Act. The Postal Service argues that the Commission does not have broad investigative or oversight authority, and the Service has implied that the amended rules are an attempt by the Commission to expand its authority and oversee operations in a manner not contemplated by the statute.

Second, the Postal Service contends that Congress does not want it to have to make information of this nature public "indiscriminately." The Act includes a special test applicable to Freedom of Information Act (FOIA) requests. The Postal Service does not have to provide "information of a commercial nature" which "under good business practice would not be publicly disclosed" in response to a FOIA request. 39 U.S.C. § 410 (c)(2). The Postal Service correctly observes that private businesses in the United States seldom disclose detailed information about their operating costs.

The Postal Service argues that because it is standard Commission practice to post public documents on its website, including data received as periodic reports, the Service should not provide such detailed information to the Commission. The Postal Service seems to concede that the Commission might have use for these materials, and for explanations of changes since the most recent rate case, but it contends that allowing internet access to this information would be contrary to Congress' vision of the Postal Service following good business practices.

The Current Commission Position. The Commission has not found either Postal Service argument persuasive, as explained fully in Order No. 1386. The Commission has concluded that its responsibility under § 3603 to establish rules to carry out its functions under the Act does provide the authority to assure that sufficient information is available in a timely fashion to facilitate meaningful public participation and to enable the Commission to provide informed recommendations in response to Postal Service rate and classification requests.

The Commission also has concluded that information required by its rules is not equivalent to a citizen's FOIA request. While citizens can file a FOIA request seeking

information on any topic without any showing of need, the Commission's rules focus on information needed to carry out its statutory functions. The Act requires public participation in all Commission proceedings, and thus contemplates public access to relevant data. In past rate cases, the Postal Service has made all of the contested information available without suggesting that there was any need to restrict public access to it.

The Commission always has recognized that when the Postal Service or any other participant provides items for use in a Commission proceeding that it shows to be trade secrets or other sensitive business information, and that disclosure of this information could result in commercial harm, such items should be made subject to appropriate protective conditions. Similarly, the Commission has been willing to accommodate in its periodic reporting rules, Postal Service requests that specific information be protected as commercially sensitive, after balancing the asserted risk of harm against the needs of the public to remain informed. See, Docket No. RM89-3, Order No. 839, at 7-8 (deferring filing dates for billing determinants of competitive products).

Comments. The Postal Service has indicated its interest in further exploring the possibility of ways to refine procedures for controlling dissemination of information provided as periodic reports. This might be accomplished through additions to rule 102. Those responding to this notice are invited to advise on the most important policies and principles that should guide the Commission in evaluating potential action in regard to this situation. Commenters also may suggest procedures for obtaining a desired outcome or specific proposals for changes to Commission rules.

It is ordered:

1. Interested persons are invited to submit comments on the Commission's Advance Notice of Proposed Rulemaking on or before December 6, 2004. Any reply comments should be submitted by January 6, 2005.

2. The Secretary shall cause this Advance Notice of Proposed Rulemaking to be published in the *Federal Register*.

By the Commission.
(SEAL)

Steven W. Williams
Secretary

MATERIALS REQUIRED BY RULE 102 THAT THE POSTAL SERVICE
HAS NOT PROVIDED

1. The In-Office Cost System (IOCS) data for FY 2003 used to distribute attributable mail processing and in-office carrier costs to classes of mail in the Cost and Revenue Analysis (CRA) report.
2. The City Carrier Cost System (CCCS) data for FY 2003 used to distribute attributable city carrier costs to classes of mail in the CRA.
3. The Rural Carrier Cost System (RCCS) data for 2003 used to distribute attributable rural carrier costs to classes of mail in the CRA.
4. The National Mail Count data for 2003. These data are used to determine attributable rural carrier costs.
5. MODS input data used to estimate mail processing cost variabilities by activity.
6. SAS computer programs showing how FY 2003 attributable mail processing costs were estimated and distributed to mail classes in the CRA.
7. Revenue, Pieces, and Weight reports by rate category for the first three quarters of FY 2004.