

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

POSTAL RATE AND FEE CHANGES }
PURSUANT TO PUBLIC LAW 108-18 }

DOCKET No. R2005-1

INITIAL BRIEF OF PARCEL SHIPPERS ASSOCIATION

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INTRODUCTION

The Parcel Shippers Association (“PSA”) is a signatory to the Stipulation and Agreement (“Settlement Agreement”) submitted by the Postal Service in the above-captioned proceeding. We support the proposed rate changes contained in the Settlement Agreement in their entirety.

The Settlement Agreement has been signed by thirty five parties and opposed by only two. The signatories represent every major class, subclass and service as well as those in the private sector engaged in the delivery of mail matter other than letters. The Settlement properly protects the interests of all users.

The evidence in the record, and the representations of the signatory parties, provide an adequate basis for the Commission to make its independent assessment that the rate proposals set forth in the Agreement are supported by the record, are consistent with the Act, and should be recommended. For those reasons, we urge the Commission to recommend to the Governors the adoption of the rates set forth in the Settlement Agreement.

1. **The Postal Service’s across-the-board approach is reasonable given the circumstances surrounding this case and benefits the mailing community as a whole.**
 - a. *The rate increase is only necessary to fund the escrow obligation, which provides no economic benefit to the Postal Service or to mailers.*

For the first time in an omnibus rate case, a Postmaster General has testified. In his testimony, Postmaster General Potter (USPS-T-1) explains that the Postal Service’s decision to

request a rate increase at this time is solely for the purpose of generating the necessary funds to make a payment into the escrow account in FY 2006:

The Postal Service's decision to seek changes in postal rates and fees at this time represents a policy judgment about the most reasonable, practical and effective way to meet a currently unavoidable financial obligation in Fiscal Year 2006. Otherwise, the Postal Service would not have filed this request now. Instead, in all likelihood, we would now be preparing to file in the future a more traditional omnibus filing. USPS-T-1 at 2.

Public Law (P.L.) 108-18 established the escrow obligation beginning in FY 2006, the Test Year in this case.

Savings accruing to the United States Postal Service as a result of the enactment of this Act...(3) to the extent that such savings are attributable to any fiscal year after fiscal year 2005, shall be considered to be operating expenses of the Postal Service and, until otherwise provided for by law, shall be held in escrow and may not be obligated or expended. P.L. 108-18, Section 3.

Since, as the Postmaster General further testified, "Congress has not acted," USPS-T-1 at 4, the Postal Service is obliged to fund this escrow account beginning in FY 2006.

b. Given the circumstances surrounding the case, an across-the-board rate increase is reasonable.

Taking into account the circumstances surrounding the case, the Postal Service Board of Governors determined that requesting an across-the-board rate increase solely to fund the escrow requirement was fair and appropriate. As described by the Postmaster General, this approach was chosen because it appropriately spreads the rate increase across all mailers and facilitates settlement.

We have determined, however, that acting now to secure the funds needed through moderate rate and fee increases would be responsible stewardship. In particular, while appropriately spreading the burden to all postal customers, this approach creates the prospect of encouraging settlement of issues among usually very contentious rate case participants. It is my hope that efforts to settle this case will lead to an early Recommended Decision and permit implementation early enough in 2006 to meet the lion's share of the escrow obligation. USPS-T-1 at 2-3.

PSA agrees that this approach is reasonable. Given that the Postal Service would have proposed no rate increase were it not required to make a payment in FY 2006 into an escrow account, it is reasonable to spread the rate increase equally among all mailers. On the other hand, it would seem inappropriate on its face for the imposition of a Congressionally-mandated obligation that “provides no economic benefit to the Postal Service,” USPS-T-6 at 12, and therefore any mailer to result in disparate rate increases for different groups of mailers, such as a 12% increase for some mailers and no increase for others.

Further, the expedition that the Postal Service anticipated from its approach allowed it to keep its revenue request to a minimum, benefiting mailers as a whole. For example, in this case, the Postal Service included no contingency provision for the first time since postal reorganization. USPS-T-6 at 17-18. Finally, PSA notes that this approach will not unreasonably delay classification and rate design changes since, as stated by the Postmaster General, there will be another rate case “on the heels of this one.” Tr. 2/80. This is likely to be about the same time that an omnibus rate case would have been filed in the absence of the escrow obligation.

As shown by the near unanimity of the settlement, PSA is not alone in this opinion. The mailing community overwhelmingly agrees that the Postal Service’s approach is reasonable. While – thirty five parties representing every major class, subclass and service signed the settlement, only OCA and Valpak Direct Marketing Systems, Inc. and Valpak Dealers’ Association, Inc. (Valpak), oppose it.

2. The settlement rates meet the requirements of the law and are supported by the record.

a. The evidentiary record shows that the settlement rates satisfy ratemaking criterion 3 the only absolute ratemaking requirement.

In Docket No. R2000-1, the Commission noted that ratemaking criterion number 3, is the only absolute ratemaking requirement, stating:

Of these criteria, only criterion 3 is a requirement. *See National Association of Greeting Card Publishers v. United States Postal Service*, 462 U.S. 810, 820 (1983). It is the foundation of the Commission’s rate recommendations, imposing two obligations on the Commission. First, recommended rates for each class or type of mail must be adequate to recover “the direct and indirect postal costs attributable to that class or

type [of mail].” The Commission satisfies this requirement by recommending rates that recover attributable costs, which include volume variable costs and product specific costs, *i.e.*, fixed costs associated with one class. Second, to enable the Postal Service to break even, the recommended rates must also be sufficient to recover “all other costs of the Postal Service,” *i.e.*, institutional costs. Recommended rates, therefore, must recover that portion of the institutional costs determined by the Commission to be “reasonably assignable to such class or type.” Thus, criterion 3 establishes an attributable cost floor, and the recommended rates must, in total, exceed attributable costs sufficiently to enable the Postal Service to recover its institutional costs. PRC Op. R2000-1, Para. 4003.

The evidentiary record shows that the settlement rates satisfy these requirements. Revenues for each mail subclass and special service cover attributable costs while revenues in total exceed attributable costs sufficiently to enable the Postal Service to recover institutional costs. Exhibit USPS-27B. The Commission should be comfortable using the Postal Service’s Test Year cost estimates presented in Exhibit USPS-27B in this case to evaluate whether the settlement rates meet criterion 3 for the reasons it discussed in Docket No. R2001-1:

Ordinarily, there is controversy in each rate proceeding concerning the measurement of attributable costs for purposes of establishing criterion 3’s attributable cost floor. The settlement, however, moots the need to resolve such issues because, by its terms, it does not bind the signatories to any costing or ratemaking principle. *See*, Stipulation at § II ¶ 9. Nor does the Commission’s approval of the settlement bind it. Nothing in the Request, the Commission’s Recommended Decision, or the Governors’ Decision shall have precedential effect in future cases. *Id.* at ¶ 10. PRC Op. R2001-1, para. 2057.

Given the settlement, PSA will not address the myriad of costing issues that it might in a fully litigated case. This brief, however, does address one costing issue that is unique to this case – the proper treatment of the escrow cost. As the Commission found in Docket No. R97-1, “attributable cost means costs which can be said to be reliably caused by a subclass of mail or special service.” PRC Op. R97-1, Para. 4017. The escrow does not fall into this category. Thus, the Postal Service properly classified it as an institutional cost.

While P.L. 108-18 requires the Postal Service to make a significant payment into an escrow account starting in FY 2006, the payment “provides no economic benefit to the Postal Service” and is “arbitrarily determined.” Further, Congress has provided no direction on how the escrowed funds can be used. USPS-T-6 at 12. From these descriptors, it is clear that the escrow is not caused by

any subclass of mail or special service. Thus, even the major critic of the Postal Service's approach in this case, Valpak witness Mitchell (VP-T-1), agrees that the escrow is not an attributable cost, stating: "I agree that the escrow costs are not volume variable and should not be attributed." Tr. 9/5395.

b. The settlement provides evidence that the proposed rates comport with the eight non-cost factors of the Act.

The other eight non-cost factors of §3622 (b) of the Act generally govern the distribution of institutional cost burdens to mail subclasses and special services and the development of recommended rates. As the Commission found in Docket No. R2001-1, unlike criterion 3, which can be quantitatively evaluated, application of the non-cost factors is an inherently judgmental process with no one correct mathematical solution.

While the proposed cost coverages and resulting markups may not be precisely what the Commission may have employed had this been a fully litigated proceeding, they nonetheless fall within acceptable target ranges to produce rates that under the circumstances are fair, equitable, and supported by substantial evidence. This conclusion is in accord with the Commission's observation that "[t]here is no single set of rates which is so 'right' that any deviation from it would produce rates which would be unlawfully unfair or inequitable." PRC Op. R2001-1, Para. 2078.

The Commission should be confident that settlement rates clearly fall within this range. In clear contrast to Docket No. R94-1¹, the last case in which the Postal Service proposed an across-the-board rate increase, parties representing every major class, subclass, and service support the Postal Service's proposal and believe that the distribution of the institutional cost burdens across mailers and resulting rates are reasonable. In fact, almost every party in this case has explicitly agreed by signing the agreement that "the specific rates and fees provided for in paragraph 5 of this agreement are in accordance with the policies of Title 39, United States Code, and, in particular, the criteria and factors of 39 U.S.C §§ 3622, including § 3622(b)(9)." Settlement Agreement at 6.

¹ In Docket No. R94-1, many First-Class Mailers objected to the Postal Service's across-the-board proposal. R94-1 Op., Para. 1014.

3. Consistent with its policy of favoring settlements, the Postal Rate Commission's recommendation should not deviate from the settlement rates.

PSA understands that, to recommend the settlement rates, the Commission must find that they are consistent with applicable statutory requirements and the evidentiary record. Order No 1443 Order Establishing Procedural Framework for Reconsideration Docket No. MC2004-3 at 17. As discussed above, the settlement rates meet these requirements. Thus, consistent with its policy of only “mak[ing] adjustments [to settlements] where necessary,” *Id.* at 17, the Commission’s recommendation should not make any changes to the settlement rates.

This policy is both appropriate and, as the Commission recently found, consistent with case law in many contexts and statutory policy:

Case law is replete with examples of the courts favoring settlements in many different contexts. For instance, in *D.H. Overmyer Co. v. Loflin*, 440 F.2d 1213, 1215 (5th Cir. 1971) the court states: “Settlement agreements are highly favored in the law and will be upheld whenever possible because they are a means of amicably resolving doubts and uncertainties and preventing lawsuits.” In *Pfizer Inc. v. W. Lord*, 456 F.2d 532, 543 (8th Cir. 1972) the court stated: “The policy of the law encourages compromise to avoid the uncertainties of the outcome of litigation as well as the avoidance of wasteful litigation and expense incident thereto.”

Statutory policy also favors the independent settlement of issues. The Administrative Procedure Act (APA), 5 USCA § 554(c) directs agencies to provide opportunities for settlement.

The agency shall give all interested parties opportunity for—(1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and (2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 557 of this title.

Id. at 15-16.

4. **Neither the Postal Reorganization Act , P.L. 108-18, nor the Commission's precedents require that the accumulated net income from FY 2004 and 2005 be used to offset the projected Test Year Loss due to the requirement to pay \$3.1 billion into an escrow account.**

In its opposition to the Postal Service request for expedition, the Office of the Consumer Advocate (OCA) contends that the Postal Service need not break even in FY 2006, the Test Year in this case. Office of the Consumer Advocate Opposition to United States Postal Service Request for Expedition and Early Consideration of Procedures Facilitating Settlement Efforts (April 29, 2005) at 2-3. Rather, the Postal Service should apply its cumulative net positive income as of the end of FY 2005 towards the projected deficit:

While members of the Parcel Shippers Association and mailers as a whole would benefit from such a proposal, it is not consistent with the Postal Rate Commission's practice of recommending rates that recover its total costs in a future Test Year and thus should be rejected. The Commission discussed its practice in Docket No. R2001-1.

By statute, the Postal Service operates under a breakeven constraint. Rates and fees recommended by the Commission are designed to generate sufficient revenues to recover, as nearly as practicable, the total estimated test year costs of the Postal Service. 39 U.S.C. § 3621. R2001-1 Op., Para. 2053.

The only way in which prior year net incomes and losses have affected the Postal Service's revenue requirement is through the provision for the recovery of prior years' losses (RPYL). This provision, which was first recommended in Docket No. R76-1, allows the Postal Service to recover these losses over a number of years. A nine year amortization period has been used since Docket No. R80-1. R97-1 Op., Para. 2032.

PSA has not developed a position regarding whether the Commission should establish a similar provision under which the Postal Service would adjust its revenue requirement downward to return cumulative net income to mailers over a nine-year period; such a provision would not substantially reduce the Postal Service's proposed revenue requirement in this case or invalidate the settlement agreement.

CONCLUSION

The evidence in the record, and the representations of the signatory parties, provide a more than substantial basis for the Commission to make its independent assessment that the rate and classification proposals set forth in the Settlement Agreement are supported by the record, are consistent with the Act, and should be recommended. For those reasons, we urge the Commission to recommend to the Governors the adoption of the rates and classifications set forth in the Settlement Agreement.

Respectfully submitted,

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