

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

Before Commissioners:

Robert G. Taub, Chairman;
Mark Acton, Vice Chairman;
Tony Hammond; and
Nanci E. Langley

Market Dominant Product Prices
Exprès Service Multilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2011-6

ORDER APPROVING MODIFICATIONS OF EXPRÈS SERVICE AGREEMENT

(Issued July 26, 2017)

I. INTRODUCTION

On May 31, 2017, the Postal Service filed notice of revisions to the Exprès Service Agreement (the Existing Agreement), which is included within the Inbound Market Dominant Exprès Service Agreement 1 product on the market dominant product list.¹ For the reasons given below, the Commission approves the modifications to the Existing Agreement.

II. BACKGROUND

The Exprès Service Agreement is a multilateral agreement that “covers the delivery of cross-border LC/AO items weighing up to 2 kilograms tendered as Exprès

¹ Notice of United States Postal Service Providing Update Concerning Inbound Market Dominant Exprès Service Agreement 1, May 31, 2017 (Notice).

items and branded with the Common Logo.”² The Commission added Inbound Market Dominant Express Service Agreement 1 to the market dominant product list as a new product on September 26, 2011, and included the Existing Agreement within that product.³ On August 8, 2016, the Commission issued an order approving various modifications to the agreement.⁴

III. THE POSTAL SERVICE NOTICE AND RELATED FILINGS

In its Notice, the Postal Service informed the Commission of two additional versions of the Postal Service’s Annex 2 to the Existing Agreement. See Notice at 1-2. Both versions of Annex 2 set forth delivery times (targets) for the Postal Service under the agreement. *Id.* The first version went into effect on June 1, 2016. *Id.* The second version was scheduled to go into effect on June 1, 2017. *Id.* The second version of Annex 2 also adds a new tab that includes a Postal Service International Service Center office of exchange used under the bilateral agreement between Hongkong Post and the Postal Service. *Id.* at 2.

Redacted copies of both versions of Annex 2 were filed contemporaneously with the Notice. See *id.* at 2. Attached to the Notice was a redacted version of Attachment 1, which provides information regarding the parties to the Existing Agreement as of April 1, 2017, and remuneration paid for inbound Express items in April 2017. Unredacted copies of Annex 2 and Attachment 1 were filed as non-public documents subject to the

² Notice at 1 (*citing* Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, August 12, 2011, at 1 (August 12, 2011 Notice); August 12, 2011 Notice, Attachment 2 at 2. The acronym “LC/AO” stands for “*lettres et cartes/autres objects*.” These are air and surface Inbound Letter Post items.

³ See Order Adding Inbound Market Dominant Express Service Agreement 1 to the Market Dominant Product List, September 26, 2011 (Order No. 876).

⁴ Order Approving Modification of Express Service Agreement, August 8, 2016 (Order No. 3457). In Order No. 3457, the Commission directed the Postal Service to file additional information in future filings pertaining to the Express Service Agreement. Order No. 3457 at 7 (Ordering Paragraph 2). The additional information was to consist of “workpapers. . . that include. . . volume, revenue, and cost data, disaggregated by country of origin, for each component of remuneration gathered in accordance with Annex 6 of the Existing Agreement, as modified.” *Id.*

Postal Service's application for non-public treatment previously filed with the August 12, 2011 Notice. See *id.* at 2-3.

On June 1, 2017, the Postal Service was requested to provide the cost, revenue, and disaggregated cost data previously specified by Order No. 3457.⁵ The Postal Service had omitted that information from the Notice. See Notice at 2. On June 8, 2017, the Postal Service responded by filing a motion for either partial reconsideration of CHIR No. 1 and Ordering Paragraph 2 of Order No. 3457, or for an extension of time to provide the information requested by CHIR No. 1.⁶

On June 30, 2017, the Chairman issued a notice designating himself as Presiding Officer, granting partial reconsideration of CHIR No. 1, and vacating CHIR No. 1.⁷ He also issued Presiding Officer's Information Request No. 1 to facilitate resolution of the remaining questions presented in this proceeding.⁸ The Postal Service responded to POIR No. 1 on July 7, 2017.⁹

IV. COMMISSION ANALYSIS

A. Financial Analysis

Market dominant negotiated service agreements (NSAs), such as the Existing Agreement, are regulated in accordance with 39 U.S.C. § 3622(c)(10) and 39 C.F.R. part 3010, subpart D. In accordance with those requirements, market dominant NSAs must "improve the net financial position of the Postal Service through reducing Postal Service costs or increasing the overall contribution to the institutional

⁵ Chairman's Information Request No. 1, June 1, 2017 (CHIR No. 1).

⁶ Motion for Partial Reconsideration of Chairman's Information Request No. 1 and Order No. 3457, or, in the Alternative, Motion for Extension of Time to Submit Response of the United States Postal Service to Chairman's Information Request No. 1, June 8, 2017 (Motion).

⁷ Notice of the Chairman Designating Presiding Officer and Ruling Granting Motion for Partial Reconsideration, June 30, 2017 (Presiding Officer's Ruling).

⁸ Presiding Officer's Information Request No. 1, June 30, 2017 (POIR No. 1).

⁹ Response of the United States Postal Service to Presiding Officer's Information Request No. 1, July 7, 2017 (Response to POIR No. 1).

costs of the Postal Service” or “enhance the performance of mail preparation, processing, transportation, or other functions.” 39 U.S.C. § 3622(c)(10)(A).

Ordering Paragraph 2 of Order No. 3457 directed the Postal Service in future filings to provide workpapers “that include. . . volume, revenue, and cost data, disaggregated by country of origin. . . .” Order No. 3457 at 7 (Ordering Paragraph 2). CHIR No. 1 sought that information because it was not provided by the Postal Service in its Notice. In its Motion, the Postal Service requested reconsideration of CHIR No. 1 and Order No. 3457 “so as to not require the production of financial information in this instance, and not require the production of country-specific data in any case.” Motion at 5.

With respect to the Postal Service’s request that it be relieved of the duty to provide the financial information sought by CHIR No. 1, the Presiding Officer acknowledged that the changes to format made in v6.1 to v6.0 of Annex 2 “do not require any additional information for evaluation.” Presiding Officer’s Ruling at 3. However, he concluded that the addition of a Postal Service International Service Center in v7.0 of Annex 2 did require additional information to assess its significance on financial performance and therefore issued POIR No. 1. See *id.* at 3.

The Presiding Officer also declined the Postal Service’s request to be relieved of the obligation in any case to produce country-specific data. *Id.* at 3. Instead, the Presiding Officer clarified that the Postal Service must, in accordance with 39 C.F.R. § 3010.42, “file financial information when a modification proposes to change rates, fees, or mail classifications.” *Id.* He stated further that this requirement does not preclude the Postal Service in future cases from asserting its belief that “a proposed modification to the agreement does not change rates, fees, or mail classifications. . . .” *Id.* However, the Presiding Officer suggested that in such cases, “the Postal Service [should] confirm such conclusion with a brief explanation of the basis for its belief when it files notice of modification.” *Id.* In making this suggestion, the Presiding Officer noted that the Commission retained “discretion to request financial information to determine

whether a proposed modification may implicate a *de facto* rate change or otherwise affect the agreement’s net financial analysis.” *Id.* (citing Order No. 3457 at 5).

The Commission adopts the rulings of the Presiding Officer. By themselves, changes in an agreement’s format do not obligate the Postal Service to provide the financial information specified by Ordering Paragraph 2 of Order No. 3457. However, other changes, such as the addition of a Postal Service International Service Center to an agreement might, alone or in concert with other changes to an agreement, require production of financial information to determine their effect. If the Postal Service believes such changes should not require the filing of financial information, it should, at a minimum, explain the basis for that belief and confirm that the addition of the International Service Center will continue to allow the agreement to improve the net financial position of the Postal Service.

In its Response to POIR No. 1, the Postal Service confirmed that the addition of the International Service Center will allow the *Exprès* Service Agreement to continue to improve the Postal Service’s net financial position. Response to POIR No.1, question 1. The Postal Service’s confirmation was supported by a brief explanation of the relationship between Inbound Market Dominant *Exprès* Service Agreement 1 and a bilateral agreement the Postal Service has with Hongkong Post. *Id.*

Based upon its review of the Postal Service’s Notice and its Response to POIR No. 1, the Commission concludes that, as modified, the *Exprès* Service Agreement should continue to enhance the net financial position of the Postal Service in accordance with 39 U.S.C. § 3622(c)(10)(A).

B. Filing Requirements

The Existing Agreement contains a provision that empowers the Steering Committee for the Existing Agreement “to amend the Annexes to this Agreement.” August 12, 2011 Notice, Attachment 2 at 7. In its Notice, the Postal Service provided notice of revisions to Annex 2. One of those revisions went into effect prior to the Postal Service’s filing of the Notice. Notice at 2. The Postal Service acknowledges that the

filing of that revision was untimely and notes regret for its oversight in filing late. *Id.* at 2 n.4.

The Presiding Officer noted the untimely filing of the June 2016 corrected version of Annex 2 and reminded the Postal Service of the importance of timely filings. Presiding Officer's Ruling at 3-4. In POIR No. 1, he requested the Postal Service to specify the steps it was taking to ensure timely filing of future modifications to the Inbound Market Dominant Express Service Agreement 1. POIR No. 1, question 2.

In its response to POIR No. 1, the Postal Service identified the following steps it is taking:

- Employees who regularly work on the Inbound Market Dominant Express Service Agreement 1 have been reminded of the Commission's request that financial information be timely filed when a modification to the Agreement proposes changes to rates, fees, or mail classifications.
- Changes to Annex 2 delivery standards proposed by the Postal Service will be submitted to the Commission at the same time they are transmitted to the Head of PRIME.
- The Postal Service's lead representative to PRIME will notify the Postal Service's Law Department as soon as possible concerning other proposed revisions to the Express Agreement that affect rates, fees, and mail classifications so that filings can be made with the Commission as soon as possible.

Response to POIR No. 1, question 2.

In addition, the Postal Service proposes that in lieu of frequent updates concerning the parties to the Inbound Market Dominant Express Service Agreement 1, it provide the Commission an annual update as part of the Annual Compliance Review (ACR). *Id.* The Commission denies this request for several reasons.

First, 39 U.S.C. § 407(d)(2) requires that "a copy of each contract between the Postal Service and an agency of a foreign government shall be transmitted to the Secretary of State and the . . . Commission not later than the effective date of such contract." Since the addition of a party to (or removal of a party from) the Express

Service Agreement establishes a revised version of the contract, the Postal Service must file such revised version with the Commission in accordance with 39 U.S.C. § 407(d)(2).

Second, filing updates of parties to the agreement in the ACR proceeding would be inappropriate because such updates do not present compliance issues. Moreover, updates of parties to the agreement are more properly filed in Docket No. R2011-6, the docket in which the Inbound Market Dominant Express Service Agreement 1 was originally added to the market dominant product list. This procedure will provide a clearer record of the status of the Express Service Agreement over time.

Third, the filing of updated party lists, as well as mere editorial changes (such as formatting changes to the Agreement), can be handled efficiently with minimum administrative burdens because such filings do not require Commission approval.

Fourth, if the Postal Service is prevented from making a timely filing due to circumstances beyond its control (*e.g.*, when the Postal Service receives untimely notification from the Express Agreement's Steering Committee), the Postal Service should promptly notify the Commission and include an explanation for the delay in its filing.

V. ORDERING PARAGRAPHS

It is ordered:

1. The updated versions of, and revisions to, the Express Service Agreement filed by the Postal Service are approved.

2. The Postal Service's request to file annual updates of parties to the Express Service Agreement in the Annual Compliance Review proceeding in lieu of more frequent filings is denied.

By the Commission.

Stacy L. Ruble
Secretary