

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 2000

Docket No. R2000-1

REPLY COMMENTS OF THE UNITED STATES POSTAL SERVICE
IN RESPONSE TO
NOTICE OF INQUIRY NO. 2
(May 15, 2000)

Several parties filed comments responding to Notice of Inquiry No. 2 (NOI 2, April 21, 2000).¹ The Postal Service hereby submits reply comments.

NOI 2 suggested three basic approaches to the use of data from the FY 1999 CRA Report and the billing determinants for FY 1999.² No party advocated the Commission's second option of relying exclusively on estimates for FY 1999, as incorporated in the Postal Service's original filing. Two parties – United Parcel Service (UPS) and Coalition of Religious Press Associations (CRPA) – supported the first option of creating a new FY 1999 base year. The remaining parties favored the third option of combining consideration of the FY 1999 actual data with the projections

¹ Comments of United Parcel Service Concerning Base Year Data in Response to Notice of Inquiry No. 2 (May 8, 2000)(UPS Comments NOI 2); Office of the Consumer Advocate Comments in Response to Notice of Inquiry No. 2 Concerning Base Year Data (May 8, 2000)(OCA Comments NOI 2); Comments of the Newspaper Association of America on Notice of Inquiry No. 2 Concerning Base Year Costs (May 8, 2000)(NAA Comments NOI 2); Association for Postal Commerce Response to NOI No. 2 (May 8, 2000)(Postcom Comments NOI 2); Response of the Coalition of Religious Press Associations to Notice of Inquiry No. 2 Concerning Base Year Data (May 8, 2000)(CRPA Comments NOI 2).

² NOI 2, at 1-2. Versions of the CRA and billing determinants were filed with the Commission beginning on March 15, 2000. See Initial Comments of the United States Postal Service in Response to Notice of Inquiry No. 2, at 1-2 (May 8, 2000)(Postal Service Initial Comments NOI 2).

embodied in the Postal Service's Request and testimony, but without creating a new base year and rolling it forward to test year estimates.

Apart from UPS's and CRPA's support for creating a new base year, the parties' views significantly reinforce and validate the position advanced in the Postal Service's initial comments. At the current stage of the proceedings, requiring the development of a new base year from which to project FY 2001 estimates would be unnecessary and counterproductive. Data and information reflecting FY 1999 actual operational and financial results, however, need not be ignored. The parties and the Commission can employ more recent data, as long as such use is not inconsistent with pertinent analytical and legal principles and does not create procedural demands that jeopardize either due process or the 10-month schedule. Within this context, the following addresses several particular issues raised by the parties.

Updated Base Year

UPS cites judicial precedent to support its position that the Commission must replace the FY 1998 base year embodied in the Postal Service's filing with a newly-constructed base year founded on the FY 1999 CRA Report. The decisions it cites stand for the general proposition that a regulatory agency, in some circumstances, cannot ignore more recent historical data in favor of clearly erroneous estimates.³ The Postal Service does not dispute this principle as a general matter. Nevertheless, it does not compel the particular result UPS seeks in the instant circumstances. Nor is the principle violated by the Postal Service's original filing in this proceeding.

³ UPS cites *West Ohio Gas Co. v. Public Utilities Commission*, 294 U.S. 79 (1934); and *Alvarado Community Hospital v. Shalala*, 155 F3d 1115 (9th Cir. 1998).

Courts have frequently acknowledged that resort to the most recently available information must sometimes yield to older data or estimates within the context of a particular regulatory scheme. In the instant situation, the general principle favoring reliance on actual results can only be applied in relation to the other requirements of postal ratemaking under the Postal Reorganization Act in the particular circumstances at hand. The language quoted by UPS from the most recent postal rate case appeal decision makes exactly this point. In *United Parcel Service v. United States Postal Service*, 184 F.3d 827 (D.C. Cir. 1999), the court of appeals was faced with an argument that the Commission and the Postal Service Governors should have relied on actual financial results available prior to the Governors' decision, as opposed to record evidence supporting estimates upon which the Commission's recommended decision was based. The court rejected the argument, in light of the Commission's actual reliance on as much recent information as could be developed on the record, given the constraints of the procedural schedule and the statutory limitation on the length of rate cases. The court stated:

Thus, the Commission did not, as the Alliance suggests, set rates without regard to actual data. By contrast, in *West Ohio Gas v. Public Utilities Comm'n of Ohio*, 294 U.S. 79, 79 L.Ed. 773, 55 S.Ct. 324 (1935), the agency "shut [its] eyes" when presented with actual revenue figures for 1930 and 1931, instead relying on estimates based on 1929 data. *Id.* at 81. Here, the Commission adjusted its figures as new data became available *and was not required to delay indefinitely the ratemaking process until all 1997 data had been compiled, particularly in light of its statutory obligation to make its recommendation within 10 months.* See 39 U.S.C. § 3624(a), (c)(1).

Id. at 835 (emphasis added), cited in UPS Comments NOI 2, at 3.

In the current situation, the Postal Service does not deny that it might be preferable from an analytical perspective to use a FY 1999 base year, if circumstances permitted. As explained in the Postal Service's initial comments, however, a new base year only makes sense if it is to be rolled forward to create new test year estimates. The technical requirements of producing a roll-forward, and the procedural and due process requirements of treating it as evidence, moreover, militate decisively against mandating that result at this stage of the proceedings. As a practical matter, producing new test year estimates would consume substantial time and resources.⁴ From a due process perspective, the schedule would need to be expanded substantially to accommodate the level of scrutiny and response that would be required, if the Postal Service's filing were essentially supplanted by a test year analysis founded on an entirely new base year.⁵

In this regard, even UPS acknowledged that it would need approximately two weeks "to incorporate FY 1999 data into its analysis of the Postal Service's proposal after the Postal Service makes necessary adjustments to the results it has filed based on the estimated data." UPS Comments NOI 2, at 3 (emphasis added). The Postal Service suspects that UPS and other parties would ultimately demand more than two

⁴ The complexity of producing a roll-forward of base year data has often been acknowledged in Commission proceedings. See, e.g., Presiding Officer's Ruling Granting in Part OCA Motion to Compel a Response to Interrogatory OCA/USPS-102 and a Further Response to Interrogatory OCA/USPS-T14-2, Docket No. MC95-1, at 2-3 (June 28, 1995).

⁵ As stated by the OCA, "it is not feasible to use the FY 1999 data as the base year for all analyses without extending significantly the time for parties, including the Postal Service, to redo their testimony using the FY 1999 data." OCA Comments NOI 2, at 2.

weeks. It is more important to note, however, that the added time would not begin until after the Postal Service had been able to develop and present a new roll-forward. As explained in the Postal Service's initial comments, this would take a considerable amount of time.⁶

Procedural Schedule

All parties appear to recognize that the 10-month limit on rate cases represents a rigid constraint upon these proceedings. Only CRPA appears to fail to acknowledge the significant bearing this has on the issue of substituting a new base year. CRPA takes a "so what" position, asserting that "[i]f delay of this case occurs because of the selection of an inapposite test [sic] year, when the correct test [sic] year data was in its final formulation, then it is the USPS which is responsible." CRPA Comments at 2-3.⁷ The Postal Service firmly rejects any suggestion that the Commission's rules compelled use of an FY 1999 base year. Rather, its use of an FY 1998 base year was consistent with both the letter and the spirit of those rules. Moreover, the Postal Service did use FY 1999 data where feasible, and adjusted its test year projections to the extent

⁶ It is not entirely clear what UPS intends by the phrase "after the Postal Service makes necessary adjustments to the results it has filed based on the estimated data." The possibilities range from one extreme in which one simply takes the existing roll-forward, adjusts the model to make the FY 1999 model output match the actual FY 1999 data from the CRA and Costs Segments and Components, and reruns the model from that point forward, to the other extreme in which all inputs to the roll-forward are updated based on everything we know now that we did not know in January. If UPS intends to suggest the former approach, it is not clear why UPS is not capable of taking that step itself.

⁷ The Postal Service is at a loss to understand why CRPA postulates a potential relationship between FY 1999 cost levels, and volume forecasts and elasticities based on actual FY 1999 volumes. See CRPA Comments at 2, footnote 1. The two are not related, and, given any set of existing or proposed test year rates, the rate case volume forecasts are unaffected by the choice of the base year for costs.

possible to account for those data.

From a practical perspective, furthermore, it must be noted that the Postal Service's Request was originally developed to file in the fall of 1999, and that the decision to postpone filing until after the holidays was made relatively late. This left little time to adjust the preparation of the case. In any event, given the time and resources required to produce a fully integrated set of rate proposals, as well as the underlying test year roll-forward and supporting testimony and documentation, any filing utilizing a FY 1999 base could not have been prepared prior to late March or early April. Relative to the actual filing date in early January, such a delay would have significantly pushed back the potential implementation date, and detrimentally affected the amount of additional revenues capable of being generated to meet FY 2001 budget goals. The Postal Service has no obligations, statutory or otherwise, that would require it to constrain its financial planning to that extent.

The Postal Service is also unaware of any circumstances in which the clear mandate of 39 U.S.C. § 3624(c) may be "waived." The 10-month limit is an important and integral part of the statutory scheme that can only be extended legally in a limited situation in which consideration of the request has been unreasonably delayed because the Postal Service has failed to respond within a reasonable time to a lawful order of the Commission. Needless to say, no such failure to respond has even been alleged in this instance, much less actually occurred.

Cost and Revenue Variances

UPS cites the cost variance (between forecast FY99 and actual FY99) reported in the attachment to NOI No. 2 for three categories of mail calculated using the

Commission's costing methodologies. UPS Comments at 3. In fact, however, if one examines similar figures from the same attachments for the same three categories based on the Postal Service's proposed costing methodologies (which the Commission has yet to evaluate in this case), the pattern is materially different. The Postal Service actually overestimated the unit cost of Express Mail by 4.66 percent, the underestimate of Priority Mail unit cost decreases to 3.62 percent, and the underestimate of Parcel Post unit cost is below one percent (0.90 percent). Variances of this magnitude could be taken account of by adjusting the recommended cost coverages of these three categories (if, in fact, any adjustment were even deemed to be warranted). This is the procedure advocated in the initial comments of the NAA, with which the Postal Service concurs in this respect. The suggestions made for relying in part on FY 1999 data

Discovery

PostCom introduces in its initial comments the suggestion that parties wishing to probe the use of FY 1999 data in the testimony of other intervenors may need to direct discovery requests to the Postal Service regarding such data. PostCom Comments at 2. To the extent that such information is necessary for a participant to prepare rebuttal testimony to the intervenor testimony relying on the FY 1999 data, such discovery already appears to be contemplated by Commission Rule 25(a). Of course, such discovery should be limited to instances of new uses of FY 1999 data. To the extent that the Postal Service already incorporated certain FY 1999 data in its filing, any

discovery about that material should have been filed by March 23rd, and would no longer be timely.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

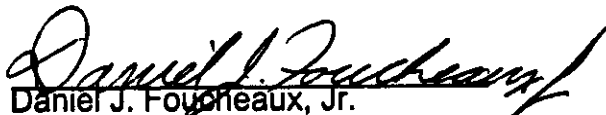
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May 15, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.


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