

The Postal Service has suggested that it should not have to disclose a set of facts similar to those that it might present in a future rate case without having an opportunity to persuade the outside world of the merits of the procedures that those facts reflect. *Id.* at 17. If the Postal Service would like to add to the documentation that is required by the rule a discussion of the merits of the procedures that it has used to produce an interim-year CRA, nothing in the rule would prevent it from doing so. Any bias that might result from this opportunity to persuade should benefit the Postal Service.

The Postal Service's main argument, however, is that if the Commission has an opportunity to view facts in an interim year that might resemble those that will be submitted in a future rate case, it will have more time to form opinions about them than it would otherwise have. *Ibid.* Contrary to conventional wisdom, the Postal Service apparently believes that the less time a staff has to think about a subject, the less likely its thoughts are to be biased. As the Greeting Card Publishers point out, the solution to bias in exercising a judicial function is not to obtain less knowledge, but to exercise the appropriate caution in the use of the knowledge obtained. GCA Comments at 2–3, n.1.

For example, the Postal Service expresses concern that an analyst that obtains an input dataset from the Postal Service could model it differently than the Postal Service modeled it. But this is not a reason to withhold the data. If an intervenor were to model the data differently, it would not affect the Postal Service unless the intervenor subsequently presented it for consideration in a formal hearing. In this way, the right of the Postal Service to debate or oppose it before it had an impact on recommended rates would be preserved. By the same token, if the Commission were to model data differently, it would not affect the Postal Service unless the Commission subsequently asked the participants in a formal hearing to comment on it in a Notice of Inquiry. The Commission could not affirmatively rely on any such model unless it were presented on the record. Here too, the right of the Postal Service to debate it or oppose it before it had an impact on recommended rates would be preserved.¹⁵

¹⁵ In its Substantive Comments, at 12–13, the Postal Service mentions two instances in the Commission's 30 year history in which a reviewing court remanded a Commission Recommended Decision on the ground that it had employed an analytical technique without observing the full range of procedural safeguards required in formal

IV. The Legal Basis for the Periodic Reporting Rule

A. The Periodic Reporting Requirement Is Authorized by the Act

In discussing the legal basis for the Periodic Reporting Rule, the Postal Service argues that the Commission does not need the information required by the rule to perform any statutory function. It also argues that it conflicts with its right to decide when to file a rate case under § 3622, its implied right to decide when to reveal its evidence and argument in support of its proposed rates, and its implied right to have all analytical activity concerning postal rates confined to the 10-month litigation window allowed by the Act for rate cases. Substantive Comments at 15–17, 36.

The Postal Service asserts that the Postal Reorganization Act does not authorize the Commission to adopt periodic reporting requirements. It recognizes that § 3603 of the Act authorizes the Commission to “promulgate rules and regulations and establish procedures * * * and take any other action they deem necessary and proper to carry out their functions and obligations * * *.” In its view, the Commission's only role under the Act is to process a Postal Service request for changes in rates within the 10 months allotted by the Act. Outside of that 10-month litigation window, it reasons, the Postal Rate Commission has no functions or obligations, and therefore § 3603 does not imply any authority to carry them out. *Id.* at 8–14.

The Scope of § 3603 Is as Broad as Its Language

The Postal Service argues that the scope of § 3603 is much narrower than its broad language suggests. It contends that the following language in § 3624(b) of the Act, which deals with the conduct of formal Commission proceedings, “specifies the type of rules that were contemplated” by § 3603. It quotes:

In order to conduct its proceedings with utmost expedition consistent with procedural fairness to the parties, the Commission may (without limitation) adopt rules which provide for—

- (1) The advance submission of written direct testimony;
- (2) The conduct of prehearing conferences to define issues, and for other purposes to insure orderly and expeditious proceedings;

hearings. This frequency of remand is probably among the lowest of any Federal regulatory body, and does not offer legitimate grounds for presuming that the Commission will ignore procedural safeguards that accompany formal hearings.

(3) Discovery both from the Postal Service and the parties to the proceedings;

(4) Limitation of testimony; and the conduct of entire proceedings off the record with the consent of the parties.

It then comments:

[b]y the very nature of the examples enumerated, the Commission's rulemaking authority is shown to be simply that necessary to implement its limited statutory role: The efficient administration of a hearing after it has been appropriately initiated under sections 3622, and 3623. The rules now contemplated go far beyond this intended role.

Id. at 14.

In drawing this narrowing inference, the Postal Service makes no effort to account for the broad wording of § 3603, which authorizes the Commission not only to “promulgate rules” but to “establish procedures” and to “take any other action” it deems to be necessary and proper to carry out its functions and obligations. If § 3603 were meant to authorize only rules governing formal hearings, one wonders why Congress saw any need to include § 3603 in the Act, since the Act already specifies the kind of rules the Commission may adopt for that purpose in § 3624(b). The Postal Service's interpretation of § 3603 renders the section entirely unnecessary. It is a basic canon of statutory construction that statutory language will not be construed in such a way as to make another section of the same statute “superfluous, void, or insignificant.”¹⁶

Section 3603 Extends to Commission Initiated Proceedings Under §§ 3623 and 3622

By authorizing the Commission not just to promulgate rules, but to “establish procedures” and to “take any other action” it is clear that § 3603 authorizes the Commission to do more than promulgate rules of only one narrow type. In characterizing the Commission's authority as “the efficient administration of a hearing after it has been appropriately initiated” the Postal Service glosses over the fact that Chapter 36 of the Act gives the Commission discretion to initiate classification hearings under § 3623, and complaint cases under § 3662. The Act authorizes the Commission to exercise its discretion and judgment as to whether there are good grounds for initiating such hearings. In doing so, the Act contemplates that the Commission will have access to relevant, reasonably

¹⁶ *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1285 (D.C. Cir. 1983) quoting 2A C. Sands, *Statutes and Statutory Construction* § 46.06 (4th ed. 1973).