

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

RATE ADJUSTMENT DUE TO EXTRAORDINARY  
OR EXCEPTIONAL CIRCUMSTANCES

Docket No. R2010-4R

MOTION OF THE UNITED STATES POSTAL SERVICE  
TO STAY ITS REQUEST FOR EXIGENT RELIEF  
(October 4, 2011)

On September 20, 2011, the Commission issued Order No. 864, in which it attempted to resolve certain issues regarding the remand of the exigent case, and also directed the Postal Service to file a statement by October 4, 2011. The purpose of that statement would be for the Postal Service to indicate whether and how it intends to pursue its request for exigent rate relief. As explained below, however, and for a variety of reasons, the Postal Service submits that now is not an appropriate time to commit to the next step in this proceeding. Consequently, instead of providing a statement of the type envisioned by Order No. 864, the Postal Service hereby respectfully moves for a stay of this proceeding until December 15, 2011.

Background

On July 6, 2010, the Postal Service initiated this proceeding by filing a request for exigent relief in accordance with 39 U.S.C. § 3622(d)(1)(E) and 39 C.F.R. § 3010.60 *et seq.* In response to dramatic and unprecedented volume declines over recent periods, the Postal Service sought authority to increase rates for market dominant products in excess of the otherwise applicable limitations of 39 U.S.C. § 3622(b)(1)(A) and 39 C.F.R. § 3010.11. In its Request, the Postal Service proposed exigent prices

representing an aggregate increase of approximately 5.6 percent, to be implemented on January 2, 2011.

In Order No. 547 (September 30, 2010), the Commission denied the Postal Service's request in its entirety. The Commission agreed that certain volume losses (those relating to the economic recession) constituted "extraordinary or exceptional circumstances," but concluded that the Postal Service had not adequately shown that the requested rate increases were "due to" those exigent circumstances. The Postal Service appealed Order No. 547 to the Court of Appeals for the D.C. Circuit, and on May 24, 2011, the court issued an opinion remanding the matter back to the Commission. The court rejected the Commission interpretation of the statute's "due to" language as requiring a *precise* match between the estimated harm from the exigent circumstances and the proposed rate adjustments, and sent the case back to the Commission to determine how close the match must be. *US Postal Service v. Postal Regulatory Commission*, 640 F.3d 1263, 1268 (D.C. Cir. 2011). The Commission initiated the remand phase of this proceeding on July 11, 2011 (Order No. 757).

On September 20, 2011, the Commission issued Order No. 864. The Order generally set forth the standard by which the Commission will evaluate whether particular rate proposals could reasonably be considered to be "due to" particular exigent circumstances. The Commission did not seek to apply the standard to this proceeding, instead requiring the Postal Service to file by October 4, 2011 a statement indicating "whether and how it wishes to pursue its Exigent Request." Order No. 864 at 56.

While the Commission was considering the matters addressed in Order No. 864, however, much was changing in the broader landscape of potential legislative intervention in the postal ratemaking process. There are currently pending bills that would impose *supra-cap* increases on underwater mail classes, as well as a bill that would allow the establishment of break-even rate levels totally independent of the cap. H.R. 2309, 112th Cong., 1st Sess. (2011); S. 1625, 112th Cong., 1st Sess. (2011); H.R. 2967, 112th Cong., 1st Sess. (2011). In addition, the President has presented legislative initiatives that would allow the Postal Service to increase rates consistent with its July 2010 exigent request without any participation by the Commission. Obviously, it would be grossly premature to attempt to anticipate what, if anything, might come out of these initiatives. Yet by the same token, neither would it seem prudent to ignore these developments entirely.

#### Motion to Stay

A stay of the exigent proceeding would create at least some potential for resolution of pending legislative proposals. Ideally, it would be preferable if there were a specific date by which the Postal Service and the Commission would know with certainty whether the operative legal framework will remain as it currently exists, or if alternate legislative options for rate adjustments will be established. Even in the absence of any such precise date, however, the prospects for and content of potential legislative changes will become clearer in the coming weeks.

Based on this totality of circumstances, the Postal Service submits that it would be premature and potentially counterproductive to attempt to decide whether to move forward in the current exigent proceeding at this juncture, and if so, on what basis to do

so. The Postal Service therefore requests that the current exigent proceeding be stayed.<sup>1</sup>

The “Super Committee” is to report on proposals for reducing the federal budget deficit on November 23. Given the President’s proposal, it is possible that postal legislation would be dealt with in the committee’s report. The first meeting of the Board of Governors after November 23 is December 13. Accordingly, if a stay were issued until December 15, the Postal Service could by that date either inform the Commission as to the advisability of continuing the stay or submit the statement sought by Order No. 864.

The Postal Service submits that no harm would be caused to any party by such a stay. While a stay could perhaps be viewed as prolonging uncertainty, the very existence of the legislative proposals discussed above obviates any hope of meaningful certainty no matter what action the Postal Service and Commission take. To the extent that all concerned parties need some more concrete notions of what to expect in the short term, the filing of the CPI notice regarding January implementation would provide more benefits in that regard than any course of action chosen in this proceeding. No solution is perfect, but the more orderly approach at this time is to stay the exigent proceeding, file a CPI notice, and carefully monitor the various legislative developments as postal initiatives are borne along in the broader deficit reduction stream.

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<sup>1</sup>During the pendency of the stay, if the request is granted, the Postal Service intends to provisionally file, later in October, a notice of price adjustment under its CPI cap authority for implementation in January of 2012. The Postal Service wishes to have certainty regarding its ability to implement some type of market dominant price increases in January of 2012, so it cannot forgo the opportunity to file an October notice of January price adjustments under the CPI procedures. The Postal Service will retain the option to withdraw its notice of CPI increases if subsequent developments, legislative or otherwise, so warrant.

Therefore, the Postal Service respectfully requests that its request for exigent relief, and therefore the otherwise applicable requirements of Order No. 864, be stayed until December 15, 2011.

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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