

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

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 2000

Docket No. R2000-1

RESPONSES OF UNITED STATES POSTAL SERVICE  
TO QUESTIONS OF THE OFFICE OF THE CONSUMER ADVOCATE  
REGARDING THE PROVISION FOR CONTINGENCIES

The United States Postal Service hereby provides its responses to questions concerning the provision for contingencies provided informally by the Office of the Consumer Advocate. These questions were provided as the result of successful negotiations between the OCA and the Postal Service to settle two related, outstanding matters. The first is the OCA's Motion to Compel a Response to OCA/USPS-T9-43(b), filed on April 10, and the second is the OCA's questions following up on the April 11 hearing, which were filed on April 13. The Postal Service and the OCA have agreed that the attached questions may be answered in lieu of responding to the above-mentioned items.

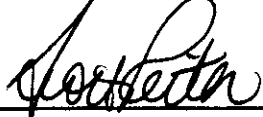
Each question is stated verbatim and is followed by the response.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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RESPONSE OF UNITED STATES POSTAL SERVICE  
OCA QUESTIONS ON THE CONTINGENCY

**OCA Questions on the Contingency (1).** Please refer to the response to OCA/USPS-T9-43 (c) and (d). Please confirm that in the course of considering the various factors, the Postal Service did not assign any weighting or otherwise attempt to quantify the contingency according to the factors considered. If you do not confirm, please explain in detail how the contingency was quantified according to the factors considered. Provide all related documents.

**Response**

As previously stated in response to OCA 43, the determination of the contingency involves the subjective evaluation of the reasonableness of the amount for contingencies required to be incorporated into the Postal Service's revenue requirement. At the level of the Board of Governors' decision to approve a particular rate filing, the contingency amount reflects a fundamental policy judgment regarding the level of risk that can be tolerated in estimates of future expenses and other revenue needs. In this regard, the contingency is assessed in relation to the elements of the entire revenue requirement, as well as to an array of financial and other policy considerations. While the contingency amount is grounded in a subjective assessment of future uncertainties affecting the Postal Service's estimates, the determination of its reasonableness is considered by the Board in the context of all of the Postal Service's proposals, including the overall impact of the rate and fee changes, as explained in witness Tayman's testimony.

The amount of the contingency is typically expressed as a percentage of the revenue requirement. It is not, however, the product of a mathematical model or a precise calculation. While consideration of the contingency is systematic, to the extent it typically involves review of several core factors and possible future events, no attempt is made in each case to identify and assess categorically the same comprehensive list

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of considerations. Furthermore, the actual contingency amount is not the result of adding up weighted factors. To the extent quantitative evaluations are used to aid the decision-making process, they generally are in the nature of sensitivity analyses showing the financial impact of variations in revenue or expense relative to various contingency levels, and the interrelated effects of alternative contingency amounts, rate levels and designs, and future policy objectives.

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**OCA Questions on the Contingency (2).** Did the Postal Service use any framework for analysis to guide the process of developing the contingency request? If so, please describe the framework and its application in detail. If not, why not?

**Response**

As explained above, there is no set "framework" in the form of a catalog of discrete factors or a mathematical model. Rather, the framework for assessing the reasonableness of the contingency amount is embodied in a basic approach to identifying sources of risk in estimating future needs. Some of these uncertainties are more identifiable than others. To the extent they can be identified, an attempt is usually made to evaluate the potential effects on future needs by some order of magnitude (e.g., calculate the value of various percentage changes in revenue, health benefits or wages). These potential effects are combined with a more subjective assessment of the potential for totally unknown adversities in the current environment.

This evaluation necessarily also involves consideration of historical circumstances, as well as knowledge of and forecasts for the economy in general, operational challenges, market trends, and certain institutional factors, such as the relative unpredictability of the collective bargaining process. The overall sense of risk that emerges from this evaluation is balanced subjectively against the other elements of the Postal Service's proposals and policy choices, such as the impact of rate increases on customers and the Board's policy regarding equity restoration.

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**OCA Questions on the Contingency (3).** Provide all documents, notes, etc. relating to (a) each factor for the contingency identified at pages 43 - 45 of Tayman's testimony and (b) any other factor considered in the course of determining the amount of the contingency request but not identified in the testimony.

**Response**

Witness Tayman's testimony contains a comprehensive list of factors considered. Evaluation of the reasonableness of the contingency amount in the Postal Service's revenue requirement is appropriately made in relation to what is expressed in the Postal Service's testimony and documentation filed with the Request. The Board of Governors adopts these expressions of explanation and justification as the reasoning and evidence supporting the Postal Service's proposals. Any attempt to explore a particular path toward those conclusions from a disparate collection of personal notes, memoranda, or other records that might have been generated throughout the process of developing the Postal Service's case would not generally provide a uniformly reliable or comprehensive picture of support for the particular contingency amount endorsed by the Board. Rather, without a detailed history and description of the various deliberative processes involved *in the complex formulation of an omnibus rate case filing, such records might be* misleading and incomprehensible. It is the Postal Service's position that forays into the privileged documentation produced by and embodied in its deliberative processes at all levels of preparation of its Request are unnecessary, would not aid the participants in evaluating the Postal Service's proposal or developing their own testimonies, would not *be useful to the Commission in formulating its recommended decision, and could indeed* be counterproductive.

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The following describes generally the deliberative processes and the paper record leading up to the Board of Governors' determination to put forward the Postal Service's filing. It is intended to promote a better understanding the overall context in which the determination of a particular contingency amount is adopted.

Over the course of several months, rate case preparation involves numerous meetings and communications among various levels and organizational groupings of staff preparing the case. Within this developmental process, many internal documents are produced and information recorded, often unsystematically, by a variety of persons with widely varying roles. Meetings and "brainstorming" sessions typically take place at all levels to discuss possibilities and outcomes in an open, uninhibited manner. As one might expect in such a complex undertaking, personal notes and other documents are often created to record ideas and concepts that might never be adopted or even seriously considered. Typically, no thought is given to organizing the ideas and internal documents generated by this diverse group for presentation outside of the Postal Service.

In developing the Postal Service's filing in the current case, several levels of staff from different functional departments participated in deliberations leading to consideration of the Postal Service's eventual proposals. Typically representatives from different levels of Finance, Marketing, the Law Department, Operations, and Corporate Communications were involved, although not always together or represented at the same meetings. Within this context, discussions sometimes focused on the appropriate level of contingency. More often, discussions of contingency took place in conjunction

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with discussions of related rate case issues, for example, the level of the overall rate increase and the legal framework for considering the Postal Service's revenue requirement. Depending on the group of issues and level of personnel involved at any one time, these discussions occurred daily, in some instances, weekly and biweekly, in other instances, and monthly and bimonthly, in yet other instances. The meetings commenced roughly nine months before the rate case was filed and continued right up until the filing date

The substance of these discussions ranged across a wide array of topics related to the overall purpose for including a contingency amount in the revenue requirement. These focused on reasons that the contingency is critical, including various sources of uncertainty in projecting the future, such as adverse legislative changes, economic changes, weather and natural disasters, and legal developments. The statutory basis and history of the contingency were also sometimes reviewed. In this context, it was sometimes observed that legislative history would support the conclusion that Congress contemplated a 3 - 5% range as reasonable, and that the contingency amounts adopted in previous rate cases, except in extraordinary situations, had tended to fall within that range. Discussions sometimes focused on particular events that might occur in the future, and on the general potential for estimates of future costs and revenues to be wrong.

Quantitative sensitivity analyses were sometimes conducted as an aid to evaluating the effects of the various sources of change on the overall revenue requirement, and on the overall level of rate changes. In this context, the different

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contingency amounts were sometimes tested, in order to assess relationships among the different levels of the revenue requirement, or in order to more precisely frame decision options. Such analyses were used for illustrative purposes, and did not represent reliable explanations of any substantive consideration of the purposes or uses of contingency. In this respect, they were only tools employed in deliberations, and not substantive inputs or rationales for a particular result. Many of these considerations, furthermore, tended to be recorded, and the records maintained relatively unsystematically.

Key stages of the deliberative path toward recommendations made by management to the Board of Governors typically involved briefings or presentations. These occurred at different levels, both within particular departments and interdepartmentally. Major points of decision often involved briefings of the Postal Service's Management Committee. Ultimately, briefings were prepared and presented to the Board of Governors at several of its monthly meetings. Documentation surrounding these briefings tended to take the form of copies of slides, with or without text. A variety of other records also were generated, including personal notes or handwritten notations on other documents. Such information did not always reliably reflect the nature of the discussions, the views of the decision-making body, or the final result of the deliberations.

The Postal Service strongly opposes disclosure of the records reflecting these deliberations. As noted previously, the explanations and rationales supporting the reasonableness of the contingency amount are presented in the Postal Service's



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testimony and documentation. These stand as the bases for the Request approved by the Board of Governors, who judgmentally adopted the contingency amount as an integral element of the Postal Service's revenue requirement. In the context of a lengthy, complicated, and sensitive deliberative process leading to postal management's recommendations to the Board, reference to any particular document reflecting that process could mislead analysis of the Postal Service's case. At the very least, it could require considerable, unnecessary effort to explain the significance of information which, at times, might be ambiguous or disconnected.

The reasons for preferring not to disclose such documentation are firmly rooted in the fundamental justifications underlying privileges for deliberative process, attorney work product, and the attorney-client relationship. Ultimately, such disclosure would have a seriously intrusive, chilling effect on the decision-making process, and would lead to inevitable alteration of procedures for recording and exchanging information within the Postal Service. Existing practices that surround frank and open discussions in the preparation of general rate filings have evolved because they have proved to be effective and efficient. Any artificial constraint imposed by the knowledge that the free exchange of ideas might be subject to subsequent public scrutiny would impede development of Postal Service filings and could ultimately affect the quality of its decisions. This reasoning applies almost uniformly to the full range of the records in question, regardless of the distinction between "fact" and "advice" that is sometimes employed in the context of public disclosure laws. First, the overall nature of deliberations concerning the contingency is speculative and not factual. Furthermore, in

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most instances, any references to arguably objective facts in these records involve selective judgment, and are part and parcel of the deliberative process.

Finally, it might be argued that the purpose for inspecting these privileged documents is to test the accuracy of the reasoning expressed by the Postal Service in testimony and discovery responses supporting its contingency proposal. Such an argument would be no more sensible than a requirement by the Governors that, when the Commission provides its Opinion and Recommended Decision to them, it include copies of all staff notes and records of deliberations relating to the conclusions reached in the Opinion. For the above reasons, the Postal Service declines to provide the documents requested.

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

A handwritten signature in black ink, appearing to read "Scott L. Reiter", is written above a horizontal line.

Scott L. Reiter

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