

Before the  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Rate Adjustment Due to Extraordinary or  
Exceptional Circumstances

Docket No. R2013-11

PUBLIC REPRESENTATIVE ANSWER OPPOSING  
UNITED STATES POSTAL SERVICE MOTION TO  
STAY CERTAIN REPORTING REQUIREMENTS

(April 29, 2014)

On April 23, 2014, the Postal Service filed a request with the Commission to stay the reporting requirements prescribed in Order No. 1926, Order Granting Exigent Price Increase, issued December 24, 2013.<sup>1</sup> The Postal Service notes that it has filed a petition for review of Order No. 1926 with the United States Court of Appeals for the District of Columbia Circuit.<sup>2</sup> It argues that in light of the pendency of the Court of Appeals review, it would be premature to have to comply with the reporting requirements since this action could be overtaken by the Court's decision.

Specifically, the Postal Service asks relief from the following:

- The Postal Service shall report incremental and cumulative surcharge revenue to the Commission 30 days after the end of each quarter.
- The Postal Service shall file a report no later than May 1, 2014, providing a proposed plan for removing the surcharge from postage rates with a complete explanation of how the plan will operate.

Order No. 1926 at 193.

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<sup>1</sup> 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 (Motion).

<sup>2</sup> U.S. Postal Service v. Postal Regulatory Commission, No. 14-1010 (D.C. Cir.).

The Public Representative opposes the Postal Service's Motion to stay the reporting requirements. However, the Public Representative would be amenable to a slight delay in reporting incremental and cumulative surcharge revenue to allow for the use of the latest quarterly billing determinants if the Commission determines that this will significantly improve the reported data.

The Commission has authority to stay agency actions.

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

5 U.S.C. § 705. When considering a stay, an agency typically applies a four part test: (1) likelihood that appeal will succeed on merits, (2) degree to which movant will suffer irreparable injury if stay is denied, (3) substantial harm that other parties involved may suffer if stay is granted, and (4) whether public interest is served by granting stay.<sup>3</sup>

On balance, the Motion does not support a stay of the reporting requirements. There is no indication whether or not the Postal Service will prevail with its Court of Appeals challenge, or any timetable to indicate when the Court of Appeals will issue its decision. The Postal Service has not provided a persuasive argument of undue burden or any harm that it may occur by filing the required reports. The Postal Service provides no indication of progress that it may have made in developing these reports, approximately four months after Order No. 1926 was issued, and one week before both reports are due. No overriding public interests have been expressed. However, there are indications that suspending reporting requirements may cause other parties (mailers) actual financial harm. The potential harm to mailers is discussed below.

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<sup>3</sup> The Opposition of Alliance of Nonprofit Mailers [et al.] to USPS Motion for Stay, April 28, 2014 at 2, discusses this test.

*Reporting incremental and cumulative surcharge revenue.* By not reporting incremental and cumulative surcharge revenue, mailers may be financially harmed by the Postal Service recovering more than the \$2.776 billion in additional contribution authorized by the Commission. Without reporting, there will be no indication of when the surcharge limit is reached in order to allow for reversal of the surcharge. Mailers will have no reasonable recourse if this is allowed to happen. The date for the Court of Appeals to issue its decision is also an unknown, which adds to the uncertainty.

Furthermore, the Commission, the Postal Service, and mailers must be provided visibility into the approaching recovery limit to allow adequate time to implement the procedural steps necessary for rolling back the surcharge. The Postal Service must file, and the Commission consider, a plan outlining the methodology for rolling back the exigent prices. The Postal Service must file, and the Commission consider, a price change proposal. Mailers have to update software, etc., reflecting new prices. Without visibility into the recovery of additional contribution, no one can predict when each of these steps must be completed, or be prepared to re-adjust prices before the contribution limit is reached.

The Postal Service asserts it will be unable to meet the deadline for the first incremental and cumulative surcharge revenue report. Motion at 3. It refers to 10-Q report and billing determinant timing issues. If the Commission determines a slight delay will result in more accurate reporting, the Public Representative is not opposed to the Commission modifying the timing of the reports. However, the Public Representative is opposed to indefinitely staying the Postal Service requirement to provide regular, timely, reports.

*Providing a proposed plan for removing the surcharge from postage rates.* The Commission's requirement for the Postal Service to produce a plan to roll back the exigent price increases attempts to limit the risk that mailers will be harmed by incurring exigent prices any longer than necessary. Producing the plan, now, allows all interested persons the opportunity to comment on the plan, and allows the Commission

to resolve any methodological issues outside the context of the price rollback proposal. This may facilitate rapid consideration of the price rollback proposal. Any delays could harm mailers as they will have no reasonable recourse if exigent prices remain in effect longer than authorized.

Exigent prices have already been in effect for approximately 3 months (since January 26, 2014). The Commission estimated that the exigent prices may be in effect for a total of 12 to 24 months. Order No. 1029 at 181. The Commission has directed the Postal Service to file its notice of removal of the surcharge one and one-half months before such effective date. The Commission has stated that interested persons will be provided an opportunity to comment on the proposed plan to rollback prices. Time must be allotted for the Commission to consider comments and rule on the proposal. The date that when the Court of Appeals may (or may not) act is unknown. The relatively short duration that the exigent prices are authorized to be in effect combined with the steps that must be taken to reverse the prices dictates the need for the Postal Service to submit its plan now.

The Postal Service “believes that more time is needed to fully evaluate its options and prepare a report” for removing the surcharge from postage rates. *Id.* It refers to the need for additional information such as CPI trends and forecasts that will not be available by the May 1, 2014 report due date.

The Postal Service has had four months to prepare its report. There is no indication that it has made any progress toward completion of this task. While it is conceivable that the Postal Service may need recent CPI trends and forecasts to propose actual prices, there no explanation why this information is necessary to formulate a plan. The Commission indicated that the exigent increase should be treated as a surcharge. Thus, the Postal Service should have a general idea of how to formulate a plan that the Commission might find acceptable.

Because of potential harm to mailers, and the absence of any persuasive rationale for missing the deadline, the Public Representative opposes the Postal

Service's request for suspending the requirement to provide a plan for removing the surcharge from postage rates.

Respectfully submitted,

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