

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

COMPETITIVE PRODUCT PRICES
GLOBAL DIRECT CONTRACTS (MC2009-9)
NEGOTIATED SERVICES AGREEMENT

Docket No.
CP2009-29

**COMMENTS OF UNITED STATES POSTAL SERVICE IN RESPONSE TO
ORDER NO. 368
(January 4, 2010)**

On December 18, 2009, the Postal Service filed notice that prices under the Global Direct contract at issue in the above-captioned proceeding will change as contemplated by the contract's terms.¹ The Postal Service explained that the price change fell within the scope of Article 9, paragraph 2, as well as paragraphs 1, 3, and 4, of the contract. Although the Commission has considered price changes pursuant to Article 9, paragraphs 1, 3, and 4 of the instant contract to require only streamlined review, the Postal Service understands price changes pursuant to Article 9, paragraph 2, to remain presumably subject to 39 C.F.R. § 3015.5. Hence, the Postal Service further explained that because Article 9, paragraph 2 of the contract forms part of the basis for this price change, the Postal Service was filing supporting financial documentation and a certified statement as required by 39 C.F.R. § 3015.5.

In its Order No. 368, the Commission advised that

It is unclear . . . whether the planned increase is only the result of "objective, external factors" contemplated by Order No. 216. If the increase is based on other terms of the contract that are not "objective, external factors," *i.e.*, based on Article 9, paragraph 2, of the contract, then

¹ Notice of United States Postal Service of Change in Prices in Accordance with Order No. 216, Docket No. CP2009-29, December 18, 2009.

it must be subject to the usual requirements of a competitive rate change set forth in 39 CFR 3015.5. . . . If the change is based on such factors, Commission review may be unnecessary under the terms of Order No. 216.²

In response to these observations, the Postal Service recognizes that the discussion in its initial Notice may not have been sufficiently clear and submits the following clarification.

The instant price change essentially consists of a direct response to two factors. First, Canada Post's published prices for domestic Lettermail will change on January 11, 2010. Under Article 9, paragraphs 3 and 4 of the contract, the Global Direct contract prices must change accordingly, and in response to certain exchange rate shifts, so that the contract's prices remain higher than Canada Post's domestic Lettermail prices, as expressed in United States Dollars. Because the circumstances appeared to warrant invocation of Article 9, paragraphs 3 and 4, the price change falls in part under these provisions. If there were no further factors at place, the Postal Service believes it would have been clear that the Commission's allowance of streamlined review under Order No. 216 would apply.

However, the price change also incorporated consideration of a change in the amounts paid to Canada Post for delivery of Global Direct items in Canada, as a result of the negotiations concerning the Postal Service's impending bilateral agreement with Canada Post. This is particularly the case starting in 2010, when the amounts paid to Canada Post will transition from negotiated settlement charges to Canada Post's applicable domestic published rates, which Canada Post sets in its sole discretion.

Although the Postal Service respectfully submits that this circumstance is another type

² PRC Order No. 368, Notice and Order Concerning Change in Prices in Accordance with Order No. 216, Docket No. CP2009-29, December 24, 2009, at 2.

of objective, external factor that merits streamlined review, the Postal Service considered that it could also arguably be seen as a change to the costs that the Postal Service incurs in providing Global Direct service under the contract. In the absence of preexisting guidance from the Commission on this matter, therefore, the Postal Service opted to proceed as if this change falls under Article 9, paragraph 2, and requires submission of more formal materials under 39 C.F.R. § 3015.5.

In sum, the Postal Service believes that the changes at issue should qualify as those responsive to objective, external factors. Because the changes could be seen as discretionary, cost-based changes, however, and because the question had not yet been presented to the Commission, it was considered advisable to submit a full filing under 39 C.F.R. § 3015.5. Due to changes in the nature of charges the Postal Service will pay Canada Post for this service, the Postal Service further believes that future such price changes will more clearly qualify for streamlined review. To this end, the Postal Service notes that it intends to include clarifying language in future contracts, as it has done in the contracts at issue in Docket Nos. CP2010-18 and CP2010-19.³

³ Notice of the United States Postal Service of Filing Functionally Equivalent Global Direct Contracts Negotiated Service Agreement, and Request to Add Global Direct Contracts 1 to the Competitive Products List, Docket Nos. MC2010-17 and CP2010-18, December 23, 2009, at 5 & Att. 1, art. 9(2); Notice of the United States Postal Service of Filing Functionally Equivalent Global Direct Contracts 1 Negotiated Service Agreement, Docket No. CP2010-19, December 23, 2009, at Att. 1, art. 9(2).

Respectfully submitted,

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January 4, 2010