

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman;
Tony L. Hammond; and
Nanci E. Langley

Rate Adjustment Due to Extraordinary or
Exceptional Circumstances

Docket No. R2010-4R

NOTICE AND ORDER ESTABLISHING
PROCEDURES ON REMAND

(Issued July 11, 2011)

On May 24, 2011, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *United States Postal Service v. Postal Regulatory Commission*, 640 F.3d 1263 (D.C. Cir. 2011). The court denied in part and granted in part a Postal Service petition for review of the Commission's September 30, 2010 order denying a Postal Service request for an exigent rate adjustment under 39 U.S.C. 3622(d)(1)(E).¹ 640 F.3d at 1268.

On July 11, 2011, the court issued its mandate remanding the case to the Commission. The Commission is issuing this Order to promptly establish procedures

¹ Order Denying Request for Exigent Rate Adjustments, September 30, 2010 (Order No. 547).

for receiving initial and reply comments that address the causation standard applicable to exigent rate adjustment requests submitted under 39 U.S.C. 3622(d)(1)(E).²

Background. On July 6, 2010, the Postal Service filed a request for an exigent rate adjustment pursuant to 39 U.S.C. 3622(d)(1)(E).³ This was the first such request filed by the Postal Service. The Exigent Request alleged that “extraordinary or exceptional circumstances” had occurred—namely, the recent recession and related declines in mail volume—and that the Postal Service was entitled to an exigent rate adjustment. *Id.* at 6.

After holding public hearings and considering initial and reply comments filed by the Postal Service and other interested persons, the Commission issued Order No. 547 denying the Postal Service's Exigent Request. The Commission analyzed the plain meaning of “due to” in section 3622(d)(1)(E), interpreting the phrase as requiring that a “proposed adjustment...be causally related to the alleged extraordinary or exceptional circumstance.” Order No. 547 at 54. The Commission found that the recent recession and its impact on postal volumes qualified as an “extraordinary or exceptional” circumstance. *Id.* at 50. However, it ruled that the Postal Service had failed to demonstrate that the proposed rate adjustments were “due to” the “extraordinary or exceptional” circumstance, as required by section 3622(d)(1)(E), because it did not show how the rate increases related to exigent circumstances that purportedly gave rise to them. *Id.* at 53, 60. Accordingly, the Commission denied the requested exigent rate adjustment. *Id.* at 87.

² Section 3622(d)(1)(E) provides in relevant part as follows:

“[R]ates may be adjusted on an expedited basis *due to* either extraordinary or exceptional circumstances, provided that the Commission determines...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).

³ Exigent Request of the United States Postal Service, July 6, 2010 (Exigent Request).

The court's opinion. On appeal, the court affirmed the Commission's conclusion that the plain meaning of the words “due to” in section 3622(d)(1)(E) requires a causal relationship between the amount of the requested adjustment and the impact of the extraordinary or exceptional circumstances.⁴ The court confirmed that, “under the plain meaning of [section 3622(d)(1)(E)], a rate may be ‘adjusted on an expedited basis’ only *because of* ‘extraordinary or exceptional circumstances.’” *Id.* (emphasis in original).

The court nevertheless concluded that the plain meaning of the “due to” phrase does not adequately express how close the relationship between the proposed adjustment and the exigent circumstance must be.⁵ In the court's view, the “due to” phrase in section 3622(d)(1)(E) is ambiguous because the phrase can mean “due *in part* to” as well as “due *only* to.” *Id.* (emphasis in original).

Because the phrase “due to” is ambiguous as a standard of causation, the court held that the Commission could not properly reject the Exigent Request based on a plain meaning interpretation of the phrase.⁶ Thus, it granted the Postal Service's petition in part and remanded the case to the Commission to satisfy its obligation “to fill the statutory gap by determining how closely the amount of the adjustments must match the amount of the revenue lost as a result of the exigent circumstances.” *Id.*

The Commission's response. As directed by the court, the Commission will proceed to apply its expertise and interpret the phrase “due to” to determine how closely the amount of an exigent rate adjustment must match the amount of revenue lost as a result of an exigent circumstance. *Id.*; see *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984).

⁴ 640 F.3d at 1267 (“[W]e agree with the Commission that the plain meaning of ‘due to’ mandates a causal relationship between the amount of a requested adjustment and the exigent circumstances’ impact on the Postal Service.”).

⁵ *Id.* at 1268 (“[A]lthough [‘due to’] has a plain meaning regarding causal connection *vel non*,...it has no similar plain meaning regarding the closeness of the causal connection.”).

⁶ *Id.* The court rejected the Commission's plain meaning interpretation as “requiring that the Postal Service match the amount of the proposed adjustments *precisely* to the amount of revenue lost as a result of the exigent circumstances.” *Id.* (emphasis in original).

The Commission establishes Docket No. R2010-4R to consider issues on remand. Docket Nos. R2010-4 and R2010-4R are part of the same proceeding. The Commission shall consider all documents filed to date in Docket No. R2010-4 as part of the record in Docket No. R2010-4R.

To ensure that the Postal Service and other interested persons have an opportunity to make their views known regarding the proper interpretation of “due to” as the standard of causation in 39 U.S.C. 3622(d)(1)(E), the Commission hereby provides for submission of initial and reply comments on this topic. Initial comments are due no later than July 25, 2011. Reply comments are due no later than August 1, 2011. All comments and other documents related to issues on remand must be filed under Docket No. R2010-4R.

It is ordered:

1. The Commission establishes Docket No. R2010-4R to consider issues on remand.
2. James Waclawski will continue to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Initial comments addressing the proper interpretation of “due to” as a standard of causation in 39 U.S.C. 3622(d)(1)(E) are due no later than July 25, 2011.
4. Reply comments addressing matters raised in initial comments are due no later than August 1, 2011.
5. All comments and other documents related to issues on remand must be filed under Docket No. R2010-4R.

6. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Ruth Ann Abrams
Acting Secretary