

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

Competitive Product Prices
Inbound Competitive Multi-Service Agreements
with Foreign Postal Operators
Canada Post Corporation–United States Postal Service
Bilateral Agreement (MC2010-34)
Negotiated Service Agreement

Docket No. CP2012-4

NOTICE AND ORDER CONCERNING
BILATERAL AGREEMENT WITH CANADA POST CORPORATION
NEGOTIATED SERVICE AGREEMENT

(Issued December 19, 2011)

I. INTRODUCTION

On December 9, 2011, the Postal Service filed notice, pursuant to 39 CFR 3015.5 and Order No. 546, informing the Commission that it has entered into a bilateral agreement with Canada Post Corporation (Canada Post 2012 Agreement or Agreement) and seeks to include the Agreement within the Inbound Competitive

Multi-Service Agreement with a Foreign Postal Operators 1 product.¹ The Notice concerns only the inbound portion of the Agreement; specifically, inbound Expedited Parcels USA and EMS for delivery in the United States. *Id.* at 4.

Attachments to the Notice include:

- Attachment 1—a redacted copy of the 2012-2013 bilateral agreement with Canada Post and supporting documents;
- Attachment 2—the certified statement, required under Commission rules, attesting to the accuracy of supporting data and explaining why, after the change, competitive products in total will be in compliance with 39 U.S.C. 3633(a)(1) and (3);²
- Attachment 3—the certification of the Governors’ vote in Governors’ Decision No. 10-3; and
- Attachment 4—an application for non-public treatment of certain materials.

The Postal Service also provided a redacted copy of the Agreement and supporting financial documentation as an Excel file. *Id.* at 3.

Parent product. In Order No. 546, the Commission approved the Inbound Competitive Multi-Service Agreements with Foreign Operators 1 product and included the TNT Agreement within the product at that time. It also acknowledged that the Postal Service proposed adding other functionally equivalent agreements as price categories within this product.³ The Commission, pursuant to the proposed approach,

¹ Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator, December 9, 2011 (Notice).

² Commission rule 3015.5(c)(2) addresses the required certification. Section 3633(a)(1) includes a prohibition against the subsidization of competitive products by market dominant products. Section 3633(a)(3) includes the requirement that all competitive products collectively cover what the Commission determines to be an appropriate share of the institutional costs of the Postal Service.

³ “TNT Agreement” refers to Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement). See Order No. 546.

subsequently found it appropriate to include several other bilateral agreements within the parent product.⁴

Canada Post 2012 Agreement. The Postal Service and Canada Post, the postal operator, are parties to the Agreement. The Agreement is to deliver inbound Expedited Parcels USA and EMS in the United States. The effective date of the rates for the items included in the Agreement is January 1, 2012. Notice at 4. The rates are to remain in effect for two years after the effective date, unless terminated sooner. *Id.*

Functional equivalency. The Postal Service asserts that the inbound portion of the Canada Post Agreement is substantially similar to the inbound portion of the TNT and Australia Post Agreement in terms of the products being offered under the contract and the contract's cost characteristics. *Id.* at 5. It claims that like those agreements, the Canada Post Agreement fits within the parameters outlined by Governors' Decision No. 10-3, which establishes the rates for Inbound Competitive Multi-Service Agreements with Foreign Operators. *Id.* It also identifies some differences, but says most are immaterial to the Commission's functional equivalency analysis. The differences include more detailed provisions concerning the consequences of early termination and the processes to be used to protect Canada Post's confidential information when filed in regulatory or other proceedings in the United States. *Id.* The Postal Service says it is possible that the more detailed information could have an impact on the cost characteristics of this Agreement in comparison to others in the product grouping, but asserts the difference would be a positive one because the more detailed termination clause eliminates substantial risks concerning the rates following termination that would otherwise apply. *Id.* at 5-6. It also says the more detailed provision concerning procedures to be followed in the event of certain regulatory filings does not affect either the market or cost characteristics of the Agreement. *Id.*

⁴ The China Post Agreement was added in Order No. 859 (Docket No. CP2011-68). The Norway Post Agreement was added in Order No. 840 (Docket No. CP2011-69). The Australia Post Agreement was added in Order No. 956 (Docket No. CP2012-1).

Relevant cost and market characteristics. The Postal Service asserts that because the Canada Post 2012 Agreement and the Australia and TNT Post Agreements incorporate the same cost attributes and methodology, the relevant cost and market characteristics are similar, if not the same, for the Canada Post 2012 Agreement and the TNT and Australia Post Agreements. *Id.* at 6. The Postal Service says it does not consider that the specified differences affect either the fundamental service the Postal Service is offering or the fundamental structure of the agreements. It claims that nothing detracts from the conclusion that these agreements are functionally equivalent in all pertinent respects. *Id.*

Postal Service's position. The Postal Service therefore maintains, based on the reasons discussed in the Notice and as demonstrated by the financial data filed under seal, it has established that the Canada Post 2012 Agreement is in compliance with the requirements of 39 U.S.C. 3633 and is functionally equivalent to the TNT and Australia Post Agreements within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product. *Id.*

The Agreement's status as a "draft." The text of the Agreement is marked "Draft" because the parties continue to exchange drafts concerning the exact wording of the terms and conditions. *Id.* at 1 n.2. The Postal Service does not expect any substantive changes to the rates, the operational terms, or the financial liability provisions of the Agreement because those negotiations have been successfully concluded. *Id.* It anticipates filing a final signed version of the Agreement with the Commission and the Department of State prior to December 31, 2011. *Id.*

The Commission considers the draft version acceptable for purposes of issuing notice of the Postal Service's filing; however, it cannot base its final order in this proceeding on the draft version. To avoid delay in issuance of the final order, the Commission urges the Postal Service to file the final executed Agreement as soon as possible. At that time, the Postal Service should identify all changes between the draft version and the Agreement as executed.

II. ADDITIONAL MATTERS

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. 3632 and 3633 and 39 CFR part 3015. Comments are due no later than December 27, 2011.

The public portions of the Postal Service filing 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. CP2012-4 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.
3. Comments by interested persons in this proceeding are due no later than December 27, 2011 .
4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Shoshana M. Grove
Secretary