

**BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001**

Exigent Request, 2010

Docket No. R2010-4

**Reply Comments of the
National Association of Postmasters of the United States**
(September 2, 2010)

Pursuant to Order No. 485, the National Association of Postmasters of the United States (NAPUS) submits the following comments in support of the Postal Service's July 6 request of the Postal Regulatory Commission to approve a rate adjustment due to "extraordinary or exceptional circumstances". In addition, this submission responds to comments by intervenors, statements made at public hearings, and subsequent submissions related to the Postal Service's request for a rate adjustment, pursuant to 39 U.S.C. § 3622(d)(1)(E).

NAPUS represents the managers-in-charge of the approximately 27,000 Post Offices in the United States, and comprises over 39,000 members. In many communities, the Postmaster is the highest-ranking public official and, in all communities, the Postmaster fully understands the communications needs of the citizens he or she serves. Postmasters have daily contact with the American public and are best-positioned to assess how the inadequacy of postage revenue can and will impact the American public – particularly small businesses, citizen mailers and destination point customers.

Summary Argument

A protracted, deep, and broad recession has devastated the U.S economy for the past four years. The severity of this economic decline has had a destructive effect on mail volume and, consequently, satisfies the litmus test for an exigent rate increase.

Seismic and caustic economic forces have reverberated throughout our nation; these economic circumstances are either “extraordinary or exceptional”, or both. Failure to approve this emergency rate increase would irrevocably undermine the Postal Service’s ability “to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States” [39 U.S.C. § 3622(d)(1)(E)], including its citizen mailers and destination point customers.

**“Extraordinary or Exceptional Circumstances” Should Not Be Interpreted as
Suffocatingly Restrictive**

A number of intervenors and commenters have suggested that the “exigency clause” should be read exceedingly narrow. Under their reasoning, the provision would apply only to super-natural events, acts-of-God, and Brigadoon-like occurrences. The actual words of the statute do not so constrain the conditions necessitating an exigent rate case. Thus, do not preclude the case at hand. In the absence of a Conference Report explaining the phrase “extraordinary or exceptional”, the Commission must rely on the plain meaning of the statute.

Admittedly, the original exigency provision (i.e., the provision included in S. 662 and passed by the Senate on February 17, 2006) was different and starkly restrictive. The evolution of the actual words encapsulated in the exigency clause should cast light on their meaning.

Under the original language, as included in S. 2468 (108th Congress) and S. 662 (109th Congress), the Postal Service would have been able to file an exigent rate case only if circumstances were “unexpected and extraordinary.” The Senate Report language accompanying S. 2468, a bill very similar to S. 662, would have applied exigency provision to circumstances “such as the September 11, 2001 terrorist attack or the use of the mails to transmit anthrax.” (Senate Report 108-318). However, the statutory language is not “unexpected and extraordinary” – it is “extraordinary or exceptional”. The House

of Representatives never included a comparable exigency clause. In addition, no Conference Report accompanied the ultimate legislation.

Obviously, the meaning of “unexpected” is quite different than the meaning of “exceptional; and, the meaning of “and” is clearly different than “or”. “Unexpected” implies that a situation may be surprising, sudden, or unforeseeable. “And” is an additive conjunction, while “or” is a conjunction representing alternatives. In addition, the exigency language in PL 109-435 does not adopt predictability as the criteria for filing and exigent rate case, nor did the triggering circumstance have to be both extraordinary and exceptional, rather one or the other. So, if the Commission finds that the circumstances confronting the Postal Service is either “extraordinary” or “exceptional”, the Postal Service will have met the standard embedded in law.

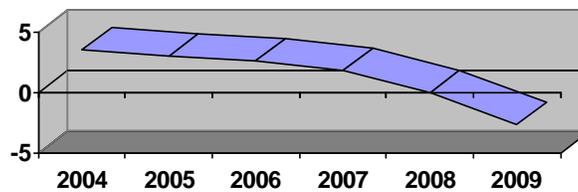
The Recession is an Extraordinary or Exceptional Circumstance

While NAPUS believes that the overly restrictive formulation is not the law of the land, we believe that the current recession would have even met the more restrictive standard. After all, economists and policy-makers alike have referred to the ongoing economic crisis as “the Great Recession.”

Since enactment of PL 109-435, global and domestic economic conditions have deteriorated sharply. In fact, 2005 was the last year in which the United States Gross Domestic Product (GDP) exceeded 3%. While the normal business cycle experiences economic waxing and waning, the ongoing financial turmoil is quite different. As of yet, our country is still languishing in a unrelenting recession. In fact, over the past three years, the Congress and two successive Administrations felt the necessity to take drastic steps, attempting to stabilize the economy. As illustrated by falling mail volume and revenue decline, the Postal Service is not immunized from these dire economic circumstances. Furthermore, the statute does not state that the circumstances must be unique to the Postal Service to prompt an exigent rate case.

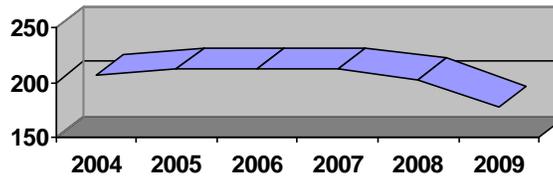
NAPUS believes that the ongoing economic chaos has produced an historic decline in mail volume, and is of such magnitude that the Commission should grant the Postal Service's exigent rate request. The two accompanying charts, taken together, vividly illustrate the correlation between the economic nose dive and the abrupt mail volume decline. NAPUS does not discount the effect of electronic diversion upon the mail stream, but we strongly believe that the recession had a defining and pivotal impact on volume.

Percent Change in U.S. Gross Domestic Product



Source: US Department of Commerce

U.S. Post Service Mail Volume in Billions



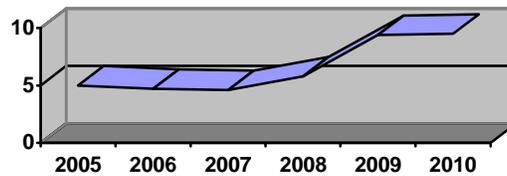
Source: USPS 2009 Annual Report

These circumstances are “extraordinary or exceptional”. The Commission should note that the last time that the national Gross Domestic Product fell by a factor greater than 2.6% (2009) was in 1946. While the most recent economic indicators illustrate an incremental improvement in the GDP, there is no evidence that this will have any immediate effect on mail volume.

NAPUS also urges the Commission to consider unemployment data for the years 2004 to 2010, as part of its evaluation of the circumstances prompting this exigent rate request. In

July 2010, United States unemployment reached 9.5%. The last time the unemployment rate exceeded 9.5% was in June 1983, 27 years ago. A healthy economy supports jobs that encourage consumer spending, thereby generating mail volume. Unemployment rates at this level are historic and further support the Postal Service’s legitimate contention that it is confronting “extraordinary or exceptional circumstances.”

U.S. Unemployment Rate in July



Source: Bureau of Labor Statistics

A number of intervenors have commented that the private-sector institutions were able to ride out the recession through retrenchment, radical structural and pruning labor costs. For the most part, these private-sector profit-maximizing strategies are unavailable or improper in a governmental public service agency. The Postal mission is to maximize service to the American public. Moreover, the Postal Service must comply with a series of statutes and regulations (e.g., veterans’ preference, pre-funding retiree health benefits, fully funding retirement benefits, and the universal service obligation); those who urge the Postal Service to freeze, furlough and fire are exempt from these requirements.

Clearly, the national financial situation has been spiraling downward and this toxic environment commenced in 2006. The conditions are not part of the normal business cycle. They are historic. They erode mail volume, and thus, constitutes circumstances envisioned under 39 U.S.C. § 3622(d)(1)(E).

Commission Should Not Render an Anticipatory Ruling

The Postal employee community is deeply involved in promoting legislation to rectify some statutory impediments that are confounding the Postal Service, including the treatment of its retirement account and the requirement to pre-fund its retiree health

benefits obligations. NAPUS understands that the Commission is keenly aware of and appreciates these issues, and our collective efforts to address them; however, NAPUS cautions the Commission against presuming an expeditious legislative action.

In sum, the Commission should not render an anticipatory ruling, assuming enactment of legislation to either waive this year's payment to pre-fund retiree health benefits, or to recalculate the Postal Service's Civil Service Retirement System liability. As the Commission knows full well, the legislative hurdles remain formidable, particularly in an election year when the congressional calendar is limited.

Postal Actions to Reduce Costs

A number of intervenors and commenters have suggested that the Commission should reject the Postal Service's request, since the federal agency has not exercised such cost-cutting strategies as freeze, furlough and fire. Those who have associated with these views have a total disregard for the impact on the service provided to the American public, the affect on the postal workforce, and the long-term implications for the future of the Postal Service's universal service obligation.

The intervenors seem to overlook the huge decline in postal employment over the past decade. The agency has shed more than 164,000 positions and this represents an almost 21% decline since fiscal year 2000. The Commission should recognize that "Reductions-in-Force", within the federal government, are subject to various statutes, which among other safeguards, protecting former members of the U.S. Armed Forces. It would be shameful if those who argue for furloughs would have the unintended consequence of advocating against our veterans.

Unlike private sector companies that have undergone recession-necessitated retrenchments and initiated sizeable layoffs, the Postal Service provides a vital and constitutionally mandated public service. Moreover, profit-driven entities, by their very nature, may be dismissive of the public-service aspect of their mission, if they have one

at all. For the Postal Service, however, public service is its *raison d'être*; and, any action that undermines its core mission needs to be considered unfavorably.

Postmasters are painfully aware of the cost-cutting strategies that have been employed by the Postal Service, including the unilateral and unjustified termination of “convention leave.” This benefit was summarily taken away from Postmasters approximately 14 months ago. As a direct result of the termination, new and veteran Postmasters no longer benefit from essential training – training that includes enhancing the efficiency of postal operations and reducing expenses.

NAPUS is concerned that the recently announced hiring freeze is undermining the capability of front-line postal managers and their employees to deliver quality services to the mailing public. This compounds a major problem that is being experienced throughout the country, a concerted strategy to close statutorily protected Post Offices through the abuse of the Post Office suspension process. (Last year, the Commission initiated an investigation of this abuse – PI2010-1.) In response to POIR-4, in the present docket, the Postal Service disclosed that, beginning in fiscal year 2010, the agency estimates that 3,248 Post Offices will be without a Postmaster; the number of Postmaster vacancies almost doubled over the past year. Additionally, in fiscal year 2010, 12% of all Post Offices would be without a Postmaster and foreshadows Postal efforts to suspend (aka to close) those Post Offices.

Commission denial of the requested rate adjustment, in NAPUS' view, would compel the Postal Service to wield its cost-cutting axe against service provided to American citizens, small businesses and rural America. These are the prime constituency for which the universal service obligation was established.

Commission Denial of Exigent Rate Request Would Lead to Non-Compliance

Under 39 U.S.C. §3653, the Commission is tasked with issuing an Annual Compliance Review (ACR). The most recent such review, ACR2009, cast a small light on how the

inadequacy of rates could impair postal services. The Commission, unlike its predecessor, not only has authority over rates, but also exercises a pivotal role in assuring the maintenance and quality of mail service. Should the Commission conclude that in the absence of an exigent rate adjustment, postal services would suffer, failure to provide the Postal Service with the requested increase could force the Postal Service into a situation where “services standards in effect during such year were not met.” Moreover, as part of the ACR, §3653(c) directs the Commission to “take appropriate action in accordance with (c) and (e) of section 3662.”

The Public Representative in ACR2009 suggested that the Commission could have used the docket to remedy non-compliance by adjusting rates at that time, consistent with § 3662(c). That is, correcting “unlawful rates”. A number of intervenors argued that rates can only be adjusted within the context of §3622; and, this is the process on which the Commission is presently engaged. While the jury is still out on whether the Commission can enforce rate compliance as part of the ACR, there is less doubt that the Commission can do so as part of this exigent rate docket.

NAPUS suggests that the Commission consider degradation of postal service standards (e.g., delivery standards, postal window hours, customer service, etc.) in its assessment of the exigent rate request. To do otherwise, would force the Postal Service into non-compliance, which would only come to light when the Commission issues its ACR for 2011.

Conclusion

NAPUS urges the Commission to approve the Postal Service rate increase, which is necessitated by “extraordinary and exceptional circumstances.” We believe that the current economic conditions are of such magnitude that the request is justified and that the Postal Service has striven to reduce costs, including cuts that Postmasters continue to believe are harmful to customer service. Rejection of the Postal Service request will result in a cascade of service reductions that will utterly destroy our Postal Service.

Respectfully submitted,

/s/

Robert M. Levi

Director of Government Relations

National Association of Postmasters of the United States