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ORDER NO. 2623

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners: Robert G. Taub, Acting Chairman;
Tony Hammond, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Nanci E. Langley

Rate Adjustment Due to Extraordinary or Exceptional Circumstances — Docket No. R2013-11R

ORDER RESOLVING ISSUES ON REMAND

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TABLE OF CONTENTS

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(Issued July 29, 2015)

This case has been remanded to the Commission by the United States Court of Appeals for the District of Columbia Circuit for further proceedings consistent with the Court's opinion in *Alliance of Nonprofit Mailers v. Postal Regulatory Commission,* 2015 WL 3513394 (D.C. Cir. June 5, 2015) (*ANM*). For the reasons set forth below, the Commission finds that the Postal Service is entitled to recover $1.191 billion in additional contribution as an exigent rate adjustment. When added to the $2.766 billion in contribution originally authorized by the Commission in Order No. 1926,[1] the total exigent rate adjustment approved by the Commission is $3.957 billion in contribution.

[1] Docket No. R2013-11, Order Granting Exigent Price Increase, December 24, 2013 (Order No. 1926).

I. BACKGROUND

A. Order No. 1926

On December 24, 2013, the Commission issued Order No. 1926, which granted the Postal Service's request for a 4.3 percent exigent price increase pursuant to 39 U.S.C. § 3622(d)(1)(E).[2] Order No. 1926 was the first Commission order approving a Postal Service request for an exigent price increase.[3]

In Order No. 1926, the Commission made several key determinations, four of which are of central importance to the current remand proceeding. First, the Commission found that at some point following the onset of the "Great Recession" (the event that constituted the exigent circumstance under section 3622(d)(1)(E)), a "new normal" emerged that effectively ended the impact of the exigent event by severing the causal link between the Great Recession and the exigent circumstances. Order No. 1926 at 85. Second, to calculate the total volume impact, the Commission counted that lost mail volume once in the year the volume exited the network. *Id.* at 95-96. This determination is referred to as the Commission's "count once" rule and served as a mechanism for calculating the total mail volume lost due to the Great Recession. Third, the Commission converted lost mail volume into contribution loss by "multiplying the total volume loss due to the Great Recession [for each category of mail] by the [applicable] FY 2014 After Rates [unit] contribution." *Id.* at 105. Fourth, the Commission determined that the additional contribution, collected in the form of the exigent surcharge, complies with the other requirements of section 3622(d)(1)(E), including that it is "reasonable and equitable and necessary." *See, e.g., id.* at 122, 156-157, 169.

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[2] As the Commission explained in Order No. 1926, "exigent" price increases are rate adjustments that can be authorized upon a showing by the Postal Service of extraordinary or exceptional circumstances, provided certain additional requirements set forth in section 3622(d)(1)(E) are also met. *See* Order No. 1926 at 4 n.1. As in Order No. 1926, the Commission will use the term "exigent" as a shorthand reference for the statutory phrase "extraordinary or exceptional."

[3] The history leading up to the exigent rate adjustment approved by Order No. 1926 is summarized by the Court in its *ANM* decision. *ANM* at *2-3.

B. The *ANM* Decision

On June 5, 2015, the United States Court of Appeals for the District of Columbia Circuit issued the *ANM* decision. The Court issued its mandate on July 29, 2015. On appeal, the Court upheld most of Order No. 1926. *See ANM* at *5. The Court did not disturb the Commission's conclusions that: the Great Recession constituted an exigent circumstance; the Postal Service was permitted to recover for that exigent circumstance; the circumstance remained exigent until the Postal Service had an opportunity to adjust to the "new normal" in the mail economy (which severed the causal "due to" nexus of the Great Recession and the exigent circumstance); and the relief was "reasonable and equitable and necessary." *Id.* at *5-6.

In Order No. 1926, the Commission used the "new normal" test to determine how long volume losses would be attributed as being "due to" the exigent circumstance. The Court described the Commission's "new normal" test as follows:

> [The] "new normal" arrived and cut off the causal "due to" linkage between the exigency and its economic impact … once (1) macroeconomic indicators "demonstrate[d] a return to near historic positive trends;" (2) macroeconomic variables "accurately project[ed] change, and the rate of change on Postal Service mail volume [became] positive;" (3) the Postal Service "regain[ed] its ability to predict or project mail volumes;" and (4) the Postal Service "demonstrate[d] an ability to adjust operations to lower volumes."

Id. at *5 (citing Order No. 1926 at 86).

The Court explicitly endorsed the Commission's discretion to apply the "new normal" test as one "designed to capture precisely the time when the exigent character of a circumstance dissipates—when its effects lose their exceptional character…." *Id*. at *6. In accepting the "new normal" test to measure the point at which the exigent event ended, the Court found that "the Commission [had] sensibly concluded that the statutory exception allowing higher rates when needed to respond to extraordinary financial circumstances should only continue as long as those circumstances, in fact, remained extraordinary." *Id.* The Court had no difficulty accepting the limitation placed by the Commission's "new normal" rule on the collection of higher rates "even though the effects in some literal, but-for causal sense linger." *Id.* The Court concluded that "the Commission [had] permissibly reasoned that just because some of the effects of exigent circumstances may continue for the foreseeable future, that does not mean that those circumstances remain 'extraordinary' or 'exceptional' for just as long." *Id.*

The Court determined that the Commission appropriately linked the "new normal" test to the causation analysis rather than to the "reasonable and equitable and necessary" requirements of section 3622(d)(1)(E) because the "reasonable and equitable and necessary" inquiry only applies after causation is established. *Id.* The Court rejected the Postal Service's contention that it had insufficient notice of the "new normal" test and its application because it was discussed extensively before the Commission and there was ample notice that such a test could emerge from the proceeding. *Id*. at *7.

The Court also held that the Commission acted "well within its discretion" in applying the "new normal" test to the facts presented and determining that the "new normal" had arrived at different dates for different classes of mail. *Id.* The Commission found that the "new normal" cutoff arrived by the beginning of FY 2011 for First-Class Mail. For Standard Mail and Package Services, the new normal cutoff arrived by the beginning of FY 2010. Finally, for Periodicals, the "new normal" cutoff arrived by the beginning of FY 2012. Order No. 1926 at 94.

The Court explained that the "reasonable and equitable and necessary" test evaluated by the Commission in Order No. 1926 is relevant to the recovery portion of the section 3622(d)(1)(E) inquiry, rather than the causation inquiry. *ANM* at *6. Because the test is relevant to recovery, it only applies after an exigent-caused loss is established. *Id*. In Order No. 1926, the Commission explained that the "reasonable" and "necessary" parts of the "reasonable and equitable and necessary" test could further limit, but not increase, an amount recoverable “due to” an exigent circumstance.[4] The Court held that the Commission appropriately addressed the “reasonable and equitable and necessary” requirements. *ANM* at *6.

By contrast, the Court rejected the two rationales offered by the Commission to support its conclusion that mail volume lost due to the exigent circumstance should be counted only once in calculating the contribution loss that the Postal Service was entitled to recover through higher rates (the “count once” rule). *Id.* at *8. The first rationale was that counting mail beyond the first year in which it is lost makes it impossible for the Commission to calculate the total amount lost due to the exigent circumstance. The second rationale relied upon by the Commission was that once a piece of mail is lost due to the exigent event, the Postal Service adjusts its expectations to continue without that piece of mail.

The Court found that neither rationale could be reasonably harmonized with the Commission’s explanation that the “new normal” “defines when the Postal Service ‘regain[ed] its ability to predict or project mail volumes’ or to ‘adjust to the lower volumes.’” *Id.* (citing Order No. 1926 at 86). In the Court’s view, the “new normal” rule demonstrates both that it is possible to identify a stopping point for determining lost mail volume and that the same considerations relied upon to determine when the “new normal” arrived can be used to “guide the Commission’s determination of when to stop counting lost mail volume.” *Id.* The Court therefore “vacate[d] the ‘count once’ portion of the Commission’s order….” *Id.* at *10

At oral argument, the Postal Service raised an argument that the “new normal” test is inconsistent with the Commission’s “necessary” analysis in Order No. 1926. The Court found the argument was not properly before it. *Id*. at *8 n.3. The Court acknowledged that the Commission is free to consider the argument on remand. *Id.*

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[4] *See* Order No. 1926 at 30 (“The ‘necessary’ requirement provides a limitation on amounts demonstrated by the Postal Service to be ‘due to’ ‘extraordinary or exceptional’ circumstances.”); *see also id.* at 35 (“The ‘reasonable’ requirement does not permit recovery of amounts larger than the amounts determined to be ‘due to’ … ‘extraordinary or exceptional’ circumstances and ‘necessary.’”).

II. PROCEEDINGS ON REMAND

A. The Postal Service Motion and Responses

Postal Service motion. On June 8, 2015, the Postal Service filed a motion requesting the Commission implement remand proceedings expeditiously.[5] Pending completion of those proceedings, the Postal Service requested that the Commission suspend the mechanism for removal of the exigent surcharge on the grounds that the *ANM* Court vacated the "count once" portion of Order No. 1926, rendering the $2.766 billion estimate of contribution loss due to the Great Recession inadequate. Postal Service Motion at 2. For the reasons set forth in its motion, the Postal Service asserted that under Commission methodologies left undisturbed by the *ANM* decision, its total contribution loss was "in no circumstances less than $3.957 billion." *Id.* In the Postal Service's view, this additional amount of contribution loss would provide a cushion, allowing the Postal Service to maintain the exigent surcharge while further proceedings on remand were conducted. *Id.*

In its motion, the Postal Service also called upon the Commission to reconsider the "new normal" framework based on its reading of footnote three in the *ANM* decision. Footnote three reads:

> At oral argument, counsel for the Postal Service argued that the "new normal" analysis in the Order is also inconsistent with the Commission's analysis of whether the rate increase was "necessary." *See* Oral Argument Transcript 19. That argument was not raised in the Postal Service's briefs, and is not properly before this court. The Commission, of course, is free to consider that argument on remand.

ANM at *8 n.3. From footnote three, the Postal Service inferred that "the court left open the question of whether the totality of Order No. 1926 stated a consistent position

[5] Docket No. R2013-11, Motion of the United States Postal Service to Suspend Exigent Surcharge Removal Provisions of Order No. 1926 and to Establish Remand Proceedings, June 8, 2015, at 1 (Postal Service Motion).

regarding the Postal Service's ability to reduce institutional costs through operational adjustments made in response to dramatically lower volume levels." Postal Service Motion at 3. In the Postal Service's view, the Commission must undertake "a necessary reconsideration of the 'new normal' framework" on remand, in addition to its duty to respond to the Court vacating the "count once" rule. *Id.* at 4.

Responses to Postal Service Motion. The Commission received two responses to the Postal Service Motion. The first was filed by the American Postal Workers Union AFL-CIO (APWU),[6] and the second response was filed by a coalition of mailers (PostCom *et al.*).[7]

In its response, APWU supported the Postal Service's request to suspend the exigent surcharge removal provisions, arguing that the Court "intends that the Commission maintain the exigent surcharge without the invalid 'count once' limitations while it recalculates the total loss." APWU Response at 4.

PostCom *et al.* responded to the Postal Service Motion by asserting that "[t]he Postal Service has grossly misstated the proper scope of the case on remand" and that the Commission's only responsibility on remand is to "recalculate the exigent rate surcharge without the 'count once' limitation." PostCom *et al.* Response at 1. In the view of PostCom *et al.*, if the Commission were to reopen the record for reconsideration of the "new normal" framework, the Commission must also reopen the record to consider other issues which would reduce the exigent surcharge. *Id.* at 6-8. Finally, PostCom *et al.* argued that if the Postal Service is given interim relief in the form of a temporary extension of the exigent surcharge pending completion of remand

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[6] Docket No. R2013-11, Comments of American Postal Workers Union, AFL-CIO in Support of Postal Service Motion to Suspend Exigent Surcharge Removal Procedures, June 11, 2015 (APWU Response).

[7] Docket No. R2013-11, Response of Association for Postal Commerce, MPA—The Association of Magazine Media, Alliance of Nonprofit Mailers, Direct Marketing Association, Inc., American Catalog Mailers Association, Envelope Manufacturers Association, Epicomm, Idealliance, Major Mailers Association, National Newspaper Association, and Saturation Mailers Coalition to the Motion of the United States Postal Service to Suspend Exigent Surcharge Removal Provisions of Order No. 1926 and to Establish Remand Proceedings, June 11, 2015 (PostCom *et al.* Response).

proceedings, such relief should be conditioned upon the Postal Service's agreement "to conditions that would make mailers whole if the additional surcharge revenue is ultimately found unwarranted." *Id.* at 8.

B. Order No. 2540 and Submissions by Participants

On June 12, 2015, the Commission issued Order No. 2540, which granted the Postal Service's request to expeditiously establish remand procedures.[8] The Commission established June 26, 2015, and July 6, 2015, as deadlines for filing initial and reply comments respectively. Order No. 2540 at 8. Although the Commission rejected the Postal Service's request that the $2.766 billion surcharge contribution target be suspended, it did suspend the requirement that the Postal Service file a 45-day notice of intent to remove the exigent rate surcharge in order to avoid a series of potentially disruptive rate fluctuations while the Commission sought to conclude expedited remand proceedings before the $2.766 billion surcharge contribution target was reached. *Id.* at 6.

The Commission received seven sets of initial comments and seven sets of reply comments, all of which are identified in the Appendix to this Order.[9] Two sets of comments were accompanied by library references.[10]

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[8] Notice and Order Establishing Procedures on Remand and Suspending the 45-Day Notice Requirement for Removing the Exigent Surcharge, June 12, 2015 (Order No. 2540).

[9] A motion for late acceptance was filed by the Software & Information Industry Association (SIIA). Motion of the Software & Information Industry Association for Late Acceptance of the Reply Comments, July 7, 2015. The motion is granted.

[10] The initial comments filed by PostCom *et al.* were supplemented by a library reference designated as Library Reference PostCom, MPA *et al.*-LR-R2013-11R/1. *See* Notice of Filing of Library Reference by Association for Postal Commerce, MPA—The Association of Magazine Media, Alliance of Nonprofit Mailers, Direct Marketing Association, Inc., American Catalog Mailers Association, Envelope Manufacturers Association, Epicomm, Major Mailers Association, National Newspaper Association and Saturation Mailers Coalition, June 29, 2015. The reply comments filed by the Greeting Card Association and National Postal Policy Council (GCA/NPPC) were accompanied by a library reference designated as Library Reference GCA/NPPC-LR1 R2013-11R. *See* Greeting Card Association and National Postal Policy Council Notice of Filing of Library Reference, July 6, 2015.

On July 8, 2015, the Postal Service filed a motion to strike portions of the comments and accompanying materials submitted by GCA/NPPC and Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. (Valpak).[11] Further motion practice from involved participants ensued.[12] In Order No. 2540, the Commission requested comments addressing "the question of how to count the volume of lost mail in calculating the exigent surcharge…." Order No. 2540 at 3. Accordingly, the Commission denies the Postal Service's Motion to Strike and considers the methodologies proposed by GCA/NPPC and Valpak in the interest of considering all comments that are responsive to Order No. 2540. Given the Commission's use of the Postal Service's methodology to count the total volume of lost mail, the Commission finds the Postal Service has not been prejudiced by its consideration of GCA/NPPC's and Valpak's comments.

The primary issues addressed by the commenters are: (1) the Postal Service's position on how the Commission should approach the "new normal" framework on remand; (2) the appropriate methodology to use in place of the "count once" rule for calculating mail volumes lost due to the Great Recession; (3) whether the uniform FY 2014 unit contributions applied in Order No. 1926 should be replaced with year-specific unit contributions in calculating losses recoverable by the Postal Service through the exigent surcharge; (4) whether any amounts to be collected by the Postal Service in excess of those authorized by Order No. 1926 are "reasonable and equitable

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[11] Motion of the United States Postal Service to Strike New Analyses Improperly Submitted in Reply Comments by GCA/NPPC and Valpak, July 8, 2015 (Motion to Strike).

[12] GCA/NPPC and Valpak each filed an opposition to the Postal Service's Motion to Strike. *See* Opposition of the Greeting Card Association and the National Postal Policy Council to Motion to Strike, July 14, 2015; and Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Opposition to U.S. Postal Service Motion to Strike, July 15, 2015. On July 16, 2015, the Postal Service moved for leave to reply to GCA/NPPC's opposition to its motion to strike together with a proposed reply. *See* Motion of the United States Postal Service for Leave to Reply to GCA's Opposition to Postal Service Motion to Strike, July 16, 2015; and Reply of the United States Postal Service to GCA's Opposition to Postal Service Motion to Strike, July 16, 2015. On July 20, 2015, GCA/NPPC filed an opposition to the Postal Service's motion for leave to reply to its opposition. *See* Opposition of the Greeting Card Association and the National Postal Policy Council to Motion for Leave to Reply, July 20, 2015. The Postal Service's motion for leave to reply is granted and its proposed reply is accepted.

and necessary;" and (5) whether steps should be taken to protect mailers from overcollection, including reinstatement of the 45-day notice requirement. Summaries of the commenters' positions are set forth below. Their arguments are considered in conjunction with the Commission's analysis in Section III.

1. Initial Comments

Postal Service. The Postal Service argues that the Commission must address the "count once" rule vacated in the *ANM* decision. Postal Service Comments at 5-7, 26-28. The Postal Service asserts that the Commission should reconcile what it alleges are conflicting statements concerning when the Postal Service could reasonably have been expected to adjust to the reduced level of mail volume resulting from the Great Recession and argues that the Commission should find that this point was at the beginning of FY 2013. *Id.* at 7-21, 29-35. Alternatively, the Postal Service urges the Commission to harmonize the treatment of Standard Mail and First-Class Mail by counting the losses for both classes of mail for the same amount of time. *Id.* at 21-26, 35-37. Finally, the Postal Service explains why it believes the Commission should find that an extension of the exigent surcharge conforms to the "reasonable and equitable and necessary" requirement of section 3622(d)(1)(E). *Id.* at 38-52.

APWU. APWU argues that the Commission should allow for the continued collection of the exigent rate surcharge until the section 3622(d)(3) review, to be conducted by the Commission in CY 2017. APWU Comments at 7-9.

PostCom et al. PostCom *et al.* take the position that while the Commission assesses alternatives to the "count once" rule, it should also correct the cumulative loss calculations for an alleged error in the unit contribution data used to convert lost volumes into contribution loss. PostCom *et al.* Comments at 3-8. PostCom *et al.* oppose any attempt to reopen the "new normal" analysis or any other aspect of Order No. 1926 that was not successfully challenged on appeal. *Id.* at 8-12. PostCom *et al.* assert that if the record is reopened for reconsideration of the "new normal" analysis, it should also be reopened to consider other previously-raised issues that might reduce the exigent surcharge. *Id.* at 12-14. As examples, PostCom *et al.* point to issues which the Court in the *ANM* decision declined to consider as "beyond the expertise of 'generalist judges'" and more recent information that allegedly suggests that additional exigent surcharge revenues are not "reasonable and equitable and necessary" under section 3622(d)(1)(E). *Id.*

GCA/NPPC. GCA/NPPC assert that the Commission should: limit its consideration on remand to the proper count of mail pieces lost due to the Great Recession; recognize that the methodology used by the Postal Service to calculate lost mail volumes (which GCA/NPPC characterize as the "count every piece every time" method) over counts mail volumes lost due to the Great Recession; recognize that some volumes lost during the first and second year of the Great Recession would have left the mail in subsequent years for other reasons; and protect mailers from over-recovery of any further amounts the Commission authorizes the Postal Service to collect. GCA/NPPC Comments at 3-4.

National Association of Letter Carriers, AFL-CIO (NALC). NALC asserts that the Commission should reconsider the "new normal" analysis because that analysis in Order No. 1926 underestimates the Postal Service's volume losses from the Great Recession. NALC Comments at 2-4. NALC also supports the Postal Service's method of addressing the *ANM* Court's remand on the "count once" issue. *Id.* at 1-2.

Valpak. Valpak alleges that the suspension of the 45-day notice requirement for removal of the exigent surcharge unnecessarily complicates the remand proceedings and does not maintain the status quo. Valpak Comments at 3. Valpak also argues that the remand proceedings should focus solely on the issue of lost mail volume and should not include a reconsideration of Order No. 1926's "new normal" analysis as urged by the Postal Service. *Id.* at 7-8. In addition, Valpak asserts that the methodology proposed by the Postal Service for calculating lost volume is inconsistent with the Court's *ANM* decision. Finally, Valpak contends that the Postal Service has failed to correctly estimate volume lost due to the Great Recession, and that the "count once" rule for estimating lost volume should be "replaced by a methodology that comports with the

Commission's 'new normal' analysis in Order No. 1926 that the Court explicitly sanctioned." *Id.* at 11.

Public Representative. The Public Representative reads the Court's decision to imply that the Postal Service's losses due to the Great Recession can be estimated by using cumulative mailpiece losses until the "new normal" is reached. PR Comments at 2. The Public Representative asserts that this methodology is just as arbitrary and capricious as the "count once" rule vacated by the Court. *Id.* In lieu of that methodology, the Public Representative suggests that the Postal Service receive the contribution loss needed to recover the temporary cost of sustaining the postal network until the network has been right-sized and, in addition, the one-time cost of right-sizing the network. *Id.* at 3-4.

2. Reply Comments

Postal Service. The Postal Service takes the position that the Commission does not need to wait for the Court's issuance of its mandate before addressing the arguments presented on remand. Postal Service Reply Comments at 2-5. The Postal Service reasserts its position that the Commission should reconcile its allegedly inconsistent findings in Order No. 1926 regarding the Postal Service's ability to adjust its operations to the "new normal." *Id.* at 5-14. The Postal Service urges the Commission to reject the alternative suggestions by other commenters for addressing the Court's vacating of the "count once" rule. *Id.* at 14-55. In addition, the Postal Service argues that there is no reason to pursue what it characterizes as Valpak's and the Public Representative's suggestions to revisit the "new normal" framework. *Id.* at 55-62. Finally, the Postal Service responds to PostCom *et al.* by arguing that the continuation of the exigent surcharge remains "necessary." *Id.* at 61-64.

PostCom et al. PostCom *et al.* assert that the Commission's "new normal" findings in Order No. 1926 should not be disturbed, but if those findings are revisited, the Postal Service's arguments should be rejected. PostCom *et al.* Reply Comments at 6-14. PostCom *et al.* also oppose the Postal Service's suggestion that the onset of the “new normal” should be delayed until FY 2013 for purposes of calculating lost volume. *Id.* at 14-21. Finally, PostCom *et al.* oppose the Postal Service’s alternative suggestion that the “new normal” cutoff for Standard Mail should be delayed until FY 2011 for purposes of calculating lost volume. *Id.* at 21-23.

GCA/NPPC. GCA/NPPC reassert their positions that: the remand proceedings concern only the narrow issue of how to replace the “count once” rule vacated by the Court; the Commission should not allow relitigation of settled issues or prolong the proceedings to address new issues; and the Commission should order removal of the surcharge pending completion of the remand proceedings if the Postal Service is permitted to reopen broader issues in the case. GCA/NPPC Reply Comments at 3-6, 10-17. GCA/NPPC elaborate further on their proposal for the cumulative count of lost mail volume and submit a library reference detailing that methodology. *Id.* at 3-6; Library Reference GCA/NPPC-LR1 R2013-11R. Finally, GCA/NPPC argue that any increase in the current amount authorized for collection by the exigent surcharge would violate the “reasonable and equitable and necessary” standard of section 3622(d)(1)(E). GCA/NPPC Reply Comments at 6-10.

NALC. NALC restates its position that the Postal Service has taken the correct approach in recalculating the volume and contribution loss due to the Great Recession. NALC Reply Comments at 1-5. NALC also restates its support for reconsideration of the Commission’s “new normal” analysis because it argues that the analysis underestimates the Postal Service’s losses. *Id.* at 5. Finally, it disagrees with PostCom *et al.*’s suggestion that the Postal Service does not need additional exigent surcharge revenue. *Id.* at 6.

Newspaper Association of America (NAA). In its reply comments, NAA takes the position that the scope of the Commission’s remand is limited to consideration of the “count once” issue. NAA Reply Comments at 2. NAA requests that the Commission end collection of the exigent surcharge as promptly as possible. *Id.* at 3.

SIIA. SIIA opposes the Postal Service’s attempt to relitigate the “new normal” analysis and urges the Commission to bring a prompt end to the exigent surcharge.

SIIA Reply Comments at 1. SIIA also supports PostCom *et al.*'s position on the need to correct the cumulative loss calculations because of the alleged error in the unit contribution data used to convert lost volumes to contribution loss. *Id.* at 6. Finally, SIIA requests that the Commission reconsider methodologies proposed by mailers and rejected by the Court for accounting for volume losses in calculating the exigent surcharge. *Id.* at 3.

Valpak. Valpak reiterates its opposition to the cumulative counting methodology proposed by the Postal Service as a replacement for the "count once" rule vacated by the Court. Valpak Reply Comments at 3-5. Valpak also presents "a method to evaluate…and…calculate…exactly how successful the Postal Service was in adjusting to decreased volume by year." *Id.* at 5. Valpak urges the Commission to reject what it characterizes as "the Postal Service's attempt to relitigate the new normal." *Id.* at 9-11. It also urges the Commission to reject the Postal Service's alternative argument that the same cutoff date should be used for counting volume losses for Standard Mail and First-Class Mail. *Id.* at 11-12. Finally, Valpak asserts that to meet the "reasonable and equitable and necessary" standard of section 3622(d)(1)(E), the Postal Service should be required to demonstrate not only that it cut costs, but that it "did not squander its resources by deliberately setting prices below cost for its favored products." *Id.* at 13.

Valpak also responds to assertions made in the initial comments of the Postal Service, APWU, PostCom *et al.*, GCA/NPPC, NALC, and the Public Representative. Valpak challenges APWU's reliance upon certain portions of then Vice Chairman Taub's dissent in Order No. 1926 as an incorrect interpretation of that dissent. *Id.* at 14. Valpak supports PostCom *et al.*'s proposal for use of unit contribution data from different vintages to determine the cumulative losses that the Postal Service should be eligible to collect. *Id.* However, Valpak opposes PostCom *et al.*'s acceptance of the Postal Service's allegedly mechanical method for counting lost volumes. *Id.* at 1-15. Valpak asserts that GCA/NPPC's proposal for removing mail volumes lost in subsequent years for reasons other than the Great Recession is consistent with the premise of Valpak's initial comments. *Id.* at 15. Valpak opposes NALC's call for a re-examination of the “new normal” as unsupported by both the Court’s decision and the study that NALC attached to its comments. *Id.* at 15-16. Finally, Valpak agrees with the Public Representative’s assertion that a mechanical count of lost mailpieces during a specific timeframe will not lead to a meaningful estimate of the amount that the Postal Service should be allowed to recover. *Id.* at 16.

III. COMMISSION ANALYSIS

The issues raised by commenters in the remand proceedings largely fall under several broad categories. In this section, the Commission addresses comments pertaining to each category and provides its analysis in light of these comments. First, the Commission addresses comments concerning the “new normal” framework adopted in Order No. 1926 and declines to reopen the issue. Second, the Commission reviews the different methodologies proposed by commenters to replace the “count once” rule and determines how volume lost due to the Great Recession is to be calculated. Under the revised methodology, the Commission finds that an additional $1.191 billion in contribution was lost by the Postal Service due to the Great Recession. This additional contribution translates into $1.396 billion in revenue added to the revenue surcharge limitation. Third, the Commission declines to revisit the application of uniform FY 2014 unit contributions to calculate losses the Postal Service is permitted to recover through the exigent surcharge. Fourth, the Commission finds that the new amount the Postal Service is authorized to collect as a result of the new calculation of volume lost due to the Great Recession is “reasonable and equitable and necessary.” Fifth, the Commission addresses comments pertaining to protecting mailers from overcollection and reinstatement of the 45-day notice requirement.

A. The "New Normal"

1. Background

This section considers the Postal Service's arguments regarding the need for changes to the "new normal" framework in Order No. 1926. In Order No. 1926, the Commission adopted a four-factor test for determining when the "new normal" arrived for the Great Recession:

> For the Great Recession,…the "new normal" point in time is when all or most of the following occur: (1) the disruption to a sufficient number of relevant macroeconomic indicators demonstrate a return to near historic positive trends; (2) application of the macroeconomic variables accurately project change, and the rate of change on Postal Service mail volumes is positive; (3) the Postal Service regains its ability to predict or project mail volumes following an extraordinary or exceptional event; and (4) the Postal Service demonstrates an ability to adjust operations to the lower volumes.

Order No. 1926 at 86 (citations omitted). As suggested by the Postal Service witness Thress, the Commission found the "new normal" was different for each class of mail in Order No. 1926. *Id.* Applying this four-part test for identifying the "new normal," the Commission concluded that the "new normal" cutoff arrived by the beginning of FY 2011 for First-Class Mail; by the beginning of FY 2010 for Standard Mail and Package Services; and by the beginning of FY 2012 for Periodicals. *Id.* at 94.

In its *ANM* decision, the Court upheld the Commission's four-part "new normal" test:

> [T]he Commission sensibly concluded that the statutory exception allowing higher rates when needed to respond to extraordinary financial circumstances should only continue as long as those circumstances, in fact, remained extra-ordinary. The Commission's "new normal" test is designed to capture precisely the time when the exigent character of a circumstance dissipates—when its effects lose their exceptional character—even though the effects in some literal, but-for causal sense linger. In other words, the

> Commission permissibly reasoned that just because some of the effects of exigent circumstances may continue for the foreseeable future, that does not mean that those circumstances remain "extraordinary" or "exceptional" for just as long.

ANM at *6. The Court also endorsed the Commission's finding that the "new normal" cutoff was separate for each class of mail. *Id.* at *7.

2. Comments

Postal Service position. In its motion, the Postal Service requested that the Commission "reconsider its 'new normal' framework" on remand. Postal Service Motion at 4.[13] In its subsequent comments and reply comments, the Postal Service refrains from requesting reconsideration of the "new normal" framework and, instead, calls for the Commission to reconcile what it views as a conflict between Part IV and Part V of Order No. 1926. Postal Service Comments at 7-21; Postal Service Reply Comments at 5-14. Part IV of Order No. 1926 addresses the "due to" requirement of 39 U.S.C. § 3622(d)(1)(E) and includes the Commission's "new normal" analysis. Part V. addresses the requirement in section 3622(d)(1)(E) that an exigent rate increase be "necessary."

The Postal Service bases its request on what it perceives as the Court's "invitation" to "revisit [the Commission's] assumption that the Postal Service could have adjusted its operations simultaneously with the time at which the Commission determined that the Great Recession had caused mail volume to settle at a permanently lower level…." Postal Service Comments at 7. The "invitation" referred to by the Postal Service is contained in footnote three of the *ANM* opinion, which states:

> At oral argument, counsel for the Postal Service argued that the "new normal" analysis in the Order is also inconsistent

[13] That request was opposed by PostCom *et al.* as a misstatement of the scope of the remand proceedings. PostCom *et al.* Response at 1. PostCom *et al.* argued that the Commission's only responsibility on remand is to "recalculate the exigent rate surcharge without the 'count once' limitation." *Id.*

> with the Commission's analysis of whether the rate increase was "necessary." *See* Oral Argument Transcript 19. That argument was not raised in the Postal Service's briefs, and is not properly before this court. The Commission, of course, is free to consider that argument on remand.

ANM at *8 n.3.

The Postal Service urges the Commission to remedy that alleged conflict by extending the period for recovery of aggregate losses from the Great Recession to the beginning of FY 2013 for all market dominant classes:

> Even if it makes sense to stop counting *new* year-over-year losses when category-specific variables begin to trend upward, as the Commission did in Order No. 1926, it would be a much more rational application of the "new normal" framework to choose the beginning of FY 2013 as the point when the Postal Service, as an institution, regained its ability to adjust to the post-Great Recession "new normal," after which *aggregate* losses could stop being counted.

Postal Service Comments at 21 (emphasis in original). The effect of the change proposed by the Postal Service would increase mail volume losses from the 25.271 billion pieces estimated by Order No. 1926 to 105.689 billion pieces. *Id.* at 29. The change would increase the recoverable contribution loss from the $2.766 billion authorized by Order No. 1926 to $11.431 billion. *Id.*

To support its claims, the Postal Service cites the Commission's FY 2013 Financial Analysis Report, as well as statements submitted for the record by its witness Thress, prior to the issuance of Order No. 1926, and other economic data. *Id.* at 13-21. The Postal Service argues that this information supports its assertion that FY 2013 is a more appropriate date that recognizes the Postal Service's ability to adjust to the "new normal." *Id.* at 20.

As an alternative to its principal argument that the recovery period for aggregate losses of all classes of mail should be extended to FY 2013, the Postal Service requests that the Commission eliminate what it deems is disparate treatment of First-Class Mail and Standard Mail losses. *Id.* at 21-26. In Order No. 1926, the Commission determined that the “new normal” for First-Class Mail arrived at the beginning of FY 2011, while the “new normal” for Standard Mail arrived at the beginning of FY 2010. Order No. 1926 at 94. The Postal Service argues that the different “new normal” cutoffs “cannot be justified in light of the cross-class nature of the Postal Service’s volume losses and adjustment actions.” Postal Service Comments at 21.

Responses to the Postal Service position. Both APWU and NALC support a reconsideration of the “new normal” analysis. APWU Comments at 7-11; NALC Comments at 2-4; and NALC Reply Comments at 5. APWU argues that the Commission should permit the exigent rates to remain in effect until the Commission conducts its review of the system for regulating rates and classes for market dominant products under 39 U.S.C. § 3622(d)(3). APWU Comments at 7-11.

PostCom *et al.* urge the Commission to decline to reopen the “new normal” analysis or any other aspect of Order No. 1926 that was not successfully challenged on appeal. PostCom *et al.* Comments at 8-12. PostCom *et al.* assert that the “new normal” was upheld by the Court and, in doing so, the Court “made clear its disagreement with the underlying premise of the argument…that the ‘new normal’ standard must allow the Postal Service to recover…any and all costs whose recovery is ‘necessary’ within the meaning of 39 U.S.C. § 3622(d)(1)(E)”. *Id.* at 9.

PostCom *et al.* interpret footnote three in the Court’s opinion as no more than a truism of administrative law, namely, that agencies are generally free to consider any issue on remand. *Id.* at 10-11. PostCom *et al.* emphasize that the only thing the Court has required the Commission to consider on remand is the “count once” rule. *Id.* at 11.

In their reply comments, PostCom *et al.* reiterate their position that the Commission’s “new normal” findings in Order No. 1926 should not be disturbed. PostCom *et al.* Reply Comments at 6-14. In addition, PostCom *et al.* assert that the Postal Service’s proposed remedy to the alleged conflict between its “new normal” and “necessary” analyses in Parts IV and V of Order No. 1926 would modify the “new normal” standard in three ways. *Id.* at 4-5, 7-8. First, PostCom *et al.* argue that the Postal Service would discard three of the four factors used by the Commission to determine when the "new normal" arose. *Id.* at 4, 7. The four-factor test would be replaced by a one-factor standard based solely on the Postal Service's ability to adjust to the exigent circumstance. *Id.* PostCom *et al.* oppose this change arguing that the Court upheld the Commission's decision to use a balance of four factors, not just one factor. *Id.* at 8 (citing *ANM* at *1, *5-6). Second, PostCom *et al.* oppose what they characterize as the Postal Service's attempt to replace the minimum standard for Postal Service adjustment to the exigent circumstance (the point at which the Postal Service has "begun to adjust to the extraordinary circumstances") with more subjective and expansive tests (the point at which the Postal Service has "demonstrated the ability to effectively adjust in response to the level shift;" the point at which the Postal Service "could reasonably be expected to show effective results;" or the point at which the Postal Service's "fiscal position" "began to meaningfully improve"). *Id.* at 4, 7-8 (citing Postal Service Comments at 11-13). PostCom *et al.* assert that nothing in the Court's decision suggests that the Court had a problem with the fourth factor, which considered the point at which the Postal Service had "*begun* to adjust to the extraordinary circumstances." *Id.* at 9 (citing Order No. 1926 at 94 (emphasis added)). Third, the Postal Service would benchmark the effectiveness of its "response," "results," or "improvement" against losses from all causes in FY 2008 to FY 2012, not just losses due to the Great Recession. *Id.* at 5, 8. PostCom *et al.* assert that both the Commission and the Court rejected any suggestion that the "new normal" was intended to permit recovery for volume losses due to any cause other than the Great Recession. *Id.* at 9.

PostCom *et al.* take the position that there is no inconsistency within Order No. 1926 because the Commission has repeatedly held that the "necessary" standard is subordinate to the "due to" standard. *Id.* at 9. PostCom *et al.* argue that permitting the Postal Service to raise its "new normal" arguments in the remand proceedings would violate the principle that issues not raised on appeal are waived. *Id.* at 12-13. Because of that principle, PostCom *et al.* assert that the *ANM* decision is now the law of the case. *Id.* Finally, PostCom *et al.* assert that if the Commission decides to address the Postal

Service's "new normal" arguments, those arguments should be rejected on the merits. *Id.* at 14-20.

PostCom *et al.* also object to the Postal Service's alternative proposal to harmonize the "new normal" cutoff dates for First-Class Mail and Standard Mail. PostCom *et al.* characterize this proposal as an attempt by the Postal Service "to relitigate issues that the [Postal Service] raised (or could have raised) in its petition for review of Order No. 1926." *Id. at* 21. PostCom *et al.* also assert that the Postal Service's proposal is inconsistent with the testimony of its own witness Thress, who suggested that the "new normal" arrived at different times for different classes of mail and who also recommended that the "new normal" for Standard Mail begin in 2010. *Id.* at 22. Finally, PostCom *et al.* argue that if a single uniform "new normal" were adopted for both Standard Mail and First-Class Mail, the most reasonable cutoff point would be FY 2010, not FY 2011. *Id.*

GCA/NPPC argue that the Court "[u]nambiguously affirmed the Commission's "new normal" analysis in Order No. 1926 that any volume losses "due to" the 2007-2009 recession ended once a "new normal" was achieved. GCA/NPPC Comments at 2. In their reply comments, GCA/NPPC argue that the Commission should not allow settled issues to be relitigated, nor new issues to prolong the proceeding. GCA/NPPC Reply Comments at 10-14. To support their position, GCA/NPPC assert that the Postal Service has alleged a conflict between the Commission's "due to" determination and "necessary" determination that does not exist. *Id.* at 10-11. GCA/NPPC also argue that the Postal Service is attempting to redefine the "new normal" and, in doing so, contravenes the law of the case as established by the *ANM* decision. *Id.* at 12-14.

NAA and SIIA urge the Commission to address only the "count once" issue on remand; to reject the Postal Service's attempt to relitigate the "new normal;" and to end the surcharge as promptly as possible. NAA Reply Comments at 1-2; SIIA Reply Comments at 1.

Valpak opposes the Postal Service's attempt to go beyond the scope of the Court's remand and relitigate the "new normal." Valpak Reply Comments at 1-3, 9-11.

Valpak opposes the Postal Service's argument that footnote three of the *ANM* decision constitutes, in Valpak's words, a "virtual mandate" to consider the Postal Service's "new normal" arguments on remand. *Id.* at 2. In Valpak's opinion, the Commission "is under no obligation to give the Postal Service another opportunity to find a basis for prolonging exigent rates." *Id.* at 3 (footnote omitted). Valpak asserts that the alleged inconsistency in Order No. 1926 is based on a false premise that the "new normal" is based upon one element (the point at which the Postal Service was able to adjust to the new level of mail volume), not the four elements used by the Commission to determine the "new normal." *Id.* at 10.

Valpak also opposes the Postal Service's alternative proposal to harmonize the "new normal" cutoff dates for First-Class Mail and Standard Mail as inconsistent with the testimony of its witness Thress, which was relied upon by the Commission in choosing the different "new normal" cutoff dates for each market dominant class of mail. *Id.* at 11. Valpak argues further that the Postal Service's proposal is precluded by that portion of the Court's decision in *ANM* that specifically affirmed the Commission's selection of different "new normal" cutoffs for First-Class Mail and Standard Mail. *Id.* at 11-12.

Postal Service responses. The Postal Service presents several arguments in response to its opponents. First, it argues that it is not contesting the Court's decision to uphold the Commission's decision to make the Postal Service's "ability to adjust" part of the "new normal" framework. Postal Service Reply Comments at 8. Rather, the Postal Service claims it is raising a "factual question…different in kind from the issue the court addressed." *Id.* It disavows "contesting that framework here, but is instead disputing the factual finding under one prong of the framework…." *Id.*

The Postal Service also "disagree[s] with the Court that the issue was not squarely presented on appeal…" citing a number of pages from its appellate briefs. *Id.* at 9. It asserts that the Court's opinion does not preclude the Commission from considering the "ability to adjust" issue on remand; that administrative agencies necessarily have the power to address issues identified by courts; and that under the

Administrative Procedure Act, the Commission has a duty to consider a “critical factual question” or to explain why it believes no inconsistency exists. *Id.* at 10-13.

Finally, the Postal Service suggests that if more time is needed to resolve the alleged inconsistency, the Commission could bifurcate the remand proceeding. *Id.* at 14. The Postal Service states that this should allow sufficient time for a decision on the “ability to adjust” issue before the estimated deadline for removing the surcharge arrives during FY 2016. *Id.*

3. Commission Analysis

In this section, the Commission declines to revisit the “new normal” analysis in Order No. 1926 that was affirmed by the *ANM* Court. The Postal Service has not identified any newly available evidence or other basis for reopening the issue at this late stage of the proceedings. The Commission declines to revise the “new normal” analysis of Order No. 1926 and make the adjustments to the “new normal” cutoff for each class of market dominant mail as advocated by the Postal Service.

a. The alleged inconsistency

The Postal Service uses footnote three of the *ANM* decision as the primary justification for presenting its argument that lost mail volume should be counted through FY 2013. The footnote describes an argument made by Postal Service counsel at oral argument that the “new normal” analysis was inconsistent with the “necessary” analysis in Order No. 1926. *ANM* at *8 n.3. In the referenced section of the transcript, counsel for the Postal Service argued the Commission was “arbitrary and capricious within the four corners of [its] order” because the Commission’s discussion of the ability to adjust factor of the “new normal” analysis was inconsistent with the Commission’s discussion of the limitations on the Postal Service’s ability to mitigate the impact of the Great Recession in the “necessary” analysis. Oral Argument Transcript at 18-19. In footnote three, the Court noted that “[t]he Commission, of course, is free to consider that argument on remand.” ANM at *8 n.3.

The Commission declines to revisit an issue that has already been resolved. While the Commission has discretion to reopen its decisions, an exercise of that discretion is not warranted here given the interest in finality and the lack of any newly available evidence that would justify raising the issue at this late stage.

The Commission has already explained the relationship between the "new normal" and "necessary" analysis. In Order No. 1926, the Commission determined that the effects of the Great Recession only remained an exigent circumstance until the "new normal" was reached. Order No. 1926 at 83-86. The Commission found the "new normal" was a "point in time…*when all or most* of the [four factors] occur." *Id.* at 86 (emphasis added). The fourth factor was that "the Postal Service demonstrates an ability to adjust operations to the lower volumes." *Id.* In its discussion of the fourth factor, the Commission stated "[t]he Postal Service's ability to adjust its operations to react to lower mail volumes *has a bearing* on when the new normal occurs." *Id.* at 94 (emphasis added). The Commission found "[o]nce impact of a circumstance is normal, and *the Postal Service has begun to adjust to it*, additional impact cannot be said to be due to a past extraordinary or exceptional circumstance." *Id.* (emphasis added). The *ANM* Court found "the 'new normal' rule was well reasoned and grounded in the evidence before the Commission" and that "[i]t comfortably passes deferential APA review." *ANM* at *8.

The Commission explained that its interpretation of section 3622(d)(1)(E), which was endorsed by the *ANM* Court, separated the "due to" analysis (of which the "new normal" test is a part) from the subordinate "necessary" analysis. In addition, while the Commission did discuss some limitations on the Postal Service's ability to adjust in context of its "necessary" analysis, the fact that the Commission acknowledged that there are some limitations to the Postal Service's ability to make adjustments to its network does not conflict with the fourth factor of the "new normal" test. Under that factor, it is expected that the Postal Service will make adjustments to its operations to respond to the lower mail volumes of the "new normal."

Regarding the Commission's interpretation of section 3622(d)(1)(E), in Order No. 1926, the Commission found that the "reasonable and equitable and necessary" clause of section 3622(d)(1)(E) is subordinate to the "due to" clause. Order No. 1926 at 28; *see also* PostCom *et al.* Reply Comments at 9. Order No. 1926 set forth an analytical structure for reviewing section 3622(d)(1)(E) rate adjustments. The Commission first assesses whether the exigent rate adjustment is "due to" an "extraordinary or exceptional" circumstance. Order No. 1926 at 28. The Commission established the "new normal" test as part of the "due to" analysis to aid the Commission's assessment of the point in time when volume losses could no longer be attributed to the exigent circumstance. Only after the Commission calculated the contribution loss due to the Great Recession did the Commission assess whether recouping that loss through an exigent surcharge was "necessary" within the meaning of section 3622(d)(1)(E). *Id.* Subordinate to the "due to" analysis, the Commission found analysis under the "necessary" clause can further limit, but not increase, an amount recoverable due to an exigent circumstance. *Id.* at 30. The *ANM* Court endorsed the Commission's interpretation:

> [T]he Commission acted well within its discretion in concluding that the "due to" test is concerned with determining the extent of the impact of an extraordinary or exceptional past event. The "reasonable and equitable and necessary" test, by contrast, applies only *after* exigent causation for a loss has been established and turns on the Postal Service's *current* need to get back on its feet in the wake of the now-defined exigency. More specifically, the "reasonable and equitable and necessary" test looks to present conditions to determine what the Postal Service requires "to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States."

ANM at *6. The Postal Service's argument that the "due to" and "necessary" analyses in Order No. 1926 are inconsistent does not account for the fact that the "necessary" analysis is distinct from and subordinate to the "due to" analysis. In fact, in Order No. 1926, the Commission clearly delineated the difference between the two inquiries, stating that "[q]uantification of...volume losses is independent of how the Postal Service has reacted to the volume loss in terms of shedding mail capacity or how it should adjust its network to the new normal, although those factors might be relevant to the 'necessary' analysis." Order No. 1926 at 98.

Turning to the alleged inconsistency itself, as part of Order No. 1926's "necessary" analysis, the Commission addressed section 3622(d)(1)(E)'s "best practices of honest, efficient, and economical management" standard. In conjunction with that analysis, the Commission acknowledged that "the unique framework within which the Postal Service must operate is a relevant consideration in determining what constitutes best practices." *Id.* at 127. As such, the Commission found that because the Postal Service "is charged with providing postal services as a public service," the "best practices" standard "means something more than attempting to maximize retained earnings." *Id.* For example, concerning its ability to cut costs, the Commission acknowledged that "[u]nlike a private enterprise, the Postal Service must consider the impact of its cost-cutting activities on its ability to continue to provide postal services consistent with the policies of title 39…." *Id.* at 131.[14] The Commission's recognition of the limitations and obligations the law imposes on the Postal Service is not inconsistent with the Commission's fourth factor of the "new normal" analysis because the fourth factor simply expects that the Postal Service will, as it did, take steps to adjust to lower levels of mail volume once the "new normal" is reached.

b. Adjustments proposed by the Postal Service

Claiming that it would resolve the alleged inconsistency, the Postal Service argues that the period for recovery of aggregate losses from the Great Recession

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[14] At oral argument, Postal Service counsel stated that under the "ability to adjust" analysis of the "necessary prong," the Commission "recognize[d] that these are fixed costs, network costs that reductions in mail volume they just can't take into account on the margin." Oral Argument Transcript at 19. In its "necessary" analysis, the Commission did not discuss "fixed costs" or reductions that could not be made. Thus, the Commission's discussion above centers on what the Commission infers from the Postal Service's comments is the "ability to adjust" analysis under the "necessary prong." *See* Postal Service Comments at 9.

should be extended to FY 2013 for all market dominant classes. Postal Service Comments at 10. In the alternative, the Postal Service argues that the period for recovery of aggregate losses should be extended to FY 2011 for both First-Class Mail and Standard Mail. *Id.* at 21. The Postal Service states that it is not challenging the "new normal" framework itself, but rather it is "disputing the factual finding under one prong of the framework…." Postal Service Reply Comments at 8.

The Postal Service's new proposal, under any interpretation, is a request for a new approach to an issue that was not disturbed by the *ANM* decision. The Commission declines to embark on a new approach at this late stage of the proceedings.

The Commission also agrees with PostCom *et al.* and Valpak that acceptance of the Postal Service's position would effectively rewrite the four-factor "new normal" test as a one factor test. Furthermore, the Postal Service's proposal effectively redefines the fourth factor from "when the Postal Service has begun to adjust" to "when the Postal Service has fully adjusted to the impacts of the exigent event." *See* Order No. 1926 at 94. In Order No. 1926, the Commission determined the "new normal" cutoff was a point in time when *all or most* of the four factors of the test occurred. *Id.* at 86. The *ANM* decision states, "the 'new normal' rule was well reasoned and grounded in the evidence before the Commission." *ANM* at *8. These four factors were carefully selected by the Commission, and the Commission declines to revisit them in the context of this proceeding.

For similar reasons, the Commission declines to adjust the "new normal" cutoff date for Standard Mail to coincide with the cutoff date for First-Class Mail. The cutoff dates for both classes of mail were determined on the basis of the "new normal" test. The difference in those cutoff dates was grounded, in part, on the testimony of the Postal Service's witness Thress, and was affirmed by the *ANM* Court. *ANM* at *7.

For the foregoing reasons, the Commission declines to revisit the "new normal" analysis in Order No. 1926. For the reasons given, the Commission finds that the Postal Service's proposed adjustment to remedy the alleged inconsistency effectively creates a new "new normal" test. Given the evidence and careful consideration underlying the Commission's Order No. 1926 "new normal" test, as well as the *ANM* Court's decision that the test is "well reasoned," the Commission declines to revise its "new normal" analysis. For the reasons set forth above, the Commission also declines to arbitrarily match the cutoff dates for Standard Mail and First-Class Mail. The Commission will therefore conduct its analysis of the issues on remand based on its finding from Order No. 1926 that the "new normal" cutoff arrived by the beginning of FY 2011 for First-Class Mail; by the beginning of FY 2010 for Standard Mail and Package Services; and by the beginning of FY 2012 for Periodicals. Order No. 1926 at 94.

B. The "Count Once" Rule and Alternative Approaches

1. Background

In Order No. 1926, the Commission determined that the Postal Service was entitled to collect $3.238 billion in exigent surcharge revenue. Order No. 1926 at 184. The Commission followed three steps in Order No. 1926 to calculate the total impact of the Great Recession on Postal Service volumes. First, the Commission determined that the outputs of the Postal Service's econometric model could be used to estimate yearly volume losses from the exigent circumstance, by class. The Commission determined that only some of the variables used in the econometric model could be directly attributed, or linked, to the Great Recession. *Id.* at 61-99. Second, the Commission used the "new normal" test, as described in Section III.A, to bound the term of those losses. *Id.* at 86. The final step for the calculation of the total volume loss estimate was the "count once" rule, which aggregated yearly volume losses once for the calculation of the total volume loss estimate. *Id.* at 94-96. The Commission used an additional step to calculate the contribution impact and surcharge revenue limitation, as detailed in Section III.C.

In Order No. 1926, the Commission reviewed the econometric volume analysis presented by the Postal Service via its witness Thress.[15] As detailed by Thress, the "estimated exigent impact of the 'Great Recession' on Postal Service mail volumes comes out of a set of calculations which underlie all of the Postal Service's demand equation analysis and volume forecasts." Thress Statement at 5. The Postal Service econometric demand model was used to "show past changes in mail volumes and predict future changes in volume for particular groupings of mail products and classes." Order No. 1926 at 45. The output of the econometric demand model demonstrates the impact of all model variables on Postal Service volume, by year. Thress identified variables he attributed to the Great Recession "on [a] variable-by-variable and equation-by-equation basis" including macroeconomic factors and intervention trends.[16] Thress asserted that the total impact of the Great Recession on mail volumes is the "sum of the impact of those factors which are judged to be attributable to the Great Recession," including macroeconomic variables as well as other factors which began to affect mail volumes over the time period associated with the Great Recession. Thress Statement at 5.

After a detailed technical review and discussion of the econometric model provided by the Postal Service, the Commission applied the Thress econometric demand model and estimated the yearly volume losses from the Great Recession, attributing the volume impact from only a limited set of variables. In analyzing the reliability and validity of the Postal Service's model for correctly identifying volume loss due to the exigent circumstance, the Commission noted that the Postal Service proposed "the only econometric model provided on the record in this proceeding as a starting point for its estimate of the mail volume loss 'due to' the extraordinary and exceptional circumstance." Order No. 1926 at 99. The Commission used the same

[15] Further Statement of Thomas E. Thress on Behalf of the United States Postal Service, September 26, 2013 (Thress Statement).

[16] Order No. 1926 at 47 (quoting Response of the United States Postal Service to Questions 1-12 of Presiding Officer's Information Request No. 3, November 1, 2013, question 2).

variables and trends used by Thress in his model to estimate mail volume but "[t]he Commission's analysis differs from that of Thress only in the respect of identifying the mail volume losses that are due to the Great Recession." *Id.* The Commission accepted Thress's approach in attributing the volume impact of macroeconomic variables – Employment, Investment, Retail Sales, and Foreign Trade – as directly related to the Great Recession. *Id.* However, in a detailed technical discussion, the Commission declined to attribute the volume impact of other variables proposed by Thress, finding "that the Postal Service did not meet its burden of proof in demonstrating that the volume losses associated with these linear intervention trends were due to the Great Recession as opposed to other factors such as new technologies related to the internet." *Id.* at 100.

Table 1 contains the Commission's yearly volume loss estimates, by class, (using these first two steps) from Order No. 1926.

Table 1

Order No. 1926 Table VI-5 Year-over-Year Changes in Mail Volumes due to the Great Recession (Market Dominant Mail, Millions of Pieces)				
	FY 2008	FY 2009	FY 2010	FY 2011
First-Class Mail	(583)	(1,864)	(1,043)	0
Standard Mail	(5,350)	(15,572)	0	0
Periodicals Mail	(110)	(377)	(352)	(16)
Package Services	0	(3)	0	0
TOTAL MARKET DOMINANT MAIL	**(6,043)**	**(17,816)**	**(1,396)**	**(16)**

After the Commission determined the yearly mail volumes lost due to the Great Recession, the Commission applied the now-vacated "count once" rule in order to determine the total volume lost due to the Great Recession. *Id.* at 94-96. The Commission summarized the issue as follows:

> [T]he Commission must decide how many times it is appropriate to count volume lost in a prior year due to the Great Recession that continues to be lost in subsequent years. Put another way, in calculating the volume losses due to the Great Recession, the Commission must determine whether to count pieces lost once, as lost again every year until volumes rebound.

Id. at 95. In formulating the “count once” rule, the Commission concluded that “volume is lost once.” *Id.* at 96. The process the Commission used to calculate that total volume impact of the Great Recession was to count the yearly volume loss once for each year, by class. *Id.* Table 2 contains the total volume loss due to the Great Recession as determined by the Commission in Order No. 1926.

Table 2

Order No. 1926 Table VI-5 Total Change in Mail Volumes due to the Great Recession (Market Dominant Mail, Millions of Pieces)	
	FY 2008 - FY 2011
First-Class Mail	**(3,490)**
Standard Mail	**(20,922)**
Periodicals Mail	**(856)**
Package Services	**(3)**
TOTAL MARKET DOMINANT MAIL	**(25,271)**

The Commission’s determination that “volume is lost once” was vacated on appeal. In the *ANM* decision, the Court upheld all but the final step of the total volume loss estimation process and vacated the “count once” rule. *ANM* at *8. The Court rejected the Postal Service’s challenge to the Commission’s use of the modified Thress model and found that “the Commission’s econometric analysis was well within the wide bounds of agency expertise.” *Id.* at *1, *7. The current issue on remand is how to count volume until the impact of the exigent circumstance ended as determined through the “new normal” analysis.

2. Comments

a. Postal Service proposal

Postal Service proposal. The Postal Service asserts that the Commission must “eradicate the effects of the ‘count once’ rule” consistent with the Court’s decision in *ANM*. Postal Service Comments at 6. The Postal Service argues that removing the "count once" rule is "computationally simple." *Id.* The Postal Service develops this "computationally simple" analysis using the yearly volume loss estimates developed by the Commission in Order No. 1926. Specifically, the Postal Service proposes that "the actual annual volume loss in each year is the combination of volume first lost in that year, plus annual volume lost in the previous year." *Id.* at 26. In Table 3, which has been reproduced from the Postal Service's comments, the Postal Service illustrates the impact of eliminating the "count once" rule for each market dominant class of mail until each class reached the "new normal" cutoff date. *Id.* at 27.

Table 3

Postal Service Method Impact of the Great Recession on Market Dominant Mail Volumes (Market Dominant Mail, Millions of Pieces)								
	FY 2008 First Time	FY 2009 First Time	FY 2009 Annual	FY 2010 First Time	FY 2010 Annual	FY 2011 First Time	FY 2011 Annual	FY 2008 -FY 2011 Total
First-Class Mail	(583)	(1,864)	(2,447)	(1,043)	(3,490)	0	0	**(6,519)**
Standard Mail	(5,350)	(15,572)	(20,922)	0	0	0	0	**(26,272)**
Periodicals Mail	(110)	(377)	(487)	(352)	(840)	(16)	(856)	**(2,293)**
Package Serv.	0	(3)	(3)	0	0	0	0	**(3)**
TOTAL	**(6,043)**	**(17,816)**	**(23,859)**	**(1,396)**	**(4,330)**	**(16)**	**(856)**	**(35,088)**

As a result of elimination of the "count once" rule, the Postal Service estimates that the total volume loss due to the Great Recession increases from the 25.271 billion pieces to 35.088 billion pieces. *Id.*

The Postal Service asserts that this method is the most reasonable approach to determine the total mail volume losses due to the Great Recession.[17] First, the Postal Service confirms that its approach applies the Commission's yearly mail volume loss estimates and states that "nothing in these estimates would require reconsideration of

[17] Although the Postal Service applies the mail volume losses set forth in Order No. 1926 with the "new normal" cutoffs on pages 26-28 of its comments, it argues that the Commission should count continuing losses until FY 2013, thereby increasing the total volume loss the Postal Service could claim as due to the Great Recession. It is in the context of this discussion that it addresses the reasonableness of its approach; however, its discussion applies equally to the methodology using the "new normal" cutoffs on the same pages. As discussed in Section III.A, *supra*, the Commission declines to disturb its "new normal" analysis and rejects the Postal Service's proposed adjustments.

any of the econometric models, or how the econometric models were interpreted by the Commission in Order No. 1926." *Id.* at 30. Second, the Postal Service addressed the "overlap issue," which stems from a concern that the volume estimates are overstated by this method. *Id.* at 33-34. This issue involves lost mail pieces "that are among those that the models would attribute to the macro effects of the Great Recession in one year, but by chance might also be among the pieces that would have been lost to electronic diversion anyway in some subsequent year, even without the Great Recession. Such overlap pieces are thus actually missing for *dual* reasons in the subsequent years…[and]…could in the abstract at least arguably be excluded from the count of Great Recession pieces." Postal Service Reply Comments at 41 (emphasis in original).

In addressing the overlap issue, the Postal Service contends that the concern of any "overlap" is theoretical and "there is no valid basis in practice" given the context of the estimates accepted by the Commission. Postal Service Comments at 33-34. The Postal Service explains that the Commission failed to attribute losses from its linear intervention variable, which identified additional mailpieces that it contended were lost due to the Great Recession. *Id.* at 34. Although the Commission declined to apply the linear intervention variable to determine the total lost volumes, the Postal Service asserts that a portion of the volume captured using the linear intervention variable would have been lost due to the Great Recession. *Id.* The Postal Service concludes:

> In reality, therefore, any theoretical concern that an estimate based exclusively on the macro variables might overstate the loss because of some small fraction of overlap is utterly swamped by the vastly greater probability that the estimate is understated because of the complete exclusion of pieces lost due to unanticipated changes beyond those directly encapsulated in the macro-economic variables.

Id. at 34-35 (footnote omitted).

Responses to the Postal Service proposal. NALC supports the Postal Service's proposed methodology for eliminating the effects of the "count once" rule. NALC Comments at 1-2, NALC Reply Comments at 1-2. GCA/NPPC comment on what they identify as the flaws of the Postal Service's approach. As described in detail below, GCA/NPPC, Valpak, and the Public Representative challenge the Postal Service's proposed methodology for counting mail volume losses by offering alternative approaches.

GCA/NPPC characterize the Postal Service's proposed methodology as the "count every piece every year" methodology and argue that the *ANM* decision does not require that the Commission adopt the Postal Service's approach.[18] GCA/NPPC Comments at 5-6. GCA/NPPC allege that the Postal Service's proposed methodology "is simply a 'mechanical tally of the time passed since the recession' of the type disapproved by the Court." GCA/NPPC Reply Comments at 4 (footnote omitted).

GCA/NPPC argue that the Postal Service's methodology overstates the volume lost due to the Great Recession and argue that the 35.088 billion piece volume which the Postal Service calls a lost volume floor is, in fact, a lost volume ceiling. *Id.* at 6. GCA/NPPC assert that the problem with the Postal Service's methodology is that it "simply sums, without any further analysis, the entire volumes estimated by the econometrics as lost in each year." GCA/NPPC at 7. According to GCA/NPPC, this result is the product of two flawed and unproven assumptions—the assumption that all lost volume is due to the Great Recession and the assumption that the same mail pieces would have been mailed (or lost) in each successive year. *Id.* at 8. In their reply comments, GCA/NPPC further discuss the two assumptions, stating that even the Postal Service acknowledged that the approach is flawed because it is likely to count pieces that are identified as lost due to the effects of the Great Recession, but might have been lost to electronic diversion in a subsequent year (the "overlap issue"). GCA/NPPC Reply Comments at 5. GCA/NPPC conclude by asserting that the Postal Service has not met its burden of proving that its recovery is limited to only volumes lost due to the Great Recession. GCA/NPPC Comments at 9-10.

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[18] The Postal Service responds to GCA/NPPC's characterization of the Postal Service's methodology as the "count every piece every year" method by acknowledging its potential use as a shorthand phrase for purposes of discussion. Postal Service Reply Comments at 42 n.68. However, the Postal Service "categorically rejects the implication that its approach actually pursues that objective." *Id.*

Postal Service response. The Postal Service objects to GCA/NPPC's claim that the Postal Service's "approach is based on an 'assumption' rather than 'an outcome driven by the econometric model.'" Postal Service Reply Comments at 43 (footnote omitted).[19] To the contrary, the Postal Service asserts that its approach "is indeed 'driven by the econometric model'" and that without a challenge to the well-established econometric methodology on which its approach relies, the Postal Service "does not need to 'prove' the validity of the 'count every piece every year' approach." *Id.*

b. GCA/NPPC Proposal

GCA/NPPC proposal. GCA/NPPC assert that not all volume decreases during the Great Recession could be identified as due to the Great Recession, most notably volume losses due to electronic diversion. GCA/NPPC Comments at 10-11. GCA/NPPC propose a cumulative counting method that would reduce total volumes lost due to the Great Recession by accounting for the proportion of mailpieces that would have been lost for other reasons. *Id.* at 10. This approach assumes that not all volumes lost due to the Great Recession would continue to be counted as lost for that reason in subsequent years. *Id*. To accomplish this, GCA/NPPC recommend summing the following results from the Commission's approved econometrics:

(1) the volume lost due to the recession in 2008;

(2) the volume lost due to the recession in 2009;

(3) the proportion of the volume lost due to the recession in 2008 that would have been lost due to the recession in 2009 had it remained in the system;

(4) the volume lost due to the recession in 2010; and

(5) the proportion of the volume lost due to the recession in 2009 that would have been lost due to the recession in 2010 had it remained in the system (and, for Periodicals, repeat this approach from 2011).

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[19] *See also id.* at 45 n.72 ("This [GCA/NPPC] claim [that the Postal Service "assumes, without proving, that all of the lost volume is 'due to' the recession"] makes no sense, because the only volume that the Postal Service is 'counting every year' to arrive at the estimate that GCA is challenging is the limited subset of volume that the Commission has already accepted as volume lost 'due to' the Great Recession.").

Id. (footnote omitted).

GCA/NPPC assert that this approach avoids the alleged overcount associated with the Postal Service's proposed approach and would properly address the Court's directive to revisit the "count once" rule. *Id.* at 11. In their reply comments, GCA/NPPC allege that the Postal Service's recognition that the overlap pieces could be missing for dual reasons exposes the flaw in the Postal Service's approach. GCA/NPPC Reply Comments at 5.

GCA/NPPC's reply comments provide a quantification and additional explanation of their proposed methodology. GCA/NPPC's approach reflects an estimated 31.381 billion pieces of total volume lost due to the Great Recession, resulting in a net loss of contribution of $3.373 billion. *Id.* at 5-6; Library Reference GCA/NPPC-LR1 R2013-11R. GCA/NPPC continue to maintain that their approach is simple and based on the "Commission's expertise as expressed in the econometric model." GCA/NPPC Reply Comments at 4 (footnote omitted). Table 4 contains a summary of the volume losses according to the GCA/NPPC method, using GCA/NPPC calculations from Library Reference GCA/NPPC-LR1-R2013-11R.

Table 4

GCA/NPPC Method -GCA/NPPC Calculation Impact of the Great Recession on Market Dominant Mail Volumes (Market Dominant Mail, Millions of Pieces)								
	FY 2008	FY 2009	FY 2009	FY 2010	FY 2010	FY 2011	FY 2011	FY 2008 - FY 2011
	First Time	First Time	Annual	First Time	Annual	First Time	Annual	Total
First-Class Mail	(583)	(1,864)	(1,967)	(1,043)	(1,573)	0	0	**(4,122)**
Standard Mail	(5,350)	(15,572)	(20,699)	0	0	0	0	**(26,049)**
Periodicals Mail	(110)	(377)	(436)	(352)	(596)	(16)	(65)	**(1,207)**
Package Serv.	0	(3)	(3)	0	0	0	0	**(3)**
TOTAL	**(6,043)**	**(17,816)**	**(23,105)**	**(1,396)**	**(2,168)**	**(16)**	**(65)**	**(31,381)**

Responses to the GCA/NPPC proposal. In response to the GCA/NPPC proposal, the Postal Service asserts that GCA/NPPC have erroneously attempted to address the "overlap issue" in isolation without considering more significant countervailing factors in a broader context. Postal Service Reply Comments at 46-49 (citing to Postal Service Comments at 33-35). The Postal Service objects to GCA/NPPC's characterization that the "overlap issue" leads to an overcount of lost volumes due to the Great Recession where the "Commission has severely reduced [the Postal Service's] earlier estimates" and its estimates are not overstated. *Id.* at 41, 46-47. Second, the Postal Service rejects the GCA/NPPC proposed approach where GCA/NPPC have failed to "bother to apply the proposal." *Id.* at 42.

Finally, the Postal Service contends that the proposed method by GCA/NPPC is "empirically wrong." *Id.* at 49-55. The Postal Service states that "the foundational logic of the econometric forecasting model requires that every piece be counted every year." *Id.* at 49. The Postal Service describes how "volume changes explained by fluctuations in one explanatory factor normally continue to be explained by that factor" and do not change throughout the econometric model, which counts every piece every year over a period of years. *Id.* In considering the practical application of GCA/NPPC's proposal, the Postal Service submits an excel workbook and explains its disagreement with the adjustments to the Thress workpapers as laid out by GCA/NPPC. *Id.* at 50; "Reply.GCA.Diversion.Overlap.xlsx." The excel workbook expands upon the process suggested by GCA/NPPC for calculating the impact of the diversion of prior year mail volume and makes various corrections to the GCA/NPPC proposal. As a result, the Postal Service demonstrates that the GCA/NPPC proposal, despite its impracticability, would lead to a volume loss estimate of 34.6 billion pieces, 459.1 million pieces less than the Postal Service method. Table 5 contains a summary of the volume losses for the GCA/NPPC method, using Postal Service calculations from "Reply.GCA.Diversion.Overlap.xlsx."

Table 5

GCA/NPPC Method -Postal Service Calculation								
Impact of the Great Recession on Market Dominant Mail Volumes								
(Market Dominant Mail, Millions of Pieces)								
	FY 2008	FY 2009	FY 2009	FY 2010	FY 2010	FY 2011	FY 2011	FY 2008 - FY 2011
	First Time	First Time	Annual	First Time	Annual	First Time	Annual	Total
First-Class Mail	(554)	(1,788)	(2,342)	(1,043)	(3,278)	0	0	**(6,174)**
Standard Mail	(5,350)	(15,572)	(20,922)	0	0	0	0	**(26,272)**
Periodicals Mail	(107)	(364)	(472)	(352)	(803)	5	(797)	**(2,179)**
Package Serv.	0	(3)	(3)	0	0	0	0	**(3)**
TOTAL	**(6,012)**	**(17,727)**	**(23,739)**	**(1,396)**	**(4,081)**	**5**	**(797)**	**(34,629)**

NALC objects to the method submitted by GCA/NPPC asserting that it lacks merit because it ignores the effect of the Commission's "new normal" analysis. NALC Reply Comments at 1-2. NALC asserts that the "new normal" analysis "*already* determines at what point lost pieces can no longer be counted as lost due to the Great Recession." *Id.* at 2 (emphasis in original). NALC continues to explain that the GCA/NPPC proposal challenges the "new normal" analysis because it attempts to identify a new stopping point by which the Postal Service can no longer continue to count pieces as lost as due to the exigent circumstance. *Id.*

Valpak responds that the GCA/NPPC proposed method of "removing the proportion of lost volume in subsequent years that would have been lost for other reasons...." is an "important additional factor for the Commission to evaluate in determining how much volume was lost due to the recession." Valpak Reply Comments at 15.

c. Valpak Proposal

Valpak proposal. Valpak argues that the Postal Service's proposed methodology is a mechanical tally similar to the "count once" methodology rejected by the Court. Valpak Comments at 9-10. Valpak asserts that the Postal Service failed to correctly estimate the volume loss due to the Great Recession because the Postal Service failed to analyze whether it could, should, or was able to adapt its operations for the loss of a given mail piece prior to the entire class of mail reaching the “new normal.” *Id.* at 10-16. Valpak points to steps successfully taken by the Postal Service to adjust “its operations toward the new normal both during the recession and after it ended in June, 2009.” *Id.* at 16. Specifically, it notes that the Postal Service reduced total employees by nearly 140,000 from FY 2007 to FY 2012. As an alternative approach, Valpak suggests that reductions in the number of Postal Service employees between 2007 and 2012 can be used as “a reasonable proxy for all of the Postal Service’s cost reduction efforts.” *Id.* at 16. Valpak urges the Commission to reject “the Postal Service’s demand to be allowed full credit for volume losses over multiple years while costs were actually being reduced significantly….” *Id.* at 16.

In its reply comments, Valpak sets forth a method by which the lost volume due to the Great Recession is adjusted to reflect operational changes made by the Postal Service while transitioning to the “new normal.” *See* Valpak Reply Comments at 5-9; “Reply Comments Tables.xlsx.”

The Valpak method uses “total employees as a proxy for the extent of Postal Service adjustment to the recession.” Valpak Reply Comments at 18. This quantitative measure is used as a variable to adjust prior year volume losses for the cumulative calculation of volume losses. *Id.* at 5-8. Using the total number of employees as the adjustment factor for volume lost in the Great Recession, this quantification results in decreased volume by year corresponding with the Postal Service’s percentage reduction in its workforce. *Id.* at 5-8; Reply Comments Tables.xlsx. Table 6 contains a summary of the impact of Valpak’s proposal.

Table 6

ValPak Method								
Impact of the Great Recession on Market Dominant Mail Volumes								
(Market Dominant Mail, Millions of Pieces)								
	FY 2008	FY 2009	FY 2009	FY 2010	FY 2010	FY 2011	FY 2011	FY 2008 - FY 2011
	First Time	First Time	Annual	First Time	Annual	First Time	Annual	Total
First-Class Mail	(583)	(1,864)	(2,139)	(1,043)	(2,073)	0	0	**(4,795)**
Standard Mail	(5,350)	(15,572)	(18,100)	0		0	0	**(23,450)**
Periodicals Mail	(110)	(377)	(429)	(352)	(559)	(16)	(278)	**(1,377)**
Package Serv.	0	(3)	(3)	0		0	0	**(3)**
TOTAL	**(6,043)**	**(17,817)**	**(20,671)**	**(1,396)**	**(2,631)**	**(16)**	**(278)**	**(29,624)**

Responses to the Valpak proposal. The Postal Service asserts that Valpak's argument "is nothing less than an invitation for the Commission to completely revisit its entire 'new normal' framework." Postal Service Reply Comments at 59. The Postal Service also alleges that Valpak has misstated Postal Service comments regarding its ability to cut costs during the recession or its immediate aftermath and that the figures presented by Valpak regarding employee numbers are irrelevant. *Id.* at 59-60. The Postal Service notes further that in Order No. 1926, the Commission never suggested "that the Postal Service could have adjusted while the volumes remained in freefall such that those losses were no longer 'extraordinary or exceptional.'" *Id.* at 60. Finally, the Postal Service argues that Valpak's suggestion that volume losses prior to the emergence of the "new normal" be discounted would, like the "count once" rule overturned by the Court, be inconsistent with the "new normal" framework. *Id.* at 60-61.

NALC opposes the method presented by Valpak because it violates the "new normal" analysis used by the Commission and approved by the Court. NALC Reply Comments at 1-2. NALC contends Valpak's use of Postal Service operational changes as an adjustment factor for counting lost pieces of mail is flawed "[b]ecause the 'new normal' analysis fixes the point up to which [the Postal Service] may count lost pieces as lost." *Id.* at 2. NALC states that "Valpak's argument that [the Postal Service] should only be permitted to count lost pieces as lost until the point it could adjust to the loss was precisely one of the rationales advanced by the Commission – and rejected by the Court – for the 'count once' rule." *Id.*

d. Public Representative Proposal

Public Representative proposal. The Public Representative proposes a methodology that would allow the Postal Service to recover "the 'temporary' cost of sustaining the postal network because of a decrease in contribution from lost mail volume" in place of an exigency loss based upon cumulative mailpiece loss. PR Comments at 3. The Public Representative asserts that this temporary cost could be recovered for "the time required to right-size the network." *Id.* The Public Representative does not propose or suggest any mathematical approach for the development of this methodology.

Responses to the Public Representative proposal. The Postal Service agrees with the Public Representative to the extent that both believe "the Commission's task on remand should include a re-examination of the time period over which the harm inflicted by the volume losses caused by the Great Recession, the recognized exigent circumstances, continued to be incurred." Postal Service Reply Comments at 55. Beyond that narrow agreement, however, the Postal Service opposes the Public Representative's proposal as a restatement of positions that were previously rejected by the Commission and as inconsistent with the Commission's "new normal" framework and the Court's decision in *ANM*. *Id.* at 56-57.

3. Commission Analysis

The purpose of quantifying the net adverse financial impact of the Great Recession is to ensure "that an exigent rate adjustment is limited to the adverse effects of the exigent circumstances as opposed to other, non-exigent factors."[20] In analyzing

[20] *See* Docket No. R2010-4R, Order No. 864, Order Resolving Issues on Remand, September 20, 2011, at 48.

the methodology proposed to quantify the total mail volume lost due to the Great Recession, the Commission looks to whether the methodology is supported, reasonable, and technically sound. After reviewing the proposed methods, the Commission finds that the Postal Service's cumulative method approach is consistent with the Court's decision in *ANM* and results in a reasonable measure of the total volume loss due to the Great Recession. In order to quantify the total volume loss from the exigent circumstance, the Commission applies the methodology proposed by the Postal Service for counting the total lost mail volumes due to the Great Recession. As analyzed in Section III.A *supra*, the Commission declines to apply this approach to extend the "new normal" cutoffs as advocated by the Postal Service and will only apply the cumulative method to the yearly volume loss determination set forth by the Commission in Order No. 1926.[21] This approach allows the Postal Service to recover for lost mail volumes until the point in time when the "new normal" began by class.

The Postal Service's methodology applies a simple set of computations to the Commission's findings regarding mail volume loss due to the Great Recession per year as set forth in Order No. 1926. The Postal Service calculates the total volume loss with a cumulative method using those yearly volume loss estimates. The Commission's estimates of the total impact of the Great Recession on mail volume were derived from the econometric model provided by the Postal Service in the proceedings leading up to the issuance of Order No. 1926. Order No. 1926 at 99.[22] This methodology distinguishes volume losses due to the Great Recession from losses due to other causes utilizing variables that model the impact of the Great Recession on volume. As discussed in Order No. 1926, the Commission determined that the volume losses resulting from the macroeconomic variables used in the Thress model – Employment,

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[21] By proposing that the Commission calculate the total volume loss for additional time periods beyond those set by the Commission for each class of mail in Order No. 1926, the Postal Service again challenges the Commission's "new normal" finding. As discussed in Section III.A. *supra*, the Commission declines to revisit this issue.

[22] That econometric model and related analyses were presented by the Postal Service's witness Thress. *Id.* at 7.

Investment, Retail Sales, and Foreign Trade – were directly related to the Great Recession. Order No. 1926 at 99-100. The Commission applied these macroeconomic variables in calculating the volume losses incurred by the Postal Service, but did not include the linear intervention variables in its calculation because it determined that those variables did not reflect only the effects of the Great Recession.[23] By excluding the volume impact of linear intervention variables from Thress's econometric model, the resulting yearly volume loss estimates did not include losses in mail volume due to variables that cannot be directly linked to the exigent circumstance. Order No. 1926 at 99-100.

On remand, the Postal Service uses the yearly volume loss methodology developed by the Commission using the volume outputs of the Thress econometric model as the basis for its method of calculating mail volume loss free from the constraints of the "count once" rule. The resulting calculation set forth by the Postal Service is straightforward and totals the volume losses due to the Great Recession starting in FY 2008 and ending on the date when the "new normal" began for each class of mail, as determined by the Commission in Order No. 1926. *See supra*, Table 3. As opposed to the "count once" analysis, this approach permits the Postal Service to recover the contribution to institutional cost from "lost mail volume beyond the year in which it first disappeared." *ANM* at *8.

GCA/NPPC, Valpak, and the Public Representative oppose the Postal Service's method. The Commission is not persuaded by their challenges and finds that the Postal Service's method is the most reasonable estimate of the volume lost by the Postal Service due to the Great Recession.

The GCA/NPPC proposal fails to present a sound econometric model by which the Commission could find that the overlap model represents a viable alternative approach to count the volume lost due to the Great Recession. The GCA/NPPC proposal presents a methodology that they contend would account for the "overlap

[23] The *ANM* Court found that the Commission's decision to exclude the linear intervention variables was supported by substantial evidence. *ANM* at *7.

issue." However, the Postal Service adequately addresses concerns related to the "overlap issue" raised by GCA/NPPC. The Postal Service provides a detailed explanation and excel workbook demonstrating why the volumes implicated by the GCA/NPPC proposal are relatively insignificant.

The GCA/NPPC proposal also relies on an inaccurate interpretation of the underlying econometric model. As explained by the Postal Service, the econometric model it developed and relied upon by the Commission requires the volume from past years as an input in subsequent years. Postal Service Reply Comments at 49. The econometric model in this record was not developed to apply to the situation presented by GCA/NPPC. In the econometric model in this record, volumes lost at the beginning of the exigent circumstance are inputs to subsequent years. Yearly volume decreases due to macroeconomic factors or intervention variables remain lost from the original source of change. GCA/NPPC do not provide sufficient evidence to support the modifications they propose to the model, which was used by the Commission in Order No. 1926, nor do they establish that volume lost in one year would have been lost via a different variable in another year.

The Postal Service has successfully rebutted the claims by GCA/NPPC that the Postal Service's proposed method for estimating volume losses is based on unproven and flawed assumptions. As the Postal Service has pointed out, the volume loss estimates flow from the underlying econometric model relied upon by the Commission in Order No. 1926 and left undisturbed by the Court in the *ANM* decision. There was, and is, no inconsistency between the considerations underlying determination of the "new normal" and the basis for the Commission's volume loss estimates relied upon by the Postal Service. *ANM* at *7.

The Commission similarly is not persuaded that the method proposed by Valpak is either reasonable or viable. Valpak's attempt to undercut the Postal Service's proposed methodology by arguing that employee headcounts (or other evidence of Postal Service attempts to cut costs) should be used as a proxy for all Postal Service cost reduction efforts and for discounting volume loss estimates does not present an accurate or reasonable measure of the effects of the ongoing Great Recession for two reasons.

First, the Valpak method relies on the assumption that the Postal Service's cost reduction efforts proportionally decreased during the ongoing impact of the lost volume from the exigent circumstance. While the Postal Service reduced costs during the Great Recession, the lost volume due to the exigent circumstance measures the impact of the Great Recession, not the Postal Service's response. The Postal Service's ability to adjust is considered in the fourth factor of the "new normal" test, not in the total volume loss method.

The second reason the Valpak method is not appropriate is that it is contradicted by one of the main pieces of evidence used by the Commission in its assessment of the fourth factor of the "new normal" test. As noted by the Commission in Order No. 1926, the change in Total Factor Productivity did not become positive until FY 2010. Order No. 1926 at 94; *see also id.* at 135, Table V-4. Valpak states that the employee headcount statistics show that the Postal Service was able to respond to the impact of the exigent circumstance in FY 2008 and FY 2009. While the Postal Service did reduce employees, it was unable to do so in a manner that matched workhours to workload, and thus productivity declined in both of those years. Valpak's proposed method attempts to show that the Postal Service successfully responded to the impact of the exigent circumstance while it was ongoing, but this cannot be harmonized with the other available data showing the Postal Service's inability to adjust up to FY 2010.

Finally, the Public Representative's challenge to the Postal Service's proposed methodology was previously considered and rejected in Order No. 1926. *See* Order No. 1926 at 97-98.

Applying the Postal Service's cumulative calculations in order to determine the volume lost due to the Great Recession up to the date of the "new normal" allows the Postal Service to recover its recession-related losses up to the point the impact of the Great Recession was no longer "extraordinary or exceptional." The result is an estimated volume loss of 35.088 billion mailpieces due to the Great Recession.

Accordingly, the Postal Service is entitled to recover an additional $1.191 billion in additional contribution pursuant to 39 U.S.C. § 3622(d)(1)(E).

C. The Unit Contribution Calculation

1. Background

As discussed in Section II, several aspects of Order No. 1926 were raised by commenters in the instant docket. The previous sections discuss two of these issues – (1) the bounds of the exigent circumstance (the "new normal") and (2) the calculation of the total volume loss from the exigent circumstance (formerly the "count once" rule). *See supra* Sections III.A and III.B. This section discusses a third part of the Order No. 1926 analysis raised by commenters in this remand proceeding: the calculation of the exigent financial impact (measured in contribution) and the collection of the exigent price increase (measured via the surcharge revenue limitation).

Proceeding prior to Order No. 1926. In its renewed request for an exigent rate change, the Postal Service proposed implementing a permanent price increase.[24] The Postal Service and Magazine Publishers of America (MPA) provided analyses that included the conversion of volume losses into contribution losses using both FY 2012 unit contribution and FY 2014 unit contribution.

Two methodologies were provided concerning the unit contributions that should be used to convert volume losses into adverse financial impact. Order No. 1926 at 103. The first methodology used FY 2012 and/or FY 2014 unit contribution to calculate the net adverse financial impact. *Id.* This methodology is known as the annual method, as it calculates the impact of the volume losses in one specific fiscal year. *Id.* MPA and the Postal Service used the annual method.

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[24] The Postal Service indicated that it did "not expect to be able to rescind the requested increases until Congress makes fundamental changes to the postal business model that render the additional contribution provided by the increase no longer necessary." *See* Docket No. R2013-11, Renewed Exigent Request of the United States Postal Service in Response to Commission Order No. 1059, September 26, 2013, at 17. However, the Postal Service also concluded "it is unclear when, if ever, Congress will act [on fundamental changes to the Postal Service's business model]." *Id*. at 15.

The second methodology presented to the Commission used the unit contribution from the fiscal year in which the volume was lost, for example, FY 2008 unit contribution times the FY 2008 volume loss was used to calculate the FY 2008 contribution loss. *Id.* This methodology is known as the cumulative method. *Id.* The cumulative method was discussed by the Postal Service in the context of its presumption that volume losses from the Great Recession would continue indefinitely. *Id.* The Postal Service argued that if volume losses continued into the future, current unit contributions would not accurately reflect the negative financial impact of such volume losses.

Order No. 1926. Although the Postal Service proposed implementing a permanent exigent price increase, the Commission expressly limited the duration of the exigent price increase in Order No. 1926. Order No. 1926 at 180-85. The Commission determined, in Order No. 1926, that volume losses resulting from the exigent circumstance did not continue indefinitely, and as such, the cumulative method should not be used.

In Order No. 1926, the Commission concluded that using the Postal Service's preferred method of multiplying the total volume loss due to the Great Recession by the FY 2014 After Rates contribution was proper. *Id.* at 105. The Commission reasoned that using the FY 2014 After Rates contribution to calculate the total contribution loss gave meaning to the total contribution loss determination because it allowed the Commission to readily compare the total contribution loss with the annual increased contribution from the exigent surcharge.[25] *Id.* at 105. Consequently, the Commission developed the exigent surcharge revenue limitation to ensure that the exigent price increase was limited to the adverse financial impact of the volume loss. *Id.* at 183.

[25] The Postal Service began collecting exigent surcharge revenue in FY 2014. *See* Order No. 1926 at 193 ("The rates proposed by the Postal Service in Attachment A to its Request may go into effect on January 26, 2014 as a surcharge.").

2. Comments

Postal Service proposal. The Postal Service presented its calculation of the surcharge revenue limitation in the Postal Service Motion. In order to calculate the limitation, the Postal Service first used volume losses, by year, from Table VI-5 in Order No. 1926 at 101. Second, the Postal Service calculated the cumulative volume loss in each year by combining the volume first lost in that year, plus annual volume lost in the previous years. Postal Service Motion at 5. Third, the Postal Service converted the cumulative mail volume loss into contribution loss, using the methodology previously applied in Order No. 1926. *Id.* at 6. This contribution loss is shown in Table 7. Fourth, and finally, the Postal Service applied the methodology of Table VII-2 in Order No. 1926 to calculate a revised surcharge revenue limitation from the increase in contribution loss resulting from the cumulative volume loss. *Id.*

Table 7

Postal Service Total Contribution Loss Calculation - Annual Method			
	FY 2014 AR Unit Contribution	**Total Volume Loss**	**Total Contribution Loss**
		(Billions)	**(Billions)**
First-Class Mail	0.27	(6,519)	$ (1,730)
Standard Mail	0.09	(26,272)	$ (2,367)
Periodicals Mail	(0.06)	(2,293)	$ 140
Package Services	0.04	(3)	$ (0)
TOTAL MARKET DOMINANT MAIL		**(35,088)**	**$ (3,957)**

Source: Postal Service Motion, Attachment “Corrected Commission Estimates of ‘Total’ Volume and Contribution Lost to Great Recession After Elimination of ‘Count Once’ Rule.”

PostCom et al. proposal. In their comments on remand, PostCom *et al.* assert that the Postal Service erred in its method of converting the additional volume losses produced by eliminating the “count once” rule into contribution loss. PostCom *et al.* Comments at 3. The Postal Service uses the After Rates unit contribution values for FY 2014. *Id.* PostCom *et al.* contend that properly determining the total losses in contribution in each of the four fiscal years from 2008 through 2011 requires multiplying the volume losses in each year by the unit contribution for the same year. *Id.*; *see also*

PostCom *et al.* Reply Comments at 4. PostCom *et al.* argue that the resulting product is the correct measure of the contribution loss for that year. *Id.* Table 8 details the results of PostCom *et al.*'s proposed unit contribution method.

Table 8

PostCom *et al.* Total Contribution Loss- Cumulative Method		
	Total Volume Loss (Billions)	**Total Contribution Loss (Billions)**
First-Class Mail	(6,519)	$ (1,337)
Standard Mail	(26,272)	$ (1,679)
Periodicals Mail	(2,293)	$ 189
Package Services	(3)	$ 1
TOTAL MARKET DOMINANT MAIL	**(35,088)**	**$ (2,826)**

Source: Library Reference PostCom, MPA *et al*.-LR-R2013-11R/1.

PostCom *et al.* reason that the volume losses incurred during each year of the FY 2008 to 2011 period must be matched with the unit contribution values for that year because of the term "due to" in 39 U.S.C. § 3622(d)(1)(E). *Id.* PostCom *et al.* further allege that because unit contributions were generally higher in FY 2014 than in FY 2008 to FY 2011, applying the FY 2014 values to the volume losses experienced in FY 2008 to FY 2011 overstates that the Postal Service's actual contribution losses in those years. *Id.* at 4-5. PostCom *et al.* conclude that the Commission should authorize the Postal Service to extend the termination date of the 4.3 percent exigent surcharge by a period long enough to collect $2.826 billion in total contribution instead of $2.766 billion. *Id.* at 8; Library Reference PostCom, MPA *et al*.-LR-R2013-11R/1.

Responses to PostCom et al. proposal. Valpak comments that it agrees with PostCom *et al.*'s assessment that the Commission used unit contribution data "of the wrong vintage." Valpak Reply Comments at 14 (emphasis omitted).

The Postal Service takes the position that PostCom *et al.*'s proposed method, described above, is "a newly minted argument, not even mentioned on appeal and having nothing to do with the error the court vacated." Postal Service Reply Comments at 15. The Postal Service further describes PostCom *et al.*'s arguments as an attempt "to arrive at the result that the Postal Service is essentially entitled to no further financial relief…" *Id.* at 16. The Postal Service then offers four arguments explaining why the Commission should reject PostCom *et al.*'s proposed method.

First, the Postal Service comments that PostCom *et al.* did not present their arguments in a timely manner. *Id.* at 16-18. In particular, the Postal Service couches PostCom *et al.*'s arguments as nothing more than an attempt to relitigate a portion of Order No. 1926 that they failed to mention in their appeal. *Id.* at 17.

Second, the Postal Service contends that PostCom *et al.* offer no valid basis to compel the Commission to abandon its previously selected methodology and that "[t]he Commission was acting well within its discretion in choosing to use FY2014 unit contribution for the conversion process." *Id.* at 19 (footnote omitted). The Postal Service also notes that PostCom *et al.* did not use the method they now advocate in their comments submitted to the Commission in November 2013. *Id.* at 19. The Postal Service further comments that "nothing the [C]ourt did in vacating the 'count once' rule in any way calls into question" the unit conversion procedure. *Id.* at 21.

Third, the Postal Service alleges that PostCom *et al.*'s proposed method is "fatally flawed if applied in the manner and for the purpose that PostCom proposes." *Id.* at 21. The Postal Service asserts that the key assumption of the conversion methodology is that the "*actual* financial effect of a piece of lost volume in a particular mail category can be directly approximated by using the *reported* unit contribution for that category." *Id.* at 22 (emphasis in original). The Postal Service states that when volume declines, the revenue that would have been obtained from that lost volume also declines. *Id.*

However, the Postal Service argues that the effect of the volume losses on postal costs is much less certain. *Id.* at 23. Instead, the Postal Service argues that the magnitude and pace of decline of lost mail volumes in FY 2008 and 2009 "precluded any realistic ability… to shed costs at the same pace." *Id.* Thus, the Postal Service concludes that "the assumption upon which any conversion methodology relying directly on reported unit contribution is premised – that the drop in revenue is *necessarily* offset by a proportionate drop in costs – is plainly untenable when applied specifically in FY2008 and FY2009." *Id.* (emphasis in original). The Postal Service then argues that "relying directly on reported year-specific unit contributions…*necessarily understates the net contribution loss* associated with the pieces identified by the Commission as lost due to the Great Recession in those years." *Id.* at 25 (bold emphasis removed).

Fourth, and finally, the Postal Service claims that if PostCom *et al.*'s proposed method were appropriately adjusted, the result would be a significantly higher estimate of financial harm. *Id.* at 34-40. The Postal Service argues that the contribution loss in FY 2008 to 2009 would need to be reduced by the percentage of attributable costs subtracted from revenue in order to approximate an actual unit contribution effect associated with lost mail volume. *Id.* at 34. This is because, according to the Postal Service, there is "no reason to believe that actual unit attributable costs falls by 100 percent of reported unit attributable costs when an additional piece of volume is lost." *Id.* at 35.

The Postal Service concludes that a 40 percent discount is a reasonable adjustment to unit attributable costs for FY 2008 and FY 2009. *Id.* Applying this discount, it calculates the estimated contribution loss to be $5.712 billion, which it deems "substantially higher" than its contribution loss estimate of $3.957 billion. *Id.* at 37 (emphasis omitted). The Postal Service goes on to describe three other scenarios (using different lost volume estimates) to further illustrate its argument. *Id.* at 37-40.

NALC comments that the Postal Service has taken the appropriate approach to recalculating the contribution loss due to the Great Recession. NALC Reply Comments at 3. NALC argues that if PostCom *et al.* deemed that aspect of the Commission's methodology wrong, they "should have challenged that aspect of the Commission's order." *Id.* NALC states that because PostCom *et al.* never raised that issue, they have "waived [their] right to raise the argument at this very late stage of the exigent price request proceedings." *Id.*

NALC further argues that, notwithstanding the timeliness issue, PostCom *et al.*'s proposed method is flawed. *Id.* NALC argues that because the Postal Service operates under a price cap regime, it is unable to raise prices above the price cap in order to respond to exigent events as they occur. *Id.* at 3-4. NALC contends that the proper measure of relief must include what the Postal Service "*would have charged* in 2010 if at the time it had been free to raise rates in response to the exigent circumstance." *Id.* at 4 (emphasis in original). Thus, NALC insists that using the FY 2010 per-piece contribution rate, based on capped FY 2010 prices, would understate the relief due to the Postal Service. *Id.*

3. Commission Analysis

a. Contribution calculation

The Commission declines to revisit the application of uniform FY 2014 unit contributions to calculate the losses the Postal Service is permitted to recover through the exigent surcharge. In *ANM*, the Court vacated only one portion of the methodology outlined in Order No. 1926 – the "count once" rule for calculating total volume loss – and remanded the case to the Commission for proceedings consistent with its decision, specifically to develop a volume loss methodology that covers the entire exigent period. *See ANM* at *10. The other components of the methodology used by the Commission to calculate the exigent surcharge limitation were not impacted by *ANM*. Consequently, the Commission considers the unit contribution issue to be settled and declines to reopen the issue because no commenter identifies any newly available evidence or other basis for reopening the issue at this late stage of the proceedings.

PostCom *et al.* attempt to draw a distinction between the method used by the Postal Service to calculate the total volume loss from the exigent circumstance and the method used to calculate the net adverse financial impact of the exigent circumstance (the contribution loss). PostCom *et al.* describe the Postal Service's method for calculating the total *volume loss* a "cumulative method," and argue therefore that a new cumulative *contribution loss* method is required.

The Commission declines to revisit an issue that has already been resolved. While the Commission has discretion to reopen its decisions, an exercise of that discretion is not warranted here given the interest in finality and the lack of any newly available evidence that would justify raising the issue at this late stage.

The total volume loss method developed by the Commission in this Order in response to the *ANM* decision increases the total volume loss, but it does not extend the time period during which volume losses are measured. The usage of FY 2014 unit contribution continues to align with implementation of the exigent surcharge, as previously discussed by the Commission in Order No. 1926.

The Commission declines to revisit its prior determination that the total volume loss from the exigent circumstance exists over a defined period of time (as opposed to existing in perpetuity). Thus, the Commission continues to estimate a one-time volume loss from the Great Recession, as it did in Order No. 1926, notwithstanding the fact it no longer applies the “count once” rule. The exigent surcharge, which began in FY 2014, will be removed when the revenue limitation is reached. In order to link the revenue surcharge limitation with the volume loss estimate, the best available method continues to be one using the FY 2014 After Rates unit contribution. The most reasonable measure of the recoverable amount is the FY 2014 unit contribution because the recovery of the contribution loss also began in FY 2014. This method is an “apples-to-apples” comparison between the loss in volume and the recovery in contribution. *See* Order No. 1926 at 105 n.102.

b. Revenue limitation for the surcharge

In Order No. 1926, the Commission determined that the total lost volume due to the exigent circumstance was 25.270 billion pieces. Order No. 1926 at 101. The Commission further determined that the net adverse financial impact of the Great Recession was $2.766 billion in contribution loss. *Id.* at 106. Finally, the Commission translated the contribution loss to a revenue surcharge limitation, and that resulted in a revenue surcharge limitation of $3.238 billion. *Id.* at 182, 184, Table VII-2.

In Section III.B, and consistent with the *ANM* decision, the Commission has revised its estimate of total volume loss from the exigent circumstance to 35.088 billion pieces (an additional loss of 9.818 billion pieces). In the analysis above, the Commission reiterates the appropriate method to convert the volume loss into contribution loss, which is to use the FY 2014 After Rates unit contribution. This calculation results in a total contribution loss of $3.957 billion (an additional contribution loss of $1.191 billion).

Table 9 details the net adverse financial impact (contribution loss) of the Great Recession from the total 35.088 billion volume loss.

Table 9

Commission Total Contribution Loss Calculation				
	FY 2014 AR Unit Contribution	**Total Volume Loss**	**Total Contribution Loss**	
		(Billions)	**(Billions)**	
First-Class Mail	0.27	(6,519)	$	(1,730)
Standard Mail	0.09	(26,272)	$	(2,367)
Periodicals Mail	(0.06)	(2,293)	$	140
Package Services	0.04	(3)	$	(0)
TOTAL MARKET DOMINANT MAIL		**(35,088)**	**$**	**(3,957)**

In order to convert this contribution loss into revenue loss (and therefore a surcharge limitation), the Commission applies the same contribution impact method and revenue surcharge method used in Order No. 1926 and detailed in Library Reference PRC-LR-R2013-11/2.

Table 10 translates the total contribution loss into a total revenue surcharge limitation.

Table 10

Line No.	Source	Description	Amount
1	PRC-LR-R2013-11-2	Postal Service's Projected Contribution from One Fiscal Year of Implemented Surcharge	$ 1,809
2	Table 9	Commission's Estimate of Total Contribution Loss	$ 3,957
3	Line 2 / Line 1	Ratio Commission's Estimate of Total Contribution Loss to Postal Service's Projected Contribution from One Fiscal Year of Implemented Surcharge	2.19
4	PRC-LR-R2013-11-2	One Year of Revenue from Exigent Price Adjustment	$ 2,118
5	Line 3	Ratio Commission's Estimate of Total Contribution Loss to Postal Service's Projected Contribution from One Fiscal Year of Implemented Surcharge	2.19
6	Line 4 x Line 5	Total Revenue to be Recovered from Exigent Surcharge	**$ 4,634**

The revised surcharge revenue limitation is $4.634 billion, (an additional $1.396 billion in revenue that the Postal Service may collect over the limitation established in Order No. 1926).

D. The Reasonable and Equitable and Necessary Standard

After the Commission finds a Postal Service request for an exigent rate adjustment is based on “extraordinary or exceptional circumstances” and finds a specified amount of that adjustment to be due to those exigent circumstances,[26] the Commission must evaluate the proposed adjustment pursuant to section 3622(d)(1)(E), which provides in pertinent part:

[26] The “reasonable and equitable and necessary” clause is subordinate to the “due to” clause, meaning that even if a proposed adjustment is “reasonable and equitable and necessary,” if that adjustment (or any part thereof) is not first “due to” “extraordinary or exceptional” circumstances, such adjustment is prohibited. *See* Order No. 1926 at 28.

> …such adjustment is reasonable and equitable and necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States.

See Order No. 1926 at 23.

The Postal Service contends that the exigent surcharge should be extended until it generates $11.4 billion in total contribution. Postal Service Comments at 39. In its comments, the Postal Service presented justifications to support its claim that the additional exigent surcharge amounts it seeks are “reasonable and equitable and necessary” under section 3622(d)(1)(E). *Id*. at 38-52. PostCom *et al.*, GCA/NPPC, and Valpak oppose any additional recovery under the “reasonable and equitable and necessary” standard. *See* PostCom *et al.* Comments at 13-14; GCA/NPPC Reply Comments at 6-10; and Valpak Reply Comments at 12-13.

As discussed in Section III.B *supra*, the Commission determines that an additional $1.191 billion in contribution was lost by the Postal Service due to the Great Recession. Because the “necessary” and “reasonable” factors of the “reasonable and equitable and necessary” clause could limit the Postal Service’s recovery of losses otherwise due to the Great Recession, the Commission analyzes whether the full amount of $1.191 billion or some lesser amount is first “necessary”[27] and then “reasonable” in accordance with its analysis in Order No. 1926. *See id.* at 30, 35.

The Commission previously determined that the Postal Service’s across-the-board exigent surcharge was “equitable.” *Id.* at 166. In this remand proceeding, the Postal Service has not proposed, nor has the Commission considered, an alternative to the across-the-board approach of surcharge collection considered and approved in Order No. 1926. Commenters have not raised any new issues that were not raised and

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[27] Just as the “reasonable and equitable and necessary” clause is subordinate to the “due to” clause, the “reasonable and equitable” requirements are similarly subordinate to the “necessary” requirement. *See* Order No. 1926 at 29.

discussed in Order No. 1926 as pertains to the “equitable” requirement.[28] The Commission therefore finds that the across-the-board collection remains equitable for the reasons provided in Order No. 1926. *Id*. at 166-69. Below, the Commission discusses the “necessary” and “reasonable” requirements, reviews the comments received on each on remand, and finds that the additional exigent surcharge contribution is necessary and reasonable and equitable.

1. Additional Exigent Surcharge Contribution is Necessary

Order No. 1926. In its analysis of whether the initial exigent surcharge requested was “necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States” pursuant to section 3622(d)(1)(E), the Commission found that the Postal Service’s existing low liquidity levels compromised its ability to maintain and continue the development of needed postal services. Consequently, it concluded that the amount requested by the Postal Service was necessary to enable the Postal Service to provide these services. Order No. 1926 at 108-122. In doing so, the Commission also examined whether the exigent rate adjustment is necessary to enable the Postal Service to maintain and continue the development of needed postal services “under best practices of honest, efficient, and economical management.” *Id.* at 122-138. The Commission found that the “best practices” standard is primarily forward looking, although “the Postal Service’s response to the extraordinary or exceptional circumstances giving rise to the Request” may also inform the determination that a rate adjustment is necessary. *Id.* at 123.

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[28] In its reply comments, Valpak maintains that the Postal Service itself chooses to incur ongoing losses by “deliberately setting prices below costs for its favored mailers” and as such, any continuing increase would not be equitable. Valpak Reply Comments at 13. The Commission acknowledged concerns regarding noncompensatory products in Order No. 1926, but determined that those issues were outside the scope of the exigent circumstance and therefore the request to recover for the exigent circumstance. The Commission found that the Postal Service’s approach, “while not the only potentially equitable pricing strategy [it] could have undertaken, falls in the range of equitable methods acceptable for recovering losses due to the Great Recession.” Order No. 1926 at 169.

The *ANM* Court affirmed the Commission's interpretation of "necessary" and reiterated that the test determines "what the Postal Service requires…given the realities of the post-exigency marketplace. And that inquiry focuses not on causation, but recovery." *ANM* at *6. The Court stated that these requirements were "appropriately addressed" by the Commission in its underlying order. *Id.* at *6.

Comments. The Postal Service contends that additional contribution is necessary because its current financial situation remains "precarious." Postal Service Comments at 40. It explains that as of the second quarter of FY 2015, it had liquidity of approximately $6.1 billion or approximately 22 days of operating expenses. *Id*. It states that it has experienced no significant change in financial health that would give rise to a discontinuation of the exigent surcharge. *Id.* Although it acknowledges that small improvements in liquidity have occurred, these improvements have occurred in large part because of the exigent surcharge. *Id.* It asserts that additional revenues are needed to fund capital expenditures, maintain universal service, and continue the development of the Nation's needed level of postal services. *Id.* at 42.

PostCom *et al*. assert that even if the exigent surcharge was considered necessary at the time that Order No. 1926 was issued, the Postal Service's increasing liquidity and cash on hand since that time raise serious questions about whether it is entitled to continue collecting surcharge revenue. PostCom *et al*. Comments at 13. The Postal Service counters that improved liquidity does not indicate that it has reached a point at which it can be rationally determined that the surcharge is no longer necessary. It maintains that its current level of liquidity remains precarious and there has been no abatement of the financial pressures recognized by the Commission in Order No. 1926. Postal Service Reply Comments at 62. The Postal Service further responds by stating that "PostCom provides no rational basis for the Commission to reach a different conclusion [than additional contribution being necessary]." *Id.* at 61. The Postal Service urges the Commission to reject PostCom *et al.*'s assertions regarding the "necessary" requirement. *Id*. at 61-64.

Commission analysis. The *ANM* Court acknowledged that the “necessary” standard examines what is needed for recovery only after causation has been determined under the “due to” clause of section 3622(d)(1)(E). *ANM* at *6. Once the Commission has determined a loss was caused by an exigent circumstance, the amount of that loss is the maximum amount recoverable. The subordinate “necessary” analysis may further limit the amount recoverable. *See* Order No. 1926 at 30.

The Postal Service asserts that a marginal increase in liquidity, in large part due to the existing exigent surcharge, does not mitigate its existing financial pressures to the point where continuing surcharge is no longer necessary. Specifically, rising operating costs, constraints on cost-saving measures, and the urgent need for capital investments, all of which were analyzed and discussed at length in Order No. 1926, continue to remain challenges to the Postal Service’s financial situation.

The Commission’s recent in-depth review of the Postal Service’s FY 2014 finances corroborates these assertions. The Commission found, among other things, that the Postal Service’s costs are rising and current liquidity is insufficient to make needed improvements to operational efficiency. *See* Financial Analysis of United States Postal Service Financial Results and 10-K Statement, April 1, 2015 at 19, 22. The Commission also agrees with the Postal Service that its marginal improvement in liquidity, in large part due to the existing exigent surcharge, does not as PostCom *et al.* suggest, militate against the necessity of additional contribution.

The Commission did not receive any comments on the “best practices” portion of the “necessary” analysis. As described in Order No. 1926, the Commission found that the “best practices” standard is primarily forward looking, although “the Postal Service’s response to the extraordinary or exceptional circumstances giving rise to the Request” may also inform the determination that a rate adjustment is necessary. Order No. 1926 at 123. As such, the Commission’s analysis in Order No. 1926 of the actions taken in the aftermath of the Great Recession remains applicable and does not impact the Commission’s “necessary” determination on remand. *See id.* at 123-38.

The Commission therefore concludes that the $1.191 billion of additional contribution is necessary to maintain and develop needed postal services pursuant to section 3622(d)(1)(E).

2. Additional Exigent Surcharge Contribution is Reasonable

Order No 1926. When approving the original exigent surcharge, the Commission determined that the amount requested was reasonable based on the overall percentage price increase sought by the Postal Service as well as the amount of contribution the Postal Service was forecasted to generate, including an evaluation of the potential for rate shock. *Id.* at 155, 157. The Commission stated that its analysis of reasonableness was a fact-specific determination and included consideration of the objectives and factors of section 3622. *Id.* at 35.

Comments. The Postal Service maintains that the test adopted by the Commission in Order No. 1926 remains applicable to its request for the continuing exigent surcharge. Postal Service Comments at 46. GCA/NPPC counter that extending the surcharge would not be reasonable or warranted given the immense financial challenges facing mailers. GCA/NPPC Reply Comments at 8.

Commission analysis. The considerations giving rise to the Commission's original reasonableness determination remain operative in its present evaluation. The Commission recognizes the economic pressures facing mailers, and that those same economic pressures were present during the Commission's evaluation of the exigent request in Order No. 1926. However, allowing additional recovery with a defined end date would not create rate shock for mailers or raise rates to a level supporting GCA/NPPC's assertions of serious financial harm. *See* Order No. 1926 at 157. Additionally, the continuing surcharge remains consistent with the objectives and factors, such as maintaining high quality services pursuant to section 3622(b)(2) and assuring adequate revenues as provided in section 3622(b)(5). *See id*. at 158. The Commission concludes that continuing the 4.3 percent surcharge until the Postal Service collects an additional $1.191 billion in contribution is reasonable.

E. Protection from Overcollection and the 45-Day Notice Requirement

In Order No. 2540, the Commission suspended the requirement that the Postal Service provide a notice of intent to remove the exigent rate surcharge 45 days prior to it reaching the $2.766 billion in contribution that the Commission approved in Order No. 1926. Order No. 2540 at 6. The Commission found that the suspension "maintains the status quo in order to enable prompt action on remand" while avoiding "a burdensome series of rate decreases and increases." *Id.* at 5, 7. For the reasons set forth in its analysis, the Commission reinstates the 45-day notice requirement and finds concerns about overcollection of surcharge revenue are moot as a result of this Order.

Comments. Valpak and GCA/NPPC express concern about the extension of the 45-day notice requirement and possible overcollection of surcharge rates by the Postal Service. Valpak objects to the Commission's decision in Order No. 2540 to suspend the requirement that the Postal Service provide a 45-day notice prior to the removal of the exigent surcharge. Valpak Comments at 1-7. Valpak urges the Commission to withdraw that portion of Order No. 2540 that suspends the 45-day notice requirement, suspend the remand proceeding until the Court issues its mandate, and require the Postal Service to file a notice rescinding the exigent surcharge if the Postal Service believes it is within the 45-day window. *Id.* at 7. The Postal Service opposes Valpak's request. Postal Service Reply Comments at 2-5.

In both their initial and reply comments, GCA/NPPC seek protection from possible overcollection by the Postal Service. GCA/NPPC Comments at 12-14; GCA/NPPC Reply Comments at 17-20. The concern over possible overcollection is driven by several factors, including the Commission's suspension of the 45-day notice requirement for removal of the exigent surcharge, the amount authorized to be collected by the surcharge, and the duration of the remand proceeding if the Postal Service's requests for an expansive scope of remand are indulged. GCA/NPPC Reply Comments at 17-20. To ensure protection from overcollection, GCA/NPPC request that the Commission order the exigent surcharge to be removed pending the outcome of the remand proceeding. *Id.* at 18-19.

Commission analysis. The Commission reinstates the 45-day notice requirement suspended by Order No. 2540. As described in the Commission’s previous orders, the Postal Service is required to provide a notice of intent to remove the exigent rate surcharge 45 days prior to it reaching the surcharge revenue limitation, which is now $4.634 billion as a result of this Order. In light of this, Valpak’s request that the Commission withdraw the portion of Order No. 2540 suspending the notice requirement is moot. It is also unnecessary for the Commission to take further action on GCA/NPPC’s request that the Commission ensure protection from overcollection or order the Postal Service to remove the surcharge pending the outcome of the remand proceeding. Given the Commission’s expedited determination, the increase in the amount authorized for recovery by the exigent surcharge, and the reimposition of a 45-day notice requirement for removal of the exigent surcharge, the risks of overcollection have been mitigated by the timing of and action taken in this Order.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission finds that the Postal Service has justified the recovery of $1.191 billion of contribution in addition to the $2.766 billion of contribution previously found justified by Order No. 1926.

2. Except as otherwise provided by this Order, the surcharge approved by Order No. 1926 and currently in effect shall remain in effect until removed in accordance with the surcharge removal plan filed June 2, 2014, and the provisions of Order No. 2319.

3. The Postal Service shall continue to report incremental and cumulative surcharge revenue to the Commission 45 days after the end of each quarter as required by Order Nos. 1926 and 2075.

4. The Postal Service shall notice the removal of the exigent surcharge at least 45 days before the date of the removal.

5. The Postal Service shall provide bi-weekly estimates of the incremental and cumulative surcharge revenue beginning the quarter in which the Postal Service anticipates removing the surcharge.

By the Commission.

Shoshana M. Grove
Secretary

Separate Opinion of Commissioner Langley.
Dissenting Opinion of Vice Chairman Hammond.

SEPARATE OPINION OF COMMISSIONER NANCI E. LANGLEY

I was not a Commissioner on December 24, 2013, when Order No. 1926 was issued, and I was not a part of the review, analysis and discussion of the Commission's findings in that case. The Commission's decision today addresses the Court's ruling on the appeal of Order No. 1926, not the approval or denial of the Postal Service's request for an exigent price increase pursuant to 39 U.S.C. § 3622(d)(1)(E) filed with the Commission on September 26, 2013.

Therefore, I affirm this Commission Order because it complies solely with the remand from the Court that specifically vacated the manner in which Order No. 1926 calculated the total cumulative loss of mail due to the Great Recession.

Nanci E. Langley

DISSENTING OPINION OF VICE CHAIRMAN TONY HAMMOND

Before the Postal Regulatory Commission in this Order is a continuation of the original exigent case the Postal Service filed with the Commission in July of 2010. I opposed an exigent increase in rates at that time and voted against its approval.

After not being successful in its 2010 exigency request, the Postal Service was forced to concentrate on implementing the instructions of the Congress in passing the PAEA, which required the Postal Service to make its operations more efficient and cost effective, rather than seeking rate increases on mailers simply because more money was needed.

From the original disapproval of the Postal Service's exigent request in 2010 until its 2013 request, it appears the most significant difference is that the Postal Service had been given an additional three years to adjust to the difficulties similar to those faced by American businesses all across the country because of the Great Recession.

I was not a member of the Commission during the time the latest exigency matter was briefed and deliberations made, so I will refrain from second-guessing the conclusion the Commission made in issuing its decision.

But now the matter has been ruled on by the United States Court of Appeals for the District of Columbia Circuit. The Court's decision must be implemented in accordance with its interpretation of the law. That is currently the only decision before the Commission.

While the Order complies with the Court's mandate, I cannot agree with the conclusion that the new amount the Postal Service is authorized to collect as a result of the new calculation of volume lost due to the Great Recession is "reasonable and equitable and necessary."

Thus, the reason for my dissent from approval of the Order.

Tony Hammond

APPENDIX

COMMENTS AND REPLY COMMENTS

Participant	Title	Filing Date
American Postal Workers Union, AFL-CIO (APWU)	Comments of American Postal Workers Union, AFL-CIO **(APWU Comments)**	June 26, 2015
Association of Postal Commerce, MPA-The Association of Magazine Media, Alliance of Nonprofit Mailers, Direct Marketing Association, Inc., American Catalog Mailers Association, Envelope Manufacturers Association, EpiComm, Major Mailers Association, National Newspaper Association and Saturation Mailers Coalition (PostCom *et al.*)	Initial Comments of Association of Postal Commerce, MPA-The Association of Magazine Media, Alliance of Nonprofit Mailers, Direct Marketing Association, Inc., American Catalog Mailers Association, Envelope Manufacturers Association, EpiComm, Major Mailers Association, National Newspaper Association and Saturation Mailers Coalition on Remand **(PostCom *et al.* Comments)**	June 26, 2015
Association of Postal Commerce, MPA-The Association of Magazine Media, Alliance of Nonprofit Mailers, Direct Marketing Association, Inc., American Catalog Mailers Association, Envelope Manufacturers Association, EpiComm, Major Mailers Association, National Newspaper Association and Saturation Mailers Coalition (PostCom *et al.*)	Notice of Filing of Library Reference by Association of Postal Commerce, MPA-The Association of Magazine Media, Alliance of Nonprofit Mailers, Direct Marketing Association, Inc., American Catalog Mailers Association, Envelope Manufacturers Association, EpiComm, Major Mailers Association, National Newspaper Association and Saturation Mailers Coalition **(Library Reference PostCom, MPA *et al.*-LR-R2013-11R/1)**	June 29, 2015
Association of Postal Commerce, MPA-The Association of Magazine Media, Alliance of Nonprofit Mailers, Direct Marketing Association, Inc.,	Reply Comments of Association of Postal Commerce, MPA-The Association of Magazine	July 6, 2015

American Catalog Mailers Association, Envelope Manufacturers Association, EpiComm, Major Mailers Association, National Newspaper Association and Saturation Mailers Coalition (PostCom *et al.*)	Media, Alliance of Nonprofit Mailers, Direct Marketing Association, Inc., American Catalog Mailers Association, Envelope Manufacturers Association, EpiComm, Major Mailers Association, National Newspaper Association and Saturation Mailers Coalition on Remand **(PostCom *et al.* Reply Comments)**	
Greeting Card Association and the National Postal Policy Council (GCA/NPPC)	Comments of the Greeting Card Association and the National Postal Policy Council **(GCA/NPPC Comments)**	June 26, 2015
Greeting Card Association and the National Postal Policy Council (GCA/NPPC)	Reply Comments of the Greeting Card Association and the National Postal Policy Council **(GCA/NPPC Reply Comments)**	July 6, 2015
Greeting Card Association and the National Postal Policy Council (GCA/NPPC)	Greeting Card Association and National Postal Policy Council Notice of Filing of Library Reference **(Library Reference GCA/NPPC-LR1 R2013-11R)**	July 6, 2015
National Association of Letter Carriers, AFL-CIO (NALC)	Initial Comment of the National Association of Letter Carriers, AFL-CIO **(NALC Comments)**	June 24, 2015
National Association of Letter Carriers, AFL-CIO (NALC)	Reply Comment of the National Association of Letter Carriers, AFL-CIO **(NALC Reply Comments)**	July 6, 2015
Newspaper Association of America (NAA)	Reply Comments of the Newspaper Association of America **(NAA Reply Comments)**	July 6, 2015

Public Representative (PR)	Public Representative Comments Concerning Methodological Approach for Accounting for Volume Losses Due to the Great Recession **(PR Comments)**	June 26, 2015
Software & Information Industry Association (SIIA)	Reply Comments of the Software & Information Industry Association **(SIIA Reply Comments)**	July 7, 2015
United States Postal Service (Postal Service)	Initial Comments of the United States Postal Service in Response to Commission Order No. 2540 **(Postal Service Comments)**	June 26, 2015
United States Postal Service (Postal Service)	Reply Comments of the United States Postal Service in Response to Commission Order No. 2540 **(Postal Service Reply Comments)**	July 6, 2015
Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. (Valpak)	Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Initial Comments in Response to Order No. 2540 **(Valpak Comments)**	June 26, 2015
Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. (Valpak)	Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Reply Comments in Response to Order No. 2540 **(Valpak Reply Comments)**	July 6, 2015
Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. (Valpak)	Reply Comments Tables.xlsx **(Valpak Reply Comments-Tables)**	July 6, 2015