Postal Regulatory Commission
Submitted 11/27/2019 9:05:45 AM
Filing ID: 111182
Accepted 11/27/2019

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

Before Commissioners:

Robert G. Taub, Chairman;
Michael Kubayanda, Vice Chairman;
Mark Acton;
Ann C. Fisher; and
Ashley E. Poling

Notice of Market Dominant Price Adjustment

Docket No. R2020-1

PUBLIC REPRESENTATIVE COMMENTS IN RESPONSE TO ORDER NO. 5318

(November 27, 2019)

I. INTRODUCTION AND BACKGROUND

On October 9, 2019, the Postal Service filed notice of its planned price adjustments and related mail classification changes for market dominant products.[1] On November 13, 2019, the Commission determined that the proposed prices for First-Class Mail did not comply with certain statutory and regulatory requirements and remanded them to the Postal Service for further action.[2] The remand was based on the Commission's conclusion that the Postal Service made impermissible adjustments to the billing determinants related to Inbound Letter Post, which resulted in a price adjustment in excess of the price cap limitations specified by 39 U.S.C. § 3622(d), as calculated in accordance with 39 C.F.R. § 3010.21. *Id.*

Specifically, the Postal Service adjusted the FY 2018 Inbound Letter Post small packet and bulky letter volume to reflect its planned transfer of these mailpieces from the market dominant Inbound Letter Post product to the competitive Inbound Letter Post

---

[1] United States Postal Service Notice of Market-Dominant Price Change, October 9, 2019 (Notice).

[2] Order Remanding Price Adjustments for First-Class Mail, November 13, 2019 (Order No. 5302) at 2.

small packets and bulky letters product. Notice at 9 n.15. Because the Postal Service expects the transfer of these products to be complete on July 1, 2020, it adjusted its First-Class Mail price cap calculation to apply increased Inbound Letter Post small packet and bulky letters prices to only six months of volume and weight data. *Id.* As such, it effectively halved the FY 2018 Inbound Letter Post small packet and bulky letters volume. *Id.*

The Commission analyzed the Postal Service's argument that the adjustment was consistent with the Commission's regulations and ultimately rejected it. Order No. 5302 at 18. It noted that unlike the examples cited by the Postal Service in support of its argument, Inbound Letter Post small packets and bulky letters have not yet met the conditions for transfer from the Market Dominant Product List. *Id.* at 17. Instead of calculating the percentage increase in prices individually for two different price changes (January 2020 and July 2020), the Postal Service estimated CY 2020 revenue by applying the January 2020 prices between January 1, 2020 and June 30, 2020, and applying the July 2020 prices between July 2020 and December 31, 2020. *Id.* at 18.

The Commission went on to state that this adjustment was inconsistent with 39 C.F.R. §§ 3010.23(d)(2), (3), and (4). *Id.* at 18-19. It ordered the Postal Service to file an amended notice of rate adjustment for First-Class Mail to include workpapers supporting the January 2020 price change for First-Class Mail, including the Inbound Letter Post product that:

> (1) do not include adjustments related to the potential transfer of Inbound Letter Post small packets and bulky letters from the market dominant Inbound Letter Post product to the competitive Inbound Letter Post Small Packets and Bulky Letters product;
>
> (2) do not include additional future price changes; and
>
> (3) incorporated the adjustments and corrections made by the Commission to address the Inbound Letter Post adjustment, the CY 2020 IAC [International Air Conveyance] prices, and the distribution of Inbound Registered Mail Service data…

Id. at 23.

Postal Service Response to Order No. 5302. The Postal Service filed its response to Order No. 5302 on November 20, 2019.[3] The Response provides a revised First-Class Mail rate design that is similar to the Notice with the exception of a lower increase for 5-Digit Presort Letters than originally proposed. Response at 1. The Postal Service notes that the revised price adjustment affects the 5-Digit Automation Letters workshare discount, raising its passthrough from 82.4 percent to 88.2 percent. Id. at 19.

For the calculation of the Postal Service's banked authority resulting from the implementation of the amended rate design, the Postal Service provides three alternatives for the Commission's consideration. First, the Postal Service urges the Commission to reconsider its rejection of the billing determinants originally proposed in the Notice, and seeks reconsideration of the conclusions in Order No. 5302 (Option 1). Response at 1. Alternatively, the Postal Service requests to remove Inbound E-Format Letter Post from the price cap calculations (Option 2). *Id.* at 2. To that end, together with the Response, the Postal Service concurrently files an accelerated request to reclassify Inbound E-Format Letter Post as a competitive product on January 1, 2020.[4] Response at 10. Finally, the Postal Service submits a third set of workpapers revising the rates in the manner requested by the Commission in Order No. 5302 (Option 3). *Id.* at 2. It notes that adoption of this option "does not represent the Postal Service's view as to how the percentage change in rates should be calculated" but is submitted "to facilitate the Commission's timely conclusion of this docket, while reserving the opportunity for further adjudication of the price cap treatment of Inbound E-Format Letter Post." *Id.* at 2-3.

Order No. 5318. On November 21, 2019, the Commission issued an order inviting public comment regarding whether the Response is consistent with applicable

---

[3] United States Postal Service Response to Order No. 5302, November 20, 2019 (Response).

[4] Docket No. MC2019-17, Motion of the United States Postal Service to Effectuate Transfer on January 1, 2020, and Application for Non-Public Treatment, November 20, 2019.

statutory and regulatory requirements, including 39 U.S.C. § 3622 and 39 C.F.R. part 3010.[5]

II. PUBLIC REPRESENTATIVE'S RECOMMENDATION

The Postal Service's First-Class Mail price adjustment in its Response neither exceeds its price cap authority, nor does it use more than 2 percentage points of banked authority for the class in any 12-month period. See 39 C.F.R. § 3010.29. All First-Class Mail workshare discounts are equal to or below their avoided costs, including the workshare discount associated with the proposed change in price for 5-Digit Presort Letters. Therefore, the Public Representative recommends approving the prices proposed in the Response for First-Class Mail. The remainder of these comments will focus on the various alternatives for the banked authority proposed by the Postal Service in the Response.

In its justification for Option 1, the Postal Service criticizes the Commission's legal justifications for its determination that the Inbound Letter Post billing determinants did not comply with applicable regulations. In propounding its counterarguments, the Postal Service makes a fundamental error by selectively parsing each element cited by the Commission in support of its conclusion and attacking the elements separately, rather than recognizing that the Commission's legal conclusion is based on all the contributing factors in conjunction. For example, the Postal Service maintains that the Commission's fundamental premise in Order No. 5302 rests on the assumption that billing determinant adjustments are only proper if they take effect prior to or simultaneous to a price change, and not for classification changes that occur after a price change. Response at 3. It goes on to offer the examples of promotions and the Intelligent Mail barcode discount as examples of prior Commission approvals of non-simultaneous price changes. *Id.* at 4. However, it treats as a separate element the Commission's statement that "the Postal Service acknowledges that the conditions for transfer have not yet been satisfied." *Id.* at 7-8.

[5] Notice and Order on Amended Price Adjustments and Classification Changes for First-Class Mail, November 21, 2019 (Order No. 5318).

To treat these two facts as distinct is to lose sight of the forest for the trees. The Commission remanded these rates precisely because, unlike promotions or discounts that it can approve prospectively, the price change contemplated by the Postal Service in its billing determinants is merely a possibility and highly dependent on whether the prices proposed by the Postal Service pass the review, implementation, and approval stages for transfer. It would be improper for the Commission to accept a rate design otherwise incompatible with the price cap based on conclusory assumptions about an ongoing proceeding.

The Postal Service's analogy to promotions and other discounts is similarly misplaced, as rates associated with promotions or discounts are merely variations from the baseline rates charged to mailers during non-promotional periods. In approving promotional rates prospectively, the Commission is approving both the baseline rates for the non-promotional period as well as the departure from the baseline rates for the promotional period. Here, approval by the Commission would mean ignoring price cap implications for rates that the Postal Service has assumed will go to zero beginning in July 2020. In and of itself, this is not "properly weighting the price cap calculation…[to] thereby avoid an obvious distortion"[6] as the Postal Service claims it is doing, it is precisely the opposite — forecasting a potential distortion and applying an improper weight to it in the price cap calculation. As such, the Public Representative recommends that the Commission reject the Postal Service's proposed Option 1 as improperly justified under 39 U.S.C. § 3622(d), as calculated in accordance with 39 C.F.R. § 3010.21

The Public Representative cannot recommend the approval of Option 2 while the issues raised in Docket No. MC2019-17 are still under consideration. If, however, the Commission's eventual conclusion in Docket No. MC2019-17 is that Inbound E-Format Letter Post rates to go into effect in January cover cost, the alternate transfer date may indeed be approved, with implications for the banked amount. The Public Representative recognizes that the rate setting process for Inbound Letter Post is unique, and would support delaying final determination of the banked amount in the present docket until after the transfer case has concluded.

---

[6] *Id.* at 7.

After reviewing the Postal Service's workpapers submitted with the Response, the Public Representative's opinion is that Option 3 represents the most appropriate calculation of the banked amount at this time. This option complies with all elements of the Commission's directives from Order No. 5302. It may not, however, represent the most accurate calculation of the banked authority if the Commission approves the transfer proposed in Docket No. MC2019-17.

Therefore, the Public Representative recommends that that Commission consider an approach closest to Option 2, revising the banked amount after the conclusion of Docket No. MC2019-17, assuming the transfer of Inbound E-Format Letter Post is implemented no later than 12:01 a.m. on January 26, 2020.

Respectfully submitted,

Anne O'Connor
Public Representative
anne.oconnor@prc.gov

Katalin K. Clendenin
Public Representative Technical Staff
901 New York Avenue NW
Suite 200
Washington, D.C. 20268-0001