

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

Public Inquiry Concerning Procedures for )  
Rate Cases Under Part 3010, Subpart E )

Docket No. PI2010-3

VALPAK DIRECT MARKETING SYSTEMS, INC. AND  
VALPAK DEALERS' ASSOCIATION, INC.  
TOPICS FOR DISCUSSION AT JUNE 16, 2010 TECHNICAL CONFERENCE  
(June 9, 2010)

In response to Order No. 456 (May 7, 2010), Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. ("Valpak") offers this brief overview of the statutes which will be applied for the first time in the anticipated exigent pricing docket, followed by its suggestions for possible discussion topics at the Technical Conference.

**STATUTORY BACKGROUND**

According to 39 U.S.C. section 3622(d)(1)(E), the Commission has two principal responsibilities with respect to exigent rate cases.

"[1] **establish procedures** whereby rates may be adjusted on an **expedited basis** due to either **extraordinary or exceptional circumstances**,

"[2] provided that the Commission determines, after notice and opportunity for a **public hearing** and comment, and **within 90 days** after any request by the Postal Service, that such adjustment is **reasonable** and **equitable** and **necessary** to enable the Postal Service, under best practices of honest, **efficient**, and **economical management**, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States." [Emphasis added.]

With respect to responsibility [1], *supra*, in 2007 the Commission adopted regulations establishing procedures for a rate adjustment in **extraordinary or exceptional** circumstances.

Commission regulations, *inter alia*, require the Postal Service's request for an exigent rate increase to provide "a full discussion of the extraordinary or exceptional circumstance(s) giving rise to the request." Commission Rules § 3010.61(a)(3) (Order No. 43, October 29, 2007).

With respect to responsibility [2], *supra*, once an exigent rate case is filed, the Commission must determine "that such adjustment is **reasonable and equitable and necessary** to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States," before the increase can go into effect.

### **SUGGESTED TOPICS FOR DISCUSSION**

#### **A. Threshold Issues**

1. The Commission has opened the instant docket as a "Public Inquiry" docket. Since it is not a rulemaking docket, it cannot directly result in changes to current regulations. Since the filing of the Postal Service's exigent rate case is expected in the next few weeks, the effect this docket could have on the exigent rate case that is anticipated to be filed is unclear. It would be helpful if the Commission could describe its hopes for this Technical Conference beyond the brief description set out in Order No. 456.

2. There has been much discussion as to whether the Postal Service's present financial circumstances qualify as "**extraordinary or exceptional.**" Some mailers have given indications that they plan to challenge the Postal Service's filing on that issue, and have assumed that the Commission has the authority to decide whether circumstances meet the statutory test of "extraordinary or exceptional." The statute requires the Commission to

determine if the rates are “**reasonable**,” “**equitable**,” and “**necessary**” — but these issues are different from whether “extraordinary or exceptional” circumstances exist in this particular case. Neither the statute nor the regulations expressly provide that it is the Commission that makes such a determination, which may leave it to the Postal Service Board of Governors to determine. Does the Commission believe it has statutory authority to make a *prima facie* determination of whether “**extraordinary or exceptional**” circumstances exist?

3. In an exigent rate case, where rate cap provisions do not apply, what weight is given to the objectives and factors of 39 U.S.C. section 3622?

## **B. Procedural Issues**

1. Commission rules require an exigent rate change request to provide an “explanation of when, or under what circumstances, the Postal Service expects to be able to **rescind** the exigent increases in whole or in part.” Commission Rule § 3010.61(a)(6). This rule implies that exigent rate increases **must** be rescinded at some point in the future. Will the Postal Service request be required to contain such a date or plan for rescision?

2. **Are baseline rates for a future cap-based price increase** reset by establishment of rates under exigent case increase procedures? *I.e.*, since an exigent increase exceeds the cap, if the exigent increase has not been rescinded by the time of the Postal Service’s next increase, and the percentage change in CPI does not exceed the exigent increase percentage, would the cap calculation be based on the prices established by the exigent case? If not, would future increases need to employ exigent procedures?

3. In Docket No. ACR2009, the Commission required at the time of the next rate adjustment for market dominant products that the Postal Service “develop and present a plan”

and begin to bring **rates for underwater products** up to the level of attributable cost and beyond so that they make a contribution to institutional costs, as required by PAEA. *See* Docket No. ACR2009, FY 2009 Annual Compliance Determination, p. 75. If the Postal Service fails to respond adequately to those admonishments, what remedy does the Commission have?

4. The Commission's rules for exigent price increases provide for interested persons to **submit questions** for the Commission to ask at oral cross examination, but do not provide for any other third party questions (other than a comment period). Commission Rule § 3010.65(c). May mailers also request the Commission to issue **written information requests**, as in ACR dockets?

### C. Economic Issues

1. Nothing in subparts (1) – (8) of the Commission's rules indicate that the Postal Service is required to supply any of the usual cost information that accompanied prior rate cases, or any updated cost information, or any updated elasticity information. *See* Docket No. RM2007-1, Valpak Comments In Response to Commission Order No. 2, p. 32 (April 6, 2007). The Commission may have only the CRA filed with the last ACR. Will the Postal Service be required to respond to Commission requests for additional cost or elasticity information based on requests made by mailers?<sup>1</sup>

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<sup>1</sup> Valpak has consistently argued that even if PAEA is believed not to require cost-based rate making, costs nevertheless remain a quite important consideration. *See, e.g.*, Docket No. RM2007-1, Valpak Reply Comments in Response to Commission Order No. 26 (filed October 9, 2007), Section VI, pp. 29-34.

2. The Postal Service used **short-run marginal costs** to justify lower rates in its summer sales for Standard Mail. Will the Postal Service be allowed to base **selected** rate changes on short-run marginal costs? Will the Postal Service even have to specify (at the time of the filing) what costs it is using for its recommended rates? *I.e.*, can the Postal Service selectively use short-run marginal costs for some subsets (classes) of mail, and long-run marginal costs for others?

3. If the Postal Service bases rates on “projected” costs that differ materially from costs reported in the most recently filed CRA, does it need to reveal that fact at the time of filing? *E.g.*, can the Postal Service base rates on **hypothetical** Periodicals cost reductions from full deployment of the FSS, rather than costs reported in the last CRA? Can the Postal Service selectively use projected cost estimates for some products or classes but recent costs for others?

4. Since the rate cap is not applicable in an exigent rate case, must the Postal Service put forth for Commission review **revenue targets** for (i) gross revenue (*i.e.*, something similar to a revenue requirement as existed in prior rate cases), or (ii) net revenue?

5. In a filing for an exigent rate increase, may the Postal Service also incorporate changes in the mail classification schedule into its filing, or is it restricted to making rate changes only?

Respectfully submitted,

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