

Before the
Postal Regulatory Commission
Washington, DC 20268-0001

Review of Treasury Report

Docket No. PI2008-2

PUBLIC REPRESENTATIVE'S REPLY COMMENTS
IN RESPONSE TO COMMISSION ORDER NO. 56

(May 1, 2008)

The Public Representative, pursuant to Commission Order No. 56,¹ files the following reply comments. The comments:

- offer several observations on the Postal Service's proposed alternative approach to annual filings related to competitive products;
- agree that a suggestion by the Parcel Shippers Association (PSA) related to certain types of accounting changes warrants further consideration; and
- suggest that a public conference or public forum would still be useful, notwithstanding the consensus that has emerged on several key Treasury recommendations.

¹ Notice and Order Providing an Opportunity to Comment on Treasury Report, January 28, 2008 (Order No. 56). Other documents referred to in Order No. 56 include *Report of the U.S. Department of the Treasury on Accounting Principles and Practices for the Operation of the United States Postal Service's Competitive Products Fund*, December 2007 (Treasury Report), and the Federal Trade Commission's *Accounting for Laws that Apply Differently to the United States Postal Service and Private Competitors*, December 2007.

I. Observations on the Postal Service's Reporting Proposals

Section 2011 of title 39, U.S. Code is an “umbrella” provision codifying most Postal Accountability and Enhancement Act (PAEA) directives related to establishment, operation and governance of the Competitive Products Fund (CPF).² One subparagraph requires the Commission, by rule, to provide for the Postal Service's submission of annual and other periodic reports setting forth “such information as the Commission may require.”³

In recognition of this requirement, the Commission has asked whether a full set of financial statements, including income statement, balance sheet, and statement of cash flow, should be prepared for the CPF. Order No. 56 at 16. The Postal Service does not believe that the types of statements the Commission has listed need to be filed, but has proposed an alternative set of documents. The alternative documents are an Annual Income Report, an Annual Financial Status Report, and an Annual List of Identified Property and Equipment Assets (Assets List). The Postal Service has provided details on the contents of, and the method it intends to use to develop, these reports, along with samples of two reports. Initial Comments of the United States Postal Service in Response to Order No. 56 and the Treasury Report, April 1, 2008, at 43; see *also id.* at 15 and 19 (Postal Service Comments).

The Postal Service's proposal for an alternative set of statements is based on several assumptions. One is that the context for required reporting is a theoretical, rather than stand-alone, enterprise. Another is the absence of “textbook rules” to guide the Commission, given section 2011's use of multiple sets of financial terms and concepts, each with its own set of accounting principles and practices. (The Postal Service aptly characterizes the language in section 2011 as a blend of references to fund accounting, external (public) financial accounting, and postal regulatory costing.) A

² Sections 3633 and 3634 also include CPF-related provisions. They address, respectively, issuance of Commission rules on fair competition and the assumed Federal income tax on competitive products.

³ 39 U.S.C. § 2011(h)(2)(B)(i)(III).

third assumption is that the objective is transparency, directed at demonstrating that competitive products are not unfairly advantaged by virtue of their joint production with market-dominant products. *See generally id.* at 2-7.

In initial comments, the Public Representative expressed the view that use of the theoretical “on paper” approach to accounting for the CPF appears to be consistent with the interests of the general public, so she does not take issue with the Postal Service’s assumption that reporting will be based on this approach. She also agrees that section 2011 does not present the Commission with one designated set of rules to apply in the instant circumstances, and that this points to adopting a pragmatic reporting approach, consistent with PAEA directives and goals.

Given these circumstances, the Postal Service’s proposed definitions, principles, and reports provide a good starting point for discussion; however, several aspects warrant further consideration. First, the Postal Service’s proposed definitions of the “Competitive Product Annual Revenue Share” and two of the three proposed reports (the Annual Income Statement and the Annual Financial Status Report) rely directly or indirectly on inputs from the Annual Compliance Report (ACR). The ACR appears to be an appropriate source for inputs, but regulations addressing the preparation of the ACR have not yet been published. Instead, the Postal Service has voluntarily produced, and the Commission has issued a determination related to, a document referred to as an ACR. Therefore, it may be advisable, if the Commission decides to adopt the Postal Service’s proposals or a variation thereon, to qualify the proposed definition and report inputs with a statement to the effect that the sources are “the ACR or a document or reference acceptable to the Commission.” This would remove the potential for uncertainty about the source for inputs while ACR rules are still outstanding. After ACR rules are adopted, it would address the possibility that events may preclude timely filing or that differences of opinion may arise over the accuracy or appropriateness of a number or input.

Second, although the Postal Service has provided diagrams, flow charts and other information about its proposed reporting approach, the sample reports do not

appear to contain any introductory material or explanatory notes. This may simply be due to the fact that the Postal Service, at this stage, sought to provide only a very basic illustration of its intentions. However, the Commission should consider requiring the inclusion of supporting explanatory information in each report in the interest of providing context and background consistent with the needs of a general audience. Suggested content includes a brief “lay person’s” definition of the legal requirements and the reporting objectives, along the lines the Postal Service has already provided, and the relationship between and among the reports, akin to abbreviated “roadmap” testimony. This additional information should be able to be provided without imposing an undue burden on the Postal Service. See *id.* at 13.

Third, it appears that the proposed Assets Report, based on the description the Postal Service has provided, may not be filed on a consistent, serial basis. This conclusion is based on the Postal Service’s representations that the Assets Report will provide a listing and valuation of property and equipment assets uniquely associated with providing competitive products, but that there are few, if any, physical assets it considers *strictly identifiable* with competitive products at this time. The Postal Service also states that it proposes using the existing process of assigning assets to finance numbers to potentially identify those assets that are associated with competitive products, in *those cases where the Postal Service chooses to establish separate operational or administrative units devoted solely to competitive products*. See *id.* at 17-18 (emphasis in original in both instances).

Given the Postal Service’s description of the conditions which will trigger preparation and submission of an Assets Report, the Commission may want to consider characterizing the submission as *either* an “Annual Identified Property and Equipment Assets Report” *or* a “Statement In Lieu of Assets Report.” The alternative Statement could provide a brief explanation of why the Assets Report is not being provided. A requirement along these lines has the advantages of providing consistency and continuity in reporting; removing doubt as to whether the filing of an Assets Report is not being filed (based on the absence of “triggering” circumstances) or has simply been

delayed; and making clear to a general audience why no Assets Reports may exist for certain years. Submission of this type of statement in years when a substantive Assets Report is not being filed should not be unduly burdensome for the Postal Service, as the contemplated explanation should not require more than a paragraph or two.

II. Support for Further Consideration of PSA's Suggestion Concerning Impact of Accounting Method Changes on Compliance with the Appropriate Share Requirement

In response to a Commission query, PSA states that it does not anticipate that tailoring Cost and Revenue Analysis systems to meet PAEA requirements, as recommended in the Treasury Report, will have a significant effect on the eventual measurement of the percentage of institutional costs borne by competitive products. However, it observes that given the Postal Service's "razor thin margin of compliance" in 2007 with the existing requirement, even modest changes in accounting methods could inappropriately affect whether competitive products actually produce an appropriate share of institutional costs. PSA Comments at 11. To foreclose this result, PSA urges the Commission to (i) require the Postal Service to calculate the impact of any accounting changes on the estimated share of institutional costs borne by competitive products; (ii) review the Postal Service's calculation; and (iii) if necessary, make adjustments to the appropriate share requirement.⁴ *Id.* at 11 (footnote omitted).

PSA's suggestion appears to be consistent with PAEA objectives of transparency, accountability, and an even-handed, fair approach to the Postal Service's two lines of business. It warrants further consideration.

⁴ PSA notes that it made this recommendation (with the Direct Marketing Association) in Docket No. ACR2007-1. *Id.* at 11. It also notes the possibility that the Commission may initiate proceedings to review other aspects of Postal Service CRA systems in the near term. If the Commission does so, PSA says it may be appropriate to delay making an adjustment to the appropriate share requirement until those reviews are complete and their impact quantified. *Id.* at 11-12, n.11. The Public Representative supports this suggestion.

III. Support for a Commission-sponsored Technical Conference

Responses to Order No. 56 express considerable agreement on several key Treasury recommendations, including creation of an “on paper” theoretical competitive enterprise in lieu of a stand-alone entity and use of a simplified tax approach.⁵ They also indicate where disagreement still exists, such as on the question of whether competitive products should cover incremental costs on a collective or individual basis.⁶ This narrowing of issues provides the Commission with a solid starting point for its anticipated rulemaking addressing CPF issues, and should facilitate issuance of a final set of rules by this December, as called for by the PAEA.⁷

The consensus on key points gives rise to the possibility that suggestions (in the initial round of comments) for technical conferences or separate tracks for certain issues may have been overtaken.⁸ The Public Representative's view is that while a *series* of technical conferences and separate tracks may no longer be needed, a public forum or symposium would still be useful. Commission sponsorship of such an event might broaden participation beyond those that have responded to Order No. 56. This would be

⁵ Five out of the six commenters responding to Order No. 56 express explicit agreement with the Commission's acceptance of the Treasury Department's recommendation in favor of a theoretical enterprise. *See id.* at 3; Comments of Pitney Bowes Inc. in Response to Notice and Order Providing an Opportunity to Comment on Treasury Report, April 1, 2008, at 4 (Pitney Bowes Comments); Public Representative's Comments in Response to Commission Order No. 56, April 1, 2008, at 11 (Public Representative Comments); Postal Service Comments at 21; and Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Initial Comments on Report of the U.S. Department of the Treasury on Accounting Principles and Practices for the Operations of the United States Postal Service's Competitive Products Fund, April 1, 2008, at 3 (Valpak Comments).

⁶ *Compare*, for example, Postal Service Comments at 35 and Pitney Bowes Comments at 7 (both supporting the collective approach) *with* Comments of United Parcel Service on the Treasury Report, April 1, 2008, at 2 (supporting application of the test at the individual product level). *See also* Valpak Comments at 7.

⁷ The PAEA (in 39 U.S.C. § 2011(h)(2)(B)(ii)) calls for issuance of Commission regulations not later than 12 months after the date on Treasury submits its recommendations. However, the clause “or by such later date on which the Commission and the Postal Service may agree” provides some leeway.

⁸ These suggestions were made by Pitney Bowes and the Public Representative. *See* Pitney Bowes Comments at 8 (mentioning the assumed federal income tax as a possible topic for a conference or separate proceeding) and Public Representative's Comments at 2.

beneficial because, as Pitney Bowes Inc. observes: "While these [Treasury] recommendations facially pertain only to competitive products, they will also affect market-dominant products." Pitney Bowes Comments at 2. PSA makes a similar observation (in another context):

Our members, collectively, touch the vast majority of the Postal Service's Parcel Select Shipping Services product and also make substantial use of Priority Mail, Expedited Services, and bulk international mail. Our members also ship, or consolidate for delivery to the Postal Service, hundreds of millions of mail pieces categorized as Mailing Services products. These include First-Class Mail parcels, Standard Mail parcels, Bound Printed Matter, and Media Mail. While not directly subject to the recommendations contained in the [Treasury] Report, costs and prices for these Mailing Services products will undoubtedly be affected by the accounting and costing procedures resulting from this proceeding.

PSA Comments at 2.

The Public Representative therefore continues to encourage Commission sponsorship of a public forum or similar event prior to, or in conjunction with, the anticipated rulemaking. Potential topics include the assumed Federal income tax, as Pitney Bowes Inc. has suggested (in Pitney Bowes Comments at 8) and reporting issues, such as the Postal Service's proposed annual statements or Commission alternatives.

Respectfully submitted,

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