

ORDER NO. 384

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
Global Plus 2 Contracts (MC2008-7, CP2009-48
and CP2009-49)
Negotiated Service Agreement

Docket No. CP2009-48

ORDER CONCERNING CHANGE IN PRICES
IN ACCORDANCE WITH ORDER NO. 216

(Issued January 8, 2010)

I. INTRODUCTION

The Postal Service proposes a rate change for a Global Plus 2 contract as contemplated by the terms of the contract. For the reasons discussed below, the Commission approves the proposed change, but finds that it is not entirely “objective and external” and therefore reviews it pursuant to 39 U.S.C. 3633, 39 CFR 3015.5, and 39 CFR 3015.7.

II. BACKGROUND

On December 21, 2009, the Postal Service filed a notice of a change in prices in accordance with PRC Order No. 216.¹ The Notice includes three attachments: (1) a redacted version of the letter to the customer with the amended prices (Attachment 1); (2) a certified statement of compliance with 39 U.S.C. 3633(a) (Attachment 2); and (3) an application for non-public treatment for the material filed under seal (Attachment 3).

In Order No. 216, the Commission determined that certain costs for these types of contracts are determined by “objective, external events, which essentially remove the price changes from the Postal Service’s discretion.”² Order No. 216 defined these objective, external factors as exchange rate fluctuations, and changes in the rates Canada Post Corporation charges domestically (and are passed on to the Postal Service). *Id.* at 7. For rate changes based on such objective, external factors, the Commission allowed for streamlined review and only required that the Postal Service file a notice of such changes with the Commission.

On December 24, 2009, the Commission issued Order No. 370, which noticed the proposed change, appointed a Public Representative, and provided the public with an opportunity to comment on whether this proposed change is based on objective, external factors as contemplated in Order No. 216.³ Order No. 370 noted that the Postal Service’s filing was not clear as to whether the rate change was based on objective, external factors. *Id.* at 2. Order No. 370 indicated if the rate change was based on such factors, review by the Commission may be unnecessary by the terms of Order No. 216. *Id.*

¹ Notice of United States Postal Service of Change in Prices in Accordance with Order No. 216, December 21, 2009 (Notice).

² Order Concerning Filing of Additional Global Direct Contracts Negotiated Service Agreement, May 15, 2009 (Order No. 216).

³ Notice and Order Concerning Change in Prices in Accordance with Order No. 216, December 24, 2009 (Order No. 370).

III. COMMENTS

Comments were filed by the Public Representative⁴ and the Postal Service.⁵ No other interested persons submitted comments. The Public Representative acknowledges the need for some flexibility in pricing under competitive contracts due to the unique challenges of currency fluctuations, union regulations, and different mail classifications. Public Representative Comments at 2. However, the Public Representative encourages the Commission to undertake review pursuant to 39 CFR 3015.5 to ensure that competitive products comport with the law. *Id.* The Public Representative notes that the underlying agreement, including its price contingency clause being exercised in this proceeding, was already reviewed and approved by the Commission. *Id.* The Public Representative also acknowledges that the contract and rate change at issue comport with title 39 notwithstanding the scope of the Commission's review. *Id.* at 3.

The Postal Service comments that the proposed change is based on two underlying factors. First, the Postal Service comments that the change is based on an underlying Canada Post change in its published rates for domestic Lettermail. Postal Service Comments at 2. Second, the Postal Service asserts that the change is based on a change in the bilateral agreement between Canada Post and the Postal Service which provides that, for these contracts, the Postal Service will pay domestic postage rather than settlement charges. *Id.* The Postal Service maintains that the change in the bilateral agreement that results in a change in the rate is an "objective, external" impetus as described in Order No. 216. *Id.* at 3. The Postal Service acknowledges, however, that the change could be seen as a "change to the costs that the Postal Service incurs in providing Global Direct service under the contract." *Id.*

⁴ Public Representative Comments in Response to United States Postal Service Notice of Change in Prices in Accordance with Order No. 216, January 7, 2010 (Public Representative Comments). The Public Representative's motion for late acceptance of these comments, filed contemporaneously with the comments, is accepted.

⁵ Comments of United States Postal Service in Response to Order No. 370, January 4, 2010 (Postal Service Comments).

IV. COMMISSION ANALYSIS

The Commission reviewed the comments, the letter sent to the customer explaining the new rates, the underlying contract, and the supporting financial documentation. For the reasons discussed below, the Commission finds that the basis for the proposed rate change goes beyond the “objective, external” factors discussed in Order No. 216, and is subject to review pursuant to 39 U.S.C. 3633, 39 CFR 3015.5, and 39 CFR 3015.7. However, the Commission agrees with the Public Representative and finds that the changed rate complies with the applicable laws and regulations.

Basis for the rate change. The Commission finds that the basis for the rate change is twofold. First, the Commission finds that the rate change is based on a rate adjustment by Canada Post for its domestic Lettermail. The Commission agrees with the Postal Service that without more, such a change would be based entirely on “objective, external” factors and require no further review. Second, however, the Commission finds the rate change is based, in part, by a change in a bilateral agreement between the Postal Service and Canada Post that affects the rate paid by the Postal Service to Canada Post under this contract.

Because the rate adjustment is based in part on an agreement negotiated by the Postal Service, it is a Postal Service cost and is neither entirely objective nor external. The Postal Service negotiates the bilateral agreement and may exert influence over the terms and prices in that agreement. To label the bilateral agreement as an external and objective factor, and not a Postal Service cost, would be tantamount to labeling negotiated agreements with any of the Postal Service transportation providers as “objective and external” to Postal Service costs.

The Commission, therefore, reviews the proposed price change for compliance with 39 U.S.C. 3633, 39 CFR 3015.5, and 39 CFR 3015.7.

Cost considerations. The Commission reviews competitive products to ensure that they meet the applicable requirements of rules 3015.5 and 3015.7 and 39 U.S.C. 3633. The Commission has reviewed the financial analysis provided under seal that accompanies the customer letter as well as the comments filed in this proceeding.

Based on the information provided, the Commission finds that the updated prices should cover the contract's 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 the competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, a preliminary review of the proposed price change indicates that it comports with the provisions applicable to rates for competitive products.

It is Ordered:

Based on the record developed in Docket No. CP2009-48, the Commission finds that the proposed change comports with the provisions applicable to rates for competitive products.

By the Commission.

Shoshana M. Grove
Secretary