

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
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators 1

Docket No. R2018-2

Canada Post Corporation - United States Postal Service
Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

ORDER APPROVING INBOUND MARKET DOMINANT MULTI-SERVICE
AGREEMENT WITH FOREIGN POSTAL OPERATORS 1 NEGOTIATED SERVICE
AGREEMENT (WITH CANADA POST CORPORATION)

(Issued December 4, 2017)

I. INTRODUCTION

On November 17, 2017, the Postal Service filed a Notice, pursuant to 39 C.F.R. § 3010.40-.44, of a Type 2 Rate Adjustment concerning the inbound portion of a bilateral agreement (Agreement) with Canada Post Corporation (Canada Post).¹

The Postal Service seeks to include the Agreement within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (Foreign Postal

¹ Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, November 17, 2017, at 1 (Notice).

Operators 1) product. Notice at 1. For the reasons set forth below, the Commission approves the Postal Service's request.

II. BACKGROUND

Product history. The Commission added the Foreign Postal Operators 1 product to the market dominant product list in Order No. 549 and concurrently included two agreements within that product.² The Commission has since approved the inclusion of additional agreements within the same product on grounds of functional equivalence, including the predecessor to the instant Agreement.³

Instant Notice. The Notice includes attachments consisting of an application for non-public treatment of materials filed under seal, a redacted version of the signed agreement, and public versions of the supporting financial workpapers. Notice at 2. The Postal Service also filed an unredacted version of the signed agreement and non-public versions of the supporting financial workpapers.

In its Notice, the Postal Service states that the Agreement is functionally equivalent to the TNT Agreement filed in Docket No. R2010-5.⁴ The Postal Service explains that the Agreement results in an improvement over default rates established under the Universal Postal Union (UPU) Acts for inbound letter post items; improves operational performance; and addresses other data and information requirements in Commission rules. Notice at 4-5.

² See Docket Nos. MC2010-35, R2010-5, and R2010-6, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010 (Order No. 549). The two agreements within that product included an agreement between the Postal Service and China Post and an agreement between the Postal Service and Koninklijke TNT Post BV and TNT Post Pakket-service Benelux BV (TNT Agreement).

³ See *generally* Docket No. R2016-4, Order No. 3017, Order Approving Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement with Canada Post Corporation, January 12, 2016.

⁴ *Id.* at 2, 9. See Order No. 549.

The Agreement is intended to take effect on January 1, 2018. Notice at 3; *id.*, Attachment 2 at 8. The Agreement is to remain in effect until December 31, 2019, unless either party serves the other with a 90-day advance written notice to terminate. Notice at 4; *id.*, Attachment 2 at 8.

Initial Commission action. On November 20, 2017, the Commission issued a notice establishing a docket for consideration of matters raised in the Notice, inviting public comment, and appointing a Public Representative to represent the interests of the general public.⁵ On November 22, 2017, Chairman's Information Request No. 1 was issued to clarify the Postal Service's request.⁶ The Postal Service responded to CHIR No. 1 on November 28, 2017.⁷

III. POSTAL SERVICE POSITION

Functional equivalence. The Postal Service posits that the Agreement is functionally equivalent to the TNT Agreement. Notice at 2, 9.

The Postal Service states that the terms of the Agreement fit within the Mail Classification Schedule (MCS) language for the Foreign Postal Operators 1 product and therefore both agreements conform to a common description. *Id.* at 9-10. The Postal Service also asserts that both agreements contain many similar terms and conditions and provide rates for inbound letter post tendered to the Postal Service from each foreign postal operator's territory. *Id.* at 10. However, the Postal Service does identify material differences that distinguish the Agreement from the TNT Agreement.⁸ It asserts that, despite these differences, the Agreement is functionally equivalent to the

⁵ See Docket No. CP2017-280, *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, November 20, 2017.

⁶ Chairman's Information Request No. 1, November 22, 2017 (CHIR No. 1).

⁷ Responses of the United States Postal Service to Chairman's Information Request No. 1, November 28, 2017 (Responses to CHIR No. 1).

⁸ Differences include, among others, the agreements are with different foreign postal operators; revisions to negotiated prices for various inbound letter post products; revisions to existing articles and attachments; and inclusion of new articles and attachments. *Id.* at 11-13.

TNT Agreement, and the differences do not affect the similarity of market or cost characteristics between the Agreement and the TNT Agreement. *Id.* at 10, 13.

Statutory criteria. The Postal Service asserts that the criteria for the Commission's review are whether the Agreement: (1) either improves the net financial position of the Postal Service or enhances the performance of operational functions; (2) does not cause unreasonable harm to the marketplace; and (3) is available on public and reasonable terms to similarly situated mailers. *Id.* at 8; see 39 U.S.C. § 3622(c)(10).

With respect to the first criterion, the Postal Service states that it provides information in its workpapers showing the expected financial improvements over UPU default rates.⁹ The Postal Service also identifies several improvements expected to enhance operational performance: terms for the exchange of Electronic Advance Data (EAD); continued development of settlement processes based on the exchange of electronic data from the pre-advice of dispatch; specific sortation and transportation to multiple exchange offices; and initiatives designed to improve customer satisfaction that are related to operational and other improvements involving performance, processing, routing, data quality, accuracy, reporting, visibility, and cost reduction. Notice at 5.

With respect to the second criterion, the Postal Service provides several reasons why the Agreement will not result in unreasonable harm to the marketplace. *Id.* at 6. These reasons include Canada Post's status as the only entity in a position to avail itself of an agreement of this type and the role of the Postal Service and Canada Post, as each serves as its respective country's designated operator for the exchange of mail. *Id.* In addition, the Postal Service states that because no other entities are subject to terminal dues rates with respect to inbound letter post sent under UPU documentation to the United States from Canada, the market for the services offered under the Agreement is in essence limited to its parties. *Id.*

⁹ Notice at 4-5; see Excel file "REDACTED Canada_Bilateral_MD.xls," November 17, 2017.

Finally, the Postal Service views the third criterion as inapplicable based on its assessment that there are no entities similarly situated to Canada Post to which the Postal Service could make a similar agreement available. *Id.* at 8. The Postal Service states that there are also no entities similarly situated to Canada Post in its ability to tender inbound letter post on the terms and scale contemplated in the Agreement. *Id.* The Postal Service also explains that there are no other entities that serve as a designated operator for letter post originating in Canada. *Id.*

Data collection plan and service performance reporting. The Postal Service intends to report information on the Agreement through the Annual Compliance Report (ACR), and, therefore, proposes that no special data collection plan be created for the Agreement pursuant to 39 C.F.R. § 3010.43. *Id.* at 7-8. With respect to service performance measurement, the Postal Service requests that the Agreement be excepted from separate reporting under 39 C.F.R. § 3055.3(a)(3) by virtue of Order No. 996, which established a standing exception for all agreements filed in the Foreign Postal Operators 1 product.¹⁰

IV. COMMENTS

The Public Representative filed comments on November 27, 2017.¹¹ No other comments were filed.

Functional equivalence. The Public Representative concludes, based on a review of the Postal Service's filing, that the Agreement is functionally equivalent to the

¹⁰ *Id.* at 8; see Docket No. R2012-2, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, November 23, 2011 (Order No. 996). In Order No. 996, the Commission held that negotiated service agreements with substantially all components of the agreement included in the measurement of other products may be granted an exception from reporting pursuant to 39 C.F.R. § 3055.3(a)(3). Order No. 996 at 7. The Commission further held that functionally equivalent agreements would qualify for the section 3055.3(a)(3) exception. *Id.* Therefore, agreements that fall within the parameters of the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product are excepted from the performance reporting requirements of 39 C.F.R. § 3055.3(a)(3). *Id.* at 7, 8-9.

¹¹ Public Representative Comments on Postal Service Notice Concerning Rate Adjustment for Canada Post Negotiated Service Agreement, November 27, 2017 (PR Comments).

baseline TNT Agreement. PR Comments at 4. In comparing the two agreements, she finds that the differences in the presentation of the financial models and the text of the agreements do not affect the basic methodology used in calculating financial results or affect the basic terms of the Agreement. *Id.*

Statutory criteria. The Public Representative states that the Postal Service's workpapers indicate that the Agreement should improve the net financial position of the Postal Service compared to the UPU terminal dues rates. *Id.* With respect to the second and third criteria, she states that the Postal Service makes reasonable arguments that the Agreement will not cause unreasonable harm to the marketplace and will be available on public and reasonable terms to similarly situated mailers. *Id.*

The Public Representative comments that she did not have the benefit of seeing the Postal Service's responses to CHIR No. 1 because the Postal Service had not yet responded when she filed comments. *Id.* However, she considers the questions posed by CHIR No. 1. *Id.* She states that the potential omission of certain prices, volume, or cost data from the workpapers costs should not affect her conclusions regarding the financial aspects of the agreement. *See id.* at 4-5. She also states that it is unclear whether the inbound transportation costs referenced in CHIR No. 1, question 3 would be the same with or without the Agreement. *Id.* at 5. She comments that if these costs are greater with the Agreement than without the Agreement, then these costs should be included in the workpapers. *Id.*

The Public Representative notes that Postal Service's workpapers used volume projections rather than actual volume data. *Id.* In addition, she states that the Postal Service did not provide any information about its volume forecasting methodology. *Id.* She comments that she cannot evaluate the quality of the Postal Service's volume estimates. *Id.* She notes that "[i]naccurate volume forecasts could make an agreement appear to improve the net financial position of the Postal Service if low cost coverage categories are weighted down and high cost coverage categories are weighted up." *Id.* She states that the Postal Service should refrain from using estimates and, if the Postal

Service does rely on estimates, it should provide the methodology it used to determine projected volumes to the Commission. *Id.*

V. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the Agreement, the financial analyses provided under seal, the Public Representative's comments, and the Postal Service's Responses to CHIR No. 1.

Functional equivalence. The Commission finds that the Agreement is functionally equivalent to the TNT Agreement. The agreements share similar cost and market characteristics. Differences between the Agreement and the TNT Agreement do not foreclose a finding that the agreements are functionally equivalent. The Public Representative supports this finding. *Id.* at 4. The Commission, therefore, concludes that the Agreement may be included in the Foreign Postal Operators 1 product.

Statutory responsibilities. Under the statutory and regulatory provisions of 39 U.S.C. § 3622(c)(10) and 39 C.F.R. § 3010.40(a), the Commission's approval requires a finding that the Agreement either improves the net financial position of the Postal Service or enhances the performance of various operational functions. The agreement also must not cause unreasonable harm to the marketplace and be available on public and reasonable terms to similarly situated mailers.

The Commission finds that the negotiated prices in the Agreement will improve the net financial position of the Postal Service. The Postal Service compared the cost coverage at UPU terminal dues rates and the negotiated prices. The comparison indicates that the cost coverage at the negotiated prices exceeds the cost coverage at the UPU terminal dues rates and that the negotiated prices improve the Postal Service's net financial position. Notice, Excel file "NONPUBLIC Canada_Bilateral_MD.xls." The Commission finds that the Postal Service's filing demonstrates that the negotiated prices are an improvement over the UPU terminal dues rates and improve the Postal Service's net financial position.

The statute requires that the Agreement also must be available on public and reasonable terms to similarly situated mailers. 39 U.S.C. § 3622(c)(10). The Postal Service states that it views this criterion as inapplicable in this instance as it is difficult to conceive of a similarly situated mailer. Notice at 8. The Public Representative states that the Postal Service's arguments that such criteria are not implicated by the Agreement are reasonable. PR Comments at 4. The Commission concurs with the Postal Service's assessment that there are no entities similarly situated to Canada Post. The Commission also finds the Agreement will not cause unreasonable harm to the marketplace given the contracting parties' status as designated operators in the market.

Volume projections. The Public Representative raises a concern with the Postal Service's use of estimates to determine volume projections. *Id.* at 5. The Commission finds that the Postal Service's volume projections are reasonable as they are based on actual FY 2016 volume data.

Reporting exceptions. The Postal Service proposes that no special data collection plan be created for the Agreement, essentially seeking a waiver of the 39 C.F.R. § 3010.43 data collection reporting requirements. Notice at 8. Instead, it intends to report information under the Agreement through the ACR and provide information about mail flows from Canada Post within the course of the ACR review process. *Id.* The Commission finds the Postal Service's request is reasonable and grants the exception. The Commission also approves the Postal Service's invocation of Order No. 996 in support of an exception from separate service performance reporting under 39 C.F.R. § 3055.3(a)(3) on the basis that the standing exception in Order No. 996 continues to apply.

Follow-up submissions. The Agreement is intended to take effect on January 1, 2018, and it is to remain in effect until December 31, 2019, unless either party serves the other with a 90-day advance written notice to terminate. Notice at 3-4; *id.* Attachment 2 at 8. The Postal Service shall promptly notify the Commission if the effective date of the Agreement differs from the intended effective date. The Postal Service shall also promptly notify the Commission if the Agreement terminates earlier

than intended or the termination date is modified pursuant to the terms of the Agreement.

Conclusion. The Commission finds that the Agreement satisfies relevant statutory criteria and approves its inclusion within the Foreign Postal Operators 1 product.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Type 2 Rate Adjustment requested in the Postal Service's Notice filed on November 17, 2017, in this proceeding.
2. The Agreement filed in this docket is included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.
3. The Postal Service shall notify the Commission if the effective date of the Agreement differs from the expected effective date identified in the Notice.
4. The Postal Service shall promptly notify the Commission if the Agreement terminates prior to its scheduled expiration date.
5. The Postal Service's request for an exception to the data collection plan requirements under 39 C.F.R. § 3010.43 is granted.
6. The standing exception established in Order No. 996 continues to apply with respect to reporting on service performance pursuant to 39 C.F.R. § 3055.3(a)(3).

7. The following changes to the Mail Classification Schedule go into effect on January 1, 2018.

By the Commission.

Stacy L. Ruble
Secretary

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule (MCS). The Commission uses two main conventions when making changes to the MCS. New text is underlined. Deleted text is struck through.

Part A—Market Dominant Products 1000 Competitive Product List

1600 **Negotiated Service Agreements**

1602 **International**

1602.3 **Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1**

1602.3.5 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1

Baseline Reference

Docket Nos. MC2010-35, R2010-5 and R2010-6

PRC Order No. 549, September 30, 2010

Included Agreements

Canada Post Agreement, ~~R2016-4~~R2018-2, expires December 31, ~~2017~~2019
