



## **INTRODUCTION**

On April 8, 2005, the Postal Service filed its request for an increase in rates and fees necessary to generate approximately \$3.1 billion of additional revenue to cover an escrow financial obligation which had been imposed upon it by The Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108-18). Aside from the Postal Service, only ValPak filed Direct Testimony in the case.

On September 23, 2005 the Postal Service filed the settlement Stipulation and Agreement along with signed signature pages for the Postal Service and thirty-six other settling parties. The overwhelming majority of parties in this case – all but two parties -- have joined this settlement, which agrees to all of the rates and fees proposed by the Postal Service. The Association for Postal Commerce is one of the settling parties, and supports the proposed rate changes contained in the settlement agreement in their entirety. In the unique circumstances of this case, there is nothing in the opposition advanced by Val-Pak that factually supports or legally compels departure from the across-the-board rates advanced in the Settlement Agreement.

## **ARGUMENT**

### **I. The Unique Circumstances of this Case Require an Across-the-Board Rate Increase**

The circumstances of this case are well known. Under the Civil Service Retirement Funding Reform Act of 2003, Public Law No 108-18, 117 Stat 624 (April 23, 2003), Congress required that the Postal Service hold designated funds in escrow, and classify these funds as an operating expense. At the same time, as the Postal Service

posits (in its Initial Brief at p. V-3), this escrow is not an expense that arises from any operation of the Postal Service. Witness Tayman accurately explains that the amount required by law to be placed in escrow is an amount that “represents the difference between the funding requirement relating to a legitimate estimate of Postal Service’s CSRS obligations and an estimate of these obligations that was determined to be substantially in error.” USPS-T-6 at 12. Congress has not acted to apply these funds to any useful postal purpose. It necessarily follows that this so-called “operating expense” cannot be attributed to any class or service. Therefore, at least until Congress acts, the revenue required to make the escrow payment is reasonably collected through an across-the-board rate increase, and the payment is properly treated as an institutional cost.

**II. The Across The Board Approach Proposed by the Postal Service and Agreed to by Settlement Satisfies the Pricing Factors Set Forth in the Postal Reorganization Act**

The Postal Service’s settlement rates undoubtedly satisfy all of the factors set forth in § 3622(b) of the Postal Reorganization Act. Of all the factors this Commission must consider under that section, the most potentially restrictive of the Commission’s discretion to accept the settlement rates is the third factor (“the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to that class or type plus that portion of all other costs of the Postal Service reasonably assignable to such class or type”). 39 U.S.C. § 3622(b)(3). To the extent that the cost coverages and markups applied to reach the settlement rates may not be what the Commission might have employed had this been a fully litigated proceeding, the rates nevertheless meet the statutory requirements of the Act.

For purposes of accepting the settlement rates, the Commission should simply accept the Postal Service's costing methodology. As the settlement agreement itself acknowledges (at ¶¶12 and 16), when a proceeding is settled, the methodology used has no precedential effect. *See also*, PRC Op. R2001-1, ¶ 2057. While in the last settled case (PRC Docket No. R2001-1), the Commission independently determined the attributable cost levels of the various classes and types of mail under its own costing, *see id.*, such analysis is neither necessary nor appropriate in this case. In that case, the proposed changes in rates were caused by shifts in Postal Service revenues and costs. Here, unlike the last settled case, the proposed changes in rates are based exclusively on the principle that the proposed increase is due to circumstances external to Postal Service operations – a principle fully accepted by the many settling parties. To adjust the settlement rates in this case by reason of cost or any other reason would require the Commission to completely rework all of the rates within and across each of the subclasses, without the benefit of a fully litigated proceeding. That is not likely to lead to a more "fair and equitable" result for the parties.

Plainly, the ninth factor, 39 U.S.C. § 3622(b)(9) ("such other factors as the Commission deems appropriate") gives the Commission the statutory discretion to accept the Postal Service's costing methodology for purposes of settlement. Among these "other factors," the Commission can and should acknowledge the widely recognized principle that this case was filed due to the impending escrow payment required by P.L. 108-18 and would not otherwise have been filed, and that by largely preserving the relationships embodied in the current rates, the across-the-board increases implicitly recognize that but for P.L. 108-18, there would have been no opportunity to reexamine

these rate relationships. Moreover, as the Postal Service points out in its Initial Brief (at II-25), the proximity of the next omnibus case should also bear significantly on the Commission's judgment in this case. The costs underlying the settlement rates are likely to change by the next rate case, which is expected to follow in a year's time, and in which a more complete reevaluation of costing methodology and costs will be conducted.

### **III. The Across the Board Approach Is Adequately Supported by the Record In this Proceeding**

The record in this proceeding adequately supports the Postal Service's rate proposal. As Postmaster General Potter explained in his testimony, "[t]he 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." USPS-T-1 at 2. The testimony of witnesses Taufique and Robinson explain how the specific rate proposals meet the criteria set forth in the Postal Reorganization Act. USPS-T-28 and USPS-T-27. The Postal Service's costing witnesses provide the full scope of costing testimony that is required in general rate cases. And there is sufficient evidence in the record to conclude that proposed rates for each subclass and service cover the costs of providing the service. If that were not enough, the simple fact that settlement was reached with mailers and associations representing such a broad spectrum of interests is powerful evidence of the "fairness and equity" inherent in the Postal Service's proposed rates for all subclasses and all rate categories. 39 U.S.C. §3622(b)(1).

### **IV. Conclusion**

In short, the Association for Postal Commerce generally concurs with several of the settling parties that have made arguments similar to those briefly set forth above.

Therefore, for the reasons set forth above, the Association for Postal Commerce respectfully urges the Commission to recommend approval of the settlement agreement in this proceeding.

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