

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

PERIODIC REPORTING PROCEDURES)

Docket No. RM2005-1

COMMENTS OF
VALPAK DIRECT MARKETING SYSTEMS, INC. AND
VALPAK DEALERS' ASSOCIATION, INC.
IN RESPONSE TO ORDER NO. 1423
(December 6, 2004)

Pursuant to Order No. 1423, Valpak Direct Marketing Systems, Inc., and Valpak Dealers' Association (hereafter "Valpak") submit the following comments. As an active intervenor since 1995 in omnibus rate cases, mail classification cases, as well as other dockets, Valpak has a keen interest in this rulemaking docket, and appreciates the significance of the issues raised by the Commission and the Postal Service.

Introduction

The Commission and all active participants in omnibus rate cases agree that the increasing complexity of such cases over the years has caused an increase in both the difficulty and cost of effective participation by interested intervenors within the 10-month statutory time limit, as reflected in this quotation:

The majority of comments [from interested parties at the Ratemaking Summit] addressing the rate case process focused on the difficulty of responding adequately to multiple new **complex technical presentations** within the 10-month timeframe....

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 [those] data in preparing its annual reports. It has been the Postal Service's consistent practice to withhold from the public ... **any changes to**

its analytic methodologies, until it submits an omnibus rate request. [Order No. 1423, at 3 (emphasis added).]

The Commission initiated Docket No. RM2003-3 and amended its “Rules Applicable to the Filing of Reports by the U.S. Postal Service” in its Order No. 1386, issued November 3, 2003. The Postal Service now has submitted some, but not all, of the data and reports specified in Order No. 1386. The immediate issue raised in Order No. 1423 pertains to seven items listed in Attachment 1 to that order that the Postal Service is withholding from submission. Order No. 1423 (at 2) indicates that “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.”

Comments

Six of the seven items listed in Attachment 1 to Order No. 1423 pertain only to databases of substantial size, while the other item pertains to SAS computer programs. It would be our view that even if all seven of these items were submitted and made available publicly on the Commission’s web site, it is unlikely that Valpak or any other intervenor would be able to gain any insight into: (i) possible changes in Postal Service methodologies, or (ii) other new, complex technical presentations by the Postal Service that may utilize or rely on those data in the next rate case.

At the same time, the Commission, with its expertise, may well be able to utilize the seven withheld items to keep itself more informed about developments and trends in Postal Service costs. A more informed Commission should benefit all intervenors, as well as the

Postal Service itself. Accordingly, Valpak would have no objection if the withheld data and SAS programs at issue were to be filed under seal, with access limited to Commission staff, as well as and counsel and expert witnesses for bona fide mailers. Presumably, upon filing of the next rate case, for all data that the Postal Service would routinely file with its case, the seal would be lifted automatically and the data posted on the Commission's web site or otherwise made available. Disclosure of items not routinely filed with the Postal Service's case presumably would be subject to the outcome of such motions practice as may be necessary.

Unaddressed Issues

The Postal Service is often heard to complain on Capitol Hill that rate cases are too complex, that the rate making process is too long and expensive, and that, accordingly, the Postal Service should have additional latitude to set its own rates. Putting aside for the moment the public policy issue of why a company with both a statutory monopoly and a *de facto* monopoly over its largest and most important products should be entrusted with any unilateral rate setting power, the premise for this legislative demand needs thorough re-examination. If rate cases are too complex and the rate making process is too long and expensive, it is because the Postal Service has chosen to make it so, as discussed below. Having created the problem, the Postal Service should not be heard to use that problem to gather to itself greater rate setting powers.

The increasing complexity of omnibus rate cases relates, broadly, to two distinctly different sources, both within the control of the Postal Service:

- Changes in, or entirely new, **analytic methodologies** that are integral to the rate case itself; and

- **Classification changes** that, although possessing rate implications pertinent to the issue posed, are not germane to the overall rate request.

Analytic Methodologies. Since neither Docket No. RM2003-3 nor the pending docket appears to require the early release by the Postal Service of any complex presentation or contemplated change in analytic methodology, neither docket would result in any improvement on this score for intervenors.

Classification Changes. Classification issues routinely introduced by the Postal Service during omnibus rate cases are not integral to the overall rate request, and with ease could be considered within one or more separate dockets, when no omnibus rate case is pending. However, by regularly embedding several classification issues in an omnibus rate increase, the Postal Service gains a significant “tactical” advantage over intervenors which are required to focus their limited resources, not just on understanding and evaluating the numerous costing methodology and rate changes, but on optional classification changes as well. Consequently, intervenors, operating with limited resources within the tight 10-month time limit, cannot focus on all of the issues in play, reducing potential opposition to Postal Service proposals, hence creating the tactical advantage to the Postal Service.

Conclusion

Unfortunately, neither Docket No. RM2003-3 nor the present docket will serve to reduce the complexity of the rate case itself by stripping out classification changes, or give intervenors an opportunity prior to the filing to reflect on, absorb, and ponder changes in analytic methodologies, entirely new methodologies, and all other technical issues that the

Postal Service chooses to raise. A way still needs to be found to reduce the number of issues faced within the 10-month limit placed on omnibus rate cases.

The attached comparison between the current system in column 1 and an alternative approach in column 2 demonstrates how the entire rate setting process could be reduced, from the 18 (or more) months claimed by some to 10-12 months (assuming the decision of the Commission is final and the Governors' power to modify the recommended decisions of the Commission under 39 U.S.C. section 3625 is abolished, as it would be under certain pending postal reform legislation). Even without any change in law, the process could be dramatically shortened. If an appropriate method could be found to strip out of omnibus rate cases, New Cost Studies, New Products, Proposed DMCS language, and Market Studies placed into those cases by the Postal Service, it is submitted that rate cases could be litigated before the Commission in five to six months, rather than the 10-month statutory timetable now followed.

Whether the desire would be to reduce the number of issues so that omnibus rate cases could be litigated over a shorter period of time, or simply so that the tactical advantage that the Postal Service now enjoys could be somewhat lessened, Valpak would suggest the following: upon conclusion of this docket, the Commission open a new rulemaking docket to consider fashioning new Commission rules that would limit omnibus rate cases to rate issues by some form of prohibition or limitation on the number and scope of classification issues that can be incorporated into an omnibus rate case.

Respectfully submitted,

William J. Olson
John S. Miles
Jeremiah L. Morgan
WILLIAM J. OLSON, P.C.
8180 Greensboro Drive, Suite 1070
McLean, Virginia 22102-3860
(703) 356-5070

Counsel for:
Valpak Direct Marketing Systems, Inc. and
Valpak Dealers' Association, Inc.

December 6, 2004

ATTACHMENT A

Current Omnibus Rate Case

USPS Preparation of Filing

5 months

Revenue Requirement
Updated Product Cost Data
Changes in Level of Attribution
New Cost Studies
New Products
Proposed DMCS language
Market Studies
Rate Design
Elasticity/Volume Estimates
Revenue Estimates

PRC Litigation

10 months

USPS Case-in-Chief
Intervention – Mailers/Competitors
Interrogatories & Doc Requests
Oral Cross Examination of USPS
Intervenor Testimony
Interrogatories & Doc Requests
Oral Cross Examination of Int.
USPS Reply Testimony
Oral Cross Examination of USPS
Initial & Reply Briefs

Board of Governors Consideration

1 month

Notice to Mailers

2 months

Possible Remand

3-6 months or more

Omnibus Rate-Only Case

USPS Preparation of Filing

3-4 months

avoid:
New Cost Studies
New Products
Proposed DMCS language
Market Studies

Save 1-2 months

PRC Litigation

5-6 months

avoid litigation of numerous issues
set out above

Save 4-5 months

Board of Governors Consideration
(Legislative Change)

0 months

avoid Board of Governors

Save 1 month

Notice to Mailers

2 months

No Change

Possible Remand (Legislative Change)

0 months

avoid any Remand
PRC decision is final
