

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

REVIEW OF SUNSET RULES

Docket No. RM2006-1

REPLY COMMENTS OF THE UNITED STATES POSTAL SERVICE
(October 20, 2006)

Pursuant to Order No. 1479, the Postal Service hereby files its reply comments in the above-referenced docket. The Postal Service filed its Initial Comments on October 13, 2006. See Initial Comments of the United States Postal Service in Response to Order No. 1479 (October 13, 2006). The only other party to file comments was the OCA. See Office of the Consumer Advocate Comments in Response to Order No. 1479 (October 13, 2006). The OCA and the Postal Service both agree with the Commission's proposal to permanently reissue the rules governing minor classification changes, market tests, provisional service changes, and multi-year test periods. See Postal Service Initial Comments at 1-2; OCA Comments at 2.¹ These reply comments therefore address only the OCA's statements regarding the Express Mail market response rate request rules.

In its Comments, the OCA states that the Express Mail market response rate request rules should be allowed to lapse, absent a showing by the Postal Service that "explicitly justifies retention of [the] rules and reports a concrete

¹ The OCA takes no position on the Commission's proposal to shorten the period for intervention in minor classification, market test, and provisional service change proceedings. See OCA Comments at 2.

intention to use them in the future,” because they have never been used by the Postal Service, and allowing them to lapse therefore “appears to serve administrative efficiency.” OCA Comments at 1-2.² The OCA’s views concerning this issue have either been addressed by the Postal Service’s Initial Comments, or are not an appropriate basis upon which to conclude that the rules should be allowed to lapse. Thus, they should in no way dissuade the Commission from reissuing these rules, as is requested by the Postal Service.

First, the OCA’s statement that the Postal Service should “explicitly justifi[y]” the retention of these rules is satisfied by the Postal Service’s Initial Comments. In those Comments, the Postal Service discussed how the rules still retain high value since the fundamental reasons behind their original promulgation retain force today, and therefore how their lack of use up to this point does not mean that they are unnecessary or will never be used. See Postal Service Initial Comments at 4-5.³ The Postal Service also discussed how reissuing the rules would not impose a burden on the Commission or any

² Specifically, the OCA states:

Although the Express Mail Rate Request rules have been available to the Postal Service for the past 17 years, they have never been invoked. The Commission takes this as a sign that the rules no longer serve a useful purpose. The Commission’s reasoning is sound. Unless the Postal Service explicitly justifies retention of these rules and reports a concrete intention to use them in the future, allowing them to lapse appears to serve administrative efficiency; and the rules should be “taken off the books.”

OCA Comments at 1-2.

³ The Postal Service also pointed out that the Commission itself has said that the mere lack of use of these rules is not dispositive as to whether they should be re-issued. See Postal Service Comments at 4-5 (citing Order No. 1322 at 6).

interested stakeholder. See *id.* at 5. Therefore, since there is still value in having these rules, and there is virtually no cost in reissuing them, they should be retained.

Second, it is simply not possible for the Postal Service to “report[] a concrete intention” to utilize these rules, because of their inherently reactive, defensive nature. As Rule 57 itself states, these rules only apply where the Postal Service’s rate proposal is “intended to respond to a change in the market for expedited delivery services....”⁴ In Docket No. RM88-2,⁵ the Commission recognized that the goal of these rules is to allow the Postal Service to respond in a timely manner to market developments; that is, to “accommodat[e] regulatory proceedings to claimed market exigencies.” See Docket No. RM88-2, Second Notice of Proposed Rulemaking (March 14, 1989), at 6. Since requests under these rules can only be prompted by certain changes in competitive circumstances, which cannot be predicted with certainty in advance, it is impractical to expect or require the Postal Service to definitively state that it will file such a request in the future.

Third, contrary to the OCA’s argument otherwise, allowing these rules to lapse would in no way “serve administrative efficiency.” The Postal Service fails

⁴ See *also* Rule 58(c) (requiring the Postal Service’s filing to “contain an explanation of why the change proposed by the Postal Service is a reasonable response to the change in the market for expedited delivery services to which it is intended to respond”); Rule 58(h) (requiring the filing to “be accompanied by a complete description of the change in the market for expedited delivery services to which the Postal Service proposal is in response...”).

⁵ At page 4 of its Initial Comments, the Postal Service incorrectly cited the proceeding that established these rules as Docket No. RM88-1 rather than the proper Docket No. RM88-2.

to see how the mere existence of a set of procedural rules, which while little-or-never-used do serve a valuable, discrete purpose, can somehow be “inefficient,” such that their elimination necessarily leads to “administrative efficiency.”⁶ This is especially true where, as here, administrative efficiency is in fact served by the *presence* of these rules rather than somehow by their absence. As the Commission recognized in Docket No. RM88-2, the procedural certainty provided by a set of definitive rules governing limited Express Mail rate requests is preferable to trying to achieve expedition through post-filing procedural rulings and waivers of the standard ratemaking rules. *See id.* at 16-17, 18, 62.⁷ Thus, since these rules retain value (i.e., situations may arise in the future where they could become needed), it would be more efficient to maintain the procedural

⁶ Nor does the OCA provide any detailed explanation as to how the mere existence of a set of procedural rules somehow causes “administrative inefficiency.” The OCA appears to believe that the “inefficiency” of these rules is due to the fact that they have never been used, which in its mind suggests that “they no longer serve a useful purpose.” *See* OCA Comments at 1. As the Postal Service emphasized in its Initial Comments, however, and reemphasizes here, these rules do in fact serve a valuable purpose in giving the Postal Service the ability, in certain circumstances, to respond to developments in the market for expedited delivery. Such an ability is valuable, for example, because it benefits customers in that market through the fact that it augments the Postal Service’s ability to compete. In addition, the mere fact that the Postal Service has not chosen to utilize these rules up to this point does not in any way compel a conclusion that they will not be used in the future when appropriate.

⁷ In its Second Notice, at 16-17, the Commission stated: “While expedition in considering limited rate change requests is certainly possible without amending our rules, we believe that the procedures we are fashioning will be helpful. We have seen that in dealing with cases of first impression, much time can be spent at the initial stages in discussions concerning how best to proceed. Another source of controversy is often the informational and other filing requirements. If, as we are attempting to do here, rules can give the Postal Service and interested parties advanced notice of what is expected of them and how the Commission intends to proceed, the expedition that always remains the Commission’s goal can be furthered.”

certainty that they provide rather than prematurely jettisoning them and relying on the uncertain compression of the standard procedures.

In summary, nothing in the OCA's Comments should dissuade the Commission from agreeing with the Postal Service and reissuing these Express Mail rules. Though the inherent nature of the rules prevents the Postal Service from "report[ing] a concrete intention to use them in the future," as the OCA suggests should be required before the Commission reissues them, the Postal Service reaffirms its discussion in its Initial Comments that there is still value, both to itself and to its customers, in having a defined procedural vehicle 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.

Respectfully submitted,

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