

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

Before Commissioners:

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

Competitive Product Prices
Express Mail
Express Mail Contract 8

Docket No. MC2010-16

Competitive Product Prices
Express Mail Contract 8 (MC2010-16)
Negotiated Service Agreement

Docket No. CP2010-16

ORDER CONCERNING EXPRESS MAIL CONTRACT 8
NEGOTIATED SERVICE AGREEMENT

(Issued January 4, 2010)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Express Mail Contract 8 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

II. BACKGROUND

Pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Express Mail Contract 8

to the Competitive Product List.¹ The Postal Service asserts that Express Mail Contract 8 is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). The Postal Service states that prices and classification underlying this contract are supported by Governors’ Decision No. 09-14 in Docket Nos. MC2010-5 and CP2010-5. *Id.* at 1. The Request has been assigned Docket No. MC2010-16.

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. CP2010-16.

In support of its Request, the Postal Service filed the following materials: (1) a redacted version of the Governors’ Decision, originally filed in Docket Nos. MC2010-5 and CP2010-5, authorizing certain Express Mail contracts, and Certification of Governors’ Vote;² (2) a redacted version of the contract, and Certification of Governors’ Vote;³ (3) a requested change in the Competitive Product List;⁴ (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;⁵ (5) a certification of compliance with 39 U.S.C. 3633(a);⁶ and (6) an application for non-public treatment of the materials filed under seal.⁷

In the Statement of Supporting Justification, Susan M. Plonkey, Vice President, Sales, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service’s total institutional costs. *Id.*, Attachment D. Thus, Ms. Plotkey contends there will be no issue of

¹ Request of the United States Postal Service to Add Express Mail Contract 8 to Competitive Product List and Notice of Filing (Under Seal) of Supporting Data, December 11, 2009 (Request).

² Attachment A to the Request, reflecting Governors’ Decision No. 09-14, October 26, 2009.

³ Attachment B to the Request.

⁴ Attachment C to the Request.

⁵ Attachment D to the Request.

⁶ Attachment E to the Request.

⁷ Attachment F to the Request.

subsidization of competitive products by market dominant products as a result of this contract. *Id.*

Express Mail Contract 8 is included with the Request. The contract was entered into on May 28, 2009, and will become effective as a Negotiated Service Agreement January 4, 2010. The contract provides that the Postal Service may not increase rates until after May 27, 2010. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *See id.*, Attachment D.

In its Request, the Postal Service maintains that the supporting financial information, including the analyses that provide prices, terms, conditions, cost data, and financial projections should remain under seal. *Id.*, Attachment F.

In Order No. 359, the Commission gave notice of the two dockets, requested supplemental information, appointed a public representative, and provided the public with an opportunity to comment.⁸ On December 18, 2009, the Postal Service provided its response to the Commission's request for supplemental information.⁹ On December 23, 2009, Chairman's Information Request No. 1 was issued for response by the Postal Service by December 28, 2009.¹⁰ The Postal Service filed its response on December 28, 2009.¹¹

III. COMMENTS

Comments were filed by the Public Representatives.¹² No comments were submitted by other interested parties. The Public Representatives state that the Postal

⁸ Notice and Order Concerning Express Mail Contract 8 Negotiated Service Agreement, December 15, 2009 (Order No. 359).

⁹ Supplemental Information Provided by the United States Postal Service in Response to Order No. 359, December 18, 2009.

¹⁰ Chairman's Information Request No. 1, December 23, 2009 (CHIR No. 1).

¹¹ Responses of the United States Postal Service to Chairman's Information Request No. 1, December 28, 2009.

¹² Comments of Public Representatives in Response to PRC Order No. 359, December 23, 2009.

Service's filing meets the pertinent provisions of title 39 and the relevant Commission rules. *Id.* at 3. The Public Representatives also believe that the Postal Service has provided appropriate justification for maintaining confidentiality in this case. *Id.* However, the Public Representatives assert that the Postal Service should have filed the instant contract with the Commission when it was executed in May of 2009. *Id.* at 4. As a result, the Public Representatives ask the Commission to "direct the Postal Service to file all existing Express Mail contracts which have not been previously filed." *Id.* The Public Representatives also request that the Commission encourage the Postal Service to submit all materials referenced in the relevant enabling Governors' Decision. *Id.* at 4-5.

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the contract, the financial analysis provided under seal that accompanies it, responses to CHIR No. 1, and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Express Mail Contract 8 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal 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. In determining whether to assign Express Mail Contract 8 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider 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 will be categorized as market dominant. The competitive category of products consists 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 who 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 precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, ¶ (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.*, ¶ (g). Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.*, ¶ (h).

No commenter opposes the proposed classification of Express Mail Contract 8 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Express Mail Contract 8 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service presents a financial analysis showing that Express Mail Contract 8 results in cost savings while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products.

Based on the data submitted, the Commission finds that Express Mail Contract 8 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, an initial review of proposed Express Mail Contract 8 indicates that it comports with the provisions applicable to rates for competitive products.

Other considerations. The Commission agrees with the Public Representatives that the instant contract could have been filed with the Commission for approval at a much earlier date. The Commission also shares the Public Representatives' concern that other, similar contracts might exist. Accordingly, the Commission directs the Postal Service to file, by January 15, 2010, any outstanding Express Mail contract that may be categorized as a negotiated service agreement because its prices are not subject to change with the general competitive rate increase scheduled to take effect January 4, 2010.

In conclusion, the Commission approves Express Mail Contract 8 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.

V. ORDERING PARAGRAPHS

It is Ordered:

1. Express Mail Contract 8 (MC2010-16 and CP2010-16) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.
2. The Commission directs the Postal Service to file, by January 15, 2010, any outstanding Express Mail contract that may be categorized as having competitive rates not of general applicability because its prices are not subject to change with the general competitive rate increase scheduled to take effect January 4, 2010.
3. The Postal Service shall notify the Commission if termination occurs prior to the scheduled termination date.
4. The Secretary shall arrange for the publication of this Order in the *Federal Register*.

By the Commission.

Shoshana M. Grove
Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified at 39 CFR Appendix A to Subpart A of Part 3020—Mail Classification Schedule. These changes are in response to Docket Nos. MC2010-16 and CP2010-16. The Commission uses two main conventions when making changes to the product lists. The addition of text is indicated by underscoring. Deleted text is indicated by a strikethrough.

Part B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

Domestic

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Express Mail Contract 8 (MC2010-16 and CP2010-16)

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