

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Annual Compliance Report

Docket No. ACR2010

PUBLIC REPRESENTATIVE ANSWER TO MOTION
OF THE POSTAL SERVICE FOR STAY
RE STANDARD MAIL FLATS
(May 19, 2011)

On May 17, 2011, the Postal Service filed a motion requesting that the Commission stay its directive for the Postal Service to produce a schedule for bringing the rates for Standard Mail Flats into compliance with the PAEA.¹ The schedule is due June 27, 2011. The Postal Service has appealed the Commission's directive to the D.C. Circuit Court of Appeals. The Postal Service apparently desires that the stay be effective until the court of appeals rules. The Commission should require the Postal Service to provide more information before ruling on the motion.

Under Federal Rule of Appellate Procedure 18, the Postal Service must ask the Commission for a stay before it can ask the court of appeals for a stay. The Commission's rules of practice do not specify the contents of a motion for a stay of a Commission ruling. However, Rule 21(a) states, "Motions shall set forth with particularity the ruling or relief sought, the grounds and basis therefore, and the statutory or other authority relied upon" The only basis for its motion offered by the Postal Service is that it would be wasteful for the Postal Service to make the effort to develop a schedule of rate increases that would be unnecessary should it win in court. The Postal Service cites no authority to support its request.

¹ Motion of the United States Postal Service Requesting Stay of the Remedial Provisions Regarding Standard Flats Set Forth in the FY 2010 Annual Compliance Determination, May 17, 2011.

If the court of appeals were to address a motion for stay, it would apply a four-part test. Before the Commission rules on the Postal Service's motion, it should request the Postal Service to address each of the elements of that test. Those elements are

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.²

The Postal Service's motion does not address factors (1), (3), or (4). And its claim that producing a schedule of rate increases for Standard Mail Flats would be "wasteful" hardly rises to the level of irreparable injury required by factor (2). The motion should be denied without prejudice.

Respectfully submitted,

Emmett Rand Costich
Public Representative

901 New York Avenue, NW, Suite 200
Washington, DC 20268-0001
202-789-6833, FAX: 201-789-6861
email: emmett.costich@prc.gov

² Hilton v. Braunskill, 481 U.S. 770, 776 (1987).