

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

STATUTORY REVIEW OF THE SYSTEM FOR
REGULATING RATES AND CLASSES FOR
MARKET-DOMINANT PRODUCTS

Docket No. RM2017-3

**OPPOSITION OF THE UNITED STATES POSTAL SERVICE TO
JOINT MOTION TO HOLD PROCEEDING IN ABEYANCE**

(March 30, 2020)

A number of mailing-industry associations have again requested a delay in the long-awaited resolution of this proceeding.¹ They seek indefinite deferral of further proceedings until the national emergency concerning the COVID-19 outbreak has abated. The movants assert that deferral is warranted lest “further proceedings in this docket, including potential appeals of a final order,” divert critical stakeholder resources, and in order for “any Commission order in this proceeding [to] reflect the significant societal, economic, legal, and regulatory changes that are likely to result from the current emergency.” Joint Motion to Hold Proceeding in Abeyance, PRC Docket No. RM2017-3 (Mar. 23, 2020), at 1. While current circumstances are doubtless having significant impacts upon stakeholder operations and causing uncertainty about the future, just as they have for the Postal Service, the situation only highlights the urgent need to conclude this proceeding and fix the broken ratemaking system. It certainly does not justify an additional delay.

The first asserted rationale does not pass muster, given the current state of this proceeding. No comment deadlines are pending; all that remains is Commission

¹ See *generally* Order No. 5454, Order Denying Petition for Initiation of Public Inquiry and for Suspension of Statutory Review, PRC Docket No. RM2017-3 (Mar. 17, 2020).

consideration. In that regard, there is no need for any stakeholder to devote resources to this proceeding for the foreseeable future. If and when a final rule is issued, it will determine only the amount of maximum rate authority available at the discretion of the Postal Service's Governors in a future rate change; it would not, of itself, result in a rate adjustment. It is thus likely that a final rule – even one issued soon – would not have any material effect on stakeholders until after the expiration of the current national emergency.² As for judicial review, an elective petition would not demand substantial commitment of resources until briefing is scheduled, and it is entirely possible that a court would take its own and stakeholders' contingency operations into account in any scheduling order. In short, stakeholders' concerns that continuation of this proceeding will divert resources from responding to the ongoing emergency are unfounded.³

The second rationale is likewise not a basis to further delay the conclusion of this proceeding. More than two years ago, in Order No. 4257, the Commission established that the unprecedented acceleration in volume decline – exceeding the Postal Service's substantial efforts at cost control amid statutory constraints and the rigid, inflation-based price cap – led the current ratemaking system to fail to achieve the statutory criteria. The current national emergency can only heighten, not diminish, the salience of that conclusion and the urgency of reform.⁴ The current ratemaking system has already

² And if not, that is a matter that could theoretically be addressed closer to the relevant time, when the prevailing circumstances will be better known.

³ In this regard, this proceeding's stance differs materially from Docket No. RM2020-4, in which a comment deadline is currently pending in an early stage of the proceeding.

⁴ To the extent that the mailing industry might assert that the national emergency would make above-inflation price increases all the more onerous, that would likewise merely accentuate arguments that the industry has already made. It is difficult to see how delay would alter any of the essential facts or do anything more than allow the parties a fourth opportunity to make the same arguments, while allowing a broken system to lurch onward for another year or more. Moreover, as noted repeatedly in the Postal

contributed to a decade of heavy financial losses, defaulted obligations, deferred investments, and inadequate liquidity following one major recession, from which the Postal Service still has not fully recovered. It must not be allowed to persist into a second crisis. The impacts of the current emergency on the Postal Service are a reason to accelerate resolution of this proceeding, not to delay it further.⁵

Therefore, the Commission must move forward and reform the system. If subsequent circumstances reveal inadequacies in that new system, Section 3622(d)(3) permits the Commission to conduct a fresh review at any time. As in so much else, the one constant in the postal market is change. It is always possible that future events could render a current position untenable: the history of the current ratemaking system is a prime example. But the mere prospect of such future events cannot serve as a basis for regulatory inaction.⁶ The Commission should complete its work pursuant to Section 3622(d)(3).⁷

Service's earlier submissions in this proceeding, it is the statutory responsibility of the Governors, not the Commission, to determine how postal pricing should balance the Postal Service's financial needs against broader economic and market developments. The degree of statutory flexibility for the Governors to make such business and policy judgments at the appropriate time – including whether any rate authority can be banked instead of having to be used immediately – is precisely what the Commission must determine here.

⁵ The Postal Service's "customers, the mailing industry, and the public generally," see Joint Motion at 5, will likewise suffer if a cash shortage forces the Postal Service to curtail operations.

⁶ The Commission is well aware that the prospect of legislative action, see Joint Motion at 4, is not a valid basis to avoid a statutory responsibility. See Reply Comments of the United States Postal Service in Response to Order No. 5337, PRC Docket No. RM2017-3 (Mar. 4, 2020), at 11-14 (citing *In re Aiken County*, 725 F.3d 255, 260 (D.C. Cir. 2013), and Commission orders).

⁷ In this regard as well, the motion here – concerning a statutorily obligated proceeding of vital importance for the sustainability of the mail system, a subject of years of regulatory and policy concern – is distinguishable from the wholly discretionary inquiry in Docket No. RM2020-4.

Respectfully submitted,

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