

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

NOTICE OF MARKET-DOMINANT
PRICE ADJUSTMENT

Docket No. R2013-1

**RESPONSE OF THE UNITED STATES POSTAL SERVICE IN OPPOSITION TO
VALPAK'S MOTION TO STRIKE STANDARD MAIL PRICE ADJUSTMENT
FROM NOTICE OF MARKET-DOMINANT PRICE ADJUSTMENT**
(October 31, 2012)

Pursuant to Postal Regulatory Commission (Commission) Rule 21(c), Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. ("Valpak") moved to strike the Standard Mail price adjustments in the Postal Service's Notice of Market-Dominant Price Adjustment (Notice) filed on October 11, 2012. In its motion, Valpak argues that a part of the Standard Mail price adjustments violate the Commission's directives in the FY 2010 Annual Compliance Determination (ACD), the Postal Accountability and Enhancement Act (PAEA) and 39 U.S.C. § 101(d), and seeks to have the Postal Service file revised Standard Mail price adjustments prior to public comment or Commission review.

The Postal Service respectfully requests that the Commission deny Valpak's Motion. Valpak's motion to strike the notice of price adjustment as prima facie unlawful is procedurally inappropriate, factually incorrect, and legally erroneous. Valpak's Motion amounts to a request that the Commission reject the Postal Service's notice of price changes as void ab initio. While Valpak may have concluded, although erroneously, that the Postal Service's prices are inconsistent with the statute or prior Commission pronouncements, such views are properly considered in connection with comments

allowed under the procedures established in the Commission's rules. It is the Commission that should decide whether its previous directives and orders have been followed after fully considering the Postal Service's filing and its integrated rate schedule as a whole. Further, contrary to Valpak's assertions, the Postal Service has complied with the Commission's directives related to Standard Mail. For both of these individual reasons, Valpak's Motion must be denied.

I. Valpak's Motion is Procedurally Inappropriate and the Relief Sought Is Not Contemplated by the Current Price Change Procedures

Valpak's Motion to Strike should be denied as the motion is not allowed under the current rules and the relief requested is not contemplated by the current statutory and regulatory regime. The Postal Service alone has the authority to establish reasonable and equitable rates of postage pursuant to section 101(d) and 404(b) of Title 39 U.S.C. Striking the Standard Mail Flat rates as void ab initio, before allowing the statutory and regulatory process to fully unfold, would run directly counter to 39 U.S.C. 3622(d) and 39 C.F.R. part 3010. In its motion, Valpak misguidedly attempts to unilaterally create a process that would allow for the preemptive rejection of a part of the Postal Service's rate adjustments. The process Valpak seeks, however, should be rejected as inconsistent with the current statutory and regulatory regime set forth in 39 U.S.C. 3622(d) and 39 C.F.R. part 3010.

Title 39 U.S.C. 3622(d), sets forth the procedures for the review of a price adjustment, and the basis for such review. The process is straightforward and simple. The Postal Service is required to provide public notice of the price adjustment 45 days prior to implementation. The Commission's regulations, which are consistent with the statute, require the same 45 day notice requirement, and also allow for a public

comment period during the first 20 days of the filing period. This comment period is intended specifically to focus on whether the rate adjustments comply with the annual inflation-based limitations in 39 C.F.R. 3010.11 and 3010.28. The Commission is then provided the opportunity to review the rates and to approve the rates, or if necessary, to make any determinations of any noncompliance with the limitation under subparagraph (A) of 39 U.S.C. 3622(d)(2)(A) or applicable law.

The PAEA and the Commission's regulations, thus, already prescribe the process for notice and review. By way of its current motion, Valpak is attempting to circumvent the current procedure to the detriment of all the other participants by demanding the Commission act on the Postal Service's price adjustment prematurely. There is no legal support for Valpak's new approach that would, in effect, deprive other members of the public the opportunity to comment on the proposed rates. Additionally, there are no statutory or regulatory provisions that contemplate the Commission making piecemeal findings in price adjustments prior to the public having an opportunity to comment. On the contrary, the Commission has always provided comprehensive findings only at the conclusion of the process, in recognition of the fact that, under a price cap regime, prices within a class are interrelated, and as such they cannot be considered in isolation. Valpak's effort to circumvent the prescribed process to consider price adjustments when the process is already embodied in the statute and the Commission's regulation should be rejected.

II. The Postal Service Complied with the Commission's Directives

Apart from the procedural flaws in Valpak's attempt to circumvent the process, Valpak's assertion that a part of the Postal Service's Standard Mail price adjustments

are prima facie unlawful is wholly without merit, and its motion should be rejected for this second, independent reason. Valpak asserts that the Postal Service's Standard Mail price adjustments are prima facie unlawful because the Postal Service did not (1) give an above-average CPI-U increase to Standard Mail flats, (2) give an "adequate" explanation of how the prices would move Flats cost coverage towards 100 percent, and (3) provide a statement estimating how the prices will reduce the intra-class subsidy of the Flats product. For the reasons set forth below, the Postal Service's proposed prices are consistent with the Commission's remedial pricing orders.

The Commission's initial directive in the FY 2010 ACD was "to increase the cost coverage of the Standard Mail Flats product through a combination of above average price adjustments, consistent with the price cap requirements, and cost reductions until such time that the revenues for this product exceed attributable costs."¹ The Postal Service initiated an appeal of this directive in the United States Court of Appeals for the District of Columbia Circuit challenging the Commission's authority to make the findings related to Standard Mail Flats pursuant to its powers under 39 U.S.C. § 101(d). While the Court found that the Commission had the authority to rely on section 101(d), it remanded the case to the Commission for a "definition of the extreme circumstances that trigger § 101(d)'s failsafe protection, and for an explanation of why the particular remedy imposed on the Postal Service's pricing of Standard Mail Flats is appropriate to ameliorate that extremity."² In Order No.1427, the Commission set forth its interpretation of section 101(d) and explained that a violation of section 101(d) may

¹ Docket No. R2013-1, United States Postal Service Notice of Market-Dominant Price Adjustment, at 20 (October 11, 2012).

² *United States Postal Service v. Postal Regulatory Commission*, 676 F.3d 1108, at 1105 (D.C. Cir. 2012)

arise based on the "totality of the circumstances."³ Among several factors the Commission stated it would consider before making such a finding, it held that the finding of an extreme case would not be justified if the Postal Service could demonstrate that price increases would be counterproductive under the statutory price cap.⁴ In accordance with all of the Commission's directives, the Notice explains why significant price increases to Standard Mail Flats would be counterproductive under the statutory price cap.

In this regard, the Postal Service acknowledges that it did not give Standard Mail Flats an above-average CPI-U increase, but the reason it did not do so is that such an increase would impair the ability of the Postal Service to enhance its revenue/contribution under the price cap. Indeed, this decision reflects an appropriate balance between the need to improve the cost coverage for Standard Mail Flats pursuant to the Commission's order, and the need for the Postal Service to increase contribution in order to remain economically viable.

Contrary to Valpak's contentions, the Postal Service explained in its Notice, and affirmed in its response to CHIR No. 1, why its approach both moves the Standard Mail Flats product towards 100 percent cost coverage and reduces the intra-cross subsidy of Standard Mail products. The Postal Service believes that any price adjustment that moves the Flats product towards 100 percent cost coverage simultaneously reduces the intra-class subsidy. The combination of an at-cap rate increase, anticipated savings from the Network Rationalization, and other processing savings in the future will achieve this result in compliance with the Commission's directives.

³ Docket No. ACR 2010-R, Order No. 1427: Order on Remand, at 10 (August 9, 2012).

⁴ *Id.* at 10.

Valpak's argument is also premised on another fallacy that is equally unpersuasive. Valpak erroneously claims that "the enormous continuing \$2 billion-plus losses from Standard Mail Flats contribute to jeopardizing the Postal Service's survival."⁵ Contrary to this assertion, in a price cap environment, underwater products and the difficulty in bringing them above water are a symptom and not the cause of financial distress. If the Postal Service increased the price of Standard Mail Flats in order to achieve 100% cost coverage, this would require, as Valpak recognizes in the very next paragraph in its motion, "corresponding price reductions on other Standard Mail products." However, the array of price adjustments for Standard Mail products that the Postal Service has proposed under its limited cap authority is designed to balance potentially competing interests: (1) moving Standard Mail Flats toward 100% cost coverage; and (2) the pressing need to increase overall revenue and contribution within the class. The extent to which the proposed price adjustments accomplish the latter goal, and the extent to which the latter goal may be pursued at the expense of former, is what is at issue.

Ultimately, the Postal Service understands that Valpak's Motion is intended to serve Valpak's own interest, but the Postal Service is obligated to make pricing decisions which balance all of its mailers' interests, and, most importantly, its interest in insuring the basic financial stability of the Postal Service. Pricing under the PAEA is an extremely complex undertaking. In preparing its annual price adjustment, the Postal Service must balance nine objectives and fourteen factors, and the resulting array of prices must also not exceed, at the class level, the limits of the CPI based price cap.

⁵ Docket No. R2013-1, Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Motion to Strike Standard Mail Price Adjustment from United States Postal Service Notice of Market-Dominant Price Adjustment, at 18 (October 22, 2012).

Moreover, in performing this balancing act, the Postal Service is concerned not only with the instant filing, but must also consider how its present use of its limited price cap authority will affect its ability to balance those objectives and factors, including financial stability, as product markets evolve in the future. Inevitably, the process of setting prices reflects a great deal of judgment. Here, the Postal Service's prices balance two competing imperatives — to gain some ground in cost coverage, and to actually secure the revenue essentially promised by the cap. The latter is especially important — considering § 3622(b)(5)'s reference to “financial stability” — at a time when the Postal Service's financial stability has never been at greater risk.

III. Conclusion

For the foregoing reasons, Valpak's Motion and request for relief must be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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