

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

Before Commissioners:

Dan G. Blair, Chairman;
Mark Acton, Vice Chairman;
Ruth Y. Goldway;
Tony L. Hammond; and
Nanci E. Langley

Competitive Product Prices
Global Expedited Package Services 1 (CP2008-5)
Negotiated Service Agreements

Docket Nos. CP2008-18
CP2008-19
CP2008-20
CP2008-21
CP2008-22
CP2008-23
CP2008-24

ORDER CONCERNING ADDITIONAL
GLOBAL EXPEDITED PACKAGE SERVICES 1
NEGOTIATED SERVICE AGREEMENTS

(Issued September 16, 2008)

In these dockets, the Postal Service proposes to add seven individual negotiated service agreements, namely, specific Global Express Package Service (GEPS) contracts, to the Global Express Package Services 1 (GEPS 1) product established in Docket No. CP2008-5. For the reasons discussed below, the Commission grants the Postal Service's proposals.

I. BACKGROUND

On August 14, 2008, the Postal Service filed seven identical notices, which have been assigned to Docket Nos. CP2008-18, CP2008-19, CP2008-20, CP2008-21, CP2008-22, CP2008-23 and CP2008-24, announcing price and classification changes for competitive products not of general applicability.¹ These notices announce individual negotiated service agreements and specific GEPS contracts which the Postal Service has executed with individual mailers. The Postal Service believes each is functionally equivalent to the GEPS 1 product established in Docket No. CP2008-5.

These dockets have been filed pursuant to 39 U.S.C. 3633 and 39 CFR 3015.5. In addition, the Postal Service contends that the contracts are in accord with Order No. 86.² In Order No. 86, the Commission found that additional contracts may be included as part of the GEPS 1 product if they meet the requirements of 39 U.S.C. 3633 and if they are substantially equivalent to the initial GEPS 1 contract.³

In support of each of these dockets, the Postal Service also filed the contract and supporting materials under seal. The Governors' Decision supporting the GEPS 1 product was filed in consolidated Docket No. CP2008-5.⁴ The Notices also contain the Postal Service's arguments that these agreements are substantially equivalent and that they exhibit similar cost and market characteristics to the GEPS 1 product. Notices at 3-5.

¹ Notice of United States Postal Service of Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement, August 14, 2008, filed in Docket Nos. CP2008-18, CP2008-19, CP2008-20, CP2008-21, CP2008-22, CP2008-23, and CP2008-24 (Notices).

² Docket No. CP2008-5, Order Concerning Global Expedited Package Services Contracts, June 27, 2008 (Order No. 86).

³ Order No. 86 at 7.

⁴ Docket No. CP2008-5, United States Postal Service Notice of Filing Redacted Copy of Governors' Decision No. 08-7, July 23, 2008.

In Order No. 100, the Commission gave notice of the seven dockets, appointed a Public Representative, and provided the public with an opportunity to comment.⁵

II. COMMENTS

Comments were filed by the Public Representative.⁶ The Public Representative's comments focus on five areas: (1) cost coverage; (2) appropriate classification; (3) increased access to U.S. goods by consumers; (4) volume projections, and (5) selection of economic adjustment factors. The Public Representative concludes that the seven contracts at issue satisfy the requirements of 39 U.S.C. 3633 regarding cost coverage, the lack of cross-subsidization, and contribution to institutional costs. Public Representative Comments at 3-4. The Public Representative also believes that the contracts are substantially similar and any differences between them and the original GEPS 1 contract are immaterial. *Id.* at 5. Accordingly, the Public Representative contends that these contracts should be included as part of the GEPS 1 product category. *Id.*

The remainder of the Public Representative's comments focuses on the benefits of the contracts to U.S. consumers, the sufficiency of volume projections, and the need to exercise special care in selecting economic adjustment factors. *Id.* at 5-8.

III. COMMISSION ANALYSIS

The Postal Service proposes to add additional contracts under the GEPS 1 product that was created by Docket No. CP2008-5. In Order No. 86, the Commission noted that:

⁵ PRC Order No. 100, Notice and Order Concerning Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreements, August 19, 2008 (Order No. 100).

⁶ Public Representative Comments in Response to United States Postal Service Notice of Global Expedited Package Services Contract, September 3, 2008 (Public Representative Comments). On September 3, 2008, the Public Representative also filed a Motion for Late Acceptance of Comments by the Public Representative. The motion is granted.

If the Postal Service determines that it has entered into an agreement substantially equivalent to GEPS 1 with another mailer, it may file such a contract under rule 3015.5. In each case, the individual contract must be filed with the Commission, and each contract must meet the requirements of 39 U.S.C. 3633. The Postal Service shall identify all significant differences between the new contract and the pre-existing product group, GEPS 1. Such differences would include terms and conditions that impose new obligations or new requirements on any party to the contract. The Commission will verify whether or not any subsequent contract is in fact substantially equivalent. Contracts not having substantially the same terms and conditions as the GEPS 1 contract must be filed under 39 CFR part 3020, subpart B.

Order No. 86 at 7. First, the Commission reviews the contracts to ensure that they are substantially equivalent to the pre-existing contract classified as part of the GEPS 1 product and thus belong as part of that product. Second, the Commission must ensure that the contracts at issue in this proceeding independently satisfy the requirements of rule 3015.5 and 39 U.S.C. 3633.

Here, the Postal Service has filed seven additional contracts (Docket Nos. CP2008-18, CP2008-19, CP2008-20, CP2008-21, CP2008-22, CP2008-23 and CP2008-24) that it contends are substantially similar to the one submitted in Docket No. CP2008-5 and accordingly should be grouped under the GEPS 1 product. Notices at 3-5. It argues these contracts share the same cost and market characteristics as the previously classified GEPS 1 contract, in particular, those of small or medium-sized businesses that mail their products directly to foreign destinations using either Express Mail International, Priority Mail International, or both. *Id.* at 4.

The Postal Service also identifies what it terms “incidental” and “minor” differences between the proposed new contracts and the pre-existing product group, GEPS 1. *Id.* at 4-5. In particular, it notes that the contracts may differ in minor respects, for example, prices may vary due to volume commitments, signing dates of the agreements, existence of previous agreements, and other case specific and negotiation related factors. *Id.* at 4-5.

The Commission has reviewed the contracts in Docket Nos. CP2008-18, CP2008-19, CP2008-20, CP2008-21, CP2008-22, CP2008-23 and CP2008-24 and

finds those agreements to be substantially equivalent in all pertinent respects to the GEPS 1 product.⁷

Additionally, the Commission reviews the filings to ensure that they meet the requirements of rules 3015.5 and 3015.7 and of 39 U.S.C. 3633. The Commission has reviewed the financial analysis provided under seal that accompanies the agreements in all seven dockets as well as the comments filed in this proceeding.

The Public Representative “sees no specific cause for concern about the accuracy of the volume projections associated with these contracts,” but recommends that “the Postal Service ... in its sealed filings identify the nature and source of these volume projections, in general terms, so that the Commission might properly evaluate the significance of possible vulnerabilities or weaknesses underlying those projections.” Public Representative Comments at 7. The recommendation is not unreasonable. However, for purposes of the Commission’s preliminary analysis with regard to the contracts at issue herein, it does not appear that a detailed analysis of the nature and sources of these volume projections would be warranted at this time. If, as a result of the Commission’s Annual Compliance Determination, the volume projections are shown to be unreliable, appropriate remedial action may be taken.

The Public Representative also recommends that the Postal Service should take particular care to ensure that it selects proper economic adjustment factors. *Id.* at 7-8. The contracts at issue have a relatively short duration, one year. See Notices at 2. Thus, the risk associated with such factors, *e.g.*, that the Postal Service may fail to meet its statutory cost coverage requirements, appears to be minimal.

Based on the information provided, the Commission finds that all seven proposed contracts submitted should cover their attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products’

⁷ The differences between the contracts and the originally classified GEPS 1 contract do not appear to be substantial. However, this finding does not preclude the Commission from revisiting this issue at a future date if circumstances warrant.

contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, a preliminary review of the proposed contracts indicates that they comport with the provisions applicable to rates for competitive products.

The revisions to the competitive product list are shown below the signature of this Order, and shall become effective upon publication in the *Federal Register*.

It is Ordered:

1. The contracts filed in Docket Nos. CP2008-18, CP2008-19, CP2008-20, CP2008-21, CP2008-22, CP2008-23 and CP2008-24 are added to the product category Global Express Package Services 1 (CP2008-5).
2. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Steven W. William
Secretary

**CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST**

The following material represents changes to the Product List codified at 39 CFR Appendix A to Subpart A of Part 3020—Mail Classification Schedule. These changes are in response to Docket Nos. CP2008-18 through CP2008-24. The underlined text signifies that the text is new, and shall appear in addition to all other Mail Classification Schedule text.

Part B—COMPETITIVE PRODUCTS

2000 COMPETITIVE PRODUCT LIST

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Negotiated Service Agreements

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Outbound International

Global Expedited Package Services (GEPS) Contracts

GEPS 1 (CP2008-5, CP2008-11, CP2008,-12, CP2008-13,
CP2008-18, CP2008-19, CP2008-20, CP2008-21,
CP2008-22, CP2008-23 and CP2008-24)

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