

Before The
POSTAL REGULATORY COMMISSION
Washington, DC 20268-0001

Rate Adjustment due to)	
Extraordinary or Exceptional)	Docket No. R2010-4
Circumstances)	

REPLY COMMENTS
OF THE
NATIONAL POSTAL MAIL HANDLERS UNION
REGARDING POSTAL SERVICE REQUEST FOR A RATE ADJUSTMENT
DUE TO EXTRAORDINARY OR EXCEPTIONAL CIRCUMSTANCES

In its Initial Comments in support of the Postal Service's pending request for a rate adjustment pursuant to Section 3622(d)(1)(E) of the Postal Enhancement and Accountability Act of 2006 ("PAEA"), the National Postal Mail Handlers Union ("NPMHU") focused on the proper interpretation of the governing statutory standard – that an expedited and above-CPI rate increase under Section 3622(d)(1)(E) must be “due to either extraordinary or exceptional circumstances” and must be based on a determination by the Postal Regulatory Commission “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.” The NPMHU showed that the Commission should interpret Section 3622(d)(1)(E) based on its plain language, in a manner consistent with its legislative

history and the purpose underlying its enactment. The NPMHU also showed that contrary readings of the statute – notably those put forward by the Affordable Mail Alliance and supported by Senator Susan Collins when they urged the Commission to dismiss this rate request without a hearing – are inaccurate and should be rejected by the Commission.

The NPMHU now has reviewed the initial comments filed with the Commission by the AMA and other parties opposing the requested rate increase, and those comments do not include any meaningful refutation of the position advocated by the NPMHU. As briefly discussed below, these recent comments essentially repeat the same arguments, and repeat the same errors, that were submitted by the AMA and Senator Collins in their respective filings of July 26 and August 9, 2010. Perhaps more disturbing, there appears to be a common theme running through many of the comments in opposition to the rate increase, as they urge the Commission to ignore the statute and policy judgments that previously have been adopted by Congress, especially when it enacted the PAEA in 2006. This is evident not only with regard to the interpretation of the statutory standard set forth in Section 3622(d)(1)(E), but also on other important subjects that form the basis for the rate increase sought by the Postal Service in this proceeding. The NPMHU gives a few examples of this theme toward the end of these Reply Comments, and explains why the Commission should accept these policy judgments and follow the mandate of Congress, as it is plainly required to do.

First, with regard to the interpretation of Section 3622(d)(1)(E), opponents of the plain meaning of the governing statutory provision – “either extraordinary or exceptional” – adopt inherently contradictory positions. The AMA, for example, first says that the

terms used by Congress are “simply too protean” to resolve the interpretive issue, see Comments of the Affordable Mail Alliance (Aug. 17, 2010) at 10, but then urges the Commission to interpret these terms by relying on Senator Collins’ current “personal recollection” that the AMA now claims is based on “pre-enactment statements by key legislators and officials,” id. at 11. The NPMHU already has demonstrated in its Initial Comments why the “personal recollection” of Senator Collins should be rejected by the Commission; it bears noting, however, that the AMA is able to characterize the Senator’s recollection as being based on “pre-enactment statements” not simply because those statements were made prior to enactment of the PAEA, but because each and every one of those statements actually were made prior to the creation or drafting of the words contained in the legislative compromise that eventually was included in the PAEA. Thus, these so-called “pre-enactment statements” cited by Senator Collins and adopted by the AMA not only fail to define the phrase “either extraordinary or exceptional” – a phrase that did not exist when these statements were made – but they actually provide clear and direct evidence of what Congress specifically did not intend when it rejected the standard contained in the Senate’s draft bill (S. 662) and instead adopted the current statutory provision. The NPMHU again submits that the words “extraordinary or exceptional” must be given their plain and commonsense interpretation, as reflected in dictionaries or other indicia of their usual meaning.

The Commission also should reject the AMA’s assertion that these terms are “too protean” to be defined. To the contrary, even if the AMA were correct that these terms are variable and, like the god Proteus, capable of taking many forms, that by itself would indicate a clear Congressional intent to allow above-CPI rate increases in a wide variety

of circumstances that could not fully or accurately be defined in advance. The Congress that adopted the PAEA was legislating for many years if not decades into the future; Congress reasonably understood that the future was largely unpredictable; and Congress therefore gave the Postal Service the authority to raise rates above CPI if circumstances were presented that properly could be called “extraordinary” or “exceptional.” And, as already explained in various submissions to the Commission, the 20% loss in mail volume caused by the Great Recession of 2008 satisfies either one of these independent terms.

Second, many opponents of the requested rate increase also reject other policy judgments that have been adopted by Congress. These judgments, however, are set by statute, and therefore must be accepted as binding on the Postal Service and considered as established facts of the Postal Service’s operating environment. Criticisms of these policies certainly may be expressed, but such criticism does not eliminate the fact that the Commission also is bound by these policies and the consequences that flow from these policies when making its determination under Section 3622(d)(1)(E).

For example, while virtually all parties agree that the annual payments of \$5.6 billion that must be made into the Retiree Health Benefits Fund are unwise, as of today they are included in the governing statute and must be assumed to be required by the Commission. Similarly, there is considerable evidence that the Postal Service has overfunded the Civil Service Retirement System, and most parties participating in these proceedings believe that Congress and/or the President need to fix this overfunding, but as of today the Postal Service does not have access to these funds. Congress also has

severely limited the ability of the Postal Service to close small facilities for solely economic reasons, and Congress currently requires that residential delivery be provided six days per week. Moreover, ongoing USPS attempts to close or consolidate larger postal facilities often are unsuccessful because Congress exercises its legislative or oversight functions to interfere in those decisions. On these issues, participants in these proceedings certainly have differing opinions on the wisdom of these policies. But it should be clear to the Commission that these restrictions on Postal Service operations actually exist, and that the Commission's consideration of the pending rate request must assume that these restrictions will continue.

Finally, the same is true for the collective bargaining system adopted by Congress in the Postal Reorganization Act of 1970, and confirmed by Congress in the PAEA in 2006. The participants in this proceeding may disagree about the wisdom of that policy choice (although it should go without saying that the NPMHU firmly supports the current collective bargaining and arbitration procedures included in Title 39 of the U.S. Code). What is crucial for present purposes, however, is the undisputed fact that Congress has adopted free collective bargaining and binding interest arbitration as the means for determining the pay, benefits, and working conditions of more than 600,000 career postal employees, and the Commission must make its determination on the pending rate request in light of those Congressional policy judgments and the actual consequences that flow from those judgments. Attacks such as those launched by the AMA and others on the collective bargaining process, or on the wages and benefits paid to mail handlers and other postal employees, are wholly irrelevant to the determination that the Commission must make in this case.

In short, when making its decision on the pending rate increase, the Commission is required to accept the legislative and policy judgments that Congress has made from 1970 through 2010, and use those facts as the basis on which it determines whether the above-CPI rate increase is justified under the governing statutory standard. The Commission, or even individual Commissioners, may have opinions about each of these issues, but the Commission does not have the luxury of either ignoring or imagining the elimination of these policies when it reaches a decision in this case. Each of these policies and the economic results stemming from these policies must be accepted by the Commission as the starting point for its decision. The only question properly pending before the Commission is whether the expedited and above-CPI rate increases proposed by the Postal Service are justified under the governing statutory standard.

Respectfully submitted,

/s/

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