

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

NOTICE OF PRICE ADJUSTMENT

Docket No. R2011-2

NOTICE OF THE UNITED STATES POSTAL SERVICE
OF FILING OF USPS-R2011-2/NP1
(February 9, 2011)

The Postal Service hereby gives notice of filing of the material indicated below as part of the **Non-Public Annex** in this proceeding:

USPS-R2011-2/NP1 Nonpublic Material Provided in Response to
Chairman's Information Request No. 1,
Question 14

As indicated, this material relates to requests for information posed on February 2, 2011, in Chairman's Information Request No. 1, Question 14. The requested materials include commercially sensitive information regarding International mail products, and accordingly are submitted as part of the nonpublic annex in this proceeding. Attached to this notice is an application for non-public treatment of those materials.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney:

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APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. § 3007.21, the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed with the Commission in this docket. The materials pertain to the inbound international mail volumes, weights, and rates responsive to Question 14 of Chairman's Information Request (CHIR) No. 1. The responsive information is being filed separately under seal with the Commission. The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

The materials designated as non-public consist of information of a commercial nature that would not be publicly disclosed under good business practice. In the Postal Service's view, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4).¹ Because the portions of the materials that the Postal Service is applying to file only under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its

¹ In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

(2) Identification, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

In this case, the Postal Service believes that third parties with a proprietary interest in the materials are foreign postal operators tendering international letter post mail to the United States. In view of the practical difficulties, the Postal Service has not undertaken to inform all affected postal operators about the nature and scope of this filing and about the ability to address any confidentiality concerns directly with the Commission as provided in 39 C.F.R. § 3007.20(b). To the extent that the Postal Service's filing in the absence of actual notice might be construed as beyond the scope of the Commission's rules, the Postal Service respectfully requests a waiver that would allow it to forgo providing a notice to each postal operator. It is impractical to communicate with dozens of operators in multiple languages about this matter.²

For the same reasons, the Postal Service proposes that a designated Postal Service employee serve as the point of contact for any notices to the relevant postal operators. The Postal Service identifies as an appropriate contact person Ms. Lea Emerson, Executive Director, International Postal Affairs.

² The Postal Service acknowledges that 39 C.F.R. § 3007.21(c)(2) appears to contemplate only situations where a third party's identification is "sensitive" as permitting the designation of a Postal Service employee who shall act as an intermediary for notice purposes. To the extent that the Postal Service's filing might be construed as beyond the scope of the Commission's rules, the Postal Service respectfully requests a waiver to designate a Postal Service employee as the contact person under these circumstances, for the reasons provided in the text above.

Ms. Emerson's phone number is (202) 268-2574 and her email address is

lea.emerson@usps.gov.

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

In response to Question 14 of CHIR No. 1, the Postal Service furnished responsive information, to include country-specific information on volumes, revenues, and terminal dues rates. The text of the response contains terminal dues rates for inbound letter post mail for two countries. An accompanying Excel file contains country-specific weights and volumes. These materials were filed under seal. The Postal Service maintains that the withheld information should remain confidential.

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

If the information that the Postal Service determined to be protected from disclosure due to its commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. Information about inbound volumes, weights, and terminal dues rates is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices. Foreign postal operators could use the information to their advantage in negotiating the terms of their own arrangements with the Postal Service. Competitors or other foreign postal operators could also use the information to assess market potential, costs, and country-specific mail characteristics, to the detriment of both the Postal Service and foreign postal operators.

(5) At least one specific hypothetical, illustrative example of each alleged harm;

Harm: Public disclosure of the terminal dues prices provided in the response to the CHIR would provide foreign postal operators or other potential customers extraordinary negotiating power to extract lower rates from the Postal Service.

Hypothetical: The inbound terminal dues rates in the response to CHIR No. 1, Question 14, are disclosed publicly on the Postal Regulatory Commission's website. Another postal operator sees the prices and determines the mail characteristics of the country specific flow, thereby providing intelligence that could provide leverage in terminal dues negotiations. Such information could also reveal the average mail characteristics for the flow, and in turn whether it is ripe for competitive entry based on factors such as weight.

Harm: Public disclosure of volume and revenue information could be used detrimentally by the competitors of both the Postal Service and the tendering postal operators.

Hypothetical: A competing international delivery service obtains a copy of the unredacted version of country-specific volumes and revenues responsive to CHIR Question 14 from the Postal Regulatory Commission's website. The competitor analyzes the quantitative data to assess each country-specific market for inbound mail to the United States. Specifically, the competitor uses the information to assess opportunities for competition against designated postal operators exchanging mail with the Postal Service. The information on terminal dues rates paid by any given foreign postal operator also could serve as a

baseline to compete directly with designated postal operators in particular cross-border markets, for the competitive portion of the letter post market.

(6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant market for international delivery products (including both private sector integrators and foreign postal operators), as well as their consultants and attorneys.

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

(8) Any other factors or reasons relevant to support the application.

None.

Conclusion

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.