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ORDER NO. 6209

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

Before Commissioners:

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

Annual Compliance Review, 2021 — Docket No. ACR2021

ORDER GRANTING MOTION FOR RECONSIDERATION OF DIRECTIVE REGARDING BOUND PRINTED MATTER PARCELS

(Issued June 23, 2022)

I. INTRODUCTION

This Order addresses the Motion filed by the Postal Service seeking that the Commission reconsider a directive it issued in the FY 2021 Annual Compliance Determination (ACD) that required the Postal Service to increase Bound Printed Matter (BPM) Parcels' prices by at least 2 percentage points above the Package Services class average in each rate adjustment affecting the Package Services class through the issuance of the FY 2022 ACD.[1] For the reasons discussed below, the Motion is granted.

[1] United States Postal Service Motion for Reconsideration of Directive Regarding Bound Printed Matter Parcels, April 28, 2022 (Motion); *Annual Compliance Determination*, March 29, 2022, at 40 (FY 2021 ACD).

II. BACKGROUND

BPM Parcels is a product within the Package Services class. In the FY 2020 ACD, the Commission found that the Package Services class was non-compensatory with an overall cost coverage of 92.5 percent in FY 2020.[2] The Commission also found that two products within the Package Services class, BPM Parcels and Media Mail/Library Mail, individually did not cover their attributable costs, *i.e.,* had cost coverages below 100 percent. *Id.* at 51, 53. With regard to BPM Parcels, the Commission stated that BPM Parcels' FY 2020 cost coverage of 94.0 percent was "a notable decline from its cost coverage of 106.1 percent in FY 2019" and recommended that the Postal Service propose a price increase for BPM Parcels that was above the class average for the Package Services class to address the cost coverage issue. *Id.* at 53, 54.

Docket No. R2021-2 was the Market Dominant price adjustment proceeding that followed the FY 2020 ACD as well as the first price adjustment proceeding filed and reviewed pursuant to the new regulations of 39 C.F.R. part 3030, which included new forms of rate authority including an additional 2 percentage points of rate authority for non-compensatory classes.[3] In that proceeding, the Postal Service proposed that BPM Parcels' prices increase by 6.666 percent, which was more than 2 percentage points below the class average increase of 8.804 percent.[4] The prices for the two compensatory products in the Package Services class, BPM Flats and Alaska Bypass Service, were proposed to increase by 7.453 and 6.989 percent respectively, while the prices for the other non-compensatory product, Media Mail/Library Mail, were proposed

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[2] Docket No. ACR2020, *Annual Compliance Determination*, March 29, 2021, at 51 (FY 2020 ACD).

[3] *See* Docket No. R2021-2, Order on Price Adjustments for First-Class Mail, USPS Marketing Mail, Periodicals, Package Services, and Special Services Products and Related Mail Classification Changes, July 19, 2021, at 1, 3-4 (Order No. 5937); Docket No. RM2017-3, Order Adopting Final Rules for the System of Regulating Rates and Classes for Market Dominant Products, November 30, 2020 (Order No. 5763).

[4] Docket No. R2021-2, United States Postal Service Notice of Market-Dominant Price Change, May 28, 2021, at 24 (Docket No. R2021-2, Notice).

to increase by 10.865 percent. *Id.* Thus, the proposed price increase for BPM Parcels was the lowest among the products in the Package Services class. To explain its proposed price increase for BPM Parcels, the Postal Service referenced its request to transfer BPM Parcels to the Competitive product list in Docket No. MC2021-78 and stated that it was balancing "the need to address the product's cost coverage against the need to ensure that a non-compensatory class's price cap space is not wasted on a product that may not remain on the market-dominant list."[5]

In the order approving the Docket No. R2021-2 price increases, the Commission noted that the Postal Service was not required to give BPM Parcels an above-average price increase. Order No. 5937 at 119. However, the Commission expressed "concern that the Postal Service ha[d] elected not to give BPM Parcels an above average price increase given the amount of rate authority available to Package Services" and noted that "[i]f BPM Parcels are not transferred to the Competitive product list, the Commission expects to look closely at the cost coverage of BPM Parcels in the next ACD and consider whether further regulatory action is needed at that time." *Id.* at 119-20. On February 10, 2022, the Commission denied the Postal Service's request to transfer BPM Parcels to the Competitive product list.[6]

In the FY 2021 ACD, the Commission found that the Package Services class once again did not cover its costs, which was driven by the fact that the BPM Parcels and Media Mail/Library Mail products remained non-compensatory and failed to cover their costs in FY 2021. FY 2021 ACD at 36. Specifically, BPM Parcels' cost coverage in FY 2021 was 94.6 percent, a slight increase from FY 2020's 94.0 percent cost coverage. *Id.* at 37. Given the Postal Service's decision to give BPM Parcels a below average price increase in Docket No. R2021-2 despite having ample rate authority and the fact "that the Postal Service made no efforts in FY 2021 to address rising unit costs,"

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[5] *Id.* at 25. *See* Docket No. MC2021-78, United States Postal Service Request to Transfer Bound Printed Matter Parcels to the Competitive Product List, March 26, 2021.

[6] Docket No. MC2021-78, Order Denying Request to Transfer Bound Printed Matter Parcels to the Competitive Product List, February 10, 2022 (Order No. 6105).

the Commission found “that the Postal Service did not take adequate steps in FY 2021 to improve the cost coverage for [BPM Parcels].” *Id.* at 39-40. As a result, the Commission directed “the Postal Service to increase BPM Parcels’ prices by at least 2 percentage points above the class average in each Market Dominant rate adjustment affecting the Package Services class through the issuance of the FY 2022 ACD.” *Id.* at 40.

III. MOTION

On April 28, 2022, the Postal Service filed the Motion, which requests that the Commission reconsider the directive that BPM Parcels’ prices must increase by at least 2 percentage points above the class average in rate adjustments affecting Package Services.[7] The Postal Service raises two main arguments in the Motion. First, the Postal Service asserts that the Commission exceeded its authority by issuing the directive without first making a finding that BPM Parcels violated a provision of 39 U.S.C. chapter 36 (or the underlying regulations). *Id.* at 1-2, 4-8. Second, the Postal Service argues that the Commission would not be justified in making such a finding regarding BPM Parcels based on Commission precedent related to non-compensatory products. *Id.* at 2-3, 8-17.

Although the Postal Service admits that it did not adhere to the FY 2020 ACD’s pricing recommendation for BPM Parcels, the Postal Service asserts that in its view it did attempt to correct BPM Parcels’ negative cost coverage by requesting to transfer BPM Parcels to the Competitive product list, which it asserts “would have entailed a competitive price increase to achieve positive cost coverage.” *Id.* at 12. The Postal Service represents that it selected the lower price increase for BPM Parcels in Docket No. R2021-2 because the transfer case was pending before the Commission. *Id.* at 13. The Postal Service states that “[n]ow that the outcome of Docket No. MC2021-78 is

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[7] Motion at 1. Because the Motion requests reconsideration solely of this directive, the Commission notes that this Order does not affect any other directive, requirement, or recommendation contained in the FY 2021 ACD.

known, the Postal Service would naturally be in a different position in terms of deciding how to address BPM Parcels' cost coverage within the market-dominant price cap, even without an ACD directive." *Id.* The Postal Service states that with the denial of the BPM Parcels' transfer, there is no reason to think that it would not act consistently with the Commission's pricing recommendations moving forward, as it has with regard to pricing recommendations for the Media Mail/Library Mail product. *Id.* at 14. The Postal Service concludes that "the 'appropriate' solution in these circumstances—particularly now that Docket No. MC2021-78 has been resolved—would be to monitor the product's trajectory and the Postal Service's actions for longer, rather than rushing to impose new regulatory constraints." *Id.* at 17.

IV. COMMISSION ANALYSIS

The Postal Accountability and Enhancement Act (PAEA)[8] required the Commission to review the Market Dominant ratemaking system 10 years after the PAEA's enactment to determine if the system was achieving the objectives of 39 U.S.C. § 3622(b), taking into account the factors of 39 U.S.C. § 3622(c). 39 U.S.C. § 3622(d)(3). If the Commission determined, after notice and comment, that the system was not achieving the objectives, taking into account the factors, then the PAEA permitted the Commission to "by regulation, make such modification or adopt such alternative system for regulating rates and classes for market-dominant products as necessary to achieve the objectives." *Id.*

In determining whether the ratemaking system achieved the objectives, taking into account the factors, the Commission found that non-compensatory products and classes undermined the achievement of several objectives. For example, objective 8's reasonable rates requirement calls for rates that do not threaten the financial integrity of

[8] Postal Accountability and Enhancement Act, Pub. L. 109-435, 120 Stat. 3198 (2006).

the Postal Service.[9] In Order No. 4257, the Commission found that non-compensatory classes and products do not have reasonable rates because they do not provide sufficient revenue to cover their attributable costs, let alone contribute to institutional costs, which in turn threatens the Postal Service's financial integrity. *Id.* at 231-32, 233. The Commission also found that non-compensatory products undermined the achievement of objective 5 and the Postal Service's ability to maintain financial stability in the medium term because "non-compensatory products contributed to the Postal Service's inability to cover overall total cost." *Id.* at 248. In addition, the Commission found that non-compensatory products undermined the achievement of objective 1 because non-compensatory products are not priced in accordance with allocative efficiency and contributed to the fact that the ratemaking system failed to increase pricing efficiency. *Id.* at 139-42, 145.

In light of the fact that non-compensatory products and classes prevented the achievement of several objectives, the Commission implemented several regulations aimed at addressing, over time, the issues caused by non-compensatory products and classes.[10] First, the Postal Service is prohibited from reducing rates for all non-compensatory products.[11] Second, the Postal Service must increase the rates for non-compensatory products in compensatory classes by a minimum of 2 percentage points above the class average increase whenever the Postal Service files a rate adjustment

[9] Docket No. RM2017-3, Order on the Findings and Determination of the 39 U.S.C. § 3622 Review, December 1, 2017, at 226, 228 (Order No. 4257).

[10] *See, e.g.,* Docket No. RM2017-3, Notice of Proposed Rulemaking for the System for Regulating Rates and Classes for Market Dominant Products, December 1, 2017, at 73-74, 76, 80-81, 85-86 (Order No. 4258); Docket No. RM2017-3, Revised Notice of Proposed Rulemaking, December 5, 2019, at 153-54, 157, 168 (Order No. 5337); Order No. 5763 at 186, 189-90.

[11] 39 C.F.R. § 3030.127(b). *See* Order No. 4258 at 77; Order No. 5337 at 163, 174.

affecting that class of mail.[12] Third, the regulations provide the Postal Service with an additional 2 percentage points of rate authority for non-compensatory classes of mail.[13]

In granting this additional rate authority for non-compensatory classes, the Commission noted that non-compensatory products undermined the achievement of various objectives and emphasized that "[n]on-compensatory classes are non-compensatory because they are dominated by non-compensatory products." Order No. 4258 at 81; Order No. 5337 at 163. The Commission found that "[f]or these classes to generate revenues that cover their attributable costs, the products within them must have prices that are reasonable and efficient." Order No. 4258 at 87; Order No. 5337 at 174. However, the Commission explained that because improved cost coverage cannot necessarily occur from rebalancing rates among products in the class, additional rate authority was necessary to improve cost coverage. Order No. 4258 at 84; Order No. 5337 at 164-65. The Commission expected that "[a]n increase in the class-level rate authority for non-compensatory classes will gradually move the prices of non-compensatory products within non-compensatory classes to . . . cost coverage over time, thereby achieving reasonable and efficient rates as envisioned by the PAEA." Order No. 4258 at 87.

While the Commission envisioned that the additional rate authority for non-compensatory classes would be used to improve the cost coverage of the non-compensatory products driving the classes' cost coverage issues, the Commission allowed the Postal Service to retain significant pricing flexibility over the prices in non-compensatory classes. *See* Order No. 5337 at 171, 173. Unlike non-compensatory products in compensatory classes, which are required to have price increases at least 2 percentage points above the class average, the Commission did not impose additional pricing restrictions on non-compensatory products in non-compensatory classes. *See*

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[12] 39 C.F.R. § 3030.221. *See* Order No. 4258 at 77; Order No. 5337 at 156-57; Order No. 5763 at 189.

[13] 39 C.F.R. § 3030.222(a). *See* Order No. 4258 at 84; Order No. 5337 at 165, 168, 174; Order No. 5763 at 190, 197.

39 C.F.R. § 3030.221. Regarding compensatory products in non-compensatory classes, the Commission stated that those products could only have prices increased up to the class average.[14]

In Docket No. R2021-2, the Postal Service used its pricing flexibility to propose a price increase for the non-compensatory BPM Parcels product that was more than 2 percentage points below the class average and the lowest proposed increase for the class. Docket No. R2021-2, Notice at 24. Giving a below average price increase to a non-compensatory product in a non-compensatory class is antithetical to the intent behind the additional rate authority for non-compensatory classes that price increases be targeted toward improving the cost coverage of non-compensatory products. Given the Commission found that the rates for non-compensatory products (regardless of whether they are part of a compensatory or non-compensatory class) are not reasonable, threaten the Postal Service's financial integrity, undermine the Postal Service's financial stability, and contribute to the inability to increase pricing efficiency, the best pricing policies ensure that non-compensatory products are priced above the class average and moved toward compensatory status. *See* Order No. 4257 at 139-42, 233-35, 248.

However, at the present time, giving a non-compensatory product in a non-compensatory class a below class average increase is not barred under the regulations and is within the scope of the pricing flexibility allowed by the system of ratemaking as implemented in Order No. 5763. In addition, the Postal Service represents that the then-pending transfer request for BPM Parcels influenced its pricing decision in Docket No. R2021-2, and now that the transfer request has been denied, the Postal Service is "in a different position in terms of deciding how to address BPM Parcels' cost coverage."

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[14] Order No. 4258 at 85; Order No. 5337 at 165, 173. The Commission noted that at the time it was proposing its regulations no products fit this description as both products in the only non-compensatory class at the time (*i.e.*, Periodicals) were non-compensatory. Order No. 5337 at 153, 165; Order No. 5763 at 181. The Postal Service complied with this with regard to the two compensatory products, BPM Flats and Alaska Bypass Service, in the Package Services class in Docket No. R2021-2. *See* Docket No. R2021-2, Notice at 24; Order No. 5937 at 116.

Motion at 13. The Postal Service implies that it now intends to use its pricing flexibility to price BPM Parcels in a manner that is consistent with the Commission's pricing recommendations. *Id.* at 14.

Given that the Commission allowed the Postal Service pricing flexibility over the pricing of non-compensatory products in non-compensatory classes in Docket No. RM2017-3 and the Postal Service's representations that it intends to use its pricing flexibility to address BPM Parcels' cost coverage, the Commission grants the Motion. The FY 2021 ACD directive requiring that the Postal Service increase BPM Parcels' prices by at least 2 percentage points above the class average in each Market Dominant rate adjustment affecting the Package Services class through the issuance of the FY 2022 ACD is rescinded.

The Commission emphasizes, however, that the pricing of non-compensatory products in non-compensatory classes is an area that it will continue to monitor. The regulations put in place in Docket No. RM2017-3 are still new, and the Commission remains willing to allow the Postal Service the pricing flexibility to independently address the cost coverage of non-compensatory products in non-compensatory classes at this time. However, the Commission may find it appropriate to regulate the pricing of non-compensatory products in non-compensatory classes more stringently when it undertakes its planned 5-year review. *See* Order No. 5763 at 267.

V. ORDERING PARAGRAPHS

It is ordered:

1. The United States Postal Service Motion for Reconsideration of Directive Regarding Bound Printed Matter Parcels, filed April 28, 2022, is granted.

2. The FY 2021 ACD directive requiring that the Postal Service increase BPM Parcels' prices by at least 2 percentage points above the class average in each

Market Dominant rate adjustment affecting the Package Services class through the issuance of the FY 2022 ACD is rescinded.

By the Commission.

Erica A. Barker
Secretary