

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

PUBLIC INQUIRY ON CHANGES ASSOCIATED
WITH THE DELIVERING FOR AMERICA PLAN

Docket No. PI2023-4

**UNITED STATES POSTAL SERVICE'S MOTION FOR RECONSIDERATION OF
CHAIRMAN'S INFORMATION REQUEST NO. 7**

(January 2, 2024)

On December 20, 2023, Chairman Kubayanda issued Chairman's Information Request No. 7 ("ChIR No. 7" or "ChIR"), which exceeds both the stated bounds of this docket as well as the scope of the Commission's authority. The Postal Service has answered, and will continue to answer, information requests issued in this docket, to the extent that they are appropriately within the Commission's authority and the legitimate scope of this docket. As explained more fully below, that is not the case with this request. Therefore, pursuant to 39 C.F.R. § 3010.165, the Postal Service respectfully requests that the Commission reconsider and withdraw ChIR No. 7, as it is based on a material error of law.

I. BACKGROUND

On March 23, 2021, the United States Postal Service ("Postal Service") published the *Delivering for America* Plan ("Plan" or "DFA plan"), a ten-year strategic plan articulating a broad guiding vision with high-level future initiatives to address the

Postal Service's long-standing financial, service, and operational challenges.¹ The Plan is designed to achieve two fundamental goals: service excellence, defined as meeting or exceeding 95 percent on time delivery across all product categories, and financial sustainability, by enabling the Postal Service to achieve break-even performance over the next ten years while making the necessary investments in people and infrastructure.

On April 20, 2023, the Commission opened this proceeding to provide a forum to learn more about initiatives within the Plan that may have a significant impact on the postal community.² At that time, the Postal Service submitted a motion for reconsideration asking the Commission to withdraw the docket. The Postal Service argued that the Commission lacked the statutory authority to conduct an inquiry into our strategic plan that was framed so broadly as to potentially implicate review and oversight over all aspects of postal operations, including those beyond the reach of the Commission's statutory remit.³

In denying our motion, the Commission set purported limits on the scope of this proceeding. The Commission was clear that this docket was not intended as an advisory opinion process on the entire Plan, nor was it intended to be a comprehensive review of the Plan.⁴ The Commission also reiterated that there are aspects of the Plan that fall outside of its jurisdiction, including workforce-related initiatives and legislative

¹ United States Postal Service, *Delivering for America: Our Vision and Ten-Year Plan to Achieve Financial Sustainability and Service Excellence*, Mar. 23, 2021, https://about.usps.com/what/strategic-plans/delivering-for-america/assets/USPS_Delivering-For-America.pdf.

² Docket No. PI2023-4, PRC Notice and Order Initiating Public Inquiry Associated with the Delivering for America Plan, Order No. 6488 (April 20, 2023), at 4.

³ Docket No. PI2023-4, United States Postal Service's Motion for Reconsideration of Order No. 6488 (May 5, 2023), at 5-6, 8-14.

⁴ Docket No. PI2023-4, PRC Order Denying Motion for Reconsideration, Order No. 6548 (June 21, 2023), at 9.

advocacy.⁵ In unequivocal terms, the Commission declared that “the information sought in this inquiry will not include information unrelated to its statutory obligations.”⁶

Specifically, the Commission indicated that “where planned and implemented initiatives may implicate Commission oversight, the Commission must ensure these initiatives comply with statutory and regulatory requirements,” and that it would therefore seek information in this regard “to determine whether Commission action is required.”⁷

The Commission also found our concerns to be premature, claiming that it had “merely opened a docket, creating a forum to learn more about strategic plan initiatives that may have a significant impact on the postal community,” and observing that it had “not issued any orders or directed the Postal Service to take any action in this proceeding.”⁸ In effect, the Commission ruled that the Postal Service could raise an objection to the Commission’s overreach if and when a future Commission order or directive within Docket PI2023-4 overstepped the Commission’s authority, but not before. This information request transgresses the stated limitations placed on the scope of this docket, exceeds the Commission’s statutory authority, and should be withdrawn. To the extent that our prior motion was premature, this motion surely is not.

⁵ *Id.* at 9-10.

⁶ *Id.* at 10.

⁷ *Id.* at 11-13.

⁸ *Id.* at 8.

II. ARGUMENT

A. ChIR No. 7 Does Not Advance a Legitimate Regulatory Objective Within the Scope of the Commission’s Authority or the Stated Purpose of the Proceeding—Citing to Section 503 is not Enough.

The Commission is not empowered to infringe on the Postal Service’s well-recognized strategic, managerial, and operational independence by merely invoking the notion that such independence might affect costs or could have potential impacts on service. The Commission apparently recognized as much in Order No. 6548 when it specified the scope of this docket.

As explained in our prior motion for reconsideration, the Commission, like any agency, must act within the bounds of its statutory authority.⁹ Agencies are likely to have an expansive view of their mission, but they cannot enlarge the scope of their authority, regardless of the significance of a matter they seek to address.¹⁰ This restriction applies to any exercise of the Commission’s authority, including its general authority to “take any other action they deem **necessary and proper to carry out their functions and obligations** to the Government of the United States and the people” as prescribed under Title 39. 39 U.S.C. § 503. (emphasis added).

“**Necessary and proper**” provisions, like the one found in Section 503, do not supply an agency “carte blanche authority” to justify action on any matter relating to its enabling statute.¹¹ Were that the case, an agency would be able to greatly, and

⁹ *E.g.*, *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 125 (2000); *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 321 (2014); *INS v. Chadha*, 462 U.S. 919, 953 n. 16 (1983) (explaining agency action “is always subject to check by the terms of the legislation that authorized it”).

¹⁰ See *Hi-Craft Clothing Co. v. NLRB*, 660 F.2d 910, 916 (3d Cir.1981); *Gen. Eng’g, Inc. v. NLRB*, 341 F.2d 367, 374 (9th Cir.1965).

¹¹ See *Citizens to Save Spencer Cty. v. EPA*, 600 F.2d 844, 873 (D.C. Cir. 1979); see also *Nat’l Mining Ass’n v. U.S. Dep’t of Interior*, 105 F.3d 691, 694 (D.C. Cir. 1997); *Am. Petroleum Inst. v. EPA*, 52 F.3d 1113, 1119-20 (D.C. Cir. 1995).

improperly, expand its regulatory reach. Instead, Commission requests must be rooted in one of the Commission’s enumerated “**functions and obligations**” under Title 39 and exercised within the bounds set by Congress before it can be found “necessary” to “carry[ing] out” the Commission’s responsibilities. Although the Commission stated that this interpretation and application of Section 503 was “mistaken,”¹² it has not offered any support for the notion that Section 503 expands its oversight authority beyond the confines of its role in Title 39. To the contrary, the Commission appeared to recognize that its authority under Section 503 must be tied to one of its underlying statutory functions or obligations and has before now limited the scope of this proceeding accordingly.¹³

Congress has given the Postal Service well-recognized managerial independence. In the Postal Reorganization Act, Congress embodied its intent “to minimize external intrusions on the Postal Service’s managerial independence”¹⁴ and to provide the Postal Service with the freedom to act in a business-like manner.¹⁵ Congress explained that postal management must be given the “unfettered authority and freedom that has been denied for years to maintain and operate an efficient service.”¹⁶ While the scope of the Commission’s role was expanded in some specific and targeted respects in the Postal Accountability and Enhancement Act and the Postal Service Reform Act of 2022, Congress retained its fundamental recognition of the

¹² PRC Order No. 6548 at 9.

¹³ *See id.* at 10.

¹⁴ *LeMay v. USPS*, 450 F.3d 797, 800 (8th Cir. 2006) (citing *Buchanan v. USPS*, 508 F.2d 259, 262 (5th Cir. 1975)).

¹⁵ H.R. Rep. No. 91–1104 at 5 (1970).

¹⁶ S. Rep. No. 912 at 2 (1970); H.R. Rep. No. 91–1104 at 5.

Postal Service’s managerial independence. To that end, the Postal Service has “primary responsibility for both long-range planning and day-to-day operations”¹⁷ and the Board of Governors has the exclusive authority to make policy and management decisions governing the Postal Service.¹⁸

To carry out these responsibilities, Congress has vested the Postal Service with the general authority and specific powers necessary to design, maintain, and operate the postal network. The Postal Service is responsible for maintaining an efficient system of collection, sorting, and delivery of the mail nationwide, and establishing and maintaining postal facilities to allow for ready access to essential postal service.¹⁹ The Postal Service is further authorized to acquire property as we deem necessary or convenient in the course of business, as well as to construct, operate, lease, and maintain buildings, facilities, equipment, and other improvements on any property we own or control.²⁰ The Postal Service has also been given the broad authority to provide for the collection, handling, and transportation of mail, and to determine the need for post offices, postal facilities, and equipment.²¹ And finally, to ensure we are able to satisfy these obligations, Congress has provided the Postal Service with “all other powers incidental, necessary, or appropriate” to carry out our functions and the exercise of our specific powers.²²

¹⁷ Docket No. C2012-2, PRC Order Dismissing Complaint, Order No. 1463 (Sept. 10, 2012), at 9.

¹⁸ See S. Rep. No. 912 at 5.

¹⁹ 39 U.S.C. § 403(b).

²⁰ *Id.* §§ 401(5), (6).

²¹ *Id.* §§ 404(a)(1), (3).

²² *Id.* § 401(10).

If there is a legitimate statutory or regulatory basis for the information requested in the ChIR in the context of *this* proceeding, the Postal Service is not aware of it and the Commission has not provided it. This ChIR requests extremely granular information concerning the Postal Service's current transportation trips and other operational matters. As discussed further below, there is no clear avenue for the Commission to analyze or apply the requested information in furtherance of its statutory responsibilities even if the Postal Service were to provide it. And, in many cases, any attempt to do so would infringe on the Board of Governors' policy control over the Postal Service and the Postal Service's authority over day-to-day operations. The ChIR exceeds both the Commission's statutory authority and the stated scope of these proceedings and, therefore, should be withdrawn.

B. This ChIR Exceeds the Bounds of a Public Inquiry Proceeding.

The Commission has specific areas of oversight under Title 39 and a variety of different tools available to assist it in carrying out its responsibilities. For example, the Commission can use public inquiry proceedings to gather information or to further explore issues of significant importance. See 39 C.F.R. §§ 3012.1(b), 3020.102(b). This is accomplished through information requests, which must be likely to materially assist the Commission in the conduct of its proceedings, in the preparation of its reports, or in the performance of its functions under title 39 of the United States Code. *Id.* § 3010.170(a). Beyond the public inquiry docket, the Commission has access to a stronger set of tools when carrying out certain obligations. For instance, formal discovery is available in cases where the Postal Service is seeking an advisory opinion pursuant to 39 U.S.C. § 3661, *id.* § 3020.116, or when a complaint filed under 39 U.S.C.

§ 3662 raises material issues of fact or law requiring the opportunity for a hearing on the record. See *id.* § 3010.300, § 3010.310. Additionally, in certain circumstances, like when seeking an advisory opinion, the Postal Service also has an affirmative obligation to prepare and present direct evidence to establish that proposed changes conform to the policies of Title 39. *Id.* § 3020.114.

In Order No. 6548, the Commission cites to previous advisory opinion dockets to illustrate that “whether and how certain initiatives would impact costs or rates, the speed of delivery, and retail accessibility are all reasonable inquiries under the Commission’s statutory authority.”²³ The reliance on these “nature of service” dockets demonstrates the inappropriateness of this information request in the context of a Public Inquiry docket. In each of the dockets cited by the Commission, the Postal Service determined “that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis” consistent with 39 U.S.C. § 3661(b). Nature of service proceedings are grounded in different statutory authority and are subject to different rules for initiating the proceedings, presenting evidence, evaluating proposed changes, and soliciting additional information. By contrast, in its own words, here, the Commission “has merely opened a docket, creating a forum to learn more about strategic plan initiatives that may have a significant impact on the postal community.”²⁴ Whether there is an “impact on the postal community” is not a

²³ PRC Order 6548 at 11, n. 13. (citing Docket No. N2012-1, Advisory Opinion on Mail Processing Network Rationalization Service Changes (Sept. 28, 2012); Docket No. N2021-1, Advisory Opinion on Service Changes Associated with First-Class Mail and Periodicals (July 20, 2021); Docket No. N2021-2, Advisory Opinion on the Service Standard Changes Associated with First-Class Package Service (Sept. 29, 2021); Docket No. N2022-1, Advisory Opinion on the Service Standard Changes Associated with Retail Ground and Parcel Select Ground (June 9, 2022); Docket No. N2022-2, Advisory Opinion on Changes to the Critical Entry Times for Certain Categories of Periodicals (Nov. 30, 2022)).

²⁴ *Id.* at 8.

relevant legal standard. Moreover, the Commission has asked, and the Postal Service has answered, questions regarding why the various initiatives at issue do not warrant a request for an advisory opinion.²⁵

The Commission has even gone a step further with this ChIR and, as explained more fully below in Section C, has requested information that in breadth of scope and granularity of detail, exceeds an analogous data set provided during a prior advisory opinion process, which this is not, for the reasons noted above.²⁶ If, as was the case in the prior docket, such information then sufficed for the Commission's purposes, it is unclear what objective the requested information might advance in the instant docket, especially when the Postal Service does not consider the network modernization efforts addressed by this ChIR to constitute nationwide changes in the nature of postal services, and has accordingly declined to request an advisory opinion pursuant to Section 3661 for the reasons that we have explained in response to prior ChIRs in this matter. As the Postal Service has emphasized throughout this Docket, insofar as the DFA plan's strategic goals involve substantially nationwide changes in the nature of postal services, the Postal Service has already requested multiple advisory opinions pursuant to Section 3661.²⁷ Requests for advisory opinions in all three cases addressed planned service standard changes conceived as precursors to, and enabling

²⁵ See, e.g., Docket No. PI2023-4, Responses of the United States Postal Service to Questions 1-5 of Chairman's Information Request No. 1 (July 19, 2023), at 22-27 (regarding changes to the processing network and S&DCs); Docket No. PI2023-4, Responses of the United States Postal Service to Questions 1-12 of Chairman's Information Request No. 5 (Dec. 4, 2023), at 13-15 (regarding Optimized Local Transportation); Docket No. PI2023-4, Responses of the United States Postal Service to Questions 1-7 of Chairman's Information Request No. 6 (Dec. 21, 2023), at 5-6 (regarding Optimized Local Transportation).

²⁶ *Infra* at 14.

²⁷ See Docket Nos. N2021-1, N2021-2, and N2022-1; Docket No. PI2023-4, United States Postal Service's Motion for Reconsideration of Order No. 6488 (May 5, 2023), at 3.

conditions of, the network initiatives covered so far in this docket. While the Postal Service does not foreclose the possibility of other requests pursuant to Section 3661 related to the DFA plan, these initiatives do not alter existing service standards but aim instead to realize consistently excellent service performance within the existing service standards.

There is no regulatory basis, or reasonable need, for the Commission to request more detailed data for “information gathering” purposes under a public inquiry proceeding than it requires to fulfill its obligations to issue advisory opinions in a nature of service case. In harkening back to prior N-cases, (which again, this is not), and in issuing information requests that seek this sort of information, the Commission is treating this docket as if an advisory opinion had been requested regarding the Plan’s network efforts. Yet, the Postal Service has not determined that “substantially nationwide changes in the nature of postal services” will occur or be necessary, and the Commission has clearly stated that this docket is not an advisory opinion process.²⁸

Whatever appropriateness may have been lent to the initial information requests under this proceeding, the Commission is now stretching the limits of a public inquiry docket too far. The Commission claimed that it was “well within the Commission’s authority under 39 U.S.C. § 503” to “seek[] information” through a public inquiry proceeding to determine whether the obligation to file an advisory opinion under 39 U.S.C § 3661 has been triggered, or whether to take further action with regard to any of its other statutory obligations.²⁹ Even assuming that is true, this is the Commission’s

²⁸ PRC Order No. 6488 at 4; PRC Order No. 6548 at 9.

²⁹ PRC Order No. 6548 at 11.

seventh information request presumably issued to determine whether or not to take additional steps, and the Postal Service has been responsive and provided detailed information that explain the nature of the initiatives that the Commission has inquired about, and why they do not trigger any of the Postal Service's regulatory obligations at this time. As we have previously stated, and consistently demonstrated, the Postal Service will continue to seek Commission review (and, when necessary, approval) where statutorily required.

The Commission does not explain why the further information sought in this ChIR is needed to achieve the expressed purpose of this proceeding, and there is no justifiable basis for the information that is sought. The Commission cannot use a public inquiry docket as a vehicle to conduct an unending quest into day-to-day Postal Service operations and deliberations simply by invoking a need to determine whether there has been an (illusory) failure of the Postal Service to fulfil our obligations. There is no utility, regulatory benefit, or legal justification for doing so.

C. ChIR No. 7 Is Unnecessarily Expansive and an Inefficient Use of Postal Service and Postal Regulatory Resources.

Not only does ChIR No. 7 exceed the Commission's authority and the stated bounds of the instant docket for the reasons explained above; it variously requests information that is more expansive than anything the Commission has historically relied on to fulfill its regulatory responsibilities, and requests information that falls within the Postal Service's sole discretion.

In ChIR No. 7, Questions 1-2 and 6, the Commission requests detailed information regarding all scheduled transportation trips, including trips that run between processing plants and trips that run between processing plants and delivery facilities.

The Postal Service schedules upwards of 40,000 daily trips, many of which are governed by contracts that, in the usual course of business, expire and are reanalyzed in light of market conditions beyond the Postal Service's control. It is far from clear that the Commission's request, despite its extraordinary breadth, allows distinctions to be drawn between such ordinary fluctuations and the network initiatives with which ChIR No. 7 is ostensibly preoccupied. Notwithstanding, these questions probe not only the granular operational details of scheduled Highway Contract Route ("HCR") trips—information that, as discussed below, the Postal Service has to a limited degree provided within regulatory contexts that differ crucially from the instant docket; they also request identical information concerning Postal Vehicle Services ("PVS") trips that are operated by Postal Service employees. Question 6 furthers this misplaced line of inquiry, seeking access to "workpapers and analysis" that detail plans to insource certain HCR trips, cost projections associated with such plans, and "a list of HCR Route IDs that are being considered for conversion from HCR transportation to PVS transportation"—despite the clearly pre-decisional and deliberative nature of the initiative in question, the variable and evolving models that will guide its (as yet unsettled) outcomes, and the fact that the matter in question concerns labor matters outside of the Commission's jurisdiction. The resources of time and effort required to gather (and to assess) such voluminous data are inversely proportional to any function they might serve in the pursuit of legitimate regulatory objectives. Simply put, the statutory bases cited by the Commission in its Order denying our initial Motion for

Reconsideration in the instant docket—i.e., Sections 3653, 3661, 3691 and 3692, among others³⁰—in no way justify the Commission’s requests.

Moreover, the Postal Service routinely provides extensive reporting on service and transportation performance in our Annual Compliance Reports (as well as various quarterly and biannual reports) which address the obligations embedded in Sections 3653, 3691 and 3692. Indeed, pursuant to 39 C.F.R. § 3055.2, and to various directives issued by the Commission’s Annual Compliance Determinations, the Postal Service provides detailed reporting on service performance, including service performance results, root cause data, average delivery times, last mile data, transit (trips on time) data, and critically late trips.³¹ Specifically, the Postal Service provides SPLY trips-on-time comparisons disaggregated by division and fiscal quarter, as well as data on critically late trips disaggregated by area, division and fiscal quarter. The Postal Service also, of course, offers detailed service performance data for a variety of classes and products—data which, it should be emphasized, continue to demonstrate improved performance year over year. Such reporting suffices for the Commission’s assessment of service performance, and of the nexus between service performance and transportation performance for the purposes of the aforementioned statutes. Nonetheless, this reporting does not include information pertaining to individual scheduled trips, and it does not distinguish between HCR and PVS trips. It is equally unclear why such information is required now, and how such information is relevant to the Commission’s stated objectives in the instant docket.

³⁰ PRC Order No. 6548 at 10-11.

³¹ See, e.g., Docket No. ACR2023, FY 2023 Annual Compliance Report, Folder FY23-29 (Dec. 29, 2023).

The Commission also cites 39 U.S.C. § 3661 as grounds to pursue the instant docket. Indeed, the closest analogue in prior proceedings to the data request in ChIR No. 7, Questions 1-2 and 6 was, as the ChIR suggests, contained in Docket No. N2012-1, USPS-LR-N2012-1/11. There, in the context of an advisory opinion proceeding initiated pursuant to 39 U.S.C. § 3661—one concerning both network consolidation plans and (more significantly) service standard changes—the Postal Service provided information on scheduled processing plant-to-processing plant Highway HCR trips (i.e., trip miles, trip number, trip purpose annual trip frequency, and average utilization of available capacity). ChIR No. 7, Questions 1-2 and 6, request analogous information, in addition to rates per mile and annual costs, pertaining not only to HCR trips between processing plants, but to all trips, including PVS trips, which run between processing plants and between processing plants and delivery facilities. In contrast to the Network Rationalization effort discussed in Docket No. N2012-1, the network initiatives referenced in ChIR No. 7 do not entail service standard changes; they are instead subjacent to, and supportive of, the goal of achieving consistently excellent service performance within existing service standards.³² If the materials provided in USPS-LR-N2012-1/11 sufficed for the Commission to assess the network rationalization process then at issue, it is unclear why or to what end the Commission now requires substantially more detailed and extensive information, especially when the Postal

³² Indeed, as noted above, *supra* at 10, insofar as the DFA plan's strategic goals involve substantially nationwide changes in the nature of postal services, the Postal Service has already requested multiple advisory opinions pursuant to Section 3661. See Docket Nos. N2021-1, N2021-2, and N2022-1. The Postal Service does not foreclose the possibility of other such requests, if and when they are deemed warranted.

Service has not determined, pursuant to Section 3661, that its network modernization efforts will cause substantially nationwide changes to the nature of postal services.

Further difficulties, of both a legal and practical nature, surround the information requested by Question 6. First, the Commission lacks jurisdiction over the labor agreements with which the insourcing initiative is inextricably enmeshed.³³ Indeed, the implementation of this initiative at every relevant site has involved, and will in future iterations continue to involve, labor agreements that exceed the Commission's oversight authority. Second, even if the Commission could properly assert jurisdiction over the Postal Service's insourcing initiative (which it cannot), it here seeks materials which, at this early stage, do not exist in a reliably complete or finalized form. While it is true that, as indicated in response to PI 2023-4, ChIR No. 5, Question 5, the Optimized Local Transportation (OLT) initiative will proceed in conjunction with the insourcing of transportation routes; and while OLT-related modeling may indeed identify, within the insourcing initiative's field of operation, a discrete number of HCR routes deemed eligible for conversion, the insourcing of even this subset of routes will be contingent on the outcome of labor negotiations. Furthermore, as noted in the aforementioned ChIR response, OLT is considered a part of the modelling exercise associated with the broader insourcing initiative: further insourcing of transportation can and will likely occur. Such efforts, however, have thus far been implemented at a small number of sites; and the Postal Service has found that, in each instance, multiple interrelated factors, varying in degree and proportion from site to site, inform the modelling exercise—which has

³³ See, e.g., Docket No. C2022-1, PRC Order Granting Motion to Dismiss Complaint, Order No. 6067 (Dec. 17, 2021), at 28-29 (conceding that aspects of the DFA plan are inappropriate for its review, including workforce-related initiatives such as reducing non-career staff turnover, improving the hiring process, and building and retaining a diverse pipeline of candidates); PRC Order No. 6548 at 10.

therefore proven too site-specific to be tidily encapsulated within a single paradigm applicable to all subsequent iterations. Lessons gleaned from each iteration are, moreover, being assessed and will be incorporated into subsequent modelling efforts. In short, the environment for which the Commission seeks a comprehensive model is dynamic and shifting, and it has not been fully mapped out. For this reason, neither a comprehensive set of work papers, nor a complete list of “HCR route IDs that are being considered for conversion from HCR transportation to PVS transportation,” nor even projected cost savings estimates associated with this initiative can be provided. (It bears mentioning that any such cost savings as they materialize will be captured and allocated as appropriate in subsequent Annual Compliance Reports).

Question 4 requests, for facilities from which carrier routes have been removed, Labor Distribution Codes for remaining functions, space utilization measurements, and accounts of employee staffing. The Postal Service has repeatedly emphasized that the S&DC initiative will not affect customer access to retail services, and as discussed above, the network modernization efforts addressed by ChIR No. 7 do not constitute substantially nationwide changes to the nature of postal services. Such impacts to customer retail access—which, to reiterate, the S&DC initiative will not cause—might fall within the Commission’s regulatory purview. Information of the sort here requested by the Commission does not. As discussed in Section A above, Congress vested the Postal Service with discretion in the deployment of its facilities, so long as such deployments do not impede “ready access to essential postal services.”³⁴ Indeed, Title 39 authorizes the Postal Service “to acquire, in any lawful manner, such personal or real

³⁴ 39 U.S.C. § 403.

property, or any interest therein, as it deems necessary or convenient in the transaction of its business; to hold, maintain, sell, lease, or otherwise dispose of such property or any interest therein; and to provide services in connection therewith and charges therefor”; and “to construct, operate, lease, and maintain buildings, facilities, equipment, and other improvements on any property owned or controlled by it.”³⁵ Thus, in the absence of service or retail impacts, the manner in which the Postal Service chooses to repurpose facilities, and the volume of utilized space within such facilities (before or after repurposing), fall within the Postal Service’s zone of discretion, and are not subject to Commission oversight. Furthermore, as discussed above, the Postal Service’s labor agreements and employment decisions also exceed the Commission’s oversight authority; and such data points as Labor Distribution Codes and “the number of carriers and clerks that have relocated or terminated upon removal of carrier routes and the number of clerks and carriers remaining at [repurposed facilities],” clearly and unambiguously concern employment decisions that fall outside of the Commission’s purview and within the purview of the Postal Service.

Question 7, referring to two OIG Reports on a recent truck driver shortage, likewise inquires into whether the Postal Service “has accounted for this shortage and has continued implementing the recommendations identified in the [OIG] reports.” As an initial matter, the Commission is not expressly charged with auditing and investigating the Postal Service’s compliance with OIG recommendations; for this reason alone, Question 7 would overstep the bounds of the Commission’s authority.

³⁵ *Id.* §§ 401(5), (6).

Furthermore, as with Questions 4 and 6, the Commission here seeks information pertaining to employment considerations that are not subject to Commission review.

Finally, much like Question 4, Questions 3 and 5 request information concerning the Postal Service's disposition of real property pursuant to 39 U.S.C. §§ 401 and 403. Specifically, Question 3 seeks to ascertain "the criteria used to identify the facilities for conversion to S&DCs," while Question 5 would have the Postal Service provide "all criteria used . . . to determine which S&DCs will serve as transfer hubs," together with a comprehensive list of S&DCs that serve as transportation hubs. As explained above, absent service or retail impacts, the Postal Service's deployment of facilities (including S&DCs that serve as transportation hubs), and the criteria brought to bear upon its decisions regarding such facilities, lie solely within the Postal Service's discretion and are not subject to Commission oversight. In any event, the Postal Service has already emphasized that S&DCs will "improve the transportation network by serving as Transfer Hubs for smaller Delivery Units that could not be logically consolidated and for Post Offices within a particular area."³⁶ The default assumption is that all S&DCs will serve as transfer hubs, and the rationale for this assumption has been clearly set forth. The determination as to which S&DCs will not ultimately serve as transfer hubs, as well as the timing of such determinations, will become settled as the network evolves. Thus, not only do these questions exceed the statutory scheme that both delineates—and limits—the Commission's regulatory purview; the information that is requested would

³⁶ Docket No. PI2023-4, Responses of the United States Postal Service to Questions 1-5 of Chairman's Information Request No.1 at 14.

afford little insight into ongoing developments within the network and would as such fail to advance any discernable regulatory objective.

In sum, it is not clear how the extensive level of granular information requested in ChIR No. 7 would advance the Commission's general understanding of the Plan or aid in determining whether further regulatory action is warranted. It is especially difficult to find the regulatory and probative value in the Commission's request as we are unaware of any instances, whether in nature of service cases seeking an advisory opinion, in the annual compliance review process, or otherwise, where the Commission has relied on the requested level of detailed information to fulfill its obligations.

Because the burden in responding to this information request would far outstrip the tangential (if any) relevance of the information to the Commission's consideration of the Plan, the Commission should withdraw ChIR No. 7.

III. CONCLUSION

ChIR No. 7 requests information outside the stated purpose of these proceedings, would not advance a legitimate regulatory objective within the scope of the Commission's authority, and unjustifiably intrudes on Postal Service managerial independence. For the reasons stated above, and pursuant to 39 C.F.R. § 3010.165, the Commission made a material error of law when it issued ChIR No. 7, and the Postal Service respectfully requests that the Commission reconsider and withdraw the information request.

Respectfully submitted,

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