

on the benefits of imposing the requirement.

OCA urges the Commission to modify proposed rule 53(c) to make more explicit the requirement that the Postal Service quantify the impact of material changes in cost methodology, volume estimation, and rate design.<sup>36</sup> OCA contends that the proposed rule does not specifically require the Postal Service to quantify such effects, as, in its view, the text of order no. 1355 suggests is required. Thus, OCA suggests that proposed rule 53(c) employ specific language to require quantitative estimates of the impact of each methodological change.<sup>37</sup>

The Postal Service opposes this suggestion, asserting that the rule should not be altered to require quantification in all circumstances.<sup>38</sup> Reiterating its initial comments, the Postal Service states that, when comparisons between the PRC and Postal Service versions can be made, the most relevant type of quantification would be routinely provided in the roadmap document it envisions.<sup>39</sup> It asserts that in most instances parties will be interested in only the cumulative effect of the changes, particularly as relates to the roadmap document. The Postal Service also criticizes the suggestion as overlooking the extensive documentation that it files in support of its requests. The Postal Service concludes that its focus should be on the cumulative effects of new analyses, with participants free to investigate whatever components they believe to be most significant.<sup>40</sup>

To some degree, OCA and the Postal Service appear to be talking at cross-purposes. OCA's comments address proposed rule 53(c), which directs the Postal Service to file testimony addressing the details of material methodological changes, including the impact of such changes. For its part, however, the Postal Service's response is based on "the roadmap document it envisions[.]"<sup>41</sup> an approach, as noted, that ignores distinctions between proposed rules 53(b) and (c).

As proposed, rule 53(c) requires the Postal Service to submit testimony that identifies and explains each material

change in cost methodology, volumes, and rate design. That testimony shall also discuss the impact of each such change on the levels of attributable costs, volumes, and rate levels. In order no. 1355, the Commission recognized that quantifying the effects of methodological changes may, in some instances, prove difficult. The Commission further noted that the proposed rules are not intended to require the Postal Service to address each change regardless of its consequences.

The Commission appreciates the OCA's comments. OCA's comments, however, gloss over any difficulties associated with quantifying interrelated methodological changes. OCA's suggestion that the Commission's rules be revised to require the Postal Service to quantify the impact of each separate methodological change overreaches. Furthermore, while OCA's basic point that the proposed rule does not hew explicitly to the discussion in order no. 1355 is not in dispute, the intent of the proposed rule is nonetheless reasonably clear.

As the Postal Service indicates, quantification becomes more difficult when several changes operate jointly.<sup>42</sup> To be sure, the cumulative effect of these changes is important. It remains to be seen whether parties will, for the most part, be interested only in the cumulative effect as the Postal Service contends. In any event, parties wanting more detail can avail themselves of discovery. Moreover, as the Postal Service notes, as part of its filing it provides comprehensive rate case documentation that permits replication of its analyses. Consequently, the Commission declines to adopt the OCA's suggestion.

The OCA also suggests that the rules be amended to bar institutional responses to interrogatories seeking to clarify a proponent's proposal(s) and evidence.<sup>43</sup> In support, OCA notes that responses to presiding officer information requests are sponsored by witnesses. In addition, OCA argues that timing may become an issue with written discovery.<sup>44</sup> The Postal Service opposes this suggestion, arguing, principally, that OCA fails to demonstrate that institutional responses have caused problems in recent dockets.<sup>45</sup>

<sup>42</sup> *Id.* at 10.

<sup>43</sup> OCA Comments at 4–6. Alternatively, OCA would permit institutional responses provided a witness is identified at the time and is available to stand cross-examination should it be requested. *Id.* at 6.

<sup>44</sup> *Id.* at 5.

<sup>45</sup> Postal Service Reply Comments at 11–13.

The expedition required in omnibus rate cases puts a premium on attempting to quickly understand the Postal Service's filing. Written discovery is the principal means for clarifying the Postal Service's proposals. Informal discussions with the Postal Service and technical conferences may supplement this process. While timing can be an issue with respect to written discovery, cross-examination remains available to participants as well. The rationale offered by OCA for the suggestion does not warrant its adoption. It is well understood that participants submitting institutional responses to discovery requests must be prepared to provide a sponsoring witness if follow-up oral cross-examination is required. OCA has failed to demonstrate that institutional responses have caused participants problems in understanding the Postal Service's case in recent proceedings. Should it become a problem, however, the Commission's rules provide means for seeking redress.

OCA also proposes that the Commission should, as a matter of practice, formally notice in the **Federal Register** participants' alternative proposals in any case set for hearing.<sup>46</sup> OCA believes that such notice would apprise interested persons of any new proposals and preempt any due process claims that adequate notice was not given. No commenter addressed this suggestion.

The Commission declines to adopt this suggestion. OCA does not advocate codifying this practice in the Commission's rules.<sup>47</sup> Thus, for purposes of this rulemaking, the suggestion is essentially a nullity. The Commission could, were it so inclined, adopt the practice irrespective of this rulemaking. Moreover, as OCA notes, generally the original notice issued by the Commission is sufficient to apprise interested persons of the nature of the proceeding, including the possibility that its recommendations may differ from the Postal Service's request.

Finally, OCA incorporates its comments from docket no. RM2003–3 to the extent they may be more appropriately considered in this proceeding.<sup>48</sup> The Commission finds those comments more relevant to docket no. RM2003–3.

### 3. UPS Comments

UPS proposes two modifications to the proposed rules. The Postal Service opposes both. First, UPS suggests revising rule 53(b) by substituting the

<sup>46</sup> OCA Comments at 6–8.

<sup>47</sup> *Id.* at 8.

<sup>48</sup> *Ibid.*

<sup>36</sup> OCA Comments at 2–4.

<sup>37</sup> *Id.* at 3. ABA/NAPM appear to raise a similar concern in their comments that the rule should require the Postal Service to identify situations when several small changes "all going in the same direction" have a material effect even if taken individually the changes may not. ABA/NAPM Comments at 2.

<sup>38</sup> Postal Service Reply Comments at 10.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Id.* at 11.

<sup>41</sup> *Id.* at 10.