

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

Before Commissioners:

Dan G. Blair, Chairman;  
Nanci E. Langley, Vice Chairman;  
Mark Acton;  
Ruth Y. Goldway; and  
Tony L. Hammond

Competitive Product Prices  
Parcel Return Service  
Parcel Return Service Contract 1

Docket No. MC2009-1

Competitive Product Prices  
Parcel Return Service Contract 1 (MC2009-1)  
Negotiated Service Agreement

Docket No. CP2009-2

ORDER CONCERNING PARCEL RETURN SERVICE CONTRACT 1  
NEGOTIATED SERVICE AGREEMENT

(Issued November 6, 2008)

The Postal Service seeks to add a new product identified as Parcel Return Service Contract 1 to the Competitive Product List. For the reasons discussed below, the Commission approves the request.

## I. BACKGROUND

On October 15, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Parcel Return Service Contract 1 to the Competitive Product List. The Postal Service asserts that the Parcel Return Service Contract 1 product is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). This request has been assigned Docket No. MC2009-1.<sup>1</sup>

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009-2. The Postal Service represents that the contract fits within the proposed Mail Classification Schedule (MCS) language.

In support of its Request, the Postal Service filed the following materials: (1) a redacted version of the Governors’ Decision authorizing the new product which also includes an analysis of the Parcel Return Service Contract 1;<sup>2</sup> (2) a redacted version of the contract, which among other things, provides that the contract will expire 2 years from the effective date which is proposed to be 1 day after the Commission issues all regulatory approvals;<sup>3</sup> (3) requested changes in the MCS product list;<sup>4</sup> (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;<sup>5</sup> and (5) certification of compliance with 39 U.S.C. 3633(a).<sup>6</sup>

In the Statement of Supporting Justification, Daniel J. Barrett, Acting Manager, Product & Business Development, Ground Shipping Services, asserts that the service

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<sup>1</sup> Request of the United States Postal Service to Add Parcel Return Service Contract to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, October 15, 2008 (Request).

<sup>2</sup> Attachment A to the Request. The analysis that accompanies the Governor’s Decision notes, among other things, that the cost estimates may vary but the risks reviewed and evaluated are limited.

<sup>3</sup> Attachment B to the Request.

<sup>4</sup> Attachment C to the Request.

<sup>5</sup> Attachment D to the Request.

<sup>6</sup> Attachment E to the Request.

to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Request, Attachment D, at 1. W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies, based on the financial analysis provided by the Postal Service, that the contract complies with 39 U.S.C. 3633(a). See *id.*, Attachment E.

The Postal Service filed much of the supporting materials, including the Governors' Decision and the specific Parcel Return Service Contract 1, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. *Id.* at 2.

In Order No. 119, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment. In addition, the Commission posed questions to the Postal Service seeking supplemental information.

## II. COMMENTS

Comments were filed by the Public Representative.<sup>7</sup> No filings were submitted by other interested parties. The Public Representative's comments focus principally on confidentiality and pricing under the contract. Public Representative Comments at 2-4.

The Public Representative states that a sufficient rationale for maintaining the confidentiality of the documents under seal has been provided by the Postal Service. Also, based upon a review of materials filed by the Postal Service in this proceeding, the Public Representative concludes that the contract reduces costs for both parties. *Id.* at 2-3.

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<sup>7</sup> Public Representative Comments in Response to United States Postal Service Request to Add Parcel Return Service Contract to Competitive Product List, October 29, 2008.

The Public Representative notes that the contract is intended to promote new volumes for the Postal Service and provide incentives for the shipper. He concludes, *inter alia*, that the contract should generate sufficient revenue to cover the product's attributable costs, and contribute to the recovery of total institutional costs assigned to competitive products. *Id.* at 4.

### III. COMMISSION ANALYSIS

The Commission's statutory responsibilities in this instance entail assigning Parcel Service Return Contract 1 to either the Market Dominant Product List or the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposals for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

*Product list assignment.* 39 U.S.C. 3642 governs the assignment of new products to the Market Dominant or Competitive Product List. In this case, Parcel Return Service Contract 1 is being proposed by the Postal Service to be added to the Competitive Product List.

The statutory standard that the Commission must consider is whether

the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product must be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those that use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services. Thus, the market precludes the Postal Service from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, at 2-3. The Postal Service also contends that the Postal Service may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* at 2. It further states that the contract partner supports the addition of the contract to the product list to effectuate the negotiated contractual terms. *Id.* at 3. Finally, the Postal Service states that due to the fact that the market for ground shipping services requires a substantial infrastructure to support a national network, only large shippers serve the market under consideration. Accordingly, the Postal Service is unaware of any small business concerns that could offer comparable service for this customer. *Id.*

No commenter opposes the proposed classification of Parcel Return Service Contract 1 as competitive. Having considered the statutory requirements and the support offered by the Postal Service and the public comment, the Commission finds that Parcel Return Service Contract 1 is appropriately classified as a competitive product and should be added to the Competitive Product List.

*Cost considerations.* The Commission has reviewed the contract, the financial analysis provided under seal that accompanies the agreement including the responses to the questions posed in PRC Order No. 119, as well as the comments by the Public Representative. Based on an analysis of the information submitted, the cost accounting methods proposed in Docket No. RM2008-6 are to be used for updating costs for subsequent years of the contract.<sup>8</sup> The analysis of the Commission is included as part of the record of these proceedings in Library Reference PRC-CP2009-2-NP-LR-1.

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<sup>8</sup> In its supplemental filing, the Postal Service indicated its intent to do so. See Response of the United States Postal Service to Commission's Inquiries in Order No. 119, Section IV, October 27, 2008.

Library Reference PRC-CP2009-2-NP-LR-1 is the analysis of the Postal Service data which updates the original data with the supplemental data filed by the Postal Service on October 27, 2008, and provides calculations for revenue per piece for each of the negotiated service agreement's rate categories. The analysis finds that the updated data do not cause financial results to vary significantly.

Based on the data submitted, the Commission finds that Parcel Return Service Contract 1 should cover its attributable costs (39 U.S.C. 3633(a)(2)); should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, a preliminary review of the proposed Parcel Return Service Contract 1 indicates that it comports with the provisions applicable to rates for competitive products.

The Postal Service shall promptly notify the Commission when the contract terminates, but no later than the actual termination date. The Commission will then remove the contract from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Parcel Return Service Contract 1 as a new product. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this Order.

*It is Ordered:*

1. Parcel Return Service Contract 1 (MC2009-1 and CP2009-2) is added to the Competitive Product List as a new product under Negotiated Service Agreement, Domestic.
2. The Postal Service shall notify the Commission of the termination date of the contract as discussed in this Order.

3. The Secretary shall arrange for the publication of this Order in the *Federal Register*.

By the Commission.

Steven W. Williams  
Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE  
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified at 39 CFR Appendix to Subpart A of Part 3020—Mail Classification Schedule. These changes are in response to Docket Nos. MC2009-1 and CP2009-2. The underlined text signifies that the text is new, and shall appear in addition to all other Mail Classification Schedule text.

PART B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

Domestic

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Parcel Return Service Contract 1 (MC2009-1 and CP2009-2)

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