

Before The
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

RATE ADJUSTMENT DUE TO EXTRAORDINARY
OR EXCEPTIONAL CIRCUMSTANCES

Docket No. R2010-4R

OPPOSITION OF THE UNITED STATES POSTAL SERVICE
TO PUBLIC REPRESENTATIVE'S MOTION TO STRIKE OR FOR
ALTERNATIVE RELIEF
(July 26, 2011)

On July 25, 2011, the Postal Service and many other parties filed their initial comments on remand from the court of appeals, in accordance with Commission Order No. 757. Earlier today, July 26, the Public Representative (PR) filed a motion seeking either that certain material filed as part of the Postal Service's comments be stricken, or, in the alternative, that the Commission extend the procedural schedule. The Postal Service, obviously, opposes the motion to strike. The Postal Service, however, is not opposed in principle to some extension of the schedule, but submits that the 45-day period proposed by the PR for reply comments on the material in question is grossly excessive.

The PR erroneously mischaracterizes the material in question as "new testimony." In reality, the straightforward calculations presented in the portions of the comments which the PR disputes are based on materials which were all available to the Commission at the time it issued Order No. 547, or could have been made available had the Commission, in accordance with its own regulations, sought supplemental information to better understand the exigent circumstances leading to the request. All of

these materials rely entirely on data that existed throughout the period over which the Commission was considering the Postal Service's request.¹ Moreover, a substantial part of the materials identified by the PR present nothing more than the results of the calculations specified by the Commission itself on pages 78-79 of Order No. 547, applying, for example, distinctions that the Commission said "should be made." Since the Commission never gave the Postal Service the opportunity to make such distinctions before issuing Order No. 547, there is no valid basis to object to the provision of that material by the Postal Service now. Moreover, the PR's contention (page 1) that the new material is "not directly related to ... the Postal Service's proposed causation standard" is clearly unfounded. In fact, as indicated on page 24 of the Postal Service's initial comments, that material essentially constitutes an *application* of the proposed causation standard.

There is, therefore, no colorable basis to strike this material from the Postal Service's comments. Apparently recognizing this, in the alternative, the PR seeks more time to prepare reply comments. The PR is concerned about due process, "especially in light of the fact that participants are yet to be informed of the applicable causation standard by the Commission." Of course, neither the Postal Service nor the other parties were ever informed by the Commission of any "applicable causation standard" prior to issuance of Order No. 547, so it is unclear why requiring parties to evaluate the comments of other parties in the absence of feedback from the Commission on that topic would now violate due process. Section 3010.64 of the Commission's rules

¹ In contrast, GCA has filed materials which explicitly and overtly rely on data from time periods after the Commission issued Order No. 547. Surprisingly, the PR makes no mention of the GCA filing in his motion to strike.

require expedition “at every stage” of a request for exigent relief, and that requirement surely continues into the remand phase, in which the Postal Service has now been deprived of exigent relief for many months beyond the date initially selected for implementation. In addition, determining whether the Postal Service’s calculations have merit does not depend in any way on the precise causation standard chosen by the Commission, because the lower bound estimate put forth by the Postal Service is consistent with any standard that the Commission might choose.

Nevertheless, the Postal Service is sympathetic to the suggestion that certain aspect of matters raised in its initial comments may warrant further input from the parties beyond what can be accommodated in reply comments due seven days later. Indeed, the Postal Service so indicated in note 37 on page 62 of its initial comments. Yet the PR is also plainly off-base to suggest that materials provided with the initial comments would require anything near 45 days to review and understand. There is no comparison between the scope and amount of materials filed by the Postal Service on July 6, 2010 with its original Exigent Request, and the materials submitted with regard to its Initial Comments on Remand yesterday. In a matter of days, the parties should have no trouble fully comprehending the basis on which the Postal Service derived its lower-bound harm estimate of \$2.34 billion, or the materials provided regarding any of the equally intuitive alternative estimates. What may take a few days more might be an assessment of the appropriate ramifications of those harm estimates. If the Commission believes it appropriate to reevaluate its schedule in light of the Postal Service’s initial comments, in response to the PR motion or otherwise, the Postal Service sees potential merit in such a step. Surely, an extension of the procedural

schedule is more reasonable, fair, and administratively efficient than striking the portions of the Postal Service's comments that directly respond to criticisms by the Commission and other parties that the Postal Service had allegedly failed to quantify the impact of volume losses and the recession on its finances.

Therefore, the Postal Service respectfully requests the Commission deny the relief sought by the PR's motion, except to the extent that Commission may wish to make schedule adjustments, including suspension of the August 1 deadline for reply comments.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document in accordance with Section 12 of the Rules of Practice and Procedure.

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