POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2016–2; Order No. 2793]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is noticing a recent filing requesting that the Commission initiate an informal rulemaking proceeding to consider changes to analytical principles relating to periodic reports (Proposal One Through Three). The Commission will consider Proposals One and Two at this time. Proposal Three will be held in abeyance. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* January 20, 2016. *Reply Comments are due:* March 25, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On October 8, 2015, the United Parcel Service, Inc. (UPS) filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate a rulemaking proceeding in order to consider changes to how the Postal Service accounts for the costs of competitive products in its periodic reports.[1] Proposals One, Two, and Three are attached to the Petition along with a report created by Dr. Kevin Neels (Dr. Neels), an economic consultant, which supports each Proposal. UPS concurrently filed a non-public library reference with its Petition.[2]

UPS explains that the Postal Accountability and Enhancement Act freed the Postal Service from certain rate-making conditions so that it could better compete with private companies in the parcel markets. Petition at 3. UPS notes, however, that when regulated entities such as the Postal Service are allowed to compete with private companies, ''the regulated entity has a natural incentive to leverage the monopoly revenues it is making from sales to its captive customers (here, those purchasing letter mail services) to finance the competitive ventures.'' *Id.* at 2. UPS contends that in exchange for new pricing ''freedoms,'' and in recognition of the Postal Service's ''inherent incentive'' to expand its competitive ventures at the expense of its captive customers, Congress mandated that ''the Postal Service could not subsidize its expansion into competitive parcel delivery markets with revenues it enjoys from the products it sells pursuant to the letter monopoly.'' *Id.* at 3, 4. UPS cites 39 U.S.C. 3633, which prohibits the subsidization of competitive products by market dominant products; requires that each competitive product cover its own attributable costs; and mandates that competitive products collectively cover an appropriate share of the Postal Service's institutional costs.[3]

UPS states that it is filing this Petition after an ''exhaustive analysis'' of the Postal Service's cost methodologies. *Id.* at 5. UPS asserts that its analysis reveals that the Postal Service is ''failing to ensure that its competitive products business is recovering all costs fairly attributable to that business'' and that the Postal Service ''is not accounting fully for the true costs'' of its competitive products. *Id.* at 5–6. UPS states that its analysis shows the Postal Service is misclassifying a significant amount of variable costs;[4] therefore, ''competitive products are not bearing the full scope of the variable costs attributable to them.'' *Id.* at 7. Accordingly, UPS presents three proposals to change the Postal Service's current costing methodologies. *Id.* at 1.

In Proposal One, UPS recommends that the Postal Service incorporate all the variable costs, including the inframarginal costs attributable to individual products.[5] In Proposal Two, UPS recommends that certain costs currently identified as fixed be reclassified as fully or partially variable and subsequently attributed to individual products. Petition, Proposal Two at 1. In Proposal Three, UPS recommends that the Commission increase the ''appropriate share'' pursuant to 39 U.S.C. 3633(a)(3), from 5.5 percent[6] to 24.6 percent, which is the competitive products' 3-year trailing average of the share of total attributable costs. Petition, Proposal Three at 1.

II. Summary of Proposals

A. Proposal One

In Proposal One, UPS explains that in order to attribute costs to products, the Postal Service first estimates the marginal cost of various cost segments. Petition, Proposal One at 1–2. UPS notes, however, that the Postal Service's cost attribution method ''effectively assumes that the cost associated with adding the last unit of mail is identical to the cost associated with adding each and every unit of mail.'' *Id.* at 4 (emphasis omitted).

UPS argues that this is only a reasonable assumption when marginal costs are consistent throughout all volume levels. *Id.* UPS claims that when marginal costs decline as the level of volume increases, the cost associated with the last mail piece is lower than the marginal cost associated with producing each preceding piece. *Id.* Thus, it argues that by attributing only the marginal cost of the last piece of mail, the Postal Service is failing to attribute the higher marginal costs associated with producing every preceding piece in those cost components that exhibit declining marginal costs. *Id.*

UPS recommends that the Postal Service include the inframarginal costs of individual products in its calculation of the costs attributable to those products. Petition at 1. It argues that distribution keys, which are currently used to calculate ''volume variable'' costs, can be used to distribute inframarginal costs to products. *Id.* Proposal One at 19, 20. UPS states that

[1] Petition of United Parcel Service, Inc. for the Initiation of Proceedings to Make Changes to Postal Service Costing Methodologies, October 8, 2015 (Petition).

[2] Notice of Filing Library Reference UPS–RM2016–2/LR–NP1, October 8, 2015.

[3] *Id.* at 4–5. *See also* 39 U.S.C. 3633(a).

[4] The term variable cost is a relatively new term for Commission proceedings. It is not the same as volume variable cost, which is based on marginal cost. Each piece of mail that enters the postal system imposes an additional cost. As mail pieces continue to be entered into the postal system, these additional costs increase in total. Thus these costs vary with volume. The cost imposed on the postal system by the last piece entered into the system is the marginal cost. The additional costs imposed by previous pieces entered into the postal system are called inframarginal costs. The sum of all of these additional costs, including the cost of the last piece, is called variable costs.

[5] Petition, Proposal One at 1. UPS refers to the marginal costs associated with every preceding piece of mail as ''inframarginal costs.'' *Id.*

[6] *See* 39 CFR 3015.7(c). The Commission most recently retained this share at 5.5 percent. *See generally,* Docket No. RM2012–3, Order Reviewing Competitive Products' Appropriate Share Contribution to Institutional Costs, August 23, 2012 (Order No. 1449).

''[a]ttributing inframarginal costs to products using the existing distribution keys is just as reliable as attributing marginal costs to products using those distribution keys. *Id.* at 20.

B. Proposal Two

In Proposal Two, UPS contends that the Postal Service has a ''systematic tendency to misclassify costs as fixed.'' Petition at 10. Such fixed costs, which are a major component of institutional costs, are not attributed to specific products.[7] UPS asserts that the Postal Service's misclassification of certain costs as fixed allows it to ''largely ignore'' such costs when setting the prices for its competitive products. Petition at 10. Based on UPS's belief that fixed and institutional costs are ''borne disproportionately'' by market dominant products, it concludes that the Postal Service's systemic misclassification of costs as fixed results in the improper subsidization of competitive products by market dominant products, in violation of 39 U.S.C. 3633(a)(1). *Id.* Proposal Two at 5.

Relying on Dr. Neels' analysis, UPS identifies 37 cost pools that it believes should be reclassified as wholly or partially variable. *Id.* at 1. UPS contends that Dr. Neels' analysis reveals that over $3 billion in costs have been misclassified as fixed, and thus, have not been properly attributed to products. *Id.* at 8. UPS requests that the Commission attribute these reclassified costs to specific products based on their respective shares of overall attributable costs in the prior fiscal year. *Id.* at 10. Using this methodology, UPS estimates that over $700 million of costs have not been properly attributed to the Postal Service's competitive products. *Id.* at 8.

C. Proposal Three

Unlike Proposals One and Two, Proposal Three does not involve issues related to the proper attribution of variable costs to the Postal Service's products. Rather, in Proposal Three, UPS requests that the Commission reconsider the ''appropriate share'' of institutional costs that must be covered by competitive products. Petition, Proposal Three at 1. Pursuant to 39 U.S.C. 3633(b), the Commission is required to review the appropriate share requirement at least every 5 years to determine if the percentage should be ''retained in its current form, modified, or eliminated.'' The current appropriate share, set by the Commission in CY 2012, is 5.5 percent. *See* Order 1449 at 27.

In light of competitive products' volume growth in recent years, along with the Postal Service's significant investments in its competitive business, UPS believes that the current appropriate share percentage does not reflect current market conditions. Petition, Proposal Three at 6–14. To ensure that the Postal Service competes fairly, UPS asserts that the appropriate share percentage should be set at a level that approximates the fixed costs that a private competitor must bear. *Id.* at 14. Accordingly, UPS recommends that the appropriate share percentage be set at 24.6 percent. *Id.* UPS states that this percentage is equal to the average of the ''previous three years of attributable cost shares'' for competitive products. *Id.* UPS also encourages the Commission to adopt a mechanism that would adjust the appropriate share percentage each year in order to account for the fluctuation of postal cost and market realities. *Id.* at 14–15.

III. Initial Commission Action

The Commission establishes Docket No. RM2016–2 for consideration of Proposals One and Two as raised by the Petition. The Commission holds Proposal Three in abeyance until it has completed its review of Proposals One and Two. As discussed above, Proposals One and Two both relate to the proper attribution of all variable costs to the Postal Service's products. Given the interrelatedness of these two proposals, the Commission finds that it is appropriate to consider them together in this docket. However, as UPS itself discussed in its Petition, if Proposals One and Two are adopted, unattributed costs will decline from $34.2 billion in FY 2014 to approximately $17 billion. Petition at 11–12.

Given the potentially significant impact that Proposals One and Two could have on the size of the Postal Service's unattributed costs, and given that Proposal Three relates to the portion of these costs that should be covered by competitive products, the Commission finds that consideration of Proposal Three should be delayed until the impact of Proposals One and Two are known. Both the Commission and the mailing community will benefit from having this information before evaluating UPS's proposed adjustments to the appropriate share requirement. Further, the Commission must allocate its finite resources across multiple priorities. Simultaneously considering all three proposals may result in the Commission having insufficient resources to bring to bear on other critical responsibilities.

Additional information concerning the Petition may be accessed via the Commission's Web site at *http://www.prc.gov.* Interested persons may submit comments on Proposals One and Two in the Petition no later than January 20, 2016. Reply comments are due no later than March 25, 2016. Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2016–2 for consideration of Proposals One and Two from the Petition of United Parcel Service, Inc. for the Initiation of Proceedings to Make Changes to Postal Service Costing Methodologies, filed October 8, 2015.
2. Consideration of Proposal Three from the Petition is held in abeyance until the Commission has completed its review of Proposals One and Two.
3. Comments are due no later than January 20, 2016. Reply comments are due no later than March 25, 2016.
4. Pursuant to 39 U.S.C. 505, the Commission appoints Kenneth E. Richardson to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.
5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2015–28127 Filed 11–4–15; 8:45 am]

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[7] *Id.* Proposal Two at 2. 39 U.S.C. 3633(a)(3) requires that competitive products cover an ''appropriate share'' of institutional costs.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2012–0434; FRL–9936–61–Region 6]

Approval and Promulgation of State Implementation Plans, Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP) for Louisiana. These rule revisions are the 2007 General Revisions, and 2008–2010