

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

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman;
Nanci E. Langley; and
Robert G. Taub

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators
Australian Postal Corporation–United States Postal Service
Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2012-2

NOTICE AND ORDER CONCERNING RATE ADJUSTMENT
FOR BILATERAL AGREEMENT WITH AUSTRALIAN POSTAL CORPORATION
AND FUNCTIONALLY EQUIVALENT NEGOTIATED SERVICE AGREEMENT

(Issued October 20, 2011)

I. INTRODUCTION

On October 14, 2011, the Postal Service filed a notice, pursuant to 39 CFR 3010.40 *et seq.*, that it has entered into a bilateral agreement with Australian Postal Corporation (Australian Post), which it seeks to include in the Inbound Market Dominant

Multi-Service Agreements with Foreign Postal Operators 1 product.¹ The Australian Post Agreement establishes new rates for inbound letter post items in place of default Universal Postal Union rates, as well as an ancillary service for delivery confirmation scanning for inbound letter post small packets. The Postal Service contends that the instant Agreement is functionally equivalent to several agreements included within the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product. Notice at 7-8.

In support of its Notice, the Postal Service filed two attachments as follows:

- Attachment 1—an application for non-public treatment of materials to maintain redacted portions of the agreement and supporting documents under seal; and
- Attachment 2—a redacted copy of the Australian Post Agreement.

The Postal Service also provided a redacted version of the supporting financial documentation as a separate Excel file.

Australian Post Agreement. The Postal Service filed the instant Agreement pursuant to 39 CFR 3010.40 *et seq.* The Postal Service states that the proposed inbound market dominant rates are intended to become effective on January 1, 2012. *Id.* at 2. The Australian Post Agreement provides that it becomes effective after all regulatory approvals have been received, mutual notification of such approvals, and mutual agreement on an effective date. *Id.* Attachment 2 at 1. The Agreement, however, may be terminated by either party on no less than 30 days' written notice. *Id.* at 3. The Postal Service and Australian Post, the postal operator for Australia, are parties to the Agreement. The portions of the Agreement at issue in this docket cover

¹ Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, October 14, 2011 (Notice); see *also* Docket Nos. MC2010-35, R2010-5 and R2010-6, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010 (Order No. 549).

inbound letter post in the form of Letters, Flats, Small Packets, Registered Mail, and Small Packets with Delivery Scanning. *Id.* at 9.²

Requirements under part 3010. The Postal Service states that the financial performance of the Australian Post Agreement is provided in the Excel file included with the filing. Notice at 1-2. It contends that improvements should enhance mail efficiency and other functions for letter post items under the Agreement. *Id.* at 4.

The Postal Service asserts that the instant Agreement should not cause unreasonable harm in the marketplace since it is unaware of any significant competition in this market. *Id.* at 4-5.

Under 39 CFR 3010.43, the Postal Service is required to submit a data collection plan. The Postal Service indicates that it intends to report information on this Agreement through its Annual Compliance Report. While indicating its willingness to provide information on mailflows within the annual compliance review process, the Postal Service proposes no special data collection plan for this Agreement. With respect to performance measurement, it requests that the Commission exempt this Agreement from separate reporting requirements under 39 CFR 3055.3 and establish a standing exemption to performance reporting requirements for all contracts added to the product Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators. *Id.* at 6, 10.

The Postal Service advances reasons why the Agreement is functionally equivalent to previously filed agreements.³ It asserts that the instant Agreement fits within the Mail Classification Schedule language for the Inbound Multi-Service Agreements with the Foreign Postal Operators 1 product. Additionally, it states

² Notice at 5-6. The Agreement also covers competitive products such as M-Bags, parcels, and Express Mail. See Docket No. CP2012-1, Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator, October 17, 2011.

³ *Id.* at 7-9. It cites the following orders: Order No. 549; Docket No. R2011-4, Order No. 700, Order Approving Rate Adjustment for HongKong Post–United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, March 18, 2011; Docket No. R2011-7, Order No. 871, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, September 23, 2011. See *id.* at 1 n.1.

that the Australian Post Agreement includes similar terms and conditions, *e.g.*, is with a foreign postal operator, conforms to a common description, and relates to rates for letter post tendered from the postal operator's territory. Notice at 8.

The Postal Service identifies a specific term, Article 22, which refers to the duration of the Agreement, that distinguishes the instant Agreement from the existing China Post Agreement (Docket No. R2010-6). This distinction is the duration that the Agreement will be in effect. *Id.* at 8-9. The Postal Service contends that the instant Agreement is nonetheless functionally equivalent to existing agreements. *Id.* at 9.

In its Notice, the Postal Service maintains that certain portions of the agreement, prices, and related financial information should remain under seal. *Id.* at 10; *id.* Attachment 1.

The Postal Service concludes that the Australian Post Agreement should be added as a functionally equivalent agreement under the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. Notice at 10.

II. NOTICE OF FILINGS

Interested persons may submit comments on whether the Postal Service's filing in the captioned docket is consistent with the policies of 39 U.S.C. 3622 and 39 CFR part 3010.40. Under rule 3010.44(a)(5), comments on the Postal Service's filing would be due October 24, 2011, 10 days after the filing of the Postal Service's Notice. Recognizing that rates under the instant Agreement are scheduled to become effective January 1, 2012, the Commission will establish October 27, 2011 as the due date for comments. The public portions of these filings can be accessed via the Commission's website (<http://www.prc.gov>).

The Commission appoints James F. Callow to serve as Public Representative in this docket.

III. ORDERING PARAGRAPHS

It is ordered:

1. The Commission establishes Docket No. R2012-2 to consider matters raised by the Postal Service's Notice.
2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments by interested persons in this proceeding are due no later than October 27, 2011.
4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Shoshana M. Grove
Secretary