

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

PUBLIC INQUIRY ON CHANGES ASSOCIATED
WITH THE DELIVERING FOR AMERICA PLAN

Docket No. PI2023-4

**UNITED STATES POSTAL SERVICE'S
MOTION FOR RECONSIDERATION OF ORDER NO. 6488**
(May 5, 2023)

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May 5, 2023

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Pursuant to 39 C.F.R. § 3010.165, the United States Postal Service (“Postal Service”) hereby respectfully moves the Postal Regulatory Commission (“Commission”) to reconsider Order No. 6488 and withdraw Docket No. PI2023-4 (“Docket”). Order No. 6488 purports to initiate a forum to explore the inner workings of the Postal Service’s strategic plan, *Delivering for America* (“Plan”), but fails to identify a statutory basis that would establish the Commission’s authority for this unprecedented level of review and oversight. No such basis was identified because no such basis exists.

Congress did not intend to give the Commission unfettered oversight into every aspect of the postal system or unfettered access into the deliberations and strategic thinking of Postal Service management and the Board of Governors. Instead, Congress provided discrete areas where Commission oversight is authorized. This does not include plenary-type review of all of the strategic initiatives in the Plan before concrete and specific plans have materialized and been sanctioned by the Board of Governors. Rather, through established mechanisms for Commission review, Congress has constructed a regulatory structure that offers ample opportunity for the Commission and the public to seek information and provide input as the Postal Service’s plans to implement strategic initiatives crystallize. We have regularly sought Commission review (and, when necessary, approval) where statutorily required, as we have implemented the strategies found in the Plan, and we will continue to do so where appropriate.

The Commission lacks authority to initiate this Docket. The Postal Service, therefore, respectfully requests that the Commission reconsider and withdraw Order No. 6488, as it is based on a material error of law.¹

I. INTRODUCTION AND BACKGROUND

On March 23, 2021, the Postal Service published the *Delivering for America* plan,² a ten-year strategic plan articulating a broad guiding vision with high-level future initiatives to address the Postal Service's long-standing financial, service, and operational challenges. The Plan is designed to achieve two fundamental goals: service excellence, defined as meeting or exceeding 95 percent on time delivery across all product categories, and financial sustainability, by enabling the Postal Service to achieve break-even performance over the next ten years while making the necessary investments in people and infrastructure.

As implementation of the Plan progresses, the Postal Service has kept the public generally apprised of our efforts and anticipated next steps. For example, the Postal Service has made information readily available to the public through our annual progress reports,³ and updates to the Plan website.⁴ We continue to engage with our unions, the mailing industry, and relevant congressional offices. And we regularly share

¹ We further understand that the filing of this motion makes Order No 6488 not final for the purposes of 39 U.S.C. § 3663, until final disposition of this motion. 39 C.F.R. § 3010.165(c).

² United States Postal Service, *Delivering for America: Our Vision and Ten-Year Plan to Achieve Financial Sustainability and Service Excellence*, Mar. 23, 2021, https://about.usps.com/what/strategic-plans/delivering-for-america/assets/USPS_Delivering-For-America.pdf (Plan).

³ United States Postal Service, *Delivering for America: First-Year Progress Report*, Apr. 7, 2022, <https://about.usps.com/what/strategic-plans/delivering-for-america/assets/usps-dfa-one-year-report.pdf>; United States Postal Service, *Delivering for America: Second-Year Progress Report*, Apr. 27, 2023, <https://about.usps.com/what/strategic-plans/delivering-for-america/assets/usps-dfa-two-year-report.pdf>.

⁴ <https://about.usps.com/what/strategic-plans/delivering-for-america>.

updates with Congress, the Administration, and the Commission via reports in accordance with Section 207 of the Postal Service Reform Act. These reports are also publicly available.

We have consistently sought public comment and Commission guidance, or approval, as specific details of an initiative, or a part thereof, have been developed and internally vetted, prior to implementation. We have solicited public comment through the formal rulemaking process regarding proposed changes to First-Class Mail and Periodicals service standards,⁵ and have initiated, or participated in, multiple dockets before the Commission, all of which have resulted in extensive public proceedings. For example, the Postal Service has initiated three requests for the Commission to issue an advisory opinion regarding proposals related to initiatives in the Plan;⁶ has proposed price changes in compliance with statutory and regulatory requirements in furtherance of the Plan's goal to exercise judicious implementation of our pricing authorities;⁷ has submitted a new pricing strategy for package products for review;⁸ and has engaged in

⁵ Service Standards for Market-Dominant Mail Products, 86 Fed. Reg. 21675 (proposed Apr. 23, 2021); Revised Service Standards for Market-Dominant Mail Products, 86 Fed. Reg. 43941 (final rule Aug. 11, 2021).

⁶ United States Postal Service Request for an Advisory Opinion on Changes in the Nature of Postal Services, PRC Docket No. N2021-1 (Apr. 21, 2021) (First-Class Mail and Periodicals Service Standard Changes, 2021); United States Postal Service Request for an Advisory Opinion on Changes in the Nature of Postal Services, PRC Docket No. N2021-2 (Jun. 17, 2021) (First-Class Package Service (FCPS) Service Standard Changes, 2021); United States Postal Service's Request for an Advisory Opinion on Changes in the Nature of Postal Services, PRC Docket No. N2022-1 (Mar. 21, 2022) (Retail Ground and Parcel Select Ground Service Standard Changes, 2022).

⁷ USPS Notice of Time-Limited Changes in Rates of General Applicability for Competitive Products, PRC Docket No. CP2021-127 (Aug. 10, 2021); United States Postal Service Notice of Market-Dominant Price Change, PRC Docket No. R2021-2 (May 28, 2021); United States Postal Service Notice of Market-Dominant Price Change, PRC Docket No. R2022-1 (Apr. 6, 2022); United States Postal Service Notice of Market-Dominant Price Change, PRC Docket No. R2023-1 (Oct. 7, 2022); United States Postal Service Notice of Market-Dominant Price Change, PRC Docket No. R2023-2 (Apr. 10, 2023).

⁸ USPS Notice of Time-Limited Changes in Rates of General Applicability for Competitive Products, PRC Docket No. CP2021-127 (Aug. 10, 2021).

extensive information sharing as part of the Commission’s annual compliance review of the Postal Service’s annual performance plans, which must be consistent with our strategic plan.⁹ In all of these proceedings, the Commission has solicited comments from the general public and stakeholders have actively sought to provide feedback and request information.

Despite the various avenues through which stakeholders have the ability to provide their feedback and seek information from the Postal Service, on April 20, 2023, the Commission established Docket No. PI2023-4, purportedly in response to stakeholders that have expressed “concerns regarding a lack of forum to explore the [Plan’s] impacts.”¹⁰ While acknowledging both its prior decision that an advisory opinion on the entirety of the Plan was not warranted and the Postal Service’s ongoing efforts to ensure transparency,¹¹ Order No. 6488 establishes the instant proceeding “to provide a forum to garner information about the proposed changes to the network and the impact of recent changes” in the “interests of transparency.”¹² The Commission plans to review “issues related to” the Plan and “anticipates that it will issue information requests to gather information about the proposed changes to the network and the impact of recent changes to the postal network,” and notes that “[i]nterested parties also may propose questions by filing motions seeking information requests following the procedures listed at 39 CFR part 3010.170(e).”¹³

⁹ See 39 U.S.C. §§ 2802(c), 2803, 3653(d).

¹⁰ Order No. 6488, Notice and Order Initiating Public Inquiry Associated with the Delivering for America Plan, PRC Docket No. PI2023-4 (Apr. 20, 2023), at 3.

¹¹ *Id.* at 4.

¹² *Id.*

¹³ *Id.*

II. ARGUMENT

A. The Commission Lacks Statutory Authority to Open this Docket

The Commission, like any agency, must act within the bounds of its statutory authority, regardless of how significant the matter it seeks to address.¹⁴ Agencies are likely to have an expansive view of their mission,¹⁵ but they cannot enlarge the scope of their authority,¹⁶ and must not frustrate the underlying congressional policy.¹⁷

Order No. 6488 creates a “forum” to delve into “issues related to the Postal Service’s Delivering for America Strategic Plan” without identifying a legal basis that allows the Commission to conduct such a far-flung inquiry. The Order has no limiting principles grounded in the Commission’s authority, and instead permits the Commission, as well as any interested party, to inquire into any and all aspects of the Plan, and hence—given the breadth of the Plan—upon the Postal Service’s strategic initiatives generally. This includes matters that the Commission has previously recognized are outside of its jurisdiction. For example, in its order dismissing Docket No. C2022-1, the Commission acknowledged that aspects of the Plan are inappropriate for its review, including workforce-related initiatives such as reducing non-career staff turnover, improving the hiring process, and building and retaining a diverse pipeline of candidates; as well as plans to seek legislative changes related to employee health-care costs and to request that the Administration change its method for apportioning

¹⁴ *E.g.*, *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 125 (2000); *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 321 (2014); *INS v. Chadha*, 462 U.S. 919, 953 n. 16 (1983) (explaining agency action “is always subject to check by the terms of the legislation that authorized it”).

¹⁵ *Hi-Craft Clothing Co. v. NLRB*, 660 F.2d 910, 916 (3d Cir.1981).

¹⁶ *See Gen. Eng’g, Inc. v. NLRB*, 341 F.2d 367, 374 (9th Cir.1965).

¹⁷ *See NLRB v. Brown*, 380 U.S. 278, 291 (1965); *Util. Air Regulatory Grp.*, 573 U.S. at 321.

government contributions to specific employee annuities.¹⁸ Order No. 6488 does not acknowledge the Commission’s conclusion that these topics are beyond its oversight authority, let alone explain why these topics are somehow appropriate to explore through a Public Inquiry (“PI”) docket.

Furthermore, the Commission’s Order does not identify a specific statutory provision authorizing a wholesale public inquiry into the Plan. As explained below, no such provision exists. The Commission lacks any specific grant of authority to conduct this Docket, and it cannot rely on its more general grants of authority, specifically under 39 U.S.C. §§ 503 and 504(f), to do so. Nor could the Commission rely on the mere absence of an express statutory prohibition to provide it with a “blank check” to act on any subject matter that might conceivably advance a legislative purpose.¹⁹

1. Order No. 6488’s Failure to Identify Any Legal Authority for the Proceeding Contravenes Commission Regulations and Past Practice

As required by the Commission’s own rules,²⁰ the Commission must find that the subject of this Docket—a plenary examination of the Postal Service’s strategic plan—is

¹⁸ Order No. 6067, Order Granting Motion to Dismiss Complaint, PRC Docket No. C2022-1 (Dec. 17, 2021), at 28-29.

¹⁹ *Merck & Co. v. U.S. Dep’t of Health & Human Servs.*, 385 F. Supp. 3d 81, 93-93 (D.D.C. 2019), *aff’d*, 962 F.3d 531 (D.C. Cir. 2020); *e.g.*, *Ry. Labor Executives’ Ass’n v. Nat’l Mediation Bd.*, 29 F.3d 655, 659, 671 (D.C. Cir. 1994) (were courts to *presume* a delegation of power absent an express *withholding* of such power, agencies would enjoy virtually limitless hegemony) (emphasis in original); *Ethyl Corp. v. EPA*, 51 F.3d 1053, 1060 (D.C. Cir. 1995) (refusing to presume a delegation of power merely because Congress has not expressly withheld such power and reasoning that affording deference “any time a statute does not expressly *negate* the existence of a claimed administrative power (*i.e.* when the statute is not written in ‘thou shalt not’ terms), is both flatly unfaithful to the principles of administrative law ... and refuted by precedent”) (emphasis in original); *Motion Picture Ass’n of Am., Inc. v. FCC*, 309 F.3d 796, 805 (D.C. Cir. 2002) (rejecting as “entirely untenable” the agency’s position that the adoption of a regulation “is permissible because Congress did not expressly foreclose the possibility”); *Am. Bus Ass’n v. Slater*, 231 F.3d 1, 9 (D.C. Cir. 2000) (“Hence if Congress wishes to deny an agency a given power, it need not expressly restrict the agency; it is enough for Congress simply to decline to delegate power.”).

²⁰ See 39 C.F.R. § 3010.200 (requiring that proceedings “seeking information to inform future Commission action” be conducted “in conformance with the notice and comment procedures of this

properly before the Commission,²¹ and the Notice and Order must “[r]efer to the legal authority under which the proceeding is to be conducted.”²² However, Order No. 6488 contains no finding as to the propriety of initiating a proceeding to conduct a sweeping review into “all initiatives related to the Plan,” nor any indication that the Commission even considered the issue. Nor does Order No. 6488 identify any legal authority for this proceeding as required by 39 C.F.R. § 3010.151(b)(3). This rule serves an important purpose to ensure that the Commission stays within the bounds of its statutory authority, under which the Commission has an important, but also limited, role within the postal system. Yet the Commission has, in contravention of its own rules, initiated a PI docket of unprecedented scope and open-endedness without finding that such matters are properly before it and without identifying the legal authority for the proceeding.

The failure to include a clear source of authority is particularly noteworthy because it so dramatically deviates from the Commission’s practice in every other PI docket the Commission has initiated to date. Over the last 15 years, the Commission has carefully and unambiguously articulated the statutory or regulatory basis for its authority to establish PI proceedings.²³ Here, by contrast, the Commission has not

subpart”); *id.* § 3010.201(a) (explaining the Commission may initiate a proceeding on its own motion by issuing a notice and order pursuant to 39 C.F.R. § 3010.151).

²¹ *Id.* § 3010.151(a) (“Upon a finding that a matter is properly before the Commission, the Commission shall issue a notice and order initiating the proceeding to consider that matter”).

²² *Id.* § 3010.151(b)(3).

²³ Examples over the past few years include Order No. 6479, Notice and Order Initiating Public Inquiry on the Classification of the First-Class Package Service Product, PRC Docket No. PI2023-2 (Apr. 7, 2023), at 2, 12-13 (citing 39 U.S.C. § 3642(a) and 3642(b)) and Order No. 6471, Notice and Order Initiating Proceeding to Review Postal Service Cost Attribution, PRC Docket No. PI2023-2 (Mar. 31, 2023), at 1 (citing 39 U.S.C. §§ 3633(a) and 3652(a)(1)). A full list of examples may be found in the Appendix A to this motion.

identified any legal basis for this Docket. Not only is this an unexplained departure from past practice, it leads inexorably to the conclusion that no such basis exists.

2. Order No. 6488 Is Well Outside the Bounds of the Commission's Authority to Review Reports and Plans Under Chapter 28 of Title 39

The Postal Service's strategic plans are governed by 39 U.S.C. § 2802. Section 2802 requires that strategic plans contain "general goals and objectives," "a description of how the goals and objectives are to be achieved," and "a description of the program evaluations used in establishing or revising general goals and objectives," among other requirements.²⁴ Nowhere in Section 2802 does Congress mention the Commission, let alone grant it any authority, oversight or otherwise.

Instead, regarding strategic initiatives generally, Congress crafted a deliberate scheme: (1) the Postal Service is at liberty to develop strategic plans;²⁵ (2) the Postal Service must publish an annual performance plan and an annual performance report;²⁶ (3) that performance plan and performance report must to a substantial degree reflect (or at least be "consistent with") the strategic plan in place at the time of its issuance;²⁷ and (4) the Commission has a role in evaluating whether the Postal Service met the goals established by the annual performance plan and performance report, and it may in the course of that evaluation issue recommendations "related to the protection or promotion of public policy objectives" in Title 39.²⁸

²⁴ 39 U.S.C. § 2802(a).

²⁵ *Id.* § 2802.

²⁶ *Id.* §§ 2803 (performance plan), 2804 (performance report).

²⁷ *Id.* § 2802(c).

²⁸ *Id.* § 3653(d).

Through the plain language of 39 U.S.C. § 3653(d), the statute clearly limits the Commission's role in reviewing plans and reports to those created by the Postal Service under Sections 2803 and 2804 only.²⁹ Congress could have easily extended the Commission's purview to include review of all of the Postal Service's actions under Chapter 28, or it could have included Section 2802 in the list of reports subject to Commission review, but it did not do so. As such, the Commission's oversight of these matters under Section 3653(d) does not extend to the Plan.

Indeed, this scheme evinces a clear intention: that the Commission should assess the annual performance plan and performance report, which themselves incorporate the strategic plan's policy objectives, and measure the Postal Service's progress in meeting them. The Commission understands this intention and has recognized that its authority under 39 U.S.C. §§ 2803 and 3653(d) is limited.³⁰ At most, the Commission's authority over strategic plans, viewed in their entirety, is closely circumscribed and extends only so far as necessary to ensure "consistency" with the annual performance plan and performance report within the course of the Commission's annual compliance review. Gauging the "consistency" of the Postal Service's annual performance plans with our strategic plans, and establishing a PI docket into *every* activity "associated with" *all initiatives* for any given strategic plan, is, to put it mildly, significantly different. One is "a function and obligation" enumerated by Title 39; the other is not.

²⁹ *Id.*

³⁰ See Order No. 6067 at 19 n. 24.

Congress has spoken even more directly on the issue of Commission oversight with respect to the *Delivering for America* plan. On April 6, 2022, nearly a year after the Plan was published, Congress passed the Postal Service Reform Act (“PSRA”). Congress was well aware of the Plan as it was crafting the PSRA and included provisions within the law related to oversight of the Plan. Specifically, Section 207 of the PSRA requires the Postal Service to provide reports to Congress, the Administration, and the Commission every six months for five years on topics tracking aspects of the Plan. The House Committee on Oversight and Reform explained that these reports will help explain what changes are being made and their impact on the Postal Service.³¹ This indicates Congress’ preference to monitor the implementation of the Plan through ongoing reporting, and not sweeping, before-the-fact regulatory review or inquiry by the Commission. Congress did give the Commission certain discrete responsibilities in the PSRA,³² but none of these new responsibilities are related to oversight of the Plan. If Congress had wanted to deviate from the current statutory structure for review of Chapter 28 plans and provide the Commission with an expanded role, it had the opportunity and could have done so, but it did not.³³ The Commission cannot arrogate that authority for itself now in opposition to the structure chosen by Congress.

³¹ See H.R. Rep. No. 117-89 at 21 (2022).

³² *E.g.*, Postal Service Reform Act of 2022, Pub. L. No. 117-108, tit. I, § 103(a)(1), 1136 Stat. 1127, 1142 (2022) (codifying 39 U.S.C. § 3705, which gives the Commission new oversight authority regarding property and nonpostal services); *id.* at tit. II, § 201(a), 1145 (codifying 39 U.S.C. § 3692, which provides the Commission set certain requirements for providing information related to the service performance dashboard and may issue recommendations about the Postal Service’s measurement systems related to the dashboard).

³³ *E.g.*, *Russello v. United States*, 464 U.S. 16, 23 (1983) (detailing that Congress knows how to legislate on a subject when it wishes).

3. The Commission Cannot Rely on Its General Authority Under 39 U.S.C. § 503 as a Legal Basis to Conduct a Forward-Looking Inquiry into the Plan

The grant of general authority through 39 U.S.C. § 503, which allows the Commission to “take any other action they deem necessary and proper to carry out their functions and obligations to the Government of the United States and the people” as prescribed under Title 39, does not authorize this docket. This authority is broad, but is not without limits.³⁴ “Necessary and proper” provisions, like the one found in Section 503, do not supply an agency “carte blanche authority” to justify action on any matter relating to its enabling statute.³⁵ Were that the case, an agency would be able to greatly, and improperly, expand its regulatory reach.³⁶

Instead, this general authority must be exercised within the bounds set by Congress, which has carefully specified those matters in which the Commission has jurisdiction.³⁷ The Commission’s actions, therefore, must be rooted in one of its functions or obligations enumerated by Title 39.³⁸ Put differently, an action by the Commission cannot be viewed as necessary to “carry out [its] functions and obligations

³⁴ *Motion Picture Ass’n of Am.*, 309 F.3d at 804.

³⁵ See *Citizens to Save Spencer Cty. v. EPA*, 600 F.2d 844, 873 (D.C. Cir. 1979); see also *Nat’l Mining Ass’n v. U.S. Dep’t of Interior*, 105 F.3d 691, 694 (D.C. Cir. 1997); *Am. Petroleum Inst. v. EPA*, 52 F.3d 1113, 1119-20 (D.C. Cir. 1995).

³⁶ *Motion Picture Ass’n of Am.*, 309 F.3d at 806; *Gulf Fishermens Ass’n v. Nat’l Marine Fisheries Serv.*, 968 F.3d 454, 465 (5th Cir. 2020), *as revised* (Aug. 4, 2020) (finding that the grant of authority to promulgate “necessary” regulations cannot expand the scope of the provisions the agency is tasked with “carry[ing] out”).

³⁷ See *Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81, 92 (2002) (“Our previous decisions, *Mourning* included, do not authorize agencies to contravene Congress[s] will ...”); *Aid Ass’n for Lutherans v. USPS*, 321 F.3d 1166, 1174 (D.C. Cir. 2003) (“An agency construction of a statute cannot survive judicial review if a contested regulation reflects an action that exceeds the agency’s authority.”).

³⁸ See *Governors of USPS v. U.S. Postal Rate Comm’n*, 654 F.2d 108, 116 (D.C. Cir. 1981) (analyzing the scope of the Postal Rate Commission’s authority under 39 U.S.C. § 3603, which was later recodified as 39 U.S.C. § 503).

to the Government of the United States and the people” if it does not otherwise have the authority to take the action at issue.³⁹

Section 503 does not allow the Commission to open whole new horizons on the regulatory landscape, as contemplated by Order No. 6488. The establishment of Docket No. PI2023-4—with the stated intention of “providing[ing] a forum to garner information regarding proposed changes related to the Postal Service’s Strategic Plan”— fails to identify which of the Commission’s functions or obligations under Title 39 the Docket is designed to further. Moreover, the Commission’s functions and obligations are not coextensive with the entirety of Title 39. For instance, 39 U.S.C. § 101, in declaring that “[t]he United States Postal Service shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people,” does not assign specific oversight responsibilities to the Commission. Neither does 39 U.S.C. § 404(a), which vests the Postal Service with “specific powers.” Rather, various provisions of Title 39 vest the Commission with specific grants of authority to review discrete postal matters, including Section 404(d) and Chapter 36.

The Commission has consistently acknowledged that a valid exercise of its authority under Section 503 must be tied to, and limited by, a specific substantive provision of Title 39. While instances in which the Commission has directly opined on the scope of its authority under 39 U.S.C. § 503 are sparse, it has frequently invoked this authority in Rulemaking Dockets. In those matters, Section 503 invariably appears

³⁹ See *Motion Picture Ass’n of Am.*, 309 F.3d at 806.

alongside a specific statutory basis of authority.⁴⁰ This is no mistake, as one cannot justify an action as “necessary and proper” to carrying out a statutory directive if that statutory directive does not exist. Here, Title 39 contains no affirmative authority for the Commission to prospectively and preemptively evaluate all of the strategic initiatives contained within the Plan. Nor does it authorize the Commission to conduct inquiries simply to further aspirational goals, such as those loose considerations found Order No. 6488. The Commission does not identify any authority for this Docket; instead, it simply “finds it beneficial to the interest of transparency” to initiate an inquiry to explore the Postal Service’s strategic plan.⁴¹ However, a simple invocation of “transparency” does not serve to authorize Commission action. As such, it is not “necessary” or “proper” for the Commission to initiate this PI docket to carry out a nonexistent provision.

Therefore, the Commission cannot circumvent the statutory limits on its authority set out by Congress and expand the scope of its responsibilities solely through reliance on the general rulemaking authority found in Section 503.⁴² Agencies cannot rely on general rulemaking authority plus statutory silence to presume congressional

⁴⁰ See, e.g., Order No. 5763, Order Adopting Final Rules for the System of Regulating Rates and Classes for Market Dominant Products, PRC Docket No. RM2017-3 (Nov. 30, 2020), at 32 n. 36; Order No. 5510, Order Adopting Final Rules Regarding Rates Incentives for Market Dominant Products, PRC Docket No. RM2020-5 (May 15, 2020), at 13; Order No. 6221, Order Adopting Final Rules Regarding Section 601, PRC Docket No. RM2020-4 (July 8, 2022), at 16; Order No. 6275, Notice of Proposed Rulemaking to Revise Periodic Reporting of Service Performance, PRC Docket No. RM2022-7 (Sept. 21, 2022), at 1. *C.f.* Order No. 6141, Notice of Proposed Rulemaking to Amend Rules Regarding Notices, Motions, and Information Requests, PRC Docket No. RM2022-4 (Apr. 5, 2022), at 1. This Order (and others like it) are issued solely pursuant to 39 U.S.C. § 503, but in those orders the Commission is seeking to amend its own rules of practice and procedure. Unlike this Docket, the authority in those matters rested in the first clause of 39 U.S.C. § 503 (“The Postal Regulatory Commission shall promulgate rules and regulations and establish procedures, subject to chapters 5 and 7 of title 5”), and not the second clause, which contains the “necessary and proper” rulemaking authority. As such, these orders do not contradict or undermine the proposition relevant here that the “necessary and proper” clause in 39 U.S.C. § 503 must be tied to one of the Commission’s functions or obligations under Title 39.

⁴¹ Order No. 6488 at 4.

⁴² *Gulf Fishermens Ass’n*, 968 F.3d at 465; *Air All. Houston v. EPA*, 906 F.3d 1049, 1061 (D.C. Cir. 2018).

authorization.⁴³ It is well understood that Congress does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not hide elephants in mouseholes.⁴⁴ Thus, the Commission’s general authority in 39 U.S.C. § 503 cannot overcome the absence of an underlying statutory function to which the rulemaking pertains. Moreover, relying on Section 503 as the sole source of statutory authority to conduct this Docket would allow the Commission to vitiate Congress’s clear intent that the Board of Governors has ultimate policy control over the Postal Service and would ignore the numerous limits Congress placed on the Commission’s oversight authority. In the absence of any further enumerated authority to review, or “provide forums” regarding, the Postal Service’s strategic plans, the Commission cannot seek to fit such a large elephant into such a tiny mousehole.

4. The Commission’s Authority Under 39 U.S.C. § 504(f) Does Not Provide a Separate Grant of Authority to Inquire into the Plan

Similarly, 39 U.S.C. § 504(f) does not provide the Commission with a separate grant of authority to broadly investigate any postal matter contained within the Plan. Section 504(f) permits the Commissioners to “receive evidence” and specifically authorizes the Chairman or certain designees or appointees to subpoena or order the production of information “with respect to any proceeding conducted by the Commission under [Title 39]” or “to be used to prepare a report under this title.” Here, however, Docket No. PI2023-4 is not designed to allow the Commission to “prepare a report” required by Title 39. In addition, and as discussed above, this docket is not related to

⁴³ *Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208, 223 (2009) (statutory silence may be interpreted as limiting agency discretion); *Merck*, 385 F. Supp. 3d at 92-93.

⁴⁴ *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001).

“any proceedings conducted by the Commission under [Title 39].” Section 504 authorizes the Commission to acquire information in support of proceedings that the Commission is otherwise authorized to undertake and does not create a standalone basis to initiate a docket. An attempt to use the Commission’s subpoena power as a legal basis to initiate Docket No. PI2023-4 would be mistaken.

The Commission’s subpoena power was intended to strengthen its existing, and discrete, oversight authority; it was not intended to create a new, separate well of authority from which the Commission could draw.⁴⁵ The Commission first received this authority in the Postal Accountability and Enhancement Act (“PAEA”). The PAEA expanded the Commission’s authority by adjusting its role in the ratemaking process and granting it additional oversight in other areas. Congress also provided the Commission with subpoena power to ensure that the Commission would have the tools necessary to exercise its newly expanded oversight authority. But, as noted above, while Congress expanded the Commission’s authority, it only gave the Commission certain jurisdiction over the Postal Service, and there is no basis to conclude that Section 504(f) was meant to give the Commission free reign to enlarge the scope of its oversight of the Postal Service generally.

B. The Commission Does Not Have Authority to Conduct Review into Pre-Decisional Initiatives Contained Within the Plan

The Plan is just that: a plan. It effects no changes and is merely a broad statement of strategy and potential initiatives that the Postal Service expects to pursue over the next decade to realize that strategy. It is a forward-looking document that is

⁴⁵ See Postal Regulatory Commission, *Section 701 Report: Analysis of the Postal Accountability and Enhancement Act of 2006*, 9, 12 (Sept. 22, 2011).

subject to regular evaluation, updating, and revision by the Postal Service.⁴⁶ It does not contain specific operational details or specific changes to our products or services, nor was it intended to. Those details come over time as the Postal Service explores, develops, and finalizes these initiatives. While the Postal Service can appreciate that the strategic framework set forth in the Plan naturally may pique curiosity, it is a serious overreach of the Commission's authority to subject the Postal Service's sensitive, pre-decisional deliberations to invasive inquiries at the time and in the manner of the Commission's choosing.

Nevertheless, by seeking to create a "forum to garner information regarding proposed changes related to" the Plan, the Commission has, with Order No. 6488, arrogated to itself an authority vested exclusively in the Postal Service. In so doing, the Commission improperly interposes itself, as well as the public, into the Postal Service's long-range planning responsibility and strips management (with oversight of the Board of Governors) of the ability to determine when and how to bring new initiatives or changes to the public.

Congress did not give the Commission free reign to intrude as far as it wishes into Postal Service matters.⁴⁷ Nothing in the text or structure of Title 39 conveys Congress's intent to permit the Commission to have unrestrained oversight authority into the core policy deliberations and decisions that are contained within a strategic plan. Rather, in enacting the Postal Reorganization Act, Congress endeavored to provide the Postal Service with freedom to act in a business-like manner.⁴⁸ It explained

⁴⁶ Order No. 6067 at 18.

⁴⁷ See *Mail Order Ass'n of Am. v. USPS*, 2 F.3d 408, 424 (D.C. Cir. 1993).

⁴⁸ H.R. Rep. No. 91-1104 at 5 (1970).

that postal management must be given the “unfettered authority and freedom that has been denied for years to maintain and operate an efficient service,”⁴⁹ and intended to minimize external intrusions on the Postal Service’s managerial independence.⁵⁰

Therefore, Congress gave the Board of Governors the exclusive authority to make policy and management decisions governing the Postal Service.⁵¹

Congress also gave the Commission an important, but limited, role in regulation. Unlike some administrative agencies, the Commission does not have broad public policy oversight of the Postal Service.⁵² Instead, the Commission’s role, with respect to strategic matters, is “not to trench on the management authority of the Postal Service.”⁵³ In crafting this delicate balance between regulator and operator, Congress did not give the Commission any direct authority to inquire into the Postal Service’s deliberations regarding our strategic plans.

⁴⁹ S. Rep. No. 912 at 2 (1970); H.R. Rep. No. 91–1104 at 5.

⁵⁰ *LeMay v. USPS*, 450 F.3d 797, 800 (8th Cir. 2006) (citing *Buchanan v. USPS*, 508 F.2d 259, 262 (5th Cir. 1975)); *Pa. v. DeJoy*, 490 F. Supp. 3d 833, 860 (E.D. Pa. 2020), *order clarified*, No. CV 20-4096, 2020 WL 6580462 (E.D. Pa. Oct. 9, 2020).

⁵¹ *Mail Order Ass’n of Am.*, 2 F.3d at 424; *Newsweek, Inc. v. USPS*, 663 F.2d 1186, 1204-05 (2d Cir. 1981), *aff’d and remanded sub nom. Nat’l Ass’n of Greeting Card Publishers v. USPS*, 462 U.S. 810 (1983) (“We stress that the Board, and not the PRC, is responsible for making policy decisions for the Postal Service.”); S. Rep. No. 912 at 5.

⁵² *Governors*, 654 F.2d at 116-17 (finding the Postal Rate Commission to be a different type of agency from the Federal Communications Commission, Civil Aeronautics Board, and Interstate Commerce Commission not because of any specific differences in their “statutory charters” but rather due to “a statutory gestalt according to which the regulatory agency’s control over and involvement in the affairs of the regulated industry are much more pervasive and sweeping than are the involvement and control exercised by the Postal Rate Commission”). While the scope of the Commission’s role was expanded in the PAEA, the reasoning in the *Governors* decision is still illuminating. The PAEA did not expand the Commission’s jurisdiction or change the statutory scheme so meaningfully as to provide the Commission with pervasive and sweeping involvement into all aspects of the Postal Service.

⁵³ *Mail Order Ass’n of Am.*, 2 F.3d at 423 (citing *Governors*, 654 F.2d at 115, and *Newsweek*, 663 F.2d at 1205); see S. Rep. No. 912 at 5 (Board of Governors has exclusive authority to make policy and management decisions governing the Postal Service).

The Commission itself has long recognized this limitation and has conceded that the PAEA gave the Postal Service the “primary responsibility for both long-range planning and day-to-day operations.”⁵⁴ The Commission has further explained that “[w]hereas the Commission has primary responsibility for evaluating compliance with title 39, the Postal Service has primary responsibility for developing postal operations that meet that requirement. As a practical matter, the Commission may direct the Postal Service to comply with the requirements of title 39 (which may require the Postal Service to make operational changes), but it is normally within the purview of the Postal Service to develop the specific operational changes necessary to achieve that goal.”⁵⁵ If Order No. 6488 is not withdrawn, this premature review has the potential to interfere with the deliberative process of the Postal Service and intrude upon the prerogatives of the Postal Service, and our Governors.⁵⁶

Likewise, Order No. 6488 subverts the well-established processes for sharing information with our unions, found in their respective collective bargaining agreements. In general, the Postal Service has contractual obligations to share certain information with the unions, for example if a proposed change is related to the wages, hours, and working conditions of the union’s members. The information-sharing process is bargained for and sets forth specific requirements, including scope, timing (i.e., how far in advance of the change that the Postal Service must provide information), conducting

⁵⁴ Order No. 1463, Order Dismissing Complaint, PRC Docket No. C2012-2 (Sept. 10, 2012), at 9.

⁵⁵ Order No. 2512, Order Granting Motion for Reconsideration and Granting Motion to Dismiss, PRC Docket No. C2013-10 (May 27, 2015), at 17 n. 30.

⁵⁶ The Association for Postal Commerce has already issued a motion requesting extensive information that is pre-decisional and that substantially intrudes into Postal Service affairs, among other issues. Motion of the Association for Postal Commerce for Issuance of Information Request, PRC Docket No. PI2023-4 (Apr. 28, 2023).

meetings, providing supporting documentation, and allowing the union to file grievances in some circumstances. Creating an outside process by which information can be shared, as Order No. 6488 has done, has the potential to create inconsistent obligations and could have a negative impact on our relationship with our collective bargaining agents and the employees they represent. For example, the Postal Service may be required to provide notice 60 days prior to implementing a change under a collective bargaining agreement, but may need to preemptively disclose (less specific) information years before any potential change may take place under Order No. 6488.

There is no requirement that the Postal Service seek input in the early stages of our strategic or operational planning and the Postal Service generally has discretion concerning the timing for bringing matters before the Commission where it is necessary and appropriate to do so. As such, we have historically sought public and Commission input on such matters once an initiative has been explored, developed, and internally vetted to the point that it constitutes a sufficiently concrete proposal. This reasonable approach helps ensure that we can put forward an appropriately developed request, that has been properly considered by the Board of Governors and postal management, while also enabling the Commission and the public to provide meaningful input at the appropriate time. The Commission should not probe into potential future deliberations that may occur between Postal Service management and the Governors regarding potential future initiatives in the Plan. These deliberations themselves do not implicate the Commission or its regulatory responsibilities.

Order No. 6488 not only exposes the Postal Service's internal deliberations to public participation and scrutiny; it also invites an inefficient and inappropriate misuse of

the Postal Service's and the Commission's resources. As explained above, many of the Plan's initiatives have not been fully fleshed out at this stage and are evolving and therefore subject to change. Others will never be subject to any requirement for Commission review. There is simply no logic, or legal authority, that supports requiring the Postal Service and Commission to expend considerable resources to respond to inquiries about initiatives that have either already been vetted by the Commission, are at a preliminary stage, may never come to fruition, or may never require Commission review. Moreover, using a PI docket to essentially audit the Postal Service's internal planning and deliberations is not only unjustifiable, but could disincentivize transparency if our efforts to share strategic information at early stages simply generates intrusive and inappropriate oversight by the Commission. In contrast, various venues for Commission review, described at length below, properly balance the Postal Service's interest in managerial freedom with the public's interest in being heard before any specific initiatives are implemented.

C. Inquiry into Specific Initiatives Within the Plan Are Properly Resolved Through Other Available Procedures

The Commission has recognized that aspects of the Plan are “generally more appropriately considered” under different Commission procedures, and that conducting the appropriate review avoids imposing unnecessary requirements that are inconsistent with other provisions of Title 39.⁵⁷ Rather than using a PI docket to delve into all aspects of the Plan, there are many specific aspects of the Plan that are subject to other types of regulatory review by the Commission and that allow for public participation

⁵⁷ Order No. 6067 at 29.

when such initiatives are ripe for review. Since 1997, when the Postal Service was first required to issue strategic plans under 39 U.S.C. § 2802, the Commission has relied on these other avenues to explore and evaluate decisions reached under all prior strategic plans; it has never opened a PI docket of this kind before. In fact, in Order No. 6067, dismissing Docket No. C2022-1, the Commission acknowledged that while there was not a “wide-ranging review of the entire 10-Year Strategic Plan” that the Complainants sought, the available proceedings “allow for public participation and input and independent Commission review of various other aspects of the 10-Year Strategic Plan falling within the scope of the Commission’s jurisdiction.”⁵⁸ The Commission has provided no explanation for why these other proceedings are suddenly insufficient.

As acknowledged by the Commission in Order No. 6488,⁵⁹ the Postal Service has been actively engaged in using the established mechanisms for Commission review, as appropriate under our managerial discretion and after we have determined that an initiative in the Plan is sufficiently developed to initiate review. These proceedings have provided multiple opportunities for public input, which has resulted in robust engagement. We will continue to bring certain initiatives contemplated by the Plan for review when they fall within the Commission’s jurisdiction under the statute, thereby providing the public with additional opportunities to provide input and seek information, and will continue to engage directly with our unions, the mailing industry, and other stakeholders.

⁵⁸ *Id.* at 29 n. 47.

⁵⁹ Order No. 6488 at 2.

So far, the Postal Service sought an advisory opinion from the Commission regarding the change to service standards for First-Class Mail, for First-Class Package Service, and for Retail Ground and Parcel Select Ground.⁶⁰ Following extensive public proceedings, the Commission issued a comprehensive advisory opinion on each of these proposed changes.⁶¹ Additionally, the Plan announces the Postal Service's intention to "apply judicious and prudent strategies to optimize revenues and contribution within applicable regulatory constraints."⁶² The Postal Service has already acted on this intention, filing requests with the Commission to adopt new market-dominant prices based on the new rules set forth following the 10-year Review.⁶³ The Postal Service has similarly acted on its intention to (per the Plan) "review our pricing strategy with regard to our package products" by proposing "time-limited changes in rates of general applicability for competitive products," including Priority Mail Express, Priority Mail, First-Class Package Service, Parcel Select, Retail Ground, and Parcel Return Service;⁶⁴ creating the USPS Connect Local service;⁶⁵ and reorganizing USPS Retail Ground, Parcel Select Ground, and First-Class Package Service to create USPS Ground Advantage, an enhanced and expanded product offering.⁶⁶ The Commission

⁶⁰ *Supra* note 6.

⁶¹ See Advisory Opinion on Service Changes Associated with First-Class Mail and Periodicals, PRC Docket No. N2021-1 (July 20, 2021); Advisory Opinion on the Service Standard Changes Associated with First-Class Package Service, PRC Docket No. N2021-2 (Sept. 29, 2021).

⁶² Plan at 38.

⁶³ *Supra* note 7.

⁶⁴ See Plan at 39; Notice of Time-Limited Changes in Rates of General Applicability for Competitive Products, PRC Docket No. CP2021-127 (Aug. 10, 2021).

⁶⁵ USPS Notice of Changes in Rates of General Applicability for Competitive Products, PRC Docket No. CP2022-22 (Nov. 10, 2021).

⁶⁶ See Order 5937, Order on Price Adjustments for First-Class Mail, USPS Marketing Mail, Periodicals, Package Services, and Special Services Products and Related Mail Classification Changes, PRC Docket

favorably reviewed all of these pricing initiatives.⁶⁷ Further, there are several other methods by which the Postal Service can notify the Commission of actions that may impact postal services and related service performance and that allow for public participation. In that regard, in its Annual Compliance Determinations (“ACDs”), the Commission has routinely required the Postal Service to file updates and reports on various aspects of the Postal Service’s service performance including updates related to national and local initiatives that the Postal Service will implement to improve service performance. For instance, in several recent ACDs, the Commission instructed the Postal Service to provide, among other things, for each of the Postal Service’s Divisions:

a detailed plan to improve on-time service performance results for First-Class Mail that describes each planned initiative, the problem that the planned initiative is expected to remediate, the estimated timeframe for implementation and completion of each planned initiative, and the KPI(s) used to measure and evaluate progress towards completion.⁶⁸

No. R2021-2 (July 19, 2021); Order 5973, Order Approving Price Adjustments for Domestic Competitive Products, PRC Docket No. CP2021-127 (Aug. 31, 2021); Order No. 6071, Order Approving Changes in Rates of General Applicability for Domestic Competitive Products, PRC Docket No. CP2022-22 (Dec. 21, 2021); USPS Request to Remove USPS Retail Ground from the Competitive Product List, PRC Docket No. MC2022-81 (July 13, 2022); USPS Notice of Changes in Classifications of General Applicability for Competitive Products, PRC Docket No. MC2022-82 (July 13, 2022). USPS Notice of Changes in Rates and Classifications of General Applicability for First-Class Package Service, PRC Docket No. CP2023-113 (Feb. 10, 2023).

⁶⁷ See Order 5937, Order on Price Adjustments for First-Class Mail, USPS Marketing Mail, Periodicals, Package Services, and Special Services Products and Related Mail Classification Changes, PRC Docket No. R2021-2 (July 19, 2021); Order 5973, Order Approving Price Adjustments for Domestic Competitive Products, PRC Docket No. CP2021-127 (Aug. 31, 2021); Order No. 6318, Order Removing USPS Retail Ground from the Competitive Product List and Approving Competitive Classification Changes to First-Class Package Service and Parcel Select, PRC Docket No. MC2022-81 and MC2022-82 (Oct. 28, 2022). The Commission is still engaged in work regarding Docket No. CP2023-113, filed recently in February 2023. Order No. 6442, Notice and Order Concerning Changes in Rates and Classifications of General Applicability for First-Class Package Service and Parcel Select, PRC Docket No. CP2023-113 and CP2023-114 (Feb. 15, 2023).

⁶⁸ Annual Compliance Determination Report, PRC Docket No. ACR2022 (Mar. 29, 2023) (“2022 ACD”), at 164–65; see also Annual Compliance Determination Report, PRC Docket No. ACR2021 (Mar. 29, 2022)

The purpose for such requests is to allow the Commission to review the initiatives that the Postal Service intends to implement to improve our service performance results in specific areas. Similarly, the Commission has directed the Postal Service to file other service performance improvement efforts and plans including those related to the performance of certain Market Dominant products, each of the Postal Service's International Service Centers, and for certain national metrics related to First-Class Mail.⁶⁹ The Postal Service provided numerous reports to the Commission in compliance with such directives.⁷⁰

Moreover, under Rule 3055.5, the Postal Service is required to “file notice with the Commission describing all changes to measurement systems, service standards, service goals or reporting methodologies, including the use of proxies for reporting service performance, 30 days prior to planned implementation.”⁷¹ After the Postal Service notifies the Commission of any such changes,

[t]he Commission may initiate a proceeding at any time to consider such changes if it appears that the changes might have a material impact on the accuracy, reliability, or utility of the reported measurement, or if the changes might have a

(“2021 ACD”), at 180–81; Annual Compliance Determination Report, PRC Docket No. ACR2020 (Mar. 29, 2021) (“2020 ACD”), at 181–82; Annual Compliance Determination Report, PRC Docket No. ACR2019 (Mar. 25, 2020) (“2019 ACD”); Annual Compliance Determination Report, PRC Docket No. ACR2018, (Apr. 12, 2019) (“2018 ACD”).

⁶⁹ See, e.g., 2021 ACD at 147-150; 158-59; and 164-65; 2020 ACD at 164-69, 178-180, and 188-89; 2020 ACD at 180–81, 183–84, 193, 203, and 208; 2019 ACD at 119, 127, 133, and 136; 2018 ACD at 184, 189, and 193.

⁷⁰ See, e.g., Second Response of the United States Postal Service to Commission Requests for Additional Information in the FY 2021 Annual Compliance Determination, PRC Docket No. ACR2021 (May 10, 2022), at 2–6; Third Response of the United States Postal Service to Commission Requests for Additional Information in the FY 2021 Annual Compliance Determination, PRC Docket No. ACR2021 (June 27, 2022), at 2-31 and USPS3dRsp-FY21ACD-PbAttQ2 6-27-22.zip; United States Postal Service FY 2022 Annual Compliance Report, PRC Docket No. ACR2022 (Dec. 29, 2022), at USPS-FY22-29.

⁷¹ 39 C.F.R. § 3055.5.

material impact on the characteristics of the underlying product.⁷²

The Commission initiates such proceedings denominated as PI dockets. For example, in 2021 the Postal Service notified the Commission of a material change to our Service Performance Measurement Plan.⁷³ In order to align service performance reporting with the Postal Service's changes to First-Class Mail, the Postal Service notified the Commission that we would add reporting for 3-day, 4-day, and 5-day service standards for First-Class Mail in place of the current 3-to-5-day service standard.⁷⁴ The Commission favorably reviewed this notification, finding that the changes adequately reflected the underlying service standard changes.⁷⁵

Moreover, other examples illustrate that specific avenues exist for Commission oversight over, and public participation in, Postal Service actions, such as retail discontinuance actions under 39 C.F.R. § 241.3 and appeals of post office discontinuance actions under 39 U.S.C. § 404(b) and 39 C.F.R. Part 3021.

With these extensive options, it is not clear what further opportunities for input the stakeholders feel are missing, beyond wanting granular information about certain strategic initiatives before the Postal Service is ready or required to reveal it. If stakeholders have not been engaged in the proceedings to date related to the initiatives that have properly been made public, it is not because of a lack of opportunity. The public's right to information is not unlimited, and they are not entitled to scrutinize pre-

⁷² *Id.*

⁷³ USPS Notice of Filing Changes to Service Performance Measurement Plan Document, PRC Docket No. PI2021-3 (Aug. 31, 2021).

⁷⁴ *Id.* at 1-2.

⁷⁵ Order No. 5989, Order Approving Modifications to Market Dominant Service Performance Measurement Systems and Closing, PRC Docket No. PI2021-3 (Sept. 28, 2021), at 3.

decisional deliberations or various types of sensitive management matters.⁷⁶ The Commission should use established mechanisms to ensure adequate oversight, consistent with its past decisions and its statutory authority. An open-ended PI docket that encompasses review of all possible initiatives under the Plan is wholly unnecessary, unwarranted, and contrary to the Commission's statutory authority.

III. CONCLUSION

For the reasons stated, and pursuant to 39 C.F.R. § 3010.165, the Commission made a material error of law when it issued Order No. 6488, and the Postal Service respectfully requests that the Commission reconsider and withdraw Order No. 6488 and Docket No. PI2023-4.

Respectfully submitted,

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⁷⁶ 39 U.S.C. § 410(c); *see also* 5 U.S.C. §§ 552(b)(5), 552b(c).

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Appendix A

Below is a list of Postal Regulatory Commission ("PRC" or "Commission") Orders initiating Public Inquiry ("PI") Dockets, dating back to 2007. Note that this list excludes those PI Dockets relating to measurement systems which were initiated at the Postal Service's request:

1. Order No. 21, Notice of Request for Comments on Modern Service Standards and Performance Measurement for Market Dominant Products, PRC Docket No. PI2007-1 (June 13, 2007), at 1 (seeking public comment on the Commission's "consultatory role under 39 U.S.C. § 3691(a) and its obligations under title III of the PAEA [Postal Accountability and Enhancement Act]").
2. Order No. 56, Notice and Order Providing an Opportunity to Comment on Treasury Report, PRC Docket No. PI2008-2 (Jan. 28, 2008), at 1-2 (relying on the Commission's authority under 39 U.S.C. § 2011(h)(1)(A), which requires that interested persons be given an opportunity to comment on the Treasury Report's recommendations).
3. Order No. 71, Notice and Order Providing an Opportunity to Comment, PRC Docket No. PI2008-3 (Apr. 18, 2008), at 1-2 (citing to the requirement in PAEA Section 702(c) that the Commission "consult with the Postal Service and other Federal agencies, users of the mails, enterprises in the private sector engaged in the delivery of the mail, and the general public," in preparing its report on universal postal service and the postal monopoly in the United States).
4. Order No. 72, Notice and Order Requesting Comments on Cooperative Mail Rule Exception, PRC Docket No. PI2008-4 (Apr. 22, 2008), at 1 (citing to the requirement, in PAEA Section 711, that the Commission "examine an exception to the cooperative mail rule to determine whether this change in eligibility for reduced postage contains adequate safeguards to protect against abuses of rates for nonprofit mail and deception of consumers").
5. Order No. 152, Notice and Order Providing an Opportunity for Comment, PRC Docket No. PI2009-1 (Dec. 19, 2008), at 1-2 (soliciting comments on the Report on Universal Postal Service and the Postal Monopoly submitted to Congress as required by PAEA Section 702).
6. Order No. 335, Notice and Order Providing an Opportunity for Comment, PRC Docket No. PI2010-1 (Nov. 9, 2009), at 2 (grounding its stated purpose, "to develop further information on the status of these suspended offices and the Postal Service practice of suspending offices for extended periods," on the oversight responsibilities vested in the Commission by 39 U.S.C. § 404(d)).

7. Order No. 456, Notice and Order Providing for Technical Conference, PRC Docket No. PI2010-3 (May 7, 2010), at 1-2 (scheduling a technical conference concerning procedures for rate cases under 39 C.F.R. part 3010, subpart E, is grounded in the Commission's obligation, pursuant to 39 U.S.C. § 3622(d)(1)(E), to review exigent rate increases).
8. Order No. 1420, Notice Providing Opportunity to Comment on Development of Commission Views Pursuant to 39 U.S.C. 407(c)(1), PRC Docket No. PI2012-1 (July 31, 2012), at 1, 3 (inviting public comment "on the principles that should guide development of its views on the consistency of proposals for 'rates and classification of products subject to subchapter I of chapter 36'" with the standards and criteria for modern rate regulation established by the Commission under 39 U.S.C. § 3622).
9. Order No. 1782, Notice Establishing Docket Concerning the Competitive Products Fund, PRC Docket No. PI2013-1 (July 19, 2013), at 3 (establishing a Public Inquiry concerning the competitive products fund to review "transfers of amounts from the Postal Service Fund to the Competitive Products Fund, the use of amounts from the Competitive Products Fund to prepay competitive products' future years' institutional costs, and the calculation and transfer of the assumed federal income tax"). As authority to initiate this docket, the PRC relies on its FY 2012 Annual Compliance Determination, which itself cites to 39 U.S.C. § 2011(h)(2)(C)(ii) (allowing the Commission, under its authority related to competitive products, to "on its own motion or on request of an interested party, [to] initiate proceedings. . . to improve the quality, accuracy, or completeness of Postal Service information" under certain circumstances) and to 39 C.F.R. § 3060.42. *Id.*
10. Order No. 2163, Notice Establishing Docket Concerning the Scope of Public Service or Activity Cost Reporting Under 39 U.S.C. 3651(B)(1)(C), PRC Docket No. PI2014-1 (Aug. 20, 2014), at 1 (seeking comment on the Commission's reporting obligations under 39 U.S.C. § 3651(a) and 39 U.S.C. § 3651(b)(1)(C)).
11. Order No. 2791, Notice Establishing Docket Concerning Service Performance Measurement Data, PRC Docket No. PI2016-1 (Oct. 29, 2015), at 1-3 (seeking public comment on the quality and completeness of service performance data provided by the Postal Service, an area over which the Commission has oversight authority, as recommended by a Government Accountability Office (GAO), in its report *Actions Needed to Make Delivery Performance Information More Complete, Useful, and Transparent*, GAO-15-756). In the underlying GAO Report, the Commission and GAO discuss the Commission's statutory authority related to oversight of service performance, including 39 U.S.C. §§ 3652, 3653, and 3691. GAO-15-756, at 13, 48-49.
12. Order No. 2862, Notice and Order Seeking Comments on Commission Jurisdiction Over Postal Service Determinations to Close or Consolidate Post Offices, PRC Docket No. PI2016-2 (Dec. 10, 2015), at 1, 3 (relying on 39 U.S.C.

§ 404(d) and stating plainly that “[t]he Commission’s limited authority to review post office closings and consolidations is provided by 39 U.S.C. 404(d)(5)”.

13. Order No. 3238, Notice and Order Seeking Comments on Report to the President and Congress Pursuant to Section 701 of the Postal Accountability and Enhancement Act, PRC Docket No. PI2016-3 (Apr. 14, 2016), at 1 (establishing a public inquiry “for the purpose of obtaining public comment on [the Commission’s] second report to the President and Congress pursuant to section 701 of the Postal Accountability and Enhancement Act of 2006”).
14. Order No. 3926, Notice and Order Establishing Docket Concerning City Carrier Special Purpose and Letter Route Costs and to Seek Public Comment, PRC Docket No. PI2017-1 (May 31, 2017), at 1 (establishing a public inquiry “in order to ascertain the Postal Service’s progress in its ongoing efforts to update its city carrier cost models and data collection capabilities in accordance with Commission Order No. 2792 and to invite public comment on these topics”). Order No. 2792 was issued in PRC Docket No. RM 2015-7, which was itself established after the Postal Service filed a petition pursuant to 39 C.F.R. 3050.11 requesting that the Commission initiate an informal rulemaking proceeding to consider a proposed change to analytical principles relating to periodic reports.
15. Order No. 4708, Notice and Order Initiating Public Inquiry on the Classification of the Inbound Letter Post Product, PRC Docket No. PI2018-1 (July 12, 2018), at 3 (citing as its authority 39 U.S.C. § 3642(a), which states that the Commission may consider a change to a product’s classification upon request of the Postal Service, upon request of users of the mail, or upon its own initiative).
16. Order No. 5260, Notice and Order Providing an Opportunity to Comment, PRC Docket No. PI2020-1 (Oct. 1, 2019), at 2 (initiating a public inquiry about the Commission’s methodology for estimating the value of the Postal Service letter and mailbox monopolies and seeking input on the Commission’s own methodology for estimating the values of both the combined letter and mailbox monopolies and the mailbox monopoly alone, as reported in the Commission’s Annual Report; as rooted in section 702 of the PAEA; and as relating to a methodology change first approved in Docket No. RM 2017-3, Order on Analytical Principals Used In Periodic Reporting (Proposal Nine), December 15, 2017 (Order No. 4278)). The scope of this Docket was later expanded by Order No. 5777, Notice and Order Providing an Opportunity to Comment with Respect to Universal Service Obligation Valuation Methodology, PRC Docket No. PI2021-1 (Dec. 10, 2020), at 2, which revisited the Commission’s methodology for estimating the cost of the Postal Service’s universal service obligation.
17. Order No. 5930, Notice and Order Providing an Opportunity to Comment on Regulations Pertaining to 39 U.S.C. § 601, PRC Docket No. PI2021-2 (July 2, 2021), at 1, 7 (seeking input about what regulations promulgated by the Commission may be necessary to carry out the requirements of 39 U.S.C. § 601, as expressly authorized by 39 U.S.C. § 601(c)).

18. Order No. 6101, Notice and Order Providing an Opportunity to Comment on the Postal Service's Process for Resolving Suspended Post Offices, PRC Docket No. PI2022-1 (Feb. 3, 2022), at 1 (initiating a public inquiry grounded in the Commission's review authority under 39 U.S.C. § 3652).
19. Order No. 6104, Notice and Order Providing an Opportunity to Comment on the Service Performance Dashboard, PRC Docket No. PI2022-2 (Feb. 10, 2022), at 2 (inviting comment on the Commission's dashboard for displaying an array of publicly available information that is already collects under a number of different statutes, e.g., 39 U.S.C. §§ 3652-3653, 39 U.S.C. §§ 3622-3633, 39 U.S.C. § 3641, 39 U.S.C. § 3642, 39 U.S.C. § 3654, 39 U.S.C. § 3661, and 39 U.S.C. § 3662).
20. Order No. 6471, Notice and Order Initiating Proceeding to Review Postal Service Cost Attribution, PRC Docket No. PI2023-2 (Mar. 31, 2023), at 1 (seeking review of regulations issued pursuant to 39 U.S.C. §§ 3633 and 3652(a)(1)).
21. Order No. 6479, Notice and Order Initiating Public Inquiry on the Classification of the First-Class Package Service Product, PRC Docket No. PI2023-3 (Apr. 7, 2023), at 2 (citing 39 U.S.C. § 3642(a), which states that the Commission may consider a change to a product's classification upon request of the Postal Service, upon request of users of the mail, or upon its own initiative). This Order further directs comments regarding whether any portion of the proposed USPS Ground Advantage product should be classified as Market Dominant and provide supporting analysis addressing the criteria set out in 39 U.S.C. 3642(b) and prior Commission decisions applying section 3642(b)" (listing the criteria for assigning a product to either the Market Dominant or Competitive product list). *Id.* at 12-13.