

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

REVIEW OF SUNSET RULES

Docket No. RM2006-1

INITIAL COMMENTS OF THE UNITED STATES POSTAL SERVICE  
IN RESPONSE TO ORDER NO. 1479  
(October 13, 2006)

Pursuant to Order No. 1479, the Postal Service hereby files its initial comments on the revisions to the Commission's Rules of Practice and Procedure proposed in that Order. The Commission proposes reissuing, in permanent form (*i.e.*, without a sunset provision), the rules governing requests for minor classification changes, market tests of proposed classification changes, provisional service changes of limited duration, and multi-year test periods for proposed new services, while also allowing the rules governing Express Mail market response rate requests to lapse. See Order No. 1479 at 1-2. In addition, the Commission proposes to "standardize and shorten the time period for interventions as of right in proceedings involving minor classification changes, market tests, and provisional service changes." *Id.* Finally, the Commission has proposed some minor, non-substantive editorial changes to the reissued rules. *Id.*

- I. THE POSTAL SERVICE AGREES THAT RULES 69-69c, 161-166, 171-176, AND 181-182 SHOULD BE PERMANENTLY REISSUED, AND THAT THE PERIOD FOR INTERVENTION AS OF RIGHT SHOULD BE SHORTENED IN THE MANNER PROPOSED BY THE COMMISSION

The Postal Service fully endorses the Commission's proposal to reissue, in permanent form, the rules governing requests for minor classification changes

(Rules 69-69c), market tests (Rules 161-166), provisional service changes (Rules 171-176), and multi-year test periods for proposed new services (Rules 181-182). As the Commission notes, all of these sets of rules have continuing value, as they serve discrete purposes and provide appropriate flexibility to the classification process. *See id.* at 7.

The Postal Service also supports the Commission's proposal to revise its Rules to provide for a uniform, shortened period of time ("a minimum of 15 days" from the filing of the Postal Service's request) in which parties can intervene as of right in minor classification, market test, and provisional service change proceedings. As the Commission notes, this change will have no practical adverse affect on any prospective participant in this era of electronic filing. *See id.* at 7-8. It is also consistent with handling such proceedings in as efficiently a manner as possible.

With regard to the Commission's proposed non-substantive, ministerial revisions to Rule 69 and various other provisions of its Rules, the Postal Service has no comment at this time. The Postal Service does, however, suggest one minor revision to the Commission's rules regarding market tests and provisional service changes that has not been proposed in Order No. 1479. The Commission has revised Rule 69b(d), which has been redesignated as Rule 69(e)(3) in Order No. 1479, to eliminate the requirement that the Postal Service's notice accompanying a request for a minor classification change "identify the last day for filing a notice of intervention with the Commission." *See id.* at 12.<sup>1</sup> This

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<sup>1</sup> Compare current Rule 69b(d) ("When the Postal Service files a request under

logical revision reflects the fact that the Postal Service will no longer know with certainty what the last date of intervention will be at the time it files its request for a minor classification change; instead, it will only know that the date of intervention will be “a minimum of 15 days after filing of [its] request.” The Commission has not, however, proposed similar revisions to Rules 163(d) and 173(d), which are the analogous provisions to Rule 69b(d) for market tests and provisional service changes, respectively. For purposes of consistency, and in order to prevent the Postal Service’s notice from possibly conflicting with the Commission’s subsequent notice, the Postal Service proposes that the Commission revise Rules 163(d) and 173(d) so that the notices mandated in those sections are not required to indicate the last day for filing a notice of intervention.

II. THE COMMISSION SHOULD REISSUE THE EXPRESS MAIL MARKET RESPONSE RULES (RULES 57-60) FOR ANOTHER FIVE YEARS

The Postal Service does not believe that the rules governing market response rate requests for Express Mail should be allowed to lapse, and therefore urges the Commission to reissue them for another five years. The Commission bases its tentative decision to not reissue these rules on the grounds that they have never been invoked, which in the Commission’s mind

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the provisions of §§ 3001.69 through 3001.69c, it shall on that same day file a notice that briefly describes its proposal. This notice shall indicate on its first page that it is a notice of a request for a minor change in classification to be considered under §§ 3001.69 through 3001.69c, *and identify the last day for filing a notice of intervention with the Commission.*) (emphasis added) with proposed Rule 69(e)(3) (“When the Commission files a request under this section, it shall on that same day file a notice that briefly describes its proposal. This notice shall indicate on its first page that it is a notice of a request for a minor change in classification to be considered under this section.”)

“suggests that these rules may no longer serve the purpose for which they were intended and that they may have no continuing utility.” See *id.* at 8.

The fact that these rules have never been utilized should not compel a conclusion that they have no continuing utility, as the reasons behind their original promulgation retain force today. In Docket No. RM88-1, the Commission recognized that rules providing for the expeditious review of certain defined Express Mail rate change requests were justified by the fact that Express Mail competes with a variety of non-regulated, private sector alternatives in the market for overnight delivery, and that price is of critical importance to customers in that market. See, e.g., Docket No. RM88-1, Second Notice of Proposed Rulemaking (March 14, 1989), at 2, 4. While the overnight delivery market may not be as volatile today as it was in the period in which these rules were enacted, it remains highly competitive, with service provided by firms such as UPS, FedEx, DHL, and the Postal Service. Within this competitive marketplace, price remains of critical importance for shippers. Thus, the Postal Service believes that there is still high value in having a defined procedural mechanism, with definitive, clear-cut rules, that gives it the ability to respond to changes in the market for overnight delivery in a timelier manner than is possible under the standard ratemaking regime.

Since the fundamental reasons why these rules were enacted remain valid today, the rules retain value, and the fact that they have not been used does not mean that they are unnecessary or will never be used.<sup>2</sup> This is a proposition that

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<sup>2</sup> A number of factors have lead to the Postal Service’s lack of use of these rules

the Commission has recognized before with respect to these rules. See Order No. 1322 at 6. In addition, because these rules provide adequate safeguards that protect the interests of all stakeholders,<sup>3</sup> reissuing them would not impose a burden on any interested party or on the Commission.

In Docket No. RM2001-3, the Commission decided to reissue these rules, concluding that their lack of use was not “compelling enough to foreclose the flexibility afforded by this option.” See *id.* at 7. The Postal Service urges the Commission to reach the same conclusion here. As noted above, the rules still have value as a means of assuring that the Postal Service has the ability to expeditiously change its Express Mail rates, should competitive circumstances arise requiring timely action by the Postal Service, and reissuing them would not impose a burden on the Commission or any interested party.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux  
Chief Counsel, Ratemaking

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Keith E. Weidner

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1134  
(202) 268-6252; Fax -3084

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up to this point, among those being its concentration of its resources on other markets.

<sup>3</sup> As the Commission has consistently affirmed, these rules fully comport with all relevant aspects of law, including the Postal Reorganization Act, the Administrative Procedure Act, and notions of due process. See Order No. 1042 at 2-7.