

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

Before Commissioners:

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

Competitive Product Prices
Priority Mail Express, Priority Mail &
First-Class Package Service Contract 62
(MC2019-139)
Negotiated Service Agreements

Docket No. CP2019-153

ORDER APPROVING AMENDMENT FOUR TO
PRIORITY MAIL EXPRESS, PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE
NEGOTIATED SERVICE AGREEMENT

(Issued May 23, 2023)

I. INTRODUCTION

The Postal Service seeks to amend a Priority Mail Express, Priority Mail & First-Class Package Service negotiated service agreement.¹ For the reasons discussed below, the Commission approves the Amendment.

¹ USPS Notice of Amendment to Priority Mail Express, Priority Mail & First-Class Package Service Contract 62, Filed Under Seal, May 19, 2023 (Notice). The amendment is an attachment to the Notice (Amendment).

II. BACKGROUND

In Order No. 5109, the Commission approved the Priority Mail Express, Priority Mail & First-Class Package Service Contract 62 negotiated service agreement (Existing Agreement).² On May 19, 2023, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement.

The Postal Service intends for the Amendment to become effective 1 business day after the date that the Commission completes its review of the Notice. Notice at 1.

III. 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. §§ 3035.105 and 3035.107. 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).

² See Docket Nos. MC2019-139 and CP2019-153, Order Adding Priority Mail Express, Priority Mail & First-Class Package Service Contract 62 to the Competitive Product List, May 29, 2019 (Order No. 5109). The contract was later amended. See Order Approving Amendment One to Priority Mail Express, Priority Mail & First-Class Package Service Negotiated Service Agreement, November 17, 2022 (Order No. 6332). The contract was amended again. See Order Approving Amendment Two to Priority Mail Express, Priority Mail & First-Class Package Service Negotiated Service Agreement, December 7, 2022 (Order No. 6357); See Order Approving Amendment Three to Priority Mail Express, Priority Mail & First-Class Package Service Negotiated Service Agreement, February 17, 2023 (Order No. 6444).

The Existing Agreement is set to expire May 25, 2023.³ The Amendment revises the expiration date of the contract to June 24, 2023. Notice, Attachment A at 1.

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. § 3035.107.

Timeliness. The Notice is untimely.⁴ Under the guidance previously provided by the Commission, the Notice should have been filed no later than May 17, 2023—7 days before the last day on which the Commission could approve the amendment so that the amendment would take effect prior to the expiration of the contract. See Order No. 5444 at 4-5. Additionally, the Postal Service failed to file the required motion for late acceptance. See Order No. 4866 at 4.

Adherence to the Commission's filing requirements for amending negotiated service agreements is not optional.⁵ The Commission has previously warned that future filings of amendments or modifications that do not comply with the Commission's filing requirements will be denied. See Order No. 6400 at 3.

The Postal Service specified that the delay was a result of the customer's delay in signing the amendment. Notice at 1. This information covers the substantive portion of the missing motion for late acceptance. See Order No. 5444 at 3. Additionally, the Commission is aware that it has not enforced the warning given in Order No. 6400 in

³ See Order No. 5109 at 9 (setting original expiration date as May 30, 2022); Order No. 6332 at 3 (revising expiration date to December 26, 2022); Order No. 6357 at 4 (revising expiration date to February 24, 2023); Order No. 6444 at 4 (revising the expiration date to May 25, 2023).

⁴ See Docket No. CP2017-253, *et al.*, Order Approving Modifications and Providing Guidance Regarding Extending Negotiated Service Agreements, October 30, 2018, at 4 (Order No. 4866) (requiring notices of modification to be filed at least 7 days prior to contract expiration); Docket No. CP2016-185, Order Approving Amendment Three to First-Class Package Service Negotiated Service Agreement, Granting Motion for Temporary Relief, and Providing Guidance, March 3, 2020, at 4-5 (Order No. 5444) (advising that the Commission counts the 7 day advance filing requirement from the earlier of (1) the contract's expiration date; or (2) the last date by which the amendment or modification would need to be approved for the amendment or modification to be effective at extending the contract).

⁵ See Docket No. CP2019-161, Order Approving Amendment Three to Priority Mail Negotiated Service Agreement, January 10, 2023, at 3 (Order No. 6400).

recent dockets.⁶ Thus, the Commission will, *exceptionally*, approve the Amendment. The Commission reiterates that future filings of amendments or modifications that do not comply with the Commission's filing requirements will be denied.

Other considerations. The Postal Service states that the Amendment shall become effective 1 business day after the date that the Commission completes its review. Notice at 1. The Existing Agreement, as amended, is set to expire June 24, 2023. *Id.* Attachment A at 1.

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.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Priority Mail Express, Priority Mail & First-Class Package Service Contract 62 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 24, 2023.

By the Commission.

Erica A. Barker
Secretary

⁶ See Docket No. CP2021-34, Order Approving Amendment Three to Parcel Select Negotiated Service Agreement, March 3, 2023 (Order No. 6450); Docket No. CP2019-158, Order Approving Amendment Five to Priority Mail & First-Class Package Service Negotiated Service Agreement, April 24, 2023 (Order No. 6491).