

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCTS PRICE CHANGES
RATES OF GENERAL APPLICABILITY

Docket No. CP2010-8

**RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO PUBLIC REPRESENTATIVES' COMMENTS**
(November 25, 2009)

On November 23, 2009, the Public Representatives in this proceeding submitted their comments in response to Order No. 333. The Postal Service believes that the Commission would benefit from the Postal Service's views and clarifications regarding certain requests and factual points asserted in those comments. Therefore, the Postal Service respectfully requests that the Commission grant it leave to submit this response to the Public Representatives' comments.

I. Supporting Data Requirements

The Public Representatives complain that the Postal Service's initial filing in this proceeding lacked "necessary information."¹ They note that the Commission subsequently requested additional information from the Postal Service, which the Postal Service provided. From this history, and apparently from the Public Representatives' view that earlier availability of such information would have been preferable to them, the Public Representatives parlay a request that the Commission require still more documentation from the Postal Service in advance of an initial competitive product price filing.

¹ Comments of the Public Representatives (hereinafter "PR Comments"), Docket No. CP2010-8, November 23, 2009, at 3.

The Postal Service respectfully submits that adoption of this proposal would undermine the intent and spirit of the Postal Accountability and Enhancement Act. Although the Commission's powers were expanded to promote transparency and accountability, Congress recognized that the Postal Service should be accorded more independence and flexibility to manage its competitive products and prices in the commercial marketplace. Against the backdrop of comprehensive, documentation-intensive rate cases under the Postal Reorganization Act, Congress established more flexible transparency requirements on the setting of competitive product prices, with the expectation that comprehensive review would come through annual compliance proceedings and periodic reports. With respect to competitive rates and classes of general applicability, such as those at issue in this proceeding, Congress required only that they "be established in writing, complete with a statement of explanation and justification, and the date as of which each such rate or class takes effect;" and that the Governors of the Postal Service cause their rate and class decisions to be published in the *Federal Register* at least 30 days prior to effectiveness.² The statutory provisions on competitive products are notably devoid of any advance accounting or other documentation requirements.

The Commission's current Rules of Practice appropriately incorporate Congress's intended scope of advance regulatory review for competitive rates and classes of general applicability. While the Commission's rules must ensure the maintenance of certain statutory objectives for competitive products,³ Rules 3015.2 and 3015.4 stay within the scope of the formal statutory requirements in 39 U.S.C. §

² 39 U.S.C. § 3632(b)(1), (2).

³ 39 U.S.C. § 3633(a).

3632(b). The Commission's rules also account for the possibility that, upon reviewing the information required by statute in a particular case, additional information might be deemed helpful toward fulfillment of the Commission's responsibilities; in that case, a particular information request may be appropriate.⁴ The Commission's current rules reflect a measured balance between the minimal statutory requirements, which express a preference for Postal Service flexibility in competitive product and price development, and the possible need for information in furtherance of the Commission's statutory role. The Postal Service respectfully urges the Commission to resist the invitation to stray from the course charted by Congress, particularly if that diversion points backward toward the unwieldy history of rate cases under the old law.

II. International Competitive Products

The Public Representatives voice alarm that the Postal Service has supposedly omitted five international competitive products from the instant proceeding, particularly when those products have been identified in the FY2008 Annual Compliance Determination as showing subpar cost coverage.⁵ The Public Representatives appear to be fundamentally mistaken as to the factual nature of these products, as well as in error as to their conclusions.

First, the Postal Service has not proposed price changes in this proceeding for Inbound International Expedited Services 2,⁶ Inbound Air Parcel Post (at UPU Rates),

⁴ 39 C.F.R. § 3015.6.

⁵ PR Comments at 5. These allegations lead the Public Representatives wrongly to conclude that the Governors' certifications as to competitive products' cost coverage are necessarily incorrect as to these international competitive products, and that "at least some of the competitive products whose prices remain unchanged will not cover their attributable costs." *Id.* at 4.

⁶ The Postal Service assumes that the Public Representatives' reference to "Inbound International Expedited Services" is actually intended to signify Inbound International Expedited Services 2. Inbound

and Inbound Surface Parcel Post (at Non-UPU Rates), because these competitive products are *not of general applicability*.⁷ Foreign postal operators are the only entities eligible to tender postal items at these prices, which means that the prices are not available to customers at large. By contrast, this proceeding concerns prices for products of general applicability.

Second, reference to the FY2008 Annual Compliance Determination⁸ does not give any indication as to the cost coverage that might be expected for these products in the coming year. Since the end of FY2008, the Postal Service has submitted new prices for all three of the above-named international products to the Commission (twice in the case of Inbound International Expedited Services 2), along with documentation demonstrating each product's compliance with 39 U.S.C. § 3633(a).⁹ In each case thus far, the Commission has determined that the new prices for each product appear to be in compliance with the applicable requirements. The fourth product identified by the

International Expedited Services 1 is not currently on the competitive products list due to the expiration of the bilateral agreement that had been the sole constituent of that product listing. *But see* Request to Add Inbound International Expedited Services 1 to the Competitive Products List, and Notice of United States Postal Service of Filing China Post Group – United States Postal Service Contractual Bilateral Agreement (Under Seal), PRC Docket Nos. MC2010-13 and CP2010-12, November 20, 2009 (requesting that Inbound International Expedited Services 1 be restored to the competitive products list, and demonstrating that prices therefor are expected to be in compliance with 39 U.S.C. § 3633(a)).

⁷ See PRC Order No. 345, Notice and Order Concerning Adding Inbound Air Parcel Post at UPU Rates to Competitive Products List, MC2010-11 and CP2010-11, November 20, 2009; PRC Order No. 281, Order Concerning Filing of Changes in Rates for Inbound International Expedited Services 2, PRC Docket No. CP2009-57, August 19, 2009; PRC Order No. 162, Order Adding Inbound International Expedited Services 2 to Competitive Products List, PRC Docket Nos. MC2009-10 and CP2009-12, December 31, 2008; PRC Order No. 147, Order Concerning Bilateral Agreement with Canada Post for Inbound Competitive Services, PRC Docket Nos. MC2009-8 and CP2009-9, December 12, 2008. The agreement with Canada Post Corporation at issue in Docket Nos. MC2009-8 and CP2009-9 is the only context in which inbound surface parcels are accepted at negotiated rates, rather than inward land rates set by the Universal Postal Union.

⁸ Notwithstanding the Public Representatives' citation of the "FY 2009 Annual Compliance Determination," it appears that the intended reference is to the Annual Compliance Determination for FY2008, which the Commission issued on March 30, 2009.

⁹ See footnote 7 *supra*.

Public Representatives, Inbound Air Parcel Post at UPU Rates, is currently undergoing Commission review; as explained in its initial filing in that proceeding, however, the prices are projected to comply with statutory requirements, even though the Postal Service does not possess authority over the formulas used to determine those prices.¹⁰ Thus, it is unclear to the Postal Service what further action the Public Representatives believe to be necessary at this time to maintain compliance for Inbound International Expedited Services 2, Inbound Air Parcel Post (at UPU Rates), and Inbound Surface Parcel Post (at Non-UPU Rates).

Third, the Public Representatives' citation of International Priority Airlift (IPA) is outdated and out of context. As of the very FY2008 Annual Compliance Determination that appears to form the Public Representatives' sole reference point, the Commission acknowledged that Postal Service management was "reviewing initiatives to reduce IPA costs. Moreover, published rates for IPA Service were raised 12.5 percent in May 2008, and will increase another 20.8 percent in May 2009."¹¹ In Order No. 190, the Commission found that "the planned IPA prices[, which took effect since the FY2008 Annual Compliance Determination,] appear to satisfy the statutory and regulatory requirements under 39 U.S.C. 3633 and 39 CFR 3015.7."¹² At this time, then, there is simply no evidence to suggest any non-compliance on the part of IPA prices, such that

¹⁰ Request of the United States Postal Service to Add Inbound Air Parcel Post at Universal Postal Union (UPU) Rates to the Competitive Products List, Notice of Establishment of Prices and Classifications Not of General Applicability for Inbound Air Parcel Post at UPU Rates Established in Governors' Decision No. 09-15, and Application for Non-Public Treatment of Materials Filed Under Seal, PRC Docket Nos. MC2010-11 and CP2010-11, November 17, 2009, at 2-3.

¹¹ Annual Compliance Determination, PRC Docket No. ACR2008, March 30, 2009, at 88 (citations omitted).

¹² PRC Order No. 190, Review of Notice Concerning Changes in Rates of General Applicability for Competitive Products, PRC Docket No. CP2009-23, March 12, 2009, at 8-9.

the Postal Service is somehow remiss in determining not to include IPA as part of the instant price change.

Finally, the Public Representatives allude to the cost coverage for International Money Transfer Service (IMTS). In the FY2008 Annual Compliance Determination, the Commission recognized that the Postal Service was in the process of analyzing IMTS “to better estimate volume variable (and product-specific) costs by identifying ‘specific cost drivers’ for this service,” in response to the finding as to cost coverage in FY2008.¹³ Indeed, in the proceeding concerning classification of IMTS, the Postal Service has filed statements from various persons attesting to the ongoing efforts to measure and estimate IMTS costs correctly.¹⁴ In addition, the Commission is currently considering a Postal Service proposal to provide consistency in the treatment of volume-variable costs between domestic and international money orders for window services.¹⁵ Because of the present efforts to understand the actual financial situation for IMTS, the Postal Service has determined that it would be premature to adjust prices for IMTS at this time.

III. Conclusion

The Public Representatives’ criticisms of the Postal Service’s pricing discretion appear to be off-base with respect to the international competitive products they describe. Some are not subject at all to this type of proceeding; most have been the

¹³ Annual Compliance Determination at 88.

¹⁴ Supplemental Response of the United States Postal Service to Order No. 154, PRC Docket No. MC2009-19, July 15, 2009, Attachment A (statement of Virginia Mayes); Request of the United States Postal Service to Add Postal Products to the Mail Classification Schedule in Response to Order No. 154, PRC Docket No. MC2009-19, March 10, 2009, Attachments G (statement of Pranab Shah) and H (statement of Jeff Colvin).

¹⁵ See, e.g., Responses of the United States Postal Service to Chairman’s Information Request No. 1, PRC Docket No. RM2010-4, November 23, 2009, at Proposal Twenty-three, Questions 1-3; Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Proposed Changes in Analytic Principles (Proposals Twenty-two – Twenty-five), PRC Docket No. RM2010-4, October 23, 2009, at Proposal Twenty-three.

subject of price changes since the close of FY2008 that the Commission has found, as an initial matter, to be compliant with Title 39, United States Code. The Postal Service also respectfully urges the Commission to resist the exhortation to take a step backwards toward the resource-intensive days of pre-Postal Accountability and Enhancement Act rate cases, with respect to advance review of competitive products for which Congress so recently expanded the Postal Service's commercial flexibility.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Pricing and Product Support

Elizabeth A. Reed
Jacob D. Howley

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-3179, Fax -6187
Elizabeth.A.Reed@usps.gov
November 25, 2009