

Before the  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Rate Adjustment Due to Extraordinary or  
Exceptional Circumstances

Docket No. R2010-4R

PUBLIC REPRESENTATIVE MOTION TO STRIKE PORTIONS OF THE POSTAL  
SERVICE'S INITIAL COMMENTS OR FOR ALTERNATIVE RELIEF

(July 26, 2011)

On July 11, 2011, the Commission issued Notice and Order Establishing Procedures on Remand, July 11, 2011 (Order No. 757). In Order No. 757, the Commission provided the Postal Service and other interested persons "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)." Order No. 757 at 4.

On July 25, 2011, the Postal Service filed initial comments addressing the subject matter of the Commission's request for comments. The Postal Service also presented new testimony on estimation methods and new argument attempting to justify its exigent request. The new testimony and argument is not directly related to or presented in support of the Postal Service's proposed causation standard.

The Public Representative respectfully requests that the new testimony and argument be stricken from the Postal Service's comments. This material far exceeds the scope of the Commission's request and is inappropriate for consideration at this time prior to the establishment of a causation standard. The objectionable material appears as section IV (pages 24-56), section V (pages 56-60), section VI (except for the first full paragraph) (pages 61-64), and Attachments 1-3.

Consideration of this new material by interested persons in the seven days provided for reply comments is not realistic from a due process perspective, especially in light of the fact that participants are yet to be informed of the applicable causation standard by the Commission under which to review the new material. Without providing an adequate time for interested persons to review this material, the Commission may be prejudiced from the inability of interested persons to provide meaningful comment. The Commission provided approximately 45 days to review the material in the original exigent request. An equivalent time is necessary to review this new material. The Public Representative also is concerned by the prejudicial impact on the Commission of the new testimony at this point in an inappropriate attempt to remedy the defects of the original exigent request.

Alternatively, the Public Representative asks the Commission to clarify that none of the new testimony or argument will be considered prior to establishing a causation standard, and that reply comments do not have to address the material at this time. Further, the Public Representative asks that a time of 45 days for comments on this material be provided to run from the date that the new causation standard is announced. This should be followed by an appropriate time for reply comments.

Finally, the Public Representative asks that the August 1, 2011, due date for reply comments be extended day-by-day until the issues of this motion are resolved.

Respectfully submitted,

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