

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

Rate and Service Changes to Implement)
Baseline Negotiated Service Agreement) Docket No. MC2005-3
with Bookspan)

INITIAL BRIEF OF AMERICAN POSTAL WORKERS UNION (AFL-CIO)

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The Postal Rate Commission should refuse to recommend the proposed Negotiated Service Agreement (NSA) because the submissions of the Postal Service in this case do not satisfy the requirements of the Postal Reorganization Act (39 U.S.C. §§ 3622(b) and 3623) or of the Rules of the Postal Rate Commission. Postal Rate Commission Rules of Practice and Procedure, 39 CFR 3001, Subpart L, Rules Applicable to Negotiated Service Agreements (effective July 5, 2005)(hereinafter PRC Rules).

The significance of this case cannot be measured simply in terms of the hypothetical financial benefit to the Postal Service or the likely adverse impact on other parties. This case is the first baseline NSA to be submitted under the Commission's recently issued rules of practice. It is therefore important those rules of practice be correctly interpreted and applied. If the Commission were to recommend the baseline NSA proposed in this case, which has been submitted in apparent disregard for the statutory criteria and without complying with the Commission's rules, an unfortunate precedent would be set, one that would undermine the Commission's rules. Inasmuch as the Postal Service has not submitted data adequate to meet the statutory or regulatory criteria, the Commission would not be able to articulate a basis for a favorable recommendation in this case, as required by the Act. Thus, a decision to approve the proposed NSA on this record would be arbitrary and capricious.

I. THE POSTAL SERVICE SUBMISSIONS IN THIS CASE DO NOT MEET THE STANDARDS OF THE PRA OR THE COMMISSION'S RULES

A. The Requirements Of The Law And The Rules

1. The Law

Under Chapter 36 of the Act, the Postal Service is required to submit any request for a change in rates or fees to the Postal Rate Commission, which is required to issue a recommended decision on the request for the consideration of the Board of Governors. The Commission's recommended decision is required to include a statement "specifically responsive to the criteria established under section 3622 or 3623, as the case may be." 39 U.S.C. § 3624(d). In this case, the Postal Service has asserted that its proposed NSA meets the criteria of both Sections 3622 and 3623 of the Act, 39 U.S.C. §§ 3622(b), 3623.¹ In fact, the proposal satisfies neither section.

Under Section 3622(b) the Commission's recommended decision must be made "in accordance with the policies of this title and factors listed in that section. Later in this Brief, we discuss the fact that the Postal Service submission in this case does not satisfy some of those factors:

(1) the establishment and maintenance of a fair and equitable schedule;

* * * *

(4) the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters;

(5) the available alternative means of sending and receiving letters and other mail matter at reasonable costs; and

* * * *

(7) simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services;

Similarly, Title 39, Section 3623 requires that the Commission evaluate proposed changes in the classification schedule in accordance with the policies of Title 39, and factors listed there. Later in this Brief, we discuss the fact that the Postal Service submission in this case does not comport with some of these factors:

(1) the establishment and maintenance of a fair and equitable classification system for all mail;

(2) the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail; and

* * * *

(5) the desirability of special classifications from the point of view of both the user and of the Postal Service;

* * *

¹ Direct Testimony of Michelle K. Yorgey; USPS-T-2, at 15-18.

-As we explain below. The record in this case is insufficient to support a recommended decision by the Commission stated in terms responsive to the criteria in Sections 3622 and 3623. Likewise, no recommendation by the Commission on this record would permit the Governors to make a valid estimate of anticipated revenue or to provide the required explanation and justification of the Board's action. This is hardly surprising, for the Postal Service submission in this case failed in important respects to satisfy the requirements of the Commission's Rules Applicable to Negotiated Service Agreements.

2. Rules Applicable to Negotiated Service Agreements

Under rule 193(1), the Postal Service was required to include in its request:

... 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 ... and to show that the changes or adjustments are in the public interest and in accordance with the policies and the applicable criteria of the Act... .

The Postal Service was required to include a financial analysis for a one-year period intended to be representative based on **“the estimated mailer-specific costs, volumes, and revenues of the Postal Service for that year...”** Rule

193(e)(1)(emphasis added here).

The financial analysis is required to utilize “mailer-specific costs” and “mailer-specific volumes and elasticity factors...” (Rule 193(e)(1)(iv) and (v)), and it “must provide the “bases used to determine” such mailer-specific costs, volumes and elasticity factors. Id. However,

If mailer-specific costs or elasticity factors are not available, **the bases of**

the costs or elasticity factors that are proposed shall be provided, including a discussion of the suitability of the proposed cost or elasticity factors as a proxy for mailer-specific costs or elasticity factors.

Id. (Emphasis added here.)

In this case, as we explain below, the Postal Service has chosen to submit system-wide cost data as a proxy for mailer-specific cost data. But in doing so, it has departed in two significant respects from the Commission's rules: (1) The cost data it has submitted is so deeply flawed as to be useless for the purpose of determining the effect of this NSA; and (2) the Postal Service has not provided the bases of the cost figures it has provided or discussed the suitability of the proposed costs as a proxy for mailer-specific costs. Rule 193(e)(1)(I), (iii) and (iv). Furthermore, in response to the APWU's interrogatories asking the Postal Service to explain or rectify these violations of the Commission's requirements, the Postal Service essentially refused to answer or to provide any useful explanation. Yorgey Interrogatory Responses, APWU/USPS-T2-1-3.

For these reasons, as explained in more detail below, the Postal Service submission utterly fails to meet the requirement of the Commission's rules and, for the same reasons, fails to provide any basis for the Commission to conclude that the proposed NSA meets the criteria of the Act.

B. The Postal Service's Cost Data For Letters And Flats Do Not Comply With Commission Rules And Provide No Basis To Conclude That The Proposed NSA Meets The Statutory Criteria

The Postal Service's rule 193(e)(1) financial analysis in this case is deeply flawed. In its request, the Postal Service asserts that its financial analysis "is contained within the testimonies of witnesses Michelle Yorgey (USPS-T-2), Robert Posch

(Bookspan-T-1), and Matthias Epp (Bookspan-T-2).” The Posch and Epp testimonies concern volume, which we discuss below. Only the Yorgey testimony discusses costs.

Yorgey explains (USPS-T-2 at 6-7) that the predicted financial advantages to the Postal Service from this NSA depend heavily on a net contribution gain from the anticipated conversion of Standard Mail solicitation flats to letters.² Thus, the supposed gain from this aspect of the NSA is like a three-legged stool. Two legs are provided by the cost comparisons between standard flat mail and standard letter mail, and the third leg is the anticipated volume change. But two of the three legs of this stool are missing, because the Postal Service cannot demonstrate that the predicted gain can be realized because the cost data for both standard letters and standard flats are inaccurate.

Yorgey testified (USPS-T-2, Appendix B, at 3, 4) that the unit costs per rate category for both standard letter mail and standard flat mail “are based on the USPS Docket No. R2005-1 Test Year 2006.” The Postal Service has acknowledged in R2005-1 that the cost estimates for standard letters are flawed and that the cost estimates for standard flats are likely inflated by an inexplicably high reported cost for flats processing. Further, although it is using admittedly flawed data for its financial analysis in this case, the Postal Service also acknowledges that it has made no allowance or adjustment for those flaws. Thus, in response to Interrogatory APWU/USPS-T2-1, which pointed out

² Based on Appendix A, page 9 of Yorgey’s testimony (and her revision to those estimates produced in response to POIR 1), almost 70 percent of the positive financial benefit calculated for the Postal Service comes from the conversion of flat-shaped mail to letter-shaped mail. USPS-T-2 at Appendix A, p. 9.

the “problem with allocating costs between the nonautomated and automated presort categories of both First Class and Standard letter mail, witness Yorgey acknowledged that “no adjustments were made” to the flawed data.³ Likewise, because no adjustments were made to correct for the flaws in the data relied on by Abdirahman, the Postal Service had no answer as to the impact the adjustments would have had on the cost estimates in this case. APWU/USPS-T2-2.

The cost data for flats are also deeply flawed; and the Postal Service made no attempt to take account of those flaws, much less to correct for them. Thus, in APWU/USPS-T2-3, the APWU asked witness Yorgey to respond to the fact that

“the mail processing cost numbers estimated for flat-shaped standard mail in the R2005-1 rate case are between 12.9 and 28.2 percent above cost estimates for flat-shaped standard mail in the R2001-1 rate case depending on the type of flat considered. (USPS version of costs).”

Yorgey was asked (id.):

Did you investigate why there was such a large increase in those costs during this period of time considering: 1) automation of flats processing had increased significantly; 2) the mail processing costs of First Class flats were falling at double-digit rates; and 3) Mr. McCrery, the operations expert, reports that there are no capacity constraints that would result in more manual sorting of Standard flats [R2005-1 Tr.#5, p. 1745]?

In response to these questions, Yorgey declined to confirm the flaws already acknowledged by Postal Service witnesses in R2005-1 but did acknowledge that the Postal Service made no attempt to correct for those flaws in using the data in this case. The sharp increases in flats costs were confirmed by Mr. Miller in his responses to

³The Interrogatory cites the testimony of Mr. Abdirahman, R2005-1 Tr. 4 1139-1147.

VP/USPS-T28-5 (redirected from Mr. Tafique) where he indicated a 17.3 percent increase between the R2001-1 and R2005-1 estimates of nonautomation flats using Postal Service methodology and a 18.3 percent increase for those flats if PRC methodology was used. In his response to VP/USPS-T28-6, Mr. Miller also made clear that the calculations for R2001-1 were made in support of rate design whereas those for R2005-1 were not used for the purposes of rate design. Mr. Abdirahman also stressed that his data were not being used for rate design in the R2005-1 docket. Yet, these data are now being used to support financial estimates sensitive to the differential between the estimates despite the admission by the Postal Service that the letter cost data are not accurate and observed changes in the flats costs that make them highly suspect.

Using the same sources that Mr. Miller cites for his responses to this interrogatory show an even larger 28.2 percent increase in basic auto costs. The size of these increases during a period of flats automation are highly suspect especially when compared to the cost changes that are reported for First Class flats in the same library references that Mr. Miller cites for his responses to the Val-Pak interrogatory. Using Library References K-43 and comparing the costs to Library Reference J-61, one finds a decline in nonauto presort flats costs of over 20 percent and a decline of about 17 percent in 3-digit flats costs.

Thus, the Postal Service erred by using flawed data and by failing to correct those data as they were used in this case. Those errors were compounded by the Postal Service's failure to conduct a sensitivity analysis to determine the potential impact of costing errors for standard mail flats. (APWU/USPS-T2-3d). Witness Yorgey

explained that the Postal Service had performed a sensitivity analysis to make allowances for the possibility of errors in its volume estimates. USPS-T-2, at 12-13 and Appendix C. But Yorgey acknowledged that no sensitivity analysis was performed for costing errors. (APWU/USPS-T2-3d) USPS witnesses Abdirahman has acknowledged, in R2005-1, flaws in the cost data for letters that have not been corrected. Likewise, the USPS expert witness on automation in R2005-1, Mr. McCrery, has acknowledged that there is no known operational basis for the increase in flats processing costs. In light of these acknowledged weaknesses in the R2005-1 data being relied on in this case, the omission of a sensitivity analysis further weakens the Postal Service submission in this case.

Even if the Postal Service could provide support for the cost numbers submitted in support of its financial analysis, the use of averages in this case does not provide a clear understanding of the risk associated with flats to letter conversions. Cross-examination of witness Yorgey by ValPak shows that if a greater percentage of ECR flats were converted to letters than has been assumed in witness Yorgey's model, the financial contribution of the flats to letters conversion would be significantly smaller. (Tr. 2, pp. 190-193)

A sharp decline between the historical volume numbers for the company and the before rates forecast is always a cause for some concern. Obviously, it is in the company's interest to provide as conservative an estimate of volume as possible for the before rates scenario. Providing discounts on mail volume that would have been mailed anyway is not in the financial best interests of the Postal Service. While the 2005

volume numbers (provided late in the proceedings) give some support for the before rates volume forecasts, the Postal Service's tendency to not critically evaluate these forecasts is of concern.

C. On This Record, The Proposed NSA Cannot Meet The Statutory Criteria

For the same reasons the USPS submissions in this case fail to meet the requirements of the Commission's rules, the record in this case cannot support a finding that the proposed NSA meets the statutory criteria in 39 U.S.C. Sections 3622(b) and 3623. the Commission is required to consider the effect of the rate increases on the general public and businesses not in a position to take advantage of a similar agreement. But the record in this case does not permit the Commission to make a reasoned determination that this NSA would not shift costs to other mailers. Likewise, it would be impossible for the Commission to conclude on this record that the NSA is desirable and justified based on the value of the mail matter in question, or from the point of view of the Postal Service.

In short, it is impossible to tell, on this record, whether the proposed changes would be "fair and equitable," a criterion under both 3622(b) and 3623.

Because the record is so uncertain on the issue of costs and volume, the proposed NSA also fails to meet the test of simplicity of structure, and simple identifiable relationships between the rates or fees charged different classes of mail.

When the Commission transmits a recommended decision to the Board of Governors, which it is required to do with a statement "specifically responsive to the

criteria established under section 3622 or 3623, as the case may be,” the Governors “may approve, allow under protest, reject, or modify that decision in accordance with the provisions” of Section 3625 of the Act. 39 U.S.C. § 3625(a). The Governor’s decision is required to be in writing and “shall include an estimate of anticipated revenue and a statement of explanation and justification.” 39 U.S.C. § 3625(e). For the same reasons the Commission cannot relate the proposed NSA to the criteria of the Act, the Governors, too, would have no basis for approving the USPS proposal in this case.

II. CONCLUSION

For these reasons, the Commission should reject the Postal Service request in this case on the ground that it patently fails to substantially comply with the requirements of Subpart L of the rules.⁴

Respectfully submitted,
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⁴ Alternatively, the Commission could, in accordance with rule 194, stay this proceeding until the Postal Service has made the necessary modifications of its submissions to bring them into facial compliance with the Commission’s rules and the other parties to this proceeding have had an appropriate opportunity to engage in discovery concerning those modifications.