

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

RATE ADJUSTMENT DUE TO)
EXTRAORDINARY OR EXCEPTIONAL) Docket No. R2013-11
CIRCUMSTANCES)
)

**VALPAK DIRECT MARKETING SYSTEMS, INC. AND
VALPAK DEALERS' ASSOCIATION, INC.
COMMENTS ON REPORT OF THE UNITED STATES POSTAL SERVICE
REGARDING SURCHARGE REMOVAL PLAN
(July 28, 2014)**

Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc.
(hereinafter "Valpak"), hereby submit these comments in response to Commission Order No.
2089 on the Report of the United States Postal Service in Response to Order No. 1926
Regarding Surcharge Removal Plan ("Report").

BACKGROUND

Commission Order No. 1926 (Dec. 24, 2013) approved the temporary exigent price surcharge requested by the Postal Service and ordered the Postal Service to "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." Instead, on April 23, 2014, eight days before the deadline, the Postal Service filed a motion for stay of the requirement to file a report on the proposed plan. On May 2, 2014, the Commission issued Order No. 2075, denying the Postal Service's request for a stay, but revising the deadline for the report to June 2, 2014.

On June 2, 2014, the Postal Service filed its Report, but reiterated that it “is not in a position to present a definitive ‘plan’ at this time, irrespective of whether the requirement to implement such a plan withstands appellate scrutiny.” Report, pp. 1-2. It then went on to provide several reasons why it could only “best comply with the Commission’s order ... by discussing options that it is preparing for the Governors to consider at the appropriate time.” *Id.*

COMMENTS

I. Postal Service Report

The Postal Service Report presented, in summary fashion, two “not mutually exclusive” approaches to removing the exigent surcharge. The Postal Service’s first option for removal of the exigent surcharge would be “to simply file a notice with the Commission rescinding the surcharge shortly before the point at which the Postal Service believes it has generated the \$3.2 billion in revenue allowed under the Commission’s order.” *Id.*, p. 3.

The Postal Service’s second option would be to delay the next rate adjustment (*i.e.*, not to have a Market Dominant increase in January 2015), and to reduce part of the exigent surcharge removal to absorb the then-available pricing authority. Report, pp. 3-4. The Postal Service explains that it could also use a combination of the two options, having January 2015 increases for some classes and delaying them for other classes until removal of the exigent surcharge. *Id.*

Order No. 1926 stated that the Postal Service’s Report “shall include a proposed plan for removing the exigent rate surcharge with a complete explanation of how the plan will operate.” Order No. 1926, p. 185. However, the Report does not comply with this

requirement because it does not include any plans, merely possible options, and certainly no explanation of how any of these options would operate. The Postal Service does not hide this fact, only claiming that its Report is an effort to “best comply with the Commission’s order.” Report, p. 2.

The Postal Service shrugs off compliance with Order No. 1926 because of its position that the nature of the decisions “are uniquely within the authority of the Governors to decide....” *Id.* This is not the first time the Postal Service has hidden behind the Governors’ authority when faced with an order of the Commission. For example, when the Commission ordered, *inter alia*, a schedule of above-cap price increases for Standard Flats in the FY 2010 ACD, the Postal Service reluctantly complied, but explained that its schedule was meaningless because it was only for the Governors to decide. *See* FY 2012 ACR, pp. 16-19.

The Commission should reject the Postal Service’s plan as failing to comply with Order No. 1926. The Commission should then either (i) order the Postal Service (including the Governors) to comply fully or (ii) proceed to develop its own plan to remove the exigent surcharge.

II. Calculation of Unused Rate Adjustment Authority

Neither the Postal Service nor the Commission addresses recalculation of the price cap upon removal of the exigent surcharge. Obviously, with the Postal Service’s recommended option two, there would be a necessary price cap calculation as the Postal Service would have to determine its pricing authority available at that time.

Table I
Exigent Surcharge Impact on Price Cap

Class	Unused Authority ¹	Exigent Increase	Increase Over Authority
First-Class	-0.463 %	4.280 %	4.743 %
Standard Mail	-0.397 %	4.264 %	4.661 %
Periodicals	-0.524 %	4.095 %	4.619 %
Package Services	-0.312 %	4.308 %	4.620 %
Special Services	1.814 %	4.318 %	2.504 % ²

In comments on the exigent proposal, Valpak raised the issue of the unused price adjustment authority. *See* Valpak Initial Comments (Nov. 26, 2013), pp. 79-83. The Commission summarized the portion of Valpak’s comments relevant here as follows:

Valpak asserts that because the effect of an exigent rate increase is to “absorb” all unused rate authority — positive and negative — when the exigent rates are rescinded, either (1) the rates should be “rolled back” to a new level below existing rates to account for the absorption of negative rate authority or (2) the unused rate authority must be restored.... Valpak warns that if the Commission does not account for the unused rate authority, it will fail to protect the price cap. [Order No. 1926, p. 189.]

Nevertheless, the Commission did not resolve this aspect of the issue in Order No. 1926, merely acknowledging that its “regulations do not specifically address what impact exhaustion

¹ Order No. 1926, p. 187, Table VIII-1.

² The situation of Special Services demonstrates the need to recognize the impact of the exigent surcharge on the cap. The Commission must determine that any removal will restore prices to cap compliance. Thus, Special Services prices will need to decrease only 2.504 percent because the Postal Service had unused authority for that class.

has on negative unused rate authority,” but “recognize[d] that exhaustion of unused rate authority has a potential impact on the price cap.” *Id.*, p. 191.

Removal of the exigent surcharge is for the purpose of restoring the market dominant price-setting system back to the CPI-based cap structure after the Postal Service has recovered the amount which the Commission recognizes as due to the exigent circumstances. Mere removal of the surcharge (leaving the unused rate authority at zero) removes a constraint on the Postal Service’s pricing authority.

One can be sure that if the Postal Service had any significant positive unused rate authority, it would insist that it either (i) only be required to remove the exigent surcharge up to the unused authority it had before it was “exhausted,” or (ii) return the unused authority back to the “bank” so it would not lose such authority for use at a later time.

Thus, regardless of how the Postal Service removes the exigent surcharge, it should be required to generate a price cap calculation. If the plan is simple removal, then it should be required restore the unused authority available at the time the request in Docket No. R2013-11 was filed.³

III. Intermediate CPI Rate Increase

One of the questions Order No. 2089 asked was: “if there is a CPI rate adjustment before the exigent surcharge revenue limit is reached (*e.g.*, a rate adjustment during FY 2014) must the Postal Service address the total rate paid by ratepayers (the CPI base and increase

³ Any unused rate authority regenerated by this calculation would be subject to the five-year rule in 39 U.S.C. § 3622(d)(2)(C)(ii).

plus the exigent surcharge) for compliance with 39 U.S.C. § 3622, or only address the base rate and CPI increase?” Order No. 2089, p. 4.

The Commission’s question appears to assume that any price adjustment would be made as a percentage increase to the base rates established in Docket No. R2013-10. This assumption is correct. Additionally, Valpak agrees with the first of the Commission’s alternatives that, in any CPI-based price adjustment prior to removal of the exigent surcharge, the Postal Service should “address” the total rate paid by ratepayers.

Respectfully submitted,

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