

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Michael Kubayanda, Chairman;
Mark Acton, Vice Chairman;
Ann C. Fisher;
Ashley E. Poling; and
Robert G. Taub

Public Inquiry on Changes Associated
with the Delivering for America Plan

Docket No. PI2023-4

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued June 21, 2023)

I. INTRODUCTION

On May 5, 2023, the Postal Service filed a motion requesting the Commission withdraw this docket.¹ For the reasons discussed below, the motion is denied.

II. BACKGROUND

On March 23, 2021, the Postal Service published a 10-Year Strategic Plan announcing potential changes intended to achieve financial stability and service

¹ United States Postal Service's Motion for Reconsideration of Order No. 6488, May 5, 2023 (Postal Service Motion).

excellence.² Since the publication, the Postal Service has issued two progress reports on the DFA Plan, with the most recent report published in April 2023.³

On April 20, 2023, the Commission established this docket to examine recent and planned network changes associated with the DFA plan.⁴ The Commission noted that the docket was not intended as an advisory opinion process on the plan. Order No. 6488 at 4. Rather, the docket was intended to provide a forum to seek additional information about certain planned initiatives, such as the creation and implementation of sorting and delivery centers (S&DCs). *Id.* The Commission stated that it planned to gather this information from the Postal Service by issuing information requests. *Id.* The Commission also appointed an officer of the Commission to represent the interests of the general public (Public Representative) in this docket and invited interested parties to propose questions by filing motions seeking information requests. *Id.*

The Association for Postal Commerce (PostCom) filed a motion for issuance of information requests on April 28, 2023, proposing questions to seek information “that w[ould] allow participants to better understand and evaluate the impact of recent changes to the postal network.”⁵ This Motion is currently pending before the Commission.

² See United States Postal Service, Delivering for America: Our Vision and Ten-Year Plan to Achieve Financial Sustainability and Service Excellence, March 23, 2021, available at https://about.usps.com/what/strategic-plans/delivering-for-america/assets/USPS_Delivering-For-America.pdf (DFA Plan).

³ United States Postal Service, Delivering for America, First-year Progress Report, April 7, 2022, available at <https://about.usps.com/what/strategic-plans/delivering-for-america/assets/usps-dfa-one-year-report.pdf>, United States Postal Service, Delivering for America, Second-Year Progress Report, April 2023, available at <https://about.usps.com/what/strategic-plans/delivering-for-america/assets/usps-dfa-two-year-report.pdf> (DFA Second-Year Report).

⁴ Notice and Order Initiating Public Inquiry Associated with the Delivering for America Plan, April 20, 2023, at 1, 4 (Order No. 6488).

⁵ Motion of the Association for Postal Commerce for Issuance of Information Request, April 28, 2023, at 1.

On May 5, 2023, the Postal Service filed a motion asking the Commission to reconsider Order No. 6488 and withdraw this docket. Postal Service Motion at 1. Two groups of commenters filed responses, opposing the motion.⁶

III. POSITION OF THE PARTIES

A. Postal Service Motion

In its motion, the Postal Service asserts that the Commission lacks statutory authority to open the docket. Postal Service Motion at 1. Stating that Order No. 6488 has no limiting principles grounded in the Commission's authority, the Postal Service contends that the order permits the Commission and any interested parties to inquire into all aspects of the DFA Plan, including matters that the Commission previously recognized as outside of its jurisdiction. *Id.* at 5-6. The Postal Service asserts that Order No. 6488 violates Commission Rule 3010.151(b)(3), which requires identifying a legal authority for this proceeding, and that no such authority exists. *Id.* at 6-7. It also claims that by not identifying a legal authority, the Commission deviates from its practice of doing so in every public inquiry initiated by the Commission to date. *Id.* at 7.

Additionally, the Postal Service argues that its strategic plans are governed by 39 U.S.C. § 2802 and the Commission has no oversight over these plans. *Id.* at 8. The Postal Service avers that the Commission's oversight is limited to reviewing plans and

⁶ Response to United States Postal Service Motion for Reconsideration of Order No. 6488, May 12, 2023 (NPPC/MMA/NMA Response); Response of the Association for Postal Commerce and Alliance of Nonprofit Mailers to Motion for Reconsideration of the United States Postal Service, May 12, 2023 (PostCom/ANM Response). Although the deadline to respond to the Motion was May 12, 2023, the Commission received a response from the Lexington Institute on May 22, 2023, largely concurring with the responses received from the mailer groups. Response of the Lexington Institute to Motion for Reconsideration of the United States Postal Service, May 22, 2023. The Commission also received a letter from the Taxpayers Protection Alliance, commenting on various DFA plan initiatives and providing recommendations for the Postal Service's consideration. See Letter from David Williams, President, Taxpayers Protection Alliance to Chairman Michael M. Kubayanda, May 16, 2023. Because these submissions were received after the deadline to respond and unaccompanied by motions for late acceptance, they were not considered by the Commission as part of its review of the Postal Service's Motion.

reports created under Sections 2803 and 2804. *Id.* at 9. The Postal Service contends that “the Commission should assess the annual performance plan and performance report, which themselves incorporate the strategic plan’s policy objectives, and measure the Postal Service’s progress in meeting them.” *Id.* The Postal Service notes that Congress was well aware of the DFA Plan as it was crafting the Postal Service Reform Act and included provisions within the law related to oversight of the DFA Plan but did not provide the Commission with expanded oversight of the plan. *Id.* at 10.

The Postal Service next argues that while the authority granted to the Commission by 39 U.S.C. § 503 is broad, it is not without limits and the Commission may not rely on this statutory provision as the sole basis for the proceeding. *Id.* at 11. The Postal Service avers that the Commission’s actions under Section 503 must be tied to another, more specific provision in Title 39 and that the Commission did not identify one in its order. *Id.* at 12-13. The Postal Service also states that the Commission’s authority to receive evidence under 39 U.S.C. § 504(f) does not provide a separate grant of authority into the DFA Plan because the public inquiry was not established for the Commission to prepare a report, nor is it related to a proceeding the Commission is authorized to conduct under Title 39. *Id.* at 14-15.

Stating that the DFA Plan is a forward-looking document subject to regular evaluation, updating, and revision, the Postal Service asserts that the Commission lacks authority to review pre-decisional initiatives included within the plan. *Id.* at 15-16. In particular, the Postal Service states that by issuing Order No. 6488, “the Commission improperly interposes itself, as well as the public, into the Postal Service’s long-range planning responsibility and strips management (with oversight of the Board of Governors) of the ability to determine when and how to bring new initiatives or changes to the public.” *Id.* at 16. It protests that creating an outside process by which information can be shared has the potential to interfere with the deliberate process of the Postal Service and could have a negative impact on the Postal Service’s relationships with its unions. *Id.* at 18-19. The Postal Service asserts that it is not required to “seek input in the early stages of [its] strategic or operational planning and

[it] generally has discretion concerning the timing for bringing matters before the Commission where it is necessary and appropriate to do so.” *Id.* at 19.

Finally, the Postal Service states that inquiry into specific initiatives within the plan are properly resolved through other available procedures, and it highlights its recent requests for advisory opinions from the Commission, which have provided opportunities for public input and engagement. *Id.* at 20-22. The Postal Service also states that other proceedings allow for Commission review and public input, including proceedings such as the Annual Compliance Determination, the Postal Service’s request to adopt new market-dominant prices, proposals for changes in rates of general applicability for competitive products, and a public inquiry regarding changes to its service performance measurement plan. *Id.* at 22-25.

The Postal Service concludes that “an open-ended PI docket that encompasses review of all possible initiatives under the Plan is wholly unnecessary, unwarranted, and contrary to the Commission’s statutory authority” and requests that the Commission reconsider and withdraw Order No. 6488 and this docket. *Id.* at 26.

B. NPPC/MMA/NMA Response

The National Postal Policy Council (NPPC), the Major Mailers Association (MMA), and N/MA – The News/Media Alliance (N/MA) (collectively, NPPC/MMA/NMA) urge the Commission to deny the Postal Service’s Motion, stating that the Commission has authority to open this docket in furtherance of its regulatory responsibilities and the Postal Service’s objections are premature. NPPC/MMA/NMA Response at 1, 5. They explain that certain network changes – some of which have already occurred – potentially have profound implications for matters within the Commission’s jurisdiction, such as costing, service performance, productivity, and rates. *Id.* at 2. The group states that the Commission has authority to take any action necessary and proper to carry out its statutory duties and this docket should better prepare the Commission to understand other proceedings that the Postal Service may choose to initiate pursuant to the DFA Plan. *Id.* at 3 (citing 39 U.S.C. § 503). The group contends that nothing in

Order No. 6488 describes an intention to explore long-range planning matters. *Id.* at 4. As an example, the group states that several of the S&DCs mentioned in the Order have been already implemented and constitute a change to the network, yet the cost and service impacts related to the new facilities “remain mysteries to stakeholders.” *Id.* at 5. As such, the group asserts that the Commission “[o]pening a public inquiry to educate itself regarding what appears to be a major restructuring of postal processing and delivery facilities is a reasonable and prudent action well within the regulator’s discretion.” *Id.* at 3.

C. PostCom/ANM Response

PostCom and the Alliance of Nonprofit Mailers (ANM) also oppose the Postal Service’s Motion. PostCom/ANM Response at 1. Noting that the only action the Commission has taken thus far has been to open the docket, they argue that the Postal Service objects to engaging with its regulator and to providing the Commission and the public with any information regarding the implementation of the DFA Plan. *Id.* at 1-2.

PostCom and ANM assert that the Commission acted well within its statutory authority when opening this docket. *Id.* at 1. They explain that 39 U.S.C. § 503 empowers the Commission to open a public inquiry docket and ask questions regarding Postal Service initiatives intended to improve service and efficiency, which may determine costs and impact rates, and that will impact the Postal Service’s ability to maintain high quality, affordable postal services. *Id.* at 2-3. They note that the establishment of a public inquiry docket is “generally uncontroversial, likely because an inquiry is not always tied to a specific planned regulatory action.” *Id.* at 3. They state that even though the Commission did not identify a specific statutory provision in its order, it does not mean there is no statutory authority that authorizes the Commission to gather information regarding the DFA Plan. *Id.* at 4. They assert that, to the extent the Commission seeks information regarding the planned initiatives as part of the DFA Plan and the impact of those initiatives, such inquiries are well within the Commission’s

authority, and statutory provisions such as Section 3651 support the Commission's exercise of Section 503 authority in this docket. *Id.* at 5.

PostCom and ANM note that the Postal Service relies on cases that address when an agency *regulation* exceeds the authority delegated to the agency by statute but does not cite any precedent suggesting that a regulatory agency exceeds its lawful authority when it opens an *information-gathering docket* about the activities of the entity it regulates. *Id.* at 8. They explain that the Commission has requested information similar to the kind it regularly collects through various avenues. *Id.* They further assert that the Commission did not previously disclaim any authority to open a public inquiry docket to further inform the Commission about the DFA Plan and its implementation. *Id.* at 7-8.

PostCom and ANM also contend that the Postal Service fails to recognize that the passage of the Postal Accountability and Enhancement Act in 2006 strengthened the role of the Commission. *Id.* at 9. They assert that the Commission's role now includes oversight and review authority over rate regulation, product lists, service standards, performance measures, changes to postal services, and financial transparency. *Id.* at 12. They state that the DFA Plan objectives directly relate to the Postal Service's financial stability and service performance, and these issues "fall squarely within the Commission's regulatory purview." *Id.* at 9-10.

Additionally, PostCom and ANM state that the Postal Service mischaracterizes the DFA plan as an "embryonic idea" despite numerous objectives having been implemented and already impacting postal stakeholders, noting that the Postal Service opened its first S&DC in Athens, Georgia in November 2022. *Id.* at 12, 14. They assert that under these circumstances, the Postal Service may not claim a deliberative process protection against regulatory oversight and information-gathering. *Id.* at 14.

Finally, PostCom and ANM state that, if the Commission agrees with the Postal Service that Order No. 6488 failed to comply with the Commission's rules, the Commission can easily remedy the violations by clarifying its authority under 39 U.S.C § 503 or establishing a comment date to comply with notice and procedure rules. *Id.*

at 15. In conclusion, they assert that the Postal Service's reaction to Order No. 6488 and its claim of broad immunity from Commission oversight validate the Commission's decision to open the docket, and they recommend the Commission deny the Postal Service's Motion. *Id.* at 16.

IV. COMMISSION ANALYSIS

As an initial matter, the Commission finds that the Postal Service's Motion is premature. 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.⁷ The Commission has not issued any orders or directed the Postal Service to take any action in this proceeding. By opening this inquiry, the Commission has not required the Postal Service to delay the implementation of any DFA Plan initiatives or required the Postal Service to postpone further strategic planning. Although PostCom filed a motion for issuance of information requests, the Commission has not yet ruled on the motion or issued information requests of its own. Furthermore, and as commenters have noted, the Postal Service may object to individual questions when they are asked. See NPPC/MMA/NMA Response at 5; PostCom/ANM Response at 9. The Postal Service is also reminded that it may follow the procedures outlined in 39 C.F.R. part 3011, should any of the requested information require non-public treatment.⁸

As to the Commission's authority with respect to conducting this inquiry, 39 U.S.C. § 503 grants the Commission general authority to take any action that is

⁷ Indeed, a recent Office of the Inspector General report recommended to the Postal Service that "[m]ore readily communicating a comprehensive vision of planned investments and their impact on affected employees, customers, and communities may further enhance stakeholder confidence in planned investments." United States Postal Service, Office of the Inspector General, Report Number RISC-WP-23-007, *Industry Trends – Major Investments in Postal Processing Networks*, June 13, 2023, at 12, available at <https://www.uspsoig.gov/sites/default/files/reports/2023-06/risc-wp-23-007.pdf> (OIG Report No. RISC-WP-23-007).

⁸ Although the Postal Service has not filed a formal opposition to PostCom's motion, the Postal Service asserts in its motion to withdraw this docket that PostCom's proposed information requests seek "extensive information that is pre-decisional and that substantially intrudes into Postal Service affairs...." Postal Service Motion at 18 n.56.

“necessary and proper” to carry out its “functions and obligations” under Title 39 of the United States Code.⁹ Although the Postal Service acknowledges that this authority is broad, the Postal Service argues that Section 503 does not allow the Commission to open this docket because this inquiry is not related to another Title 39 provision. See Postal Service Motion at 11. The Postal Service is mistaken.

In past and current public inquiries, the Commission has explored important issues of interest to the postal community such as those related to service performance, product classification, cost reporting, and suspended post offices.¹⁰ Initiatives related to the DFA Plan, with its emphasis on dramatic change to every aspect of the postal environment,¹¹ should be no different.

The Postal Service appears to misunderstand the scope of this docket. The Commission reiterates that this docket is not intended as an advisory opinion process on the entire DFA Plan. See Order No. 6488 at 4. Nor is it intended to be a comprehensive review of the entire plan. In opening this docket, the Commission did not express any intent to review areas of the DFA Plan beyond its authority. Although the Commission intends to focus on “strategic plan initiatives that may have an impact

⁹ 39 U.S.C. § 503. Both mailer groups note that the Commission has initiated public inquiries in the past without citing any statutory authority without Postal Service objection. See NPPC/MMA/NMA Response at 4 n.5 (citing Docket No. PI2022-3, Notice and Order Initiating Proceeding to Consider Modifications to Market Dominant Service Performance Measurement Plan, April 26, 2022 (Order No. 6159); PostCom/ANM Response at 3 n.8 (citing Docket No. PI2016-1, Notice Establishing Docket Concerning Service Performance Measurement Data, October 29, 2015 (Order No. 2791)). While the mailer groups are correct that it is not unprecedented for a Notice and Order opening a public inquiry to dispense with citing specific statutory authority, the Commission nevertheless discusses, in this Order, the statutory context for this public inquiry.

¹⁰ See, e.g., Docket No. PI2023-3, Public Inquiry on Classification of First-Class Package Service Product; Docket No. PI2023-1, Modification of Service Standard and Service Performance Measurement Plan; Docket No. PI2022-3, Modification of Service Performance Measurement Plan; Docket No. PI2022-1, Public Inquiry on Resolving Suspended Post Offices; Docket No. PI2019-1, Public Inquiry on the Classification of the Inbound Letter Post Product; Docket No. PI2014-1, Inquiry Concerning Scope of Public Service or Activity Cost Reporting.

¹¹ See United States Postal Service, Organizational Strategy Video/Transcript of Postmaster General Louis DeJoy’s Keynote Address During the 2023 National Postal Forum, May 24, 2023, available at <https://about.usps.com/newsroom/national-releases/2023/0524-organizational-strategy-pmg-louis-dejoys-keynote-address-2023-npf.htm> (2023 NPF Keynote Address).

on the postal community,” the Commission clarifies that the information sought in this inquiry will not include information unrelated to its statutory obligations. *Id.* The Commission previously recognized that portions of the DFA Plan, such as workforce-related initiatives and legislative advocacy, fall outside the scope of the Commission’s jurisdiction.¹²

However, since Order No. 6067 was issued in December 2021, specific and new aspects of the DFA plan related to potential changes in the nature of service and cost implications warrant further exploration and fall squarely within the scope of the Commission’s authority. In particular, the Postal Service recently announced initiatives that appear to impact how mail is processed in the network, which now includes new facilities such as S&DCs, Regional Processing & Distribution Centers (RPDCs), and Local Processing Centers (LPCs). See DFA Second-Year Report at 15-19. The Postal Service has started to implement these network changes, with six S&DCs already open and four RPDCs to be opened in 2023. *Id.* at 16, 18. These changes may already be impacting the postal community. Further, it is unclear how these changes would impact costs or services, or if they implicate the Postal Service’s compliance with certain statutory provisions such as those relating to service performance or the requirement to seek an advisory opinion. See, e.g., 39 U.S.C. §§ 3661, 3692.

These network changes and other DFA Plan initiatives may implicate Commission functions and obligations under Title 39, including but not limited to: the regulation of postal rates and classifications under Section 3622, the review of potential changes in the nature of postal services under Section 3661, the impact on service standards under Section 3691, and the Commission’s review of performance goals under Section 3653(d) and the corresponding mandate to provide recommendations as to the protection and promotion of Title 39’s public policy objectives. For example, the DFA states that the Postal Service will propose to consolidate certain low-traffic retail facilities where alternate facilities are available to serve customers and that it will seek

¹² See Docket No. C2022-1, Order Granting Motion to Dismiss Complaint, December 17, 2021, at 28-29 (Order No. 6067).

advisory opinions from the Commission regarding these retail network realignments. See DFA Plan at 35. However, the Postal Service recently stated that there will be no post office closures related to the DFA Plan. See DFA Second-Year Report at 18. These seemingly conflicting statements go directly to matters within the Commission's jurisdiction. In another instance, the Postal Service states that it will implement initiatives focused on cost improvements, including those involving "mail processing, transportation, retail, delivery, and administrative efficiency." See DFA Plan at 6. Yet the Commission is unaware of the specific factors or components of the DFA Plan driving these projections, and whether these initiatives implicate any of the Commission's obligations under Title 39.

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, and similar initiatives have been evaluated in prior Commission proceedings.¹³ Indeed, the deployment of new facilities and other network changes may impact costs, service performance, and retail accessibility and may constitute a change in the nature of service under 39 U.S.C. § 3661. See 2023 NPF Keynote Address (discussing the Postal Service's intention to deploy over 400 new facilities over the next 3 years, mostly from previously vacated mail processing plants, in addition to changing how mail is routed through the network). The Commission notes that similar network consolidations were the subject of past nature of service proceedings.¹⁴ Seeking information to determine whether the obligation to file an advisory opinion under 39 U.S.C § 3661 is triggered, or to take action with regard to any other statutory provision, is well within the Commission's authority under 39 U.S.C. § 503.

¹³ See, e.g., 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, September 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, November 30, 2022.

¹⁴ See, e.g., Docket No. N2012-1, Advisory Opinion on Mail Processing Network Rationalization Service Changes, September 28, 2012.

At this time, it is unclear whether these examples and other DFA Plan initiatives will require any further Commission action other than the issuance of information requests.¹⁵ As the Postal Service states in its Motion, the DFA Plan is a long-term plan, subject to regular evaluation and revision. See Postal Service Motion at 20. However, where planned and implemented initiatives may implicate Commission oversight, the Commission must ensure these initiatives comply with statutory and regulatory requirements. As discussed above, many of the Postal Service's initiatives described in its DFA Plan are already being implemented and are making actual changes to the postal system.¹⁶ Since the DFA Plan was launched, the Postal Service has committed over \$7 billion of the plan's \$40 billion budget to deploying a new processing and delivery operations network and has begun the execution of its plans, including aggregating delivery units and processing facilities into S&DCs, RPDCs, and LPCs. See DFA Second-Year Report at 15-18.

The Commission acknowledges that the Postal Service has some discretion in determining when matters are presented to the Commission for review.¹⁷ However, in multiple recent instances, the Commission learned about the deployment of new facilities from media statements or learned about potential changes in the nature of services while conducting another proceeding.¹⁸ These instances underscore the importance of the Commission acting proactively in seeking information to determine

¹⁵ The Commission notes that the Postal Service recommended Commission-led information gathering as an efficient process when the Commission evaluated the rules regarding nature of service proceedings, stating that the process would eliminate duplicative questions and allow the Postal Service to focus its resources only on those questions that the Commission itself sees fit to pose. See Docket No. RM2012-4, United States Postal Service Initial Comments, June 18, 2012, at 15.

¹⁶ See, e.g., DFA Second-Year Report at 18 (stating the first S&DC is already demonstrating operational benefits and five new S&DCs were opened in February 2023).

¹⁷ For example, 39 U.S.C. § 3661(b) requires the Postal Service to request an advisory opinion from the Commission when it is determines there should be a change in the nature of postal services.

¹⁸ See Order No. 6488 at 2-3 (citing to statements from *The Eagle Magazine* and media outlets); see also Docket No. PI2022-3, Order Directing the Postal Service to Request an Advisory Opinion Prior to Implementing its Proposed Change to the Critical Entry Times for Periodicals and Approving the Other Proposed Revisions to Market Dominant Service Performance Measurement Plan, July 18, 2022 (Order No. 6232).

whether Commission action is required. Doing so is both necessary and proper and hence is authorized under 39 U.S.C. § 503.

Accordingly, the Postal Service's Motion to reconsider Order No. 6488 and withdraw this docket is denied.

V. ORDERING PARAGRAPH

It is ordered:

The United States Postal Service's Motion for Reconsideration of Order No. 6488, filed on May 5, 2023, is denied.

By the Commission.

Jennie L. Jbara
Alternate Certifying Officer