

case, it recoils at the thought that this tool might apply to an interim-year CRA. It warns:

as the Commission's staff confirmed, the new requirements are designed to allow the Commission to completely re-run the most recent, updated CRA model based on new or alternative inputs, and thereby give the Commission the capacity to develop anticipatory rate recommendations without any formal request or policy guidance from the Postal Service.

Substantive Comments at 10.

If the very staff that are replicating, validating, and otherwise manipulating the fundamental financial and operating information sought in this rulemaking are inevitably forming impressions and conclusions from their investigations, what is to prevent those impressions and conclusions from influencing the outcome before anyone has had their opportunity to persuade? No safeguards exist which would prevent such contamination of the hearing process, and it is difficult to imagine how such safeguards could be implemented in a practical manner. The Governors are entitled to a recommended decision free from any hint of extra-record determinations, and which gives appropriate recognition to the respective statutory roles of the Governors, the Board of Governors, and the Commission.

Id. at 17 [footnote omitted].

It is important to understand what the Postal Service is expressing fear of in these comments. The CRA is the Postal Service's routine financial report that is most relevant to ratemaking because it estimates subclass attribution costs, volumes, and revenues each year. It has been examined by outside auditors, and undergone multiple layers of review by the Postal Service's staff to the point that it is accepted as the most reliable data that it can provide to postal management to guide it in matters of classification and pricing. In the Postal Service view, if the outside world understands little or nothing about how it obtains these estimates, it will not misinterpret them, or be biased, or be misled regarding the relative responsibility of the various subclasses for the Postal Service's financial condition. The Postal Service evidently believes that the more accurate an understanding the outside world gains about the data and estimation methods that produce the CRA results, the more likely that it will be misled, biased, and prejudiced by them.

As the OCA commented, knowledge is a lot less likely than ignorance to produce bias. OCA Comments at 2–3. This is especially true where competence to form an opinion is presumed to require a great deal of industry-specific statistical and economic expertise. GCA points out in its comments that Congress's primary

objective in creating the Postal Rate Commission was to ensure that rates would be based on these kinds of expertise. GCA Comments at 4. Congress intended that issues of cost attribution, in particular, should be resolved by application of the Commission's expertise. *National Association of Greeting Card Publishers v. USPS*, 462 U.S. 810, 823 (1983). The Commission, however, is in a difficult position when it comes to maintaining that expertise.

As explained previously, the Postal Service controls all of the data, has almost exclusive access to field experts, and employs almost all of the analytical resources that are devoted to estimating postal cost, volume, and revenue behavior. For these reasons, when it comes to cost attribution, the Postal Service's cost attribution engine (the CRA) is the starting point for all analysis. Its most current CRA apparently is based on two major new studies of attributable carrier costs and facilities costs. Each study is a "black box" as far as the outside world is concerned, and is likely to remain so for several more years without an updated Periodic Reporting Rule. By imposing a 10-month time limit on the Commission for processing rate requests, the Postal Reorganization Act assumes that the Commission can process such requests with extreme expedition and still base its recommendations on a thorough understanding of all aspects of the record.

Once an omnibus rate request is filed, there isn't sufficient time in the 10-month statutory period to search and resolve issues relating to the mechanics of producing the CRA, and still address the major analytical and policy issues that are raised by a Postal Service omnibus rate request. The mechanics of producing the CRA are generic, background issues, that do not ordinarily depend on a particular time period, a particular revenue requirement, or a particular set of proposed rates. Therefore, documenting this aspect of the CRA should not compromise the right of participants to litigate rate-case-specific issues when a specific rate request is filed. Replication is the primary tool for understanding the technical aspects of estimates found in the CRA.¹³

¹³ The Commission has restricted the Periodic Reporting Rule to documentation of the mechanics by which the CRA is produced (datasets, processing programs, spreadsheets, etc.) rather than justifications of theories or policies that are likely to be contested in a rate case. In this respect, the documentation performs a function similar to an informal technical conference held off the record during a rate case. The purpose of such conferences is to gain an understanding of what was done mechanically to implement a particular analysis,

The Postal Service suggests that at the technical conference held on March 11, 2003, the Commission's staff somehow signaled its intention to use the documentation required by the Periodic Reporting Rule to develop "anticipatory rate recommendations" outside of a rate case. Substantive Comments at 10. The Commission does not contemplate going to the considerable trouble to develop rate recommendations that have nothing to do with a particular rate case. This isn't because there would be anything wrong with it. It is because such an exercise wouldn't be very informative if it were not tied to a particular rate request, revenue requirement, and time period.¹⁴

With respect to any tendency of replicating the CRA to produce bias in the replicating party, the salient point is that the Periodic Reporting Rule requires only input datasets and the processing steps applied to those datasets—the minimum documentation that will disclose the mechanical process by which CRA estimates were obtained. The data used and the processing steps applied are facts that speak for themselves, devoid of argument, interpretation, spin, or nuance. Making facts available for analysis risks bias only to the extent that the facts made available are selective, or one-sided. If facts disclosed in the documentation of an interim-year CRA were to resemble facts included in the Base Year documentation in a future rate case, the Postal Service's opponents might be able to argue that the Commission was swayed by having an early look at the Postal Service's version of the facts without any alternative version to counterbalance it. If this is a potential source of bias, it works for, not against the Postal Service.

and avoids questions touching on the merits of the analysis. Restricted in this way, the Periodic Reporting Rule strikes a reasonable balance among the Postal Service's right to "surprise" intervenors with every aspect of its support of proposed rates, the intervenors' rights to comprehend the Postal Service's rate request and respond to it with alternatives in the brief time allotted, and the Commission's need to enter a rate case already understanding how the Postal Service prepares its routine financial reports. If the Postal Service believes that its reasons for making changes to the CRA should be explained in order to eliminate misconceptions, it is free to provide them. The Commission does not require such explanations, in order to minimize the burden of complying with the rule.

¹⁴ The Commission disagrees that the rule seeks enough documentation to make it feasible to develop anticipatory rate recommendations. For example, two categories of inputs that would be needed to develop a realistic alternative rate schedule (if a test year and revenue requirement were known) are the appropriate DRI inflation factors, and details about the magnitude and timing of the Postal Service's cost reduction programs. Neither is required by the Periodic Reporting Rule.