

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

RATE ADJUSTMENT DUE TO EXTRAORDINARY
OR EXCEPTIONAL CIRCUMSTANCES

Docket No. R2013-11

**MOTION OF THE UNITED STATES POSTAL SERVICE REQUESTING THE
STAY OF CERTAIN REPORTING REQUIREMENTS FROM THE COMMISSION'S
ORDER GRANTING EXIGENT RATE INCREASE**

(April 23, 2014)

The Postal Service respectfully requests that the Postal Regulatory Commission (“Commission” or “PRC”) stay those portions of its *Order Granting Exigent Price Increase* (“Exigent Order”), in which the Postal Service was directed to: 1) report the incremental and cumulative surcharge revenue to the Commission 30 days after the end of each quarter;¹ and 2) file a report with the Commission, no later than May 1, 2014, that includes a proposed plan for removing the exigent rate surcharge.²

On January 23, 2014 the Postal Service filed a petition for review of the Exigent Order in the United States Court of Appeals for the District of Columbia Circuit. See U.S. Postal Service v Postal Regulatory Commission, No. 14-1010 (D.C. Cir.). In light of the pendency of that review, it would be premature to require the Postal Service to identify a plan for removing the surcharge, since this action could be overtaken by the court’s decision on appeal. For the same reason, filing quarterly reports concerning the Postal Service’s progress in collecting the exigent surcharge is equally premature and unwarranted. The Postal Service notes that, pending the appeal of other Commission

¹ Docket No. R2013-11, Order No. 1926: Order Granting Exigent Price Increase, at 185 (December 24, 2013) [*hereafter* “Exigent Order”].

² *Id.*

orders, the PRC has previously granted stays of certain reporting / remedial requirements.³

Significantly, delaying the above-mentioned requirements would not jeopardize the ability of the Postal Service to later comply with these pieces of the Commission's Exigent Order. Instead, were the court to uphold the Commission's decision on the merits, appropriate compliance steps could be taken.⁴ This is particularly true since the Postal Service is already required to file quarterly billing determinants pursuant to 39 C.F.R. 3050.25(e),⁵ and since the court is almost certain to issue an opinion in advance of the time the Commission estimated it would take for the \$3.2 billion revenue limitation to be reached.⁶

In addition to the premature nature of these requirements, other considerations militate against reporting at this time. First, with regard to the revenue collection report, the Postal Service has determined that it will not be able to produce the report in the timeframe required by the Exigent Order (30 days after the close of each fiscal quarter). In this regard, the Postal Service notes that 39 C.F.R. § 3050.25(e) establishes a period greater than 30 days after the close of each quarter to provide quarterly billing determinants. Constructing the report required by the Exigent Order will entail

³ See *generally*, Docket No. ACR2010, Order No 739: Order Granting Stay (May 27, 2011); Docket No. MC2008-1, Order No 524: Order Denying Requests for Reconsideration, Addressing Confidentiality Matters, and Granting Stay (August 24, 2010).

⁴ Should the court uphold the Exigent Order on the merits, the Postal Service reserves the option of proposing both alternative revenue collection methodologies and a plan for removing the exigent surcharge.

⁵ The Postal Service's continuing obligation to file billing determinants after the close of each fiscal quarter will allow the Commission to approximate the surcharge revenue recovered during the pendency of the appeal using the method it initially proposed in its Exigent Order. Accordingly, should the Commission become concerned that the Postal Service is nearing the \$3.2 billion revenue limitation prior to the court issuing its ruling, appropriate steps can be taken to reconsider the stay in order to ensure that the limitation is not inadvertently exceeded.

⁶ Exigent Order, *supra* note 1, at 185.

additional calculations that utilize those billing determinants. This task is further complicated by: 1) the fact that the some of the information necessary to construct the revenue collection report will not be finalized until the 10-Q report is filed on May 9, 2014; and 2) the fact that the first report would cover Quarter 2, during which all the rates changed as a result of the CPI and exigent price increases. As a result, the Postal Service simply won't be able to meet the deadline established by the Commission.

With respect to the requirement to submit a plan to remove the exigent surcharge, it would also be premature to submit such a plan at this time. Given the variety and complexity of the options for removing the exigent surcharge, and its desire to maintain the maximum pricing flexibility permissible under the law, the Postal Service believes that more time is needed to fully evaluate its options and prepare a report. In particular, additional information such as CPI trends and forecasts will be critical in helping the Postal Service choose the most appropriate method for removing the exigent surcharge. This information will not be available, or will be incomplete, when the proposed plan is expected to be filed. Accordingly, even if the Postal Service did not believe that this requirement was legally erroneous, it does not believe that proposing a mechanism for removing the exigent surcharge on May 1, 2014 is practical.

In light of the discussion above, the Postal Service reiterates its request that the Commission stay the above mentioned requirements from its Exigent Order, pending the resolution of the Postal Service's appeal. If the Postal Service is unsuccessful on appeal, it will still be in a position to comply with these requirements, and can evaluate and determine whether to propose alternative collection methods at that time.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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