

**CONCURRING OPINION OF COMMISSIONER Nanci E. Langley  
R2010-4 – Exigent Rate Request by the U.S. Postal Service**

I concur with the Commission's determination that the drop in mail volume attributed to the recent recession constitutes an extraordinary or exceptional circumstance, but that the Postal Service fails to demonstrate that its liquidity crisis is due to the recession. I believe the recession-driven volume declines experienced by the Postal Service probably had measurable financial impact that may warrant some financial relief. It is unfortunate the Postal Service did not identify any such impact and design a rate request to recover such funds.

I recognize the difficulty that the Postal Service and all parties encountered in this first proposal to utilize and interpret the exigency provision. All are to be congratulated for their valuable contributions to the record especially in highlighting the importance of the price cap system which promotes an effective and efficient mail system. The in-depth analysis provided by the parties further illuminates the unique conditions that must exist in order to pierce the cap through an exigent request.

I am disappointed that the Postal Service's submission failed to show how the overall request, and the specific rate increases proposed, relate to the exigent circumstance. It did not meet the prerequisites required to grant its revenue requests. The Postal Service did not identify the revenue shortfall that was due to the recession in terms of amount or impact.

The written and oral testimonies of Witnesses Corbett, Masse, and Kiefer did not demonstrate that the proposed rates are intended to offset the financial harm caused by the exigent circumstance or that the rate adjustments are reasonably related to the financial harm caused by that circumstance. Documentation of how the recession specifically impacted each class of mail for these and subsequent years would have been invaluable to the Commission's deliberations.

The Postal Service incorporated the need for an exigent rate adjustment in its seven-prong plan presented in March 2010. During oral testimony, it became apparent that the Postal Service's Request was designed to be a part of its long-term recovery plan, not to deal with an emergency situation.

Additionally, given the precedential nature of this first filing under 39 USC § 3622(b)(1)(E), I wish to have my view of the legislative history relating to the development of the exigent clause on record. I believe the compromise language embodied in the PAEA was truly a bipartisan, bicameral compromise. As noted by the detailed initial comments of the National Postal Mail Handlers Union (NPMHU), "after almost two years of congressional debate and consideration, this compromise language essentially incorporated the standard originally contained in H.R. 22, and combined that House-initiated standard with a substantially more flexible version of the standard that was originally contained in S. 662." (NPMHU Initial Comments at 8). The compromise balanced the objectives of the differing House and Senate provisions relating to exigent situations. While my observations do not alter the Commission's decision, they do provide additional guidance for future discussions.