

CONCURRING OPINION OF COMMISSIONER GOLDWAY

This decision marks the second consecutive omnibus rate case that the Postal Rate Commission (PRC) decision has been premised on a settlement.

I have been pleased to be part of a regulatory oversight organization that encourages harmony and consensus among postal stakeholders.¹ I am proud to serve with fellow commissioners who are striving to facilitate our own decisionmaking process and enhance the overall efficiency of the United States Postal Service. Nevertheless, I am concerned that the continuing reliance on settlements in major rate cases may lead to unfair rates and reduced efficiency within the Postal Service and, equally important for me, to a diminution of the transparency and accountability in the operations of the Commission and the Postal Service.

Rate cases that are presented as settlements cause harm by:

- eliminating or subordinating important costing issues;
- postponing many worthwhile structural changes;
- placing undue reliance on the open-ended “catchall” decisional factor;²
- exhibiting extensive advance collaboration with well-connected mailers; and
- risking the impression of a “take it or leave it” proposition in the view of some mailers.

Under the traditional rate case process, the legitimacy of our decisionmaking rests on the resolution of complex factual issues presented in an evidentiary record, and extrapolation from those facts into classification schemes and rates guided by the criteria set forth in the Postal Reorganization Act³.

¹ In the past four years the Commission has used part or all of proposed settlements as the basis for its recommended decisions in 11 rate and classification cases.

² See, 39 U.S.C. § 3622(b)(9), “such other factors as the commission may deem appropriate.”

³ 39 U.S.C. § 3622.

Congress gave the PRC important responsibilities, especially the duty of assuring that the policies of the Act are carried out through the pricing of postal products. The Commission assures that rates promote these public policies by evaluating evidence on the costs caused by each subclass of mail, and on the portion of the remaining (institutional) costs that should be allocated to each subclass. The rates recommended in this decision are not based on such evaluations, and as a result they will not produce the economic benefits of efficient component pricing or most fairly divide institutional cost burdens between mailers.

Previously in fully litigated rate cases, the Commission found its decisionmaking abilities hampered by a lack of up-to-date cost studies, incomplete cost data, or unexplained discrepancies between the testimony of one witness and that of another. But the Commission has more than 30 years of experience in analyzing postal data and our ability to consider the evidence we have, and our record for setting fair and equitable rates, is well-respected. However, if we continue to have cases in which most mailers agree to settle at an early stage in the proceeding, we will have far less information on which to base our findings. The information with which we are presented might be deemed prejudicial. For example, those stakeholders with fewer resources may be discouraged from participating when the majority claims to speak for all. Whether it is peer pressure or the high cost of litigating, when the outcome seems predetermined, many members of the public may not participate.

In negotiated settlements, parties meet in private. Factual data and statistical methodology may play a far less important role than concessions or agreements among the negotiating parties. I am concerned that in the future “insiders” could seek to preserve their own interests and the status quo. As this Commission opinion fully enumerates, there are already many instances in which status quo rates may not accurately reflect current costs. Further, I am concerned that many of the improvements

the Commission suggested in R2000-1 in particular regarding special services used by consumers and small businesses have yet to be addressed.

Several parties in this case filed briefs indicating they wanted to present evidence, but chose not to do so because the circumstances of this case supported settlement. While I fully support the Commission opinion accepting the proposed settlement as the basis for our decision in this case, it is important for parties to realize that the Commission does not view settlements as foreclosing its duty to carefully consider all applicable public policies. Parties that do not submit evidence run the risk that without the benefit of their knowledge and opinions, the Commission may reach a potentially adverse decision.

In this concurring opinion, I take the opportunity to urge all the members of the postal community to return to the more open and vibrant, if complex, process of rate review by participating fully in our hearings. The Commission is obliged to consider all the interests of the general public and it does so best only in full partnership with all stakeholders.

A handwritten signature in cursive script, reading "Ruth Y. Goldway". The signature is written in black ink and is positioned above a horizontal line.

Ruth Y. Goldway, Commissioner