

ORDER NO. 4944

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

Before Commissioners:

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

Competitive Product Prices
First-Class Package Service Contract 38 (MC2016-33)
Negotiated Service Agreements

Docket No. CP2016-39

ORDER APPROVING AMENDMENT ONE TO
FIRST-CLASS PACKAGE SERVICE NEGOTIATED SERVICE AGREEMENT

(Issued December 21, 2018)

I. INTRODUCTION

The Postal Service seeks to amend a First-Class Package Service negotiated service agreement.¹ The negotiated service agreement in the above-captioned docket (Existing Agreement) is scheduled to expire December 23, 2018.² The Postal Service now seeks to modify the Existing Agreement to extend the expiration dates until June

¹ USPS Notice of Amendment to First-Class Package Service Contract 38, Filed Under Seal, December 20, 2018 (Notice). The amendment is an attachment to the Notice (Amendment).

² See Docket Nos. MC2016-33 and CP2016-39, Order Adding First-Class Package Service Contract 38 to the Competitive Product List, December 22, 2015, at 8 (Order No. 2910).

20, 2019.³ The Postal Service intends for the Amendment to become effective two business days after the date that the Commission completes its review of the Notice, which, in this case, will be after the Existing Agreement's scheduled expiration date.⁴ For the reasons discussed below, the Commission approves the Amendment.

II. COMMISSION ANALYSIS

The Commission has reviewed the Notice, and the accompanying materials filed under seal.

Cost considerations. The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Existing Agreement is set to expire December 23, 2018.⁵ The Amendment revises the expiration date of the contract to June 20, 2019. Notice, Attachment A at 1. The Amendment also updates the corporate name of the customer and revises language regarding the applicability of provisions of the DMM. *Id.*

The Amendment does not materially affect the underlying financial analysis of the Existing Agreement. Thus, the Commission finds that the Existing Agreement, as amended, comports with the provisions applicable to rates for competitive products in 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7.

³ Notice, Attachment A at 1. The modification also updates the corporate name of the customer and revises language regarding the applicability of provisions of the Domestic Mail Manual (DMM). *Id.*

⁴ Notice, Attachment A at 1; Order No. 2019 at 8.

⁵ Order No. 2910 at 8.

Modifications. In Order No. 4866, the Commission issued guidance on the extension of negotiated service agreements. The Commission stated that “[s]hould the contract permit modification, the Postal Service may file a Notice including a signed modification extending the contract. Such notices must be filed no later than seven days prior to the contract’s expiration date.”⁶ Modifications to the Existing Agreement thus should have been filed no later than December 16, 2018. Instead, the Postal Service filed on December 20, 2018, four days after the deadline and only one business day prior to the Existing Agreement’s expiration date. Because the Amendment, by its terms, takes effect two business days after the Commission’s review, the Postal Service’s delay in filing prevents the Amendment from taking effect before the Existing Agreement expires.⁷ Order No. 4866 further states: “[i]n the rare situation where the Postal Service is unable to file the notice at least seven days prior to the contract’s expiration date, the Postal Service should file a motion for late acceptance specifying the circumstances justifying the delay.” *Id.* The Postal Service did not file motions for late acceptance in this docket.

The Commission has reinstated lapsed contracts in the past.⁸ First, in Order No. 1523, the Commission retroactively reinstated the contract “in this instance” and issued guidance requiring future motions for temporary relief to be filed at least seven days prior to contract expiration. Order No. 1523 at 2. The contract had lapsed for a single business day at the time of filing, partially as a result of severe weather. *See id.* at 1-2. In Order No. 1565 the Commission again reinstated the same contract, but this time only prospectively, stating that a retroactive extension was not appropriate due to the

⁶ Docket Nos. CP2017-253, *et al.*, Order Approving Modifications and Providing Guidance Regarding Extending Negotiated Service Agreements, October 30, 2018, at 4 (Order No. 4866).

⁷ *See* Notice, Attachment A at 1; Order No. 2019 at 8.

⁸ Docket No. CP2009-38, Order Granting Motion for Temporary Relief and Providing Guidance Regarding Future Motions for Temporary Relief, November 1, 2012 (Order No. 1523); Docket No. CP2009-38, Order Granting Emergency Motion of the United Postal Service for Temporary Relief, December 5, 2012 (Order No. 1565). *See also* Docket No. CP2016-15, Order Authorizing Extension of Priority Mail Negotiated Service Agreement and Denying Motion for Late Acceptance, November 23, 2016 (Order No. 3635) (prospectively reinstating a contract pursuant to a pre-approved extension clause after untimely filing of a Notice of Extension).

serial extensions in that docket and the failure of the Postal Service to follow its guidance in Order No. 1523. Order No. 1565 at 3. The contract again lapsed for one business day before the Postal Service filed for relief. See Order No. 1565 at 1, n.1.

In keeping with past practice and to avoid further disruption to the Postal Service's contract partner, the Commission, on its own motion, exercises its discretion to grant the Postal Service relief in this docket. The contract partner may receive the corresponding negotiated rates beginning on the effective date of the Amendment, and ending June 20, 2019. During the interim period in which the Existing Agreement will lapse, the contract partner shall pay the approved prices of general applicability.

Commission guidance. The Commission again stresses the importance of timely filings and regular order. Untimely filings waste Postal Service and Commission time and unnecessarily disrupt the Postal Service's operations and the operations of their contract partners. Accordingly, the Commission expects all future requests to extend negotiated service agreements to be filed according to the guidance provided in Order No. 4866. The Commission will not grant future requests to modify contracts that are untimely, whether by activation of an extension clause, filing a signed modification, or moving for temporary relief.

Other considerations. If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

In conclusion, the Commission approves the Existing Agreement, as amended.

III. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the First-Class Package Service Contract 38 negotiated service agreement, as amended.
2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the revised expiration date, June 20, 2019.

By the Commission.

Ruth Ann Abrams
Acting Secretary

Vice Chairman Hammond, dissenting.