

Before The  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

Periodic Reporting Procedures

)

Docket No. RM2005-1

OFFICE OF THE CONSUMER ADVOCATE  
COMMENTS IN RESPONSE TO COMMISSION ORDER NO. 1423  
(December 6, 2004)

In its Order No. 1423,<sup>1</sup> the Commission seeks comments from interested persons on how to proceed in light of the impasse between it and the Postal Service concerning the Postal Service's failure to comply fully with the recent expansion of Rule 102. The Office of the Consumer Advocate (OCA) hereby provides its Comments.

The Postal Service has had a decades-long obligation to file with the Commission annual Cost and Revenue Analysis (CRA) reports that routinely (and without objection) are made available to the public; but the earlier obligation did not have the breadth of the current rule. The expanded requirements under Rule 102 obligate the Postal Service to "provide documentation showing how [CRA] estimates were derived."<sup>2</sup> The new documentation requirements consist of "basic datasets that [the Postal Service] uses to estimate unit product costs, and . . . any new estimating technique it applies to those data to derive the unit cost estimates in the CRA."<sup>3</sup> All 20 cost segments are covered by the Rule 102 expansion.

---

<sup>1</sup> "Advance Notice of Proposed Rulemaking," issued November 8, 2004.

<sup>2</sup> "Final Rule on Periodic Reporting Requirements," Order No. 1386, Docket No. RM2003-3, November 3, 2003, at 1.

<sup>3</sup> Id. at 2.

The Commission's chief objectives in expanding the documentation requirements for the CRA are to:<sup>4</sup>

- 1) shorten the period for hearings because the Commission and participants will already be familiar with the CRA foundational materials;
- 2) reduce the need for discovery;
- 3) allow the Commission and the public to analyze cost trends between rate cases, in some instances resulting in petitions to the Commission to initiate §3623 proceedings to correct undesirable classification relationships,
- 4) expose instances of cross-subsidy in support of §3662 complaints, and
- 5) develop alternative cost models for submission in upcoming rate cases, particularly if operational changes have caused past models to become obsolete.

The overarching purpose of the rule expansion is to increase financial transparency of the Postal Service, an objective strongly advocated by the President's Commission on the Postal Service and the Government Accountability Office.

The Commission noted that "that complying with the updated Rule should not add significantly to the Postal Service's regulatory burden, since the Postal Service annually prepares almost all of this material for its own purposes;" and the Postal Service estimated that compliance with the new requirements generated an insignificant burden compared to typical rate case preparation.<sup>5</sup>

In an attachment to Order No. 1423, the Commission listed 7 items that the Postal Service failed to provide on May 25, 2004, when it transmitted much of the

---

<sup>4</sup> Id. at 2 – 3.

<sup>5</sup> Id. at 3 – 4.

material required under the rule expansion.<sup>6</sup> The items withheld include IOCS cost data used to distribute attributable mail processing and in-office carrier costs; City Carrier Cost data used to distribute attributable city carrier costs; rural carrier cost system distribution data; MODS input data used to estimate the volume variability of mail processing costs; SAS programs showing how attributable mail processing costs were estimated and distributed; and RPW reports.

In Order No. 1423, the Commission states that the establishment of expanded reporting requirements is a proper exercise of its §3603 authority to establish rules to carry out its functions under the Act, particularly “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.”<sup>7</sup> The Commission also states that “information required by its rules is not equivalent to a citizen’s FOIA request.”<sup>8</sup> Furthermore, the Commission states that, when appropriate, it will impose protective conditions. Such conditions are imposed when the Postal Service furnishes trade secrets and sensitive business information. The Commission balances the asserted risk of harm against the needs of the public to remain informed.<sup>9</sup>

---

<sup>6</sup> These materials accompanied the filing of the FY 2003 CRA.

<sup>7</sup> At 5.

<sup>8</sup> Id.

<sup>9</sup> In Docket No. R2001-1, the Presiding Officer imposed protective conditions on the release of Postal Service data that was aggregated from customer opinion surveys. Presiding Officer’s Ruling No. R2001-1/17 at 13 (footnotes omitted). The germane considerations in such a case are:

First, as evident from the affidavits, the survey data may be used myriad ways. Aside from any ratemaking implications, the data plainly have commercial value in the markets in which the Postal Service operates. Second, the prevailing business practice, not unique to the Postal Service, is to withhold such data from public dissemination. Larsen

It is worthy of note that the Postal Service has retreated significantly from the position it articulated in Comments filed before the adoption of the final rule.<sup>10</sup> The Postal Service summarized its position as follows:<sup>11</sup>

after extensive consideration at all levels of the organization, the Postal Service finds that it must strongly oppose the general thrust of the current proposal. The Commission's apparent goal of annually auditing, replicating, investigating and manipulating the Postal Service's CRA report, and making public all of the information needed to pursue this goal, is not consistent with the limited functions and authority given to the Commission in the Postal Reorganization Act; would conflict with the Commission's duties under that Act as well as under the Administrative Procedure Act (APA); would preempt the legislative reform process; would transgress on the managerial prerogatives of the Postal Service; would impose significant and unnecessary recurring burdens of production on the Postal Service; and would substantially impair the Postal Service's ability under the Act to protect sensitive commercial and other information against unwarranted public disclosure.

The Postal Service's partial compliance with the expanded requirements on May 25, 2004, in support of the FY 2003 CRA, suggests that the Postal Service may be acknowledging Commission authority under the Postal Reorganization Act to impose such reporting requirements. The burden of complying with the new requirements appears to be manageable, as no mention was made of it in Dan Foucheaux's letter to Steven Williams that accompanied the CRA filing.

The Postal Service's chief objection to providing the remaining materials appears to be the extent of, and method for, disclosure. Mr. Foucheaux stated on May 25 that:

---

Affidavit at 2; Smith Affidavit at 2-4. Thus, to compel the Postal Service to make the data publicly available puts the Postal Service at a competitive disadvantage. Moreover, the harm is compounded because similar data from alternate suppliers remain publicly unavailable.

<sup>10</sup> "Substantive Comments of the United States Postal Service," Docket No. RM2003-3, as re-filed on July 3, 2003.

<sup>11</sup> Id. at 3.

In [a letter sent to the Commission on February 20, 2004], we offered to provide the Commission and any other interested parties with pertinent data and other materials relating to the carrier cost study briefing, although we also stated our preference that the Postal Service remain the source of such materials, and therefore requested that any information obtained not be posted on the Internet or otherwise publicly distributed. In response to our offer, we have heard from neither the Commission, nor any other party. Nevertheless, the offer made in my letter of February 20th remains open, and you or others can contact me to arrange for transfer of specific materials.

This view was reiterated in a letter from Mary Anne Gibbons to Steven Williams, dated September 8, 2004:<sup>12</sup>

When the Commission requested that it be furnished data and computer programs underlying the [city carrier cost] study, in February of this year, the Postal Service offered to make such materials available to the Commission, or to any interested member of the public. It merely requested that the Postal Service remain the source of the information, and that inquiries from the public to have access be directed to it, rather than having the materials placed on the Commission's Internet Web site. The Commission did not respond to this offer, nor did any member of the public request the materials.

After careful consideration of the Postal Service's May 25 and September 8 letters, OCA concluded that the most prudent course of action is to take up the Postal Service's offer to provide additional materials underlying the new City Carrier Cost Study presented by Dr. Michael Bradley on December 3, 2003. Accordingly, OCA submitted a request to Dan Foucheaux on December 2, 2004. OCA requested access from the Postal Service to a variety of materials, primarily concerning Dr. Bradley's city carrier study and Dr. Bozzo's mail processing cost variability study. The OCA request included materials listed by the Commission in Order No. 1423 and additional materials that the Postal Service is not required to provide under the rule expansion, but which would permit OCA to become better informed about Dr. Bradley's study and possibly to

---

<sup>12</sup> The letter was posted on the Commission's website on September 17, 2004.

prepare alternative econometric analyses of city carrier and mail processing costs in the next omnibus rate proceeding. OCA's reasons for submitting this request to the Postal Service are twofold: 1) since no other participant had previously submitted such a request to the Postal Service, OCA could gain a greater understanding of the scope of the Postal Service's offer to provide materials that underlie the CRA, and 2) OCA found that its pre-rate-case needs and interests had been accurately anticipated by the Commission in Order No. 1386, i.e., OCA wishes to go into the next rate case better informed about the Postal Service's costing methodologies and able to avoid the haste that is usually attendant to preparing a direct case in the 4 months allotted under a typical omnibus rate case schedule.<sup>13</sup>

OCA asks that it be permitted to report to the Commission in Reply Comments currently scheduled for January 6, 2005, the progress made by OCA and the Postal Service in working out procedures for OCA to obtain the requested materials. The extent to which OCA is harmed by the Postal Service's failure to comply fully with the new reporting requirements cannot be assessed until the request by OCA to the Postal Service has run its course. OCA harbors hopes that the Postal Service may also be willing to provide materials voluntarily that are not required under the rule expansion. In fairness to the Postal Service and others, OCA asks that the Commission schedule a

---

<sup>13</sup> For example, the Postal Service filed its Docket No. R2000-1 Request with the Commission on January 12, 2000. Participants' direct cases were filed on May 22, 2000.

date for supplementary reply comments that would be addressed to matters raised in OCA's reply comments.

Respectfully submitted,

---

SHELLEY S. DREIFUSS  
Director  
Office of the Consumer Advocate

1333 H Street, N.W.  
Washington, D.C. 20268-0001  
(202) 789-6830; Fax (202) 789-6819  
e-mail: [dreifusss@prc.gov](mailto:dreifusss@prc.gov)