

discounts, based on IOCS tally data, have abruptly and substantially increased or decreased in some of these presort levels but not others. If these abrupt, substantial shifts were sustained over several years, the disparity between the cost differences among density levels on which the discounts were based, and the cost differences reflected in current data, could become large, making the actual passthroughs of avoided costs so disparate that it might violate the fairness and equity criteria of the Act. See 39 U.S.C. § 3622(b)(1).

A mailer of presorted Enhanced Carrier Route mail could not know of the passthrough disparities that had emerged unless it had access to the kind of CRA documentation required by the rule. It could not make effective use of its right to ask for a hearing under § 3662 to show that ECR rates violate the policies of the Act, because it could not demonstrate to the Commission that the cost assumptions underlying these discounts were no longer valid. Although the Act provides the public with this alternative way to secure its rights under the Act, this alternative is of little value when facts that are basic to ratemaking and classification are unavailable to the public.

#### Being Adequately Prepared To Process Rate Requests

Beyond indicating when there are grounds for initiating § 3623 and § 3662 hearings, the Commission and the public need mid-level documentation of the CRA to be adequately prepared to process cases brought by the Postal Service. These include omnibus rate cases under § 3622, which must be processed within the severely compressed 10-month window allowed by the Act. They also include “experimental,” “market test,” “negotiated service agreement” and other special kinds of rate and classification cases for which the Commission has created even more compressed hearing procedures, at the Postal Service’s request.

The reasons that such documentation is needed for these kinds of cases were previously explained in describing the history of the Periodic Reporting Rule. The first of these reasons is the fact that the Postal Service’s CRA, which is the starting point for analyzing any set of proposed rates, is exceedingly complex, continually changing, and has proved to be extremely difficult to comprehend in the few months allotted for discovery in a general rate case. Providing partial documentation of the most recent versions of the CRA between rate cases is the minimum necessary to make this task feasible in the hearing time allotted.

In addition to keeping its technical expertise current in order to quickly process a rate case brought by the Postal Service, the Commission described a second reason that partial documentation of the CRA is needed between rate cases. See Docket No. RM76–5, Notice of Proposed Rulemaking, issued April 6, 1976, at 2–3. This is to narrow the scope of discovery and Presiding Officer’s Information Requests needed in rate cases, and shorten this phase of the proceeding. The objective is to avoid, as far as possible, inquiries into technical costing issues that are background, or generic in nature, rather than tied to a specific set of proposed rates. This objective has not changed since the Periodic Reporting Rule was first issued 27 years ago.

#### Researching Cost Behavior Between Omnibus Rate Cases

A third reason that partial documentation of the CRA is needed between rate cases is to gain access to the basic datasets needed to develop models of cost behavior that can be presented in an omnibus rate case, so that less of the litigation window is consumed with such development work. See PRC Order No. 141 at 3. This objective, also, has not changed since the Periodic Reporting Rule was first issued. What has changed since the Periodic Reporting Rule was last updated are the new sources of data that the Postal Service uses to develop the CRA, and the increased capability of the Commission and the intervenors to work with those data.

To develop models of postal cost behavior, it is necessary to have two things—relevant data, and the time and resources to analyze the data. The Postal Service is in a unique position among all stakeholders in postal ratemaking in this regard. It has exclusive control of almost all of the data that could be used to model postal cost behavior. When it decides to study a particular area of postal cost behavior, it has well over 100 in-house analysts and consultants whose time and expertise can be enlisted in the effort. As the only initiator of rate cases, it has exclusive control over the timing of rate cases. Consequently, when the Postal Service wants to develop a model of postal cost behavior, it can decide for itself what data to access or what new data to collect, how long to spend developing its model, and when to initiate a hearing to present it.

Currently, a mailer or competitor that would like to develop an alternative model of cost behavior has little chance of doing so. Between omnibus rate cases

it cannot get access to data that reflect current postal operations. When the Postal Service files an omnibus rate case, an intervenor will have about two months to digest the mammoth filing and determine what to investigate, and perhaps three months to find analysts, request relevant data, develop a model, and defend the results. It might have only a few weeks to do this in more abbreviated hearings, such as hearings on experimental services. It is almost impossible for intervenors in rate cases to plan, complete, and defend models of postal cost behavior in the narrow litigation window allowed. As a result, in over 30 years of Commission hearings, intervenors have almost never succeeded in developing significant alternative cost attribution models. During rate cases, intervenors are confined almost entirely to reacting to and criticizing the models developed by the Postal Service.

#### Due Process and the Need for Data

The Commission has explained why relevant data are an indispensable tool for researching, analyzing, or modeling postal cost, volume, or revenue behavior. In its comments, the Postal Service takes the position that, under the Act, no entity other than itself may possess this tool between omnibus rate cases. Substantive Comments at 6. It asserts that if the Commission or the intervenors make any use of the datasets or the programs underlying an interim-year CRA, they would be conducting a “de facto rate case” outside the confines of a formal hearing. *Id.* at 16–17. According to the Postal Service’s logic, any activity that others do during a rate case—such as studying postal cost, volume, or revenue behavior—may not be done outside of a rate case; otherwise, the 10-month time limit on rate cases is violated. The Postal Service does not extend this logic to itself, however. It may devote whatever time it wants to studying and preparing for rate cases without violating the 10-month time limit for rate hearings under the Act. Bearing in mind that significant new studies of postal cost behavior almost never can be started, completed, and defended within the allotted portion of a 10-month rate case, the Postal Service’s view of the Act means that only it has any realistic chance to develop analytical models for ratemaking, since only it may possess the required data between omnibus rate cases.

The Postal Service insists that if it is to have due process during rate cases, it must be able to withhold basic financial data between rate cases. Otherwise, it argues, it would lose what it believes to