

ORDER NO. 5102

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

Before Commissioners:

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

Competitive Product Prices  
Inbound E-Format Letter Post

Docket No. CP2019-155

NOTICE AND ORDER CONCERNING RATES NOT OF GENERAL APPLICABILITY  
FOR INBOUND E FORMAT LETTER POST

(Issued May 22, 2019)

I. INTRODUCTION

On May 20, 2019, the Postal Service filed a notice of a proposed range of prices for Inbound Letter Post Small Packets and Bulky Letters (E format), and for associated Inbound Registered Service.<sup>1</sup> The Postal Service intends for the prices to take effect on a date to be determined by the Postal Service Governors. Notice at 1. The Postal Service concurrently filed a notice of filing of non-public library references.<sup>2</sup> The Postal

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<sup>1</sup> Notice of the United States Postal Service of Rates Not of General Applicability for Inbound E-Format Letter Post, and Application for Non-Public Treatment, May 20, 2019 (Notice).

<sup>2</sup> Notice of the United States Postal Service of Filing of Non-Public Library References, May 20, 2019 (Non-Public LR Notice).

Service's Notice requests the Commission's review and approval of new rates for Inbound E format Letter Post, but does so in a unique and unprecedented manner. As described further below, the Postal Service, in lieu of providing specific rates, has proposed a range of rates for both the piece and weight components of the proposed pricing structure.

## II. BACKGROUND

Current Inbound E format Letter Post prices, known as terminal dues, were set through the Universal Postal Union (UPU). Notice at 2. The UPU terminal dues system has long been a concern of the Commission, and the Commission has noted that the current pricing regime results in noncompensatory terminal dues.<sup>3</sup> The Commission has described UPU terminal dues as discriminatory because they are not equivalent to domestic postage rates in the destination country. Order No. 4980 at 3.

On August 23, 2018, President Donald J. Trump issued a presidential memorandum to the Postmaster General and the Chairman of the Commission, among others, entitled "Modernizing the Monetary Reimbursement Model for the Delivery of Goods Through the International Postal System and Enhancing the Security and Safety of International Mail."<sup>4</sup> The Postal Service states that the Presidential Memorandum identifies economic distortion as a result of foreign merchants receiving the benefit of lower distribution costs in the United States compared to domestic vendors. Notice at 3.

Consistent with the policy objectives outlined in the Presidential Memorandum, the Secretary of State gave notice to the UPU on October 17, 2018, that the United States would withdraw as a member country, effective one year from the

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<sup>3</sup> Docket No. MC2019-17, Order Conditionally Approving Transfer, January 9, 2019, at 3 (Order No. 4980).

<sup>4</sup> Presidential Memorandum for the Secretary of State, Secretary of the Treasury, Secretary of Homeland Security, Postmaster General, and Chairman of the Postal Regulatory Commission, August 23, 2018 (Presidential Memorandum), available at: <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-secretary-state-secretary-treasury-secretary-homeland-security-postmaster-general-chairman-postal-regulatory-commission/>.

announcement.<sup>5</sup> The White House Press Secretary issued a statement indicating that the President concurred with the recommendation from the Department of State that the United States should adopt self-declared rates for terminal dues as soon as practical, but no later than January 1, 2020.<sup>6</sup>

Since issuing its notice to withdraw from the UPU, the United States has continued to negotiate with other UPU member countries to “reach a mutually acceptable solution to satisfy the aims of the Presidential Memorandum.” Notice at 5. The Postal Service states that because it does not yet know the result of current State Department negotiations on achieving “the President’s stated goal to remain within the UPU following elimination of the economic distortion” in the current system, it posits that a range of rates for E format items that accommodates those negotiations is “in the best interests of the United States and the Postal Service.” *Id.* The Postal Service states that this range allows the Postal Service to preserve flexibility, enabling it to institute rates for E format Letter Post whether the United States is in or out of the UPU. *Id.*

In Order No. 4980, the Commission conditionally approved the transfer of Inbound E format Letter Post items from the market dominant to competitive products list. Order No. 4980 at 23.

### III. PROPOSED RATES

The Postal Service’s Notice includes an application for non-public treatment of materials filed under seal (Attachment 1), a Statement of Explanation and Justification for the proposed rate range (Attachment 2), and a certification of prices (Attachment 3). Notice, Attachments 1-3. The Postal Service filed the proposed rates and underlying workpapers under seal in this docket. See Notice at 2. The Postal Service states that the price range and workpapers include “commercially sensitive information, such as price, volume, cost, and revenue data, certain non-published rates, negotiated contract

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<sup>5</sup> See Statement from the Press Secretary, October 17, 2018, available at: <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-38/>.

<sup>6</sup> *Id.*; see Order No. 4980 at 4.

data, and underlying calculations.” Non-Public LR Notice at 2. The Postal Service further explains its request for non-public treatment of the price range in its application for non-public treatment, filed pursuant to 39 CFR 3007. Notice, Attachment 1 at 1.

The Postal Service states that the proposed range of prices would conform to the requirements for competitive products under 39 U.S.C. 3633. Notice at 12. The Postal Service states that the proposed prices cover attributable costs, avoid cross-subsidization, and do not impede competitive products’ collective ability to cover the appropriate share of institutional costs. *Id.*

The Postal Service states that the proposed prices will be available only to postal operators, citing fundamental differences between postal operators and private carriers. *Id.* at 13. The Postal Service states that the risk of “cream-skimming” and operational concerns dictate that the rates be not of general applicability, but notes that private carriers can receive similar service through negotiated service agreements. *Id.* at 14.

The Postal Service addresses concerns regarding Private Express Statutes (PES). *Id.* at 15. The Postal Service states that most Inbound E format Letter Post containing letter content would fall under exceptions for letters relating to goods, or suspensions for certain advertising. *Id.* The Postal Service states that absent exceptions or suspensions, proposed maximum rates exceed the price test even at the lowest rate increment, and the minimum rates satisfy the price test at the average weight per piece. *Id.* at 15-16. The Postal Service states that for minimum rates evaluated at individual weight steps, whose prices do not alone satisfy the price test, the total postage paid (including foreign postal operators’ costs for legs 1 and 2), would likely exceed the PES price test. *Id.* at 17.

The Postal Service states that in addition to satisfying all statutory requirements, the proposed prices are consistent with the policies and reforms outlined in the Presidential Memorandum. *Id.* at 18. The Postal Service states that the proposal fully reimburses the Postal Service for its costs, avoids a preference for foreign postal operators over private carriers, and avoids a preference for foreign mailers over domestic mailers. *Id.* at 18-19. Although Inbound E format Letter Post prices would not

be identical to domestic retail and commercial rates, the proposed range is justified under domestic equivalent principles. *Id.* at 19. The Postal Service notes one particular exception. The Postal Service states that E format volume dispatched by countries in UPU Group IV will be subject to lower prices, of which the Postal Service will provide notice at a later time. *Id.* at 10-11. The Postal Service states that the proposal achieves rate “parity” and would eliminate the economic distortion identified in the Presidential Memorandum. *Id.* at 19.

#### IV. INITIAL ADMINISTRATIVE ACTIONS

The Commission establishes Docket No. CP2019-155 to consider the Postal Service’s Notice. Interested persons may express views and offer comments on whether the planned changes are consistent with 39 U.S.C. 3632 and 3633 and 39 CFR part 3015. The Commission also invites comments on whether the proposed prices are consistent with the policies outlined in the Presidential Memorandum.<sup>7</sup> Comments are due no later than June 21, 2019. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is appointed to serve as Public Representative to represent the interests of the general public in this docket.

#### V. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission establishes Docket No. CP2019-155 to provide interested persons an opportunity to express views and offer comments on whether the planned changes are consistent with 39 U.S.C. 3632 and 3633 and 39 CFR part 3015.

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<sup>7</sup> See Order No. 4980 at 20.

2. The Commission also invites interested persons to express views and offer comments on whether the proposed prices are consistent with the policies outlined in the Presidential Memorandum.
3. Comments are due no later than June 21, 2019.
4. Pursuant to 39 U.S.C. 505, the Commission appoints Katalin K. Clendenin to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.
5. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Stacy L. Ruble  
Secretary