

ORDER NO. 133

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

Market Dominant Product Prices
Bilateral
Negotiated Service Agreement

Docket No. MC2009-7

Market Dominant Product Prices
Canada Post—United States Postal Service
Contractual Bilateral Agreement for Inbound
Market Dominant Services (MC2009-7)]
Negotiated Service Agreement

Docket No. R2009-1

NOTICE AND ORDER CONCERNING BILATERAL AGREEMENT
WITH CANADA POST FOR INBOUND MARKET DOMINANT SERVICES

(Issued November 18, 2008)

I. BACKGROUND

On November 13, 2008, the Postal Service filed a request pursuant to 39 U.S.C. 3622(c)(10) and 3642, and 39 CFR 3010.40 *et seq.* and 3020.30 *et seq.* to add the Canada Post—United States Postal Service Contractual Bilateral Agreement for

Inbound Market Dominant Services (Bilateral Agreement) to the Market Dominant Product List.¹ This Request has been assigned Docket No. MC2009-7.

The Postal Service contemporaneously filed notice that the Governors have authorized a Type 2 rate adjustment to establish rates for inbound market dominant services as reflected in the Bilateral Agreement.² More specifically, the Bilateral Agreement, which has been assigned Docket No. R2009-1, governs the exchange of inbound air and surface letters post (LC/AO) and Xpresspost from Canada.³

The Request includes two attachments. Attachment 1 sets forth proposed Mail Classification Schedule language; Attachment 2 provides a Statement of Supporting Justification as required by 39 CFR 3020.32. In addition, the Postal Service indicates that it filed an unredacted copy of the contract and supporting materials under seal. Request at 2, n.2.

In the Statement of Supporting Justification, Lea Emerson, Executive Director, International Postal Affairs, reviews the factors of section 3622(c) and concludes, *inter alia*, that the revenues generated will cover the attributable costs of the services offered under the Bilateral Agreement; that the rates are preferable to default rates set by the Universal Postal Union; and that the rates represent a modest increase over those reflected in the existing bilateral agreement with Canada Post. Request, Attachment 2, at 2-4.

In its Request, the Postal Service provides information responsive to part 3010, subpart D of the Commission's rules. To that end, it addresses the requirements of section 3622(c)(10) as well as certain details of the negotiated service agreement.

¹ Request of the United States Postal Service to Add Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services to the Market Dominant Product List, Notice of Type 2 Rate Adjustment, and Notice of Filing Agreement (Under Seal), November 13, 2008 (Request).

² Type 2 rate adjustments involve negotiated service agreements. See 39 CFR 3010.5.

³ To elaborate, the Bilateral Agreement covers Letter Post, including letters, flats, packets, containers, and International Registered Mail service ancillary thereto, and Canada Post's Xpresspost, which consists of documents and packages containing merchandise. Request at 3.

Request at 2-7. The Postal Service asserts that the Bilateral Agreement satisfies all applicable statutory criteria. *Id.* at 7-8.

The Postal Service filed much of the supporting materials, financial analysis, and specific Bilateral Agreement under seal. *Id.* at 2, n.2. The Postal Service maintains that the Bilateral Agreement and related financial information should remain under seal, as they contain pricing, cost, and other information that are highly confidential. *Id.* at 2.⁴

The Postal Service has an existing bilateral agreement with Canada Post which is set to expire December 31, 2008. *Id.* at 8. The Bilateral Agreement represents a one-year extension of the existing agreement, with some modifications. It has a planned effective date of January 1, 2009. *Id.* at 3. The Postal Service urges the Commission to act promptly to allow the rates to be implemented under 39 CFR 3010.40. *Id.* at 8.

II. NOTICE OF FILINGS

Pursuant to 39 U.S.C. sections 3622 and 3642, the Commission establishes Docket Nos. MC2009-7 and R2009-1 for consideration of the Request pertaining to the proposed Canada Post-United States Postal Service Contractual Bilateral Agreement product and the related Bilateral Agreement, respectively. In keeping with practice, these dockets are addressed on a consolidated basis for purposes of this Order; however, future filings should be made in the specific docket in which issues being addressed pertain.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3622, 3642, 39 CFR part 3010.40, and 39 CFR 3020 subpart B. Because the Commission is

⁴ The Postal Service indicates that the materials filed under seal constitute a subset of the overarching agreement between the parties. Although unstated, presumably the subset represents the parties' agreement concerning inbound market dominant services. The Postal Service further indicates that the parties anticipate finalizing "this and related agreements by mid-December, and any lingering details will not affect the rates, classification, or other fundamental basis for this Request and Notice." Request at 3, n.4.

addressing these dockets on a consolidated basis, the due dates for comments is December 3 2003. The public portions of these filings can be accessed via the Commission's website (www.prc.gov).

The Commission appoints Paul L. Harrington to serve as Public Representative in these dockets.

It is Ordered:

1. The Commission establishes Docket Nos. MC2009-7 and R2009-1 for consideration of the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
3. Comments by interested persons in these proceedings are due no later than December 3, 2008.
4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Steven W. Williams
Secretary