

Commission must have enough information to determine what data and methods the Postal Service is currently using to produce its routine financial reports.

The Postal Service does not deny that providing the routinely compiled financial information called for by the updated rule would give the Commission and the intervenors the ability to respond to Postal Service rate filings more quickly and more competently. In fact, this appears to be its main objection to the updated rule. It contends that this would upset the statutory "balance" between it and the remaining players in the postal regulatory scheme.

The Postal Service understands that when it withholds this information until it files a rate case, participants must spend so much of the 10-month period that is available to litigate a rate case reading and comprehending it that they have little time to prepare alternative rate proposals in response. The Postal Service does not consider this to be inconsistent with the Act. It emphasizes that the Act makes it the sole initiator of rate cases. In its view, this allows it to take all the time that it needs to prepare for litigation, and allows the Commission and the intervenors none. It insists that this procedural advantage is intended by the Act, and that it may withhold whatever financial information it wishes between rate cases in order to preserve it. It denies that it has any obligation to provide information between cases that would facilitate the Commission's performance of its functions during those cases, or would make it easier for intervenors or the public to comprehend or respond to its filings within the time constraints imposed by the statute. Substantive Comments at 15–17, 33–36.

The Postal Service argues that since the Act does not give the Commission any meaningful function to perform between rate cases, the Commission has no legitimate need for financial information during these interim periods. Therefore, it reasons, the Commission has no legitimate motive for seeking access to financial information between rate cases. It concludes that the Commission can only have ulterior motives for seeking information between rate cases, *e.g.*, to conduct annual audits and investigations of the Postal Service, to gain "oversight responsibility," and to indulge in "day-to-day monitoring of [its] detailed operations and finances." *Id.* at 7, 11, 19, 22.

Besides serving ulterior motives, the Postal Service complains that the updated rule would force it to prepare

rate-case style documentation between rate cases. It argues that this will infringe upon management's statutory right not to concern itself with rate issues between rate cases, and will infringe on management's duty to manage. *Id.* at 21–23. It contends that most of the CRA documentation required by the rule has commercial value which the Commission would be unwilling or unable to protect from public disclosure. *Id.* at 31–32. Finally, it argues, by seeking basic information needed to understand and analyze the CRA, the Commission is seeking to preempt the legislative reform process that the President entrusted to the Commission on the Postal Service. *Id.* at 20.

As the Postal Service now interprets the Act, between the rate cases that it files, the intervenors must avoid actions or thoughts that might relate to future rate or classification cases. Otherwise, the argument goes, they will nullify the litigation advantages that the Postal Service enjoys under the Act. Similarly, the Postal Service argues, the Commission must refrain from actions and thoughts that might help it prepare for future rate or classification cases. Otherwise, its collective mind will become contaminated. The updated rule, the Postal Service contends, seeks to circumvent these constraints that it infers from the structure of the Act. *Id.* at 15–17.

The Postal Service's portrayal of the updated rule as a newly-hatched plot by the Commission to circumvent the Act disregards the history of the Periodic Reporting Rule. As explained in more detail below, the updated rule meets the same standards, and is designed to accomplish the same objectives, as the original rule adopted 27 years ago by the Commission. At that time, the Commission explained that the rule had two main objectives: (1) to accelerate the discovery process during future rate and classification hearings, and (2) to enable all those in the postal regulatory arena, including the Commission and the intervenors, to study postal cost behavior between rate cases in order to improve the attribution of costs during rate cases.

What is novel with this rulemaking is the Postal Service's interpretation of the Act as mandating that the flow of financial information cease between rate cases. This runs counter to the Postal Service's historic view that periodic reporting of financial data between rate cases, while not mandated by the Act, is a legitimate way to make the processing of future cases more efficient by reducing the need for discovery. Docket No. RM76–5, Postal Service

Response to PRC Order No. 141 (December 7, 1976) at 2. For 27 years, the Postal Service supplied the type of information called for by the rule without suggesting that its objectives were in violation of the Act.

The vast majority of the information previously required by the Periodic Reporting Rule has been willingly provided by the Postal Service. It accepted the modest additional burden of providing such information if it was likely to provide useful background information for processing future cases. It raised objections to only a few items, sometimes arguing that an item should not be included in the rule because it was *not* information "which could be employed for rate purposes." *Id.* at 4. The views that the Postal Service has expressed in this rulemaking are the converse of its traditional view of the rule. Where it had traditionally considered items to be appropriate for inclusion in the rule only if they "could be employed for rate purposes," it now considers items to be inappropriate for inclusion in the rule precisely because they "could be employed for rate purposes."

The Commission did not include an elaborate justification for the update of the Periodic Reporting Rule in its NPR because it did not think that one would be necessary. The Commission assumed that the additional burden on the Postal Service of complying with the rule would be minor because the updated rule asks for only a small fraction of the information that the Postal Service provides with an omnibus rate filing. Of that small fraction, most is prepared each year by the Postal Service anyway, either to produce its own CRA, or to comply with rule 103. The Postal Service's right to litigate the merits of its procedures in a formal hearing is not infringed by the rule because the information required by the updated rule does not address the merits of, or justification for, the procedures that the Postal Service uses to produce its CRA. The Commission assumed that the commercial sensitivity of the information would not be a significant issue because the updated rule would require the types of information that the Postal Service has, in the past, freely disclosed to the public, both during and between omnibus rate cases. Because the Postal Service now challenges these assumptions, and misinterprets the Commission's motives for proposing these updates, the Commission will provide a detailed justification of the updated rule.