

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Review of Commission's Price
Cap Rules

Docket No. RM2013-2

PUBLIC REPRESENTATIVE REPLY COMMENTS
(May 31, 2013)

I. INTRODUCTION

On March 22, 2013, the Commission initiated review of its "price cap" rules in 39 CFR part 3010 and requested comments on proposed amendments to part 3010.¹ Seven parties filed comments.² The comments raise two important issues:

1. Should the Postal Service be able to utilize unused rate adjustment authority (URAA) on a LIFO rather than FIFO basis?
2. Should the Postal Service be prohibited from creating URAA via temporary promotional rates?

II. UNUSED RATE ADJUSTMENT AUTHORITY: LIFO VS FIFO

Current rule 3010.27 states:

¹ Notice of Proposed Rulemaking Requesting Comments on Proposed Commission Rules for Determining and Applying the Maximum Amount of Rate Adjustments, March 22, 2013, 78 Fed. Reg. 22490, April 16, 2013 (Order No. 1678).

² Comments of the Association for Postal Commerce, May 16, 2013 (PostCom Comments); Comments of MPA—The Association of Magazine Media, May 16, 2013; Comments of the National Association of Presort Mailer, May 16, 2013 (NAPM Comments); Comments of Pitney Bowes Inc., May 16, 2013; Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Comments on Notice Of Proposed Rulemaking, May 16, 2013; Initial Comments of the United States Postal Service, May 16, 2013 (Postal Service Comments); Public Representative Comments, May 17, 2013.

When the percentage change in rates for a class is greater than the applicable annual limitation, then the difference between the percentage change in rates for the class and the price cap shall be subtracted from the existing unused rate authority for the class, using a first-in, first-out (FIFO) method, beginning 5 years before the instant notice.

The proposed amendments to rule 27 replace “price cap” with “annual limitation” and insert the word “adjustment” between “rate” and “authority.” These amendments “ensure the consistent use of terms.” Order No. 1678 at 15. Clearly, no substantive changes are intended. More importantly, the use of FIFO is mandated by statute. 39 U.S.C. §3622(d)(2)(C)(iii)(III).

The Postal Service objects to proposed rule 3010.26(c), which “clarify[ies] the manner in which unused rate adjustment authority is calculated.” Order No. 1678 at 15. Proposed rule 26(c) contains instructions for calculating two kinds of URAA: “annual” and “interim” URAA. Annual URAA is the difference between the actual percentage change in rates and the statutory maximum based on the most recent 12-month percentage change in CPI-U. Interim URAA, which only arises when more than 12 months elapses between rate adjustments, is equal to the percentage change in CPI-U that occurred between the previous rate change and the beginning of the 12-month period used to calculate annual URAA. Annual URAA would be “banked” as required by statute, and thus could not be used to raise rates until all previously banked URAA had been utilized on a FIFO basis. Proposed rule 26(d) “specifies that interim rate adjustment authority may be used in the same case in which it is generated,” *id.* at 9, which is the equivalent of LIFO.

The Postal Service states that “the Commission’s approach would effectively force the Postal Service to raise prices at least every twelve months, even when it would be more efficient to wait longer than twelve months.” Postal Service Comments at 2. The Postal Service requests that it be allowed “to use the full rate adjustment

authority associated with the period since the previous notice, while leaving it to the Postal Service's discretion whether to forgo some portion of the authority (which would then convert to unused rate adjustment authority)." *Id.* at 3-4. The Postal Service's concern appears to be premised on an overly literal reading of Order No. 606 and a belief that "the proposed rules codify the approach presented by the Commission in Docket No. R2011-1." *Id.* at 2. On the contrary, proposed rule 26(d) reverses Order No. 606.

In Docket No. R2011-1, a mailer coalition argued that the price cap should be equal to the sum of the annual limitation and the interim URAA—*i.e.*, the full change in CPI-U between rate cases.³ In Order No. 606 the Commission stated that the "contention that all intervening months between notices of rate adjustment must be reflected in the annual limitation is contradicted by the language of section 3622(d)(1)(A)(1)." *Id.* at 15. The Commission explained that

interim unused rate authority is not added to the annual limitation. They are separate calculations. A rate adjustment for less than the maximum amount (of the annual limitation) generates new unused rate authority. See rules 3010.26(b) and (c)(1). That amount is added to the "additional unused rate authority," *i.e.*, interim unused rate authority, which accrues during the intervening months between the filing of the most recent and instant notices of rate adjustment. The sum of these two figures . . . represents the unused rate authority available as a result of the Postal Service's instant notice of rate adjustment.

Id. at 16-17. In other words, Order No. 606 interpreted current rule 26(c) to require that interim URAA be added to annual URAA, and both would become available for use by the Postal Service in future rate cases on a FIFO basis by the terms of 39 U.S.C. §3622(d)(2)(C)(iii)(III). Proposed rule 26(d) makes interim URAA available for use

³ Docket No. R2011-1, Order Approving Market Dominant Classification and Price Changes, and Applying Price Cap Rules, December 10, 2010, at 14-15 (Order No. 606).

immediately (LIFO), at the discretion of the Postal Service (“Interim unused rate adjustment authority *may* be used . . .”). What more could the Postal Service desire?

III. UNUSED RATE ADJUSTMENT AUTHORITY: PROMOTIONAL RATES

Several parties seek a rule that would prevent the Postal Service from generating URAA via promotional rates, as it is seeking to do in Docket No. R2013-6. *E.g.*, PostCom Comments at 5. The parties argue that promotional rates are like negotiated service agreements (NSAs) in that they seek to encourage new, profitable volume. NAPM Comments at 4. Under proposed rule 3010.24, NSAs do not generate URAA. The parties argue that the Postal Service has an incentive to engage in riskier promotions if it can recover losses by using newly created URAA. Mailers ineligible for promotions could end up paying for unsuccessful promotions. PostCom Comments at 3-4.

The analogy between promotions and NSAs is only partial. Some promotions, such as the summer promotions, are intended to generate new and profitable volumes. Such promotions should not generate URAA. However, some promotions that generate current losses are more in the nature of investments. If the Postal Service can demonstrate that a current loss is actually a profitable investment that makes all mailers better off, it should be allowed recover that investment from all mailers.

Respectfully submitted,

Emmett Rand Costich
Public Representative

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901 New York Ave. NW
Washington, DC
202-789-6833
FAX: 202-789-6861
rand.costich@prc.gov