

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

RATE ADJUSTMENT DUE TO EXTRAORDINARY OR
EXCEPTIONAL CIRCUMSTANCES

Docket No. R2013-11

**COMMENTS OF
THE NATIONAL POSTAL POLICY COUNCIL**
(July 28, 2014)

The National Postal Policy Council respectfully submits these comments in response to Order No. 2089, which invited comment on the Postal Service's plans for removing the exigency surcharge¹ adopted previously in this proceeding,² and on certain specific issues identified therein.³

For NPPC members, perhaps the most important aspect of the procedures relating to the removal of the exigency surcharge is that only one change in postal prices occurs in a given year. For large mailers, adjusting mailing operations in response to changes in postal prices is a costly, complicated process. And the costs in time, software changes, and planning associated with postal price changes must be incurred every time that rates change, regardless of whether rates increase, decrease, or both. For example,

¹ For simplicity, NPPC will refer to the exigent rates authorized by Order No. 1926 as a "surcharge" although the size of the surcharge(s) varied among products.

² Order No. 1926 (Dec. 24, 2013), *petition for review pending sub nom. Alliance of Nonprofit Mailers v. Postal Regulatory Commission*, No. 14-1009 (D. C. Cir. reply briefs filed July 14, 2014). In commenting on Order No. 2089, NPPC does not waive its opposition to the surcharge, which currently is under review in the U.S. Court of Appeals.

³ *Notice and Order on the Postal Service's Exigent Surcharge Removal Plan*, Docket No. RM2013-11 (June 11, 2014)("Order No. 2089").

the upcoming Priority Mail rate changes planned for September 2014 will cost one NPPC member nearly \$20,000 just for testing and retraining of production teams. In addition, some mailers are still experiencing software complications associated with the January 2014 change in Single Piece rates.

Due to the expense of adjusting mailing systems to postal pricing changes, NPPC members would strongly prefer that the removal of the surcharge (and any simultaneous index adjustment that the Postal Service may choose to make) be the only rate change in the year in which it occurs. To make the transition to the post-surcharge rates as smooth as possible, the Postal Service should give a 90-day advance notice of the removal of the surcharge and/or of any new rates in order to allow adequate time for mailers to adjust.

Order No. 2089 asks several questions about the technical process of removing the exigency surcharge. Although these are issues of first impression, the appropriate removal process is straightforward because the exigent increase is in the form of a temporary surcharge – instead of being embedded in the base rates. In particular:

- If the Postal Service were simply to remove the exigency surcharge and make no other rate changes, the resulting rates would be those approved in Docket No. R2013-10, and no further showing would be necessary;
- To remove the exigency surcharge and impose any rates different than those set in Docket No. R2013-10, the Postal Service would file a notice in this docket removing the surcharge, and notice any rate adjustments in a separate filing in a new docket subject to the normal price cap regulations; and
- Any price cap rate adjustments filed before the surcharge is removed must be calculated as adjustments from the rates approved in Docket No. R2013-10, and the resulting rates

(combining the price cap adjusted rates plus the surcharge) must comply with Section 3622.

I. THE POSTAL SERVICE SHOULD PROVIDE 90-DAYS NOTICE BEFORE REMOVING THE SURCHARGE OR ADJUSTING RATES

In Order No. 1926, the Commission directed the Postal Service to provide 45-days' notice before removing the surcharge, in order to allow mailers sufficient time to prepare for the rates that would next take effect. In what is in effect an invitation to reconsider that period, Order No. 2089 asks (at 4) whether 45 days is sufficient advance notice, and also asks whether the appropriate notice would depend on the details of the removal plan that the Commission ultimately approves.

As a rule, NPPC member companies desire as much notice as is reasonably possible – at least 90 days -- before postal pricing changes take effect. To provide sufficient time to prepare for pricing changes, NPPC members have for years encouraged the Postal Service to provide more than a 45-day notice of rate changes. Commendably, the Postal Service routinely provides such notice when adjusting rates subject to the price cap index.

Order No. 2089 asks whether the details of the removal plan would affect the minimum desirable notice period. The answer is no, because the time and cost are incurred by the fact of pricing changes themselves; the costs of modifying mailing systems are independent of the methodology upon which the pricing change is based.

The statute does not speak to a minimum notice period for removing an exigent increase. Section 3622 requires a notice period of no less than 45 days

before price cap adjustments may be implemented, and a longer 90 day notice period for exigency increases. Because the statute does not specify any particular notice period for *removing* an exigency increase, the Commission may have authority to set the period. This would constitute an exception to the general rule that the Governors determine the timing of rate filings; this is because the Commission has authorized removal of the surcharge once a revenue total is reached, and the Governors do not have authority to override that Commission determination, just as by inaction on removing the surcharge.

This matter need not lead to a jurisdictional dispute between the Postal Service and the Commission. The optimal solution would be for the Postal Service to pledge to give at least a 90-day notice of removal of the surcharge and any other rate adjustments, and the Commission to accept that pledge. NPPC strongly encourages the Postal Service's management and Governors to coordinate the removal of the surcharge and implementation of any CPI adjustments to minimize the transition costs imposed on the mailing community.

II. THE COMMISSION HAS ALREADY FOUND THAT THE RATES IN DOCKET NO. R2013-10 COMPLY WITH SECTION 3622

The Commission asks whether, if the Postal Service simply removes the exigent surcharge when the revenue limit is met, the Postal Service must “demonstrate that the resulting prices comply with 39 U.S.C. §3622(e)?” Order No. 2089 at 3. NPPC submits that the answer to this question depends on what “resulting prices” would be in effect upon removal of the surcharge.

In general, the Postal Service bears the burden of demonstrating that any generally applicable rates that it intends to charge will satisfy the statute,

including the provisions of Section 3622. Here, the exigency surcharges approved in Docket No. R2013-11 were applied to the rates approved by this Commission in Docket No. R2013-10, including the workshare discounts. Mailers have been paying them (plus the surcharge) since January 2014. If the Postal Service were simply to remove the exigency surcharge, make no other adjustments, and no intervening rate adjustments have occurred, the Docket No. R2013-10 rates are the ones that would be left in place.⁴

In this scenario, there would be no need for the Postal Service to address Section 3622 at the time that it announces the removal of the surcharge. The Postal Service has already met its Section 3622 burdens as to those rates. No further review, proof or action would be necessary to allow the previously approved Docket No. R2013-10 rates to remain in effect. The Postal Service would simply file a notice in this docket setting the date on which it would remove the surcharge. The appropriate time for the Commission to make any further review would be in the following Annual Compliance Determination.

However, at the current pace of revenue collection,⁵ the surcharge is unlikely to expire before summer 2015. It follows that at least one annual compliance review will occur while the surcharge remains in effect, even assuming no CPI adjustment is made. Nothing in that review need dictate a different result. The Commission's practice, in the event that it finds during an

⁴ This assumes that the Commission's decision in Docket No. R2013-10 is upheld by the U.S. Court of Appeals for the District of Columbia Circuit in the Postal Service's pending petition for review. See *United States Postal Service v. Postal Regulatory Commission*, No. 13-1308 (D.C. Cir. intervenor brief filed July 8, 2014).

⁵ See *Response of the United States Postal Service to Order No. 2075* (May 15, 2014).

annual compliance review a workshare discount to exceed estimated avoided cost, is to direct the Postal Service to address the matter “during the next general market dominant price adjustment.” See, e.g., ANNUAL COMPLIANCE DETERMINATION FISCAL YEAR 2013 at 26 (March 27, 2014). If the only rate change is the removal of the surcharge, no general market dominant adjustment would occur, and the Commission should adhere to its normal practice.

III. REMOVING THE SURCHARGE AND SIMULTANEOUSLY IMPOSING AN INDEX INCREASE WOULD REQUIRE TWO NOTICES IN TWO DOCKETS

The preceding section addressed the situation in which the Postal Service simply removes the exigency surcharge. It is quite possible, of course, that the Postal Service may want to make a price cap adjustment that would take effect simultaneously with the removal of the surcharge. Two separate notices in two separate dockets would be required in this scenario.

Of the two notices, one would be filed in this docket to remove the surcharge. This is consistent with the approach discussed in the preceding section, and would terminate the surcharge in the same docket in which it was established.

Any index rate adjustments to take effect upon removal of the surcharge should be considered in a separate, normal index case. Accordingly, the Postal Service would notice any new rates in a new proceeding and make the normal showings required by Section 3622. In doing so, it should of course be mindful of the effects on mailers of the changes in rate levels and discounts from those in effect today. For instance, were the Postal Service to reduce workshare

discounts from current levels or discourage efficient mail preparation, the effect would be to cause mailers to work harder to convert mail to electronic alternatives.⁶

As NPPC understands the variation referred to as the “second” option, the Postal Service would remove the exigency surcharge while simultaneously reimposing the same rates by a price cap adjustment based on accumulated inflation since January 2014 (if accrued and banked inflation were sufficient to allow this to occur), This would, in effect, convert the exigent rate surcharge into a CPI rate adjustment while leaving the actual rates unchanged. Order No. 2089 asks what procedures should be required in this special scenario.

In view of the current pace of revenue collection, it may be unlikely that inflation will have risen by 4.3 percent from January 2014 by the time that the \$3.2 billion in surcharge revenues are collected. Nevertheless, if this scenario were to occur, two notices in two dockets would again be appropriate. As discussed on the preceding page, the Postal Service would (1) file a notice in Docket No. R2013-11 terminating the surcharge; and (2) file a notice of rate adjustment, in a new docket, which would be subject to Commission review for compliance with Section 3622 in the same manner as any notice of rate adjustment.

This two-docket approach would provide the first opportunity for the Commission to review the erstwhile surcharged rates for compliance with the price cap regulations. This the Commission has never done. To date, the rates

⁶ This would be true, of course, regardless whether the removal and new rates were done in one proceeding or two.

that include the surcharge have been reviewed only under the exigency provision in Section 3622(d)(1)(E), not (d)(1)(A) & (C). In such a case, the Postal Service would have to demonstrate compliance with Section 3622, including the cap, subsection (e), and all other applicable provisions.⁷

IV. AN INDEXED RATE ADJUSTMENT FILED BEFORE THE SURCHARGE IS REMOVED MUST BE BASED ON THE R2013-10 RATES, AND BE ADDED TO THE SURCHARGED RATES WITH THE RESULTING COMBINED RATE SUBJECT TO SECTION 3622

The Commission asks what procedures should apply if the Postal Service notices a CPI rate adjustment before the exigent surcharge revenue limit is reached. In particular, the Commission asks whether the Postal Service should address the total rate paid by ratepayers for compliance with Section 3622, or only the base rate and CPI increase.

First, the Postal Service must demonstrate that the total, combined rates comply with statutory requirements, including Section 3622(b) and (c) and Section 403(c). That is because those are the rates that mailers will be expected to pay.

Second, it is important that the Commission ensure that the CPI adjustment is properly calculated and applied. To calculate the amount of a permitted CPI adjustment while the surcharge is in effect, the correct base is the Docket No. R2013-10 rates -- not the current rates that include the exigent surcharge. Basing the CPI adjustment on rates that embed the surcharge would

⁷ As mentioned above, removal of the exigency surcharge would have the effect of restoring the indexed rates previously approved in Docket No. R2013-10. Thus, if the Commission were to identify any violation of Section 3622 in the rates noticed in the CPI docket, the rates approved in Docket No. R2013-10 could remain in effect

improperly overstate the allowed increase by 0.043 percent per percentage point of inflation.

Third, after the absolute amount of the CPI increase is determined based on the Docket No. R2013-10 rates, that amount (or, rather, those amounts, as the Postal Service could change pricing relationships among products within each class as it does with any cap adjustment) should be added to the surcharged rates that are in effect today to arrive at the rates to be paid by mailers.⁸ The resulting combined rates would be subject to Section 3622 review.

A separate question is whether the Commission also should review the base rate plus CPI increase combination (that is, excluding the surcharge). That combination would take effect if the surcharge were removed before the subsequent market-dominant rate adjustment. For example, if the Postal Service were to file a CPI adjustment effective January 2015, those CPI rates would take effect if the surcharge were removed in the summer of 2015, as appears likely today. In anticipation of that occurring, the Commission may find it administratively efficient to review that combination as well, so that when the surcharge is removed there would be previously approved rates set to take effect. Somewhat analogously, the Commission in effect did just that when it reviewed and approved the rates in Docket No. R2013-10, as discussed above.

⁸ Or, equivalently, the exigent surcharge would be added to the newly determined base rates.

V. CONCLUSION

For the foregoing reasons, the National Postal Policy Council respectfully urges the Commission to adopt procedures to govern the removal of the exigent surcharge consistent with these comments.

Respectfully submitted,

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