

training and staff support for thorough analysis," to place too much reliance on lobbyists. House Report, at 18. Consequently, *it attempted to remove undue price discrimination and political influence by placing ratesetting in the hands of a Rate Commission, composed of "professional economists, trained rate analysts, and the like," id., at 5, independent of Postal service management, id., at 13, and subject only to Congress' "broad policy guidelines," id., at 12.*

462 U.S. 810, at 822. [Emphasis added.] In its comment, the Greeting Card Association points out that—

Since [the Commission's] duties centrally include acting as an expert decisionmaker on matters arising under ch. 36 of title 39, it seems clear that obtaining the information covered by this docket regularly and systematically, in usable form, and in a timeframe allowing it to be given mature consideration is a legitimate need.

GCA Comments at 4. UPS agrees. See UPS Comments at 2,4.

Similarly, the Commission is obligated to afford intervenors meaningful due process in its rate hearings. Making the information required by the rule available to prospective intervenors will help them comprehend the prodigious amount of technical information presented in an omnibus rate request, and to develop and present alternative estimation techniques, within the short time allotted by statute. As the OCA points out, "providing due process to all participants within a ten-month time period is 'a compelling and legitimate Commission function.'" OCA Reply Comments at 3–4 [footnote omitted].

The information required by the rule might not "make or break" the achievement of the legitimate statutory goals of maintaining the Commission's ratemaking expertise, and affording prospective intervenors due process, but it will greatly improve the odds. That is all that is required to come within the authority of § 3603.

Illegitimate Purposes Hypothesized for the Periodic Reporting Rule

Having identified the legitimate statutory functions that the Periodic Reporting Rule facilitates, it is helpful to identify what functions the rule is not designed to serve. The Postal Service suggests that the purpose of the rule is to allow the Commission to conduct "day-to-day monitoring of [the Postal Service's] detailed operations and finances" [Substantive Comments at 7], "auditing of the Postal Service's books on a regular basis" [Id. at 11] and obtain "oversight," "data collection," and "investigatory powers." Id. at 19.

As UPS points out, the updated Periodic Reporting Rule does none of

these things. UPS Comments at 1. The rule does not require the Postal Service to provide any backup data with which to audit its books of account, any documentation of its data collection activities, or any data that would make possible daily monitoring of operations or finances. No oversight is involved, and no investigation is involved. Nor does it involve any hearings, or any comments from the public. The rule simply requires the Postal Service to file some of the routinely prepared documentation that support its periodic financial reports that bear on ratemaking.¹⁸

In discussing the legal basis for the Periodic Reporting Rule, the Postal Service argues that the rule conflicts with its right to decide when to file a rate case under § 3622, and what it considers to be two corollary rights—the right to decide when to reveal its evidence and argument in support of its proposed rates, and the right to have all analytical activity concerning postal rates confined to the 10-month litigation window allowed by the Act. Substantive Comments at 15–17, 36.

The Rule Does Not Affect the Timing of Rate Filings

When the Postal Service files a rate request under § 3622 of the Act, a complex set of legal consequences attach. These include the right to receive a recommended decision on proposed rates from the Commission, the right to receive it within ten months, and a complex set of options that the Governors have to respond to the Commission's recommended decision, including acceptance, rejection, modification, and the right to appeal that recommended decision. The public's right to intervene, to present evidence, and to appeal the result, also attach when the Postal Service files a rate request.

No legal consequences that affect the Postal Service or the rates that it may charge attach to the filing of information under the Periodic Reporting Rule. When it complies with the rule, the Postal Service has no further legal obligation to do anything. Its

¹⁸ It is worth noting that when outside auditors review the Postal Service's CRA, they perform a "process audit" that is designed only to confirm that the processing steps that are intended to be performed are in fact performed. It does not involve a conceptual audit that addresses the suitability of the estimation methods used or the reasonableness of the results obtained. Review of the CRA by the Office of the Inspector General, or by GAO, are generally not conceptual audits either. There does not appear to be any provision in the current regulatory regime for regular conceptual audits of the Postal Service's cost, volume, and revenue estimates like the ones that the Commission performs intermittently during omnibus rate cases.

complaints, therefore, can only be based on the effects that the rule might have, if any, on the way that its request is handled during a rate case.¹⁹

Section 410(c)(4) Is Not Relevant to the Rule

Section 410(c)(4) of the Act exempts "[i]nformation prepared for use in connection with proceedings under Chapter 36 of this title" from mandatory disclosure under the Freedom of Information Act. The Postal Service argues § 410(c)(4) protects information required by the Periodic Reporting Rule from public disclosure not just through Freedom of Information Act requests, but through any other mechanism, including Commission rules adopted under § 3603 of the Act. Id. at 26.

Whether § 410(c)(4) provides a general shield of protection for materials prepared for Chapter 36 litigation is not a question that needs to be decided as part of this rulemaking. There is a crucial distinction between standard financial reports that are routinely prepared for the benefit of management, and financial reports that have been adapted to support a specific proposed revenue requirement and a specific set of proposed new rates, to be implemented in a specific test period. The former class of reports are normal business records not prepared primarily for litigation. The Periodic Reporting Rule requires that some standard business records be provided. The principal effect of providing them is to allow the interested public to learn enough about the way that the Postal Service routinely estimates costs and revenues to comprehend an enormously complex omnibus rate filing in the narrow litigation window provided. Only the latter class of reports are prepared primarily for litigation purposes. The Periodic Reporting Rule

¹⁹ The existing Periodic Reporting Rule contains a long list of routinely gathered financial and operating information that is prepared for the benefit of postal management, but also gives the Commission and the interested public useful background information that will help them process a rate case when it is eventually filed. Almost any of the categories of information covered by the rule are the kind that could be expected to eventually be discussed and analyzed in a rate case. For example, for decades, the rule has included accounting period financial reports, reports on revenue, pieces, and weight for groups of mail (RPW), various management plans, and the CRA and the Cost Segments and Components report, with partial documentation. For decades the rationale for including these reports in the rule was that they help the Commission and the affected public understand the kind of information, but not the specific information, that will be used to support rates when a case is eventually filed. This helps the Commission process a rate case more efficiently and more fairly. This is the principal effect that the rule has on the way that a Postal Service rate request is handled.