

**BEFORE THE
POSTAL REGULATORY COMMISSION**

**MODIFICATION OF ANALYTIC PRINCIPLES
IN PERIODIC REPORTING
(PROPOSALS THREE THROUGH NINETEEN)**

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Docket No. RM2009-10

**REQUEST OF UNITED PARCEL SERVICE
THAT THE COMMISSION REQUIRE DISCLOSURE OF
THE ESTIMATED PERCENTAGE IMPACT OF
CERTAIN COST METHODOLOGY PROPOSALS
ON INDIVIDUAL COMPETITIVE PRODUCT COSTS
(August 14, 2009)**

Pursuant to Rule 3050.11(c), 39 C.F.R. § 3050.11(c), United Parcel Service hereby requests the Commission to require the Postal Service to report in percentage terms the estimated impact of cost methodology Proposals 4, 6, 7, 8, 9, 11, and 14 on individual competitive products, as the Postal Service has done for Proposal 3. This Request does not seek public disclosure of actual cost figures.

Because the Postal Service has publicly disclosed the percentage impact of Proposal 3, we assume that it does not consider this type of information to be commercially sensitive. If it does (or if these percentages were already filed with the Commission under seal), UPS asks in the alternative that the Commission treat this filing as a request under Rule 3007.31, 39 C.F.R. § 3007.31, to find that the percentage

impact of Proposals 4, 6, 7, 8, 9, 11, and 14 on individual competitive product costs should be made public.¹

BACKGROUND

On July 28, 2009, the Postal Service filed a Petition requesting the Commission to consider 17 proposed changes in analytic principles. Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Proposed Changes in Analytic Principles (Proposals Three – Nineteen) (July 28, 2009). As required by Rule 3050.11(b)(1), the Petition includes certain estimates of “the impact of the proposed change[s] on the relevant characteristics of affected products” See 39 C.F.R. § 3050.11(b)(1). For example, for Proposal 3, the Petition reports the estimated percentage change in FY2008 IOCS dollar-weighted tallies that would result for each of the two products involved -- Single-Piece Parcel Post (a market-dominant product) and Parcel Select (a competitive product).

However, the Postal Service does not provide the estimated percentage impact of each proposal on all affected products. For example, it does not do so for Proposal 14, which would modify the Parcel Select and Parcel Return Service cost models. For other proposals that would also affect competitive products, the Petition discloses the estimated impact on costs in dollars for domestic competitive products as a whole, but it does not provide the anticipated percentage impact on individual competitive products (as it does for Proposal 3). See Proposals 4, 6, 7, 8, and 9. Likewise, the Petition

1. 39 C.F.R. Part 3007 took effect on July 29, 2009, after the Postal Service filed its Petition. 74 Fed. Reg. 30,938 (June 29, 2009). However, we assume that the new rules apply to this Request. Otherwise, the Request is filed under Rule 3001.21, 39 C.F.R. § 3001.21, which is applicable to motions in general.

reports the estimated impact in dollars on all international mail product costs -- both competitive and market-dominant grouped together -- as one aggregated line item; it does not provide the percentage change in costs for individual international products.

Id.

DISCUSSION

The Commission has recognized the importance of the public's participation in proceedings to consider changes to the analytic principles governing the Postal Service's cost systems. It has described such proceedings as "an opportunity for input and feedback from other stakeholders and the Commission . . . by approaching analytical issues through a process that promotes cooperation and facilitates consensus." Docket No. RM2008-4, Order No. 104, at 30-31 (August 22, 2008).

In this proceeding, however, it is impossible for any party interested in competitive products to determine the magnitude of the impact of the proposals on individual competitive products. Disclosure of the order of magnitude of each costing proposal's impact on individual products would help to remedy this deficiency. Members of the public could use that information to assess whether any proposal's impact on an individual competitive product is significant or insignificant, and whether it therefore warrants the party's further evaluation and concomitant investment of time and resources.

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If the Postal Service considers percentage impact information to be commercially sensitive, UPS disagrees and asks the Commission to require its public disclosure. The

percentage change in costs that would result from these proposals is not “commercial information” described in Section 410(c) of PAEA or exempt from public disclosure by Section 552(b) of Title 5 (“FOIA”). Even if this information did fall within those provisions, the balancing test set forth in Section 504(g)(3) of PAEA and Commission Rule 3007.33(a) nevertheless mandates public disclosure.

1. Section 504(g) of PAEA allows the Postal Service to file documents under seal only if those documents contain information which is described in Section 410(c) of PAEA, or which is exempt from public disclosure under FOIA. 39 U.S.C. § 504(g)(1). Thus, the Postal Service can generally file under seal only “information of a commercial nature, including trade secrets, . . . which under good business practice would not be publicly disclosed,” 39 U.S.C. § 410(c), or “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4).

The estimated **percentage** change in costs that would result from the use of a modified cost system is not the type of “commercial information” that is exempt from disclosure under these provisions. To the contrary, it is extremely limited information that only provides a measure of the magnitude of the proposed changes. It would not give the public any indication of actual costs incurred by the Postal Service. It could not be used by any member of the public for any purpose other than the legitimate evaluation of these costing proposals.²

2. This Request does not address the unresolved issue of whether and to what extent underlying costs should be publicly disclosed. UPS reserves its right to address that issue at an appropriate time. See Docket No. ACR2008, Order No. 196, at 3 (March 25, 2009).

2. Even if percentage change information were covered by Section 410(c) or FOIA, Section 504(g)(3)'s balancing test, as set forth in Commission Rule 3007.33(a), nevertheless requires the public disclosure of this information.

Rule 3007.33(a) provides that “[i]n determining whether to publicly disclose non-public materials filed by the Postal Service, the Commission shall balance the nature and extent of the likely commercial injury identified by the Postal Service against the public interest in maintaining the financial transparency of a government entity competing in commercial markets.” 39 C.F.R. § 3007.33(a). The Commission has noted that “broad and vigorous public participation is beneficial” in Commission proceedings. Docket No. RM2008-4, Order No. 203, at 14 (April 16, 2009). The public interest is particularly heightened where, as here, changes to cost methodologies are proposed. As the Commission has noted, “[t]he metrics by which the Postal Service’s compliance with the PAEA is determined depend, importantly, on the analytical principles that the Postal Service uses to prepare its periodic reports to the Commission.” Docket No. RM2008-4, Order No. 104, at 31 (August 22, 2008).

Information on the percentage impact of costing changes is especially important for competitive products, where the accurate measurement of attributable costs by product and total competitive product contribution to institutional costs are two of PAEA’s most essential safeguards. See 39 U.S.C. § 3633(a)(2) and (3).

In contrast to the great public interest in the disclosure of the estimated percentage impact of these proposals, there is no likelihood that commercial injury to the Postal Service would result from it. This unlikelihood appears to be acknowledged by the Postal Service itself, since it voluntarily disclosed the percentage change in total

FY2008 IOCS dollar-weighted tallies for both Parcel Select and Single-Piece Parcel Post that result from Proposal 3. Such limited information cannot be used by any member of the public for any purpose other than evaluating the impact of these proposals. Thus, the Postal Service should publicly disclose the same information for the other proposals affecting competitive product costs, namely Proposals 4, 6, 7, 8, 9, 11, and 14.

CONCLUSION

The Commission should require the Postal Service to publicly disclose the order of magnitude of the estimated impact of its proposals on individual competitive product costs, specifically the percentage difference in costs for each competitive product that would have resulted in FY2008 if each cost methodology proposal had then been in effect. This information is not covered either by Section 410(c) of PAEA or FOIA, and even if it were, Section 504(g)'s balancing test weighs strongly in favor of its disclosure in this proceeding.

Respectfully submitted,

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