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

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OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 2000	Docket No. R2000–1

NOTICE OF THE UNITED STATES POSTAL SERVICE
OF DECISION OF THE GOVERNORS

The following Decision of the Governors has been mailed to the service list in Docket No. R2000-1:

> Decision of the Governors of the United States Postal Service on the Further Recommended Decision of the Postal Rate Commission on Postal Rate and Fee Changes, Docket No. R2000-1 (March 5, 2001).

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney:

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March 6, 2001

DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE FURTHER RECOMMENDED DECISION OF THE POSTAL RATE COMMISSION ON POSTAL RATE AND FEE CHANGES, DOCKET NO. R2000-1

March 5, 2001

SUMMARY OF DECISION

In this Decision, we act on the Postal Rate Commission's Opinion and Further Recommended Decision (February 9, 2001) in the most recent omnibus rate case, Docket No. R2000-1. Because we find that in their totality the rates and fees recommended by the Commission do not meet the statutory policy of break-even, and would jeopardize the Postal Service's financial situation during FY 2001 and beyond, we must reject the Commission's Further Recommended Decision. The Postal Service will resubmit its request for further reconsideration.

In our Decision of December 4, 2000, on the Commission's initial Recommended Decision in this docket, we found the Postal Service's total revenue requirement to be $69.8 billion. We asked the Commission to reconsider its first Recommended Decision, which provided $1 billion less than this amount, and to adjust its recommended rates and fees to provide revenues consistent with our finding. After considering the comments of the Postal Service and other participants, the Commission has determined not to recommend rates and fees providing that level of revenue. Instead, the Commission recommended changes that will generate an additional $53.5 million, which does little to close the $1 billion gap. As explained below, we find this result inadequate to meet the Postal Service's needs as established on the record.

STATEMENT OF EXPLANATION AND JUSTIFICATION

COMMISSION'S AUTHORITY

For nearly thirty years, the Governors—and the courts—have interpreted the Postal Reorganization Act to give us the responsibility to establish financial and operating policies, including the ultimate authority and responsibility to ensure that the Postal Service achieves a balance of revenues and expenses. We base our conclusions here today, like the conclusions we expressed in our December 4 Decision, on this interpretation.

We recognize that the Board and the Postal Service do not exercise unfettered, unreviewable discretion in assessing and securing the Postal Service's financial needs through the ratemaking process. We must satisfy the same statutory policies which, according to the Commission, direct its review of the Postal Service's revenue requirement. In addition, our decisions are subject to judicial appeal. In rate cases over the last thirty years the Postal Service has cooperated with reasonable examination by intervening parties and the Commission of the estimates of financial need that are the basis for the Postal Service's Requests for a Recommended Decision. Such examinations have sometimes led to corrections and revisions of the Postal Service's estimates. We have often accepted those changes, even where the Commission's recommendations have conflicted with the Postal Service's positions, and even where we might have questioned the Commission's authority to recommend changes.

Nevertheless, in this case we find that the Commission has taken its role beyond the statutory scheme. The view that the Commission expressed in its Opinion and Further Recommended Decision makes the Postal Service's revenue goals essentially a product of the Commission's hearing process. Under the Commission's view, the estimates of expenses and other revenue objectives endorsed by the Board in the Postal Service's Request are merely the starting point in a process in which the Commission evaluates evidence from a variety of sources and, in effect, establishes the Postal Service's revenue requirement. This view finds its most expansive expression in the Commission's replacement of the Board's judgment on the appropriate allowance for contingencies.

The Commission justifies its significant reduction of the overall revenue requirement in part on the fact that Congress authorized the Governors to modify a recommended decision. PRC Op., R2000-1, Vol. 1 at 62-65; Further Op. at 5. As we explained in our December 4 Decision, we and the courts over the years have taken the position that Congress did not intend to subordinate our and the Board's managerial and policy functions to the Commission's limited ratemaking role. Congress intended to merge the authority to set policy and determine revenue need with the responsibility for running the Postal Service—in the Board of Governors, as well as in the Governors' function in the ratemaking scheme. Accepting the Commission's argument would mean something contrary: that Congress intended for the Commission to have the authority to constrain those policies and objectives, subject only to modification. This makes little sense from a practical standpoint, especially in light of the significant limitations that the statute places on our ability to modify recommended rates and fees and the timing in a typical rate case.

The current situation clearly illustrates the justification for our conclusion. After over a year and a half of preparation and litigation of Docket No. R2000-1, we find ourselves, almost half way into the test year, operating under rates inadequate to meet the Postal Service's revenue needs. With every day that passes, our judgment as to the appropriate level of the Postal Service's revenue requirement, and specifically the reasonableness of its contingency provision, is vindicated. With each day, moreover, we become more convinced that the Commission's substitution of its judgment was inappropriate, and that its judgment was clearly wrong. We need not look beyond the evidentiary record before us and the Commission to reach this conclusion. Subsequent events only reinforce what is already on the record. This situation demonstrates that the ability of the Governors to ultimately modify a recommended decision is not a justification for the Commission to exceed its statutory authority.

RECONSIDERATION

The Commission has favorably reconsidered its conclusions regarding elimination of approximately $97 million in supervisors costs and approximately $20 million of costs associated with First-Class Mail. Yet, it remains wedded to its reduction of the 2.5 percent contingency provision that we have endorsed. We ask that the Commission reconsider this determination and restore the contingency based on the updated level of costs that it has adopted. In these circumstances, furthermore, we urge the Commission to provide us with another recommended decision with great expedition, so that we can consider exercising our statutorily-limited modification option. Of course, if a further recommendation contains adjustments in rates and fees that would generate revenues to fully cover costs of $69.8 billion, then modification will not be necessary. In either case, expedition will assist postal management in determining the level of the overall revenue need supporting the rate case now being prepared.

The Commission states that it may supersede the judgment of the Governors simply because participants provided significant testimony opposing the Postal Service's presentation. We note that participants made opposing presentations in past cases as well, which is not surprising, since the contingency is an obvious target for those seeking lower rate increases. An objective analysis of the various testimonies in the current case shows that the participants analyzed the same factors as did the Postal Service's witnesses, including the state of postal finances and the economic outlook. They simply reached different conclusions. This does not provide a basis for overriding the judgment of the Governors on a key matter of financial policy.

With respect to the $200 million field reserve amount, the Commission goes to great lengths to justify its conclusion that this is a contingent expense that should be covered by the Commission's already reduced contingency provision. In order to find the field reserve to be a contingent expense, the Commission flatly dismissed the unequivocal testimony of the Postal Service's Chief Financial Officer that the $200 million field reserve will be spent in the test year, and his specification of the various purposes that it is intended to cover. Instead, the Commission invented an unprecedented "special-purpose component" of the contingency provision to describe the field reserve. Despite the pages of discussion on this issue in the Commission's latest Opinion, the Commission's conclusion that this expense lacks record support is simply inexplicable in light of the CFO's testimony. Furthermore, by including this actual expense item as part of the Commission's reduced contingency provision, the Commission has in fact incorporated an even lower amount to cover unforeseen expenses.

We want to make clear that we are not asking the Commission to reopen the record and decide on the basis of new facts. First, we believe that the existing record supports a recommendation of rates and fees that cover the cost level we find to be established on the record. Second, and quite simply, reopening the record would entail additional delay, thereby jeopardizing even further the Postal Service's precarious financial state. Last month, the Chief Financial Officer told us that the Postal Service stands to lose between $2 billion and $3 billion this fiscal year, which is the rate case test year. While we are not asking the Commission to recommend rates to eliminate this latest projected net loss, we are asking the Commission to recommend rates and fees that meet the updated cost estimates already developed on the record, including a 2.5 percent contingency provision. This would reduce the projected net loss.

We disagree with the Commission's implication that its failure to recommend rates producing adequate revenue is the result of a deficiency in the Postal Service's presentation on the record of this case. To the contrary, as the Postal Service indicated in its memorandum on reconsideration, recent events confirm that the Postal Service's predictions on the record of the case were more reasonable and closer to what we now know is reality than were the determinations made by the Commission in its first Recommended Decision. Our view is that the Commission ought to have recognized that this record evidence clearly established the reasonableness of the 2.5 percent contingency. The record already contains adequate support for the level of revenue that the Commission has refused to recommend. If it wished to reconsider its previous recommendations, the Commission could recommend rates adequate to cover the total of updated costs contained on the existing record, including a 2.5 percent contingency provision.

As another option, the Commission states that, if the Postal Service were to file a new rate case, based on the record of this one, and without proposing costing or classification changes, the case could be heard and decided in less than ten months. PRC Op., R2000-1, at 3-4 (February 9, 2001). Despite the good faith underlying this suggestion, we note that the length of litigation is generally a function of the degree of opposition to the Postal Service's request. This has been true even for limited cases pursued under the Commission's specialized rules that allow expedited proceedings. In an omnibus rate case involving significant overall rate increases, there is no doubt that participants will mount substantial challenges, and therefore the likelihood of expedition is small. Moreover, even if the litigation process could be streamlined substantially, it is unlikely that new rates could be implemented soon enough to prevent a huge net loss in the current fiscal year, which was the test year in the current case.

The Commission's suggestion that we may file another rate case now, as a consequence of its failure to recommend adequate rates and fees, is precisely the type of result affecting the timing of rate filings that the court in the *Newsweek* case[1] cautioned the Commission against when it overturned the Commission's previous attempt to reduce the Postal Service's reasonable provision for contingencies. In light of the above, we find this approach to be an unacceptable alternative to a Commission recommendation of rates and fees based on restoring the Postal Service's revenue requirement to appropriate levels in this case.

THE SCOPE OF THIS REJECTION

The Commission's Further Recommended Decision does include new rate and fee recommendations for two products, Bound Printed Matter and Certified Mail. With respect to

[1] *Newsweek v. United States Postal Service*, 663 F.2d 1186 (2d. Cir. 1981); *affirmed on other grounds sub nom. National Association of Greeting Card Publishers v. United States Postal* (continued...)

Bound Printed Matter, the Commission has acknowledged that the rates originally recommended and implemented on January 7, 2001, will not generate as much revenue as intended by the Commission's first Recommended Decision. As we requested, the Commission has acted to rectify this discrepancy by recommending higher rates. These would provide the level of revenues the Commission originally intended, but they would not address the overall revenue deficiency that we identified. With respect to Certified Mail, on the other hand, the Commission has recommended higher fees specifically to cover expense increases which it has now acknowledged (*i.e.*, the slightly higher revenue requirement).

In the abstract, there is no reason why we would not implement these two recommendations. For Bound Printed Matter, the higher rates would be necessary to align with the Commission's conclusions regarding the appropriate cost coverage and percentage increase for that category. Furthermore, while the $53.5 million additional revenue from Certified Mail is only a small step toward reducing the overall revenue deficiency, it is at least a step in the right direction. Nevertheless, there is relatively little to be gained by immediate implementation. If these increases are included among other recommendations leading to substantially more revenue, as we have requested, all of the new rates can be implemented simultaneously. Alternatively, even if the Commission were not to recommend higher rates for any other categories, we anticipate that it would again recommend increases for Bound Printed Matter and Certified Mail. We would then be able to consider these changes in responding to the Commission's next recommended decision. Accordingly, the recommended rates for Bound Printed Matter and the fee for Certified Mail are included within this rejection.

ESTIMATE OF ANTICIPATED REVENUE

The instant rejection decision maintains the status quo established by implementation of rates and fees on January 7, 2001. Consequently, on the record of this case, the most current estimate of anticipated revenue remains that contained in our Decision of December 4, 2000. As mentioned above, we do note that recent evaluations by Postal Service management, and changing economic and other conditions, reinforce the reasonableness of the Postal Service's

(...continued)
Service, 462 U.S. 410 (1983).

contingency provision to cover unforeseen occurrences, which was previously established on the basis of the evidentiary record.

By The Governors:

Chairman

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.

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