

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Michael Kubayanda, Chairman;  
Ashley E. Poling, Vice Chairwoman;  
Mark Acton;  
Ann C. Fisher; and  
Robert G. Taub

Performance Incentive Mechanism

Docket No. RM2021-2

ORDER GRANTING MOTION TO HOLD PROCEEDING IN ABEYANCE

(Issued July 2, 2021)

On June 24, 2021, the Postal Service filed a motion requesting that the Commission hold this proceeding in abeyance until resolution of a consolidated appeal from a separate Commission docket currently pending before the United States Court of Appeals for the District of Columbia Circuit.<sup>1</sup> The appeal in question concerns Docket No. RM2017-3, in which the Commission adopted final rules pursuant to 39 U.S.C. § 3622(d)(3) implementing a modified ratemaking system that provided the Postal Service with discrete sources of above-consumer price index (CPI) rate authority to address specific deficiencies that the Commission identified in the former ratemaking

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<sup>1</sup> Motion of the United States Postal Service to Hold Proceeding in Abeyance, June 24, 2021 (Motion).

system.<sup>2</sup> As part of that docket, the Commission also considered implementing a performance incentive mechanism but ultimately decided to defer the matter for further consideration in this docket. See Order No. 5763 at 132-180. The Commission issued an Advance Notice of Proposed Rulemaking in this docket on January 15, 2021.<sup>3</sup> Comments are currently due on July 14, 2021, and reply comments on August 13, 2021.<sup>4</sup>

Referring to the appeal of Order No. 5763, the Postal Service asserts that “it is clear that the propriety and amount of the supplemental rate authority, and thus the foundation for any further performance-based incentives, is hotly contested.” Motion at 1. As a result, the Postal Service states that “commenters lack a clear foundation on which to construct arguments and proposals for additional rate authority.” *Id.* The Postal Service thus argues that “[i]t would . . . be a much more efficient use of Commission, Postal Service, and other stakeholder resources to wait until after the judicial-review proceeding is resolved before discussing how any further pricing authority should be structured.” *Id.* at 2. The Postal Service’s motion is supported by the Public Representative and the Association for Postal Commerce, who both echo the same concerns.<sup>5</sup> No party filed an opposition to the Motion.

Having considered the foregoing, the Commission finds good cause to hold this proceeding in abeyance pending the outcome of appellate proceedings with respect to Order No. 5763. Holding this proceeding in abeyance does not prejudice any party. Therefore, the Motion is granted.

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<sup>2</sup> See Docket No. RM2017-3, Order Adopting Final Rules for the System of Regulating Rates and Classes for Market Dominant Products, November 30, 2020 (Order No. 5763); *Nat’l Postal Policy Council et al. v. Postal Regulatory Comm’n*, Case Nos. 17-1276, 20-1505, 20-1510, 20-1521 (D.C. Cir. 2021).

<sup>3</sup> Advance Notice of Proposed Rulemaking Regarding Performance Incentive Mechanism, January 15, 2021 (Order No. 5816).

<sup>4</sup> Order Extending Time to File Comments and Reply Comments, April 7, 2021, at 3 (Order No. 5862).

<sup>5</sup> Response of the Public Representative in Support of Postal Service Motion, June 28, 2021; Statement of the Association for Postal Commerce in Support of USPS Motion for Abeyance, June 25, 2021.

*It is ordered:*

1. The Motion of the United States Postal Service to Hold Proceeding in Abeyance, filed June 24, 2021, is granted.
2. This proceeding shall be held in abeyance until further notice.

By the Commission.

Erica A. Barker  
Secretary