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POSTAL REGULATORY COMMISSION
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Competitive Product Prices — Docket No. MC2013-21
First-Class Package Service
First-Class Package Service Contract 31

Competitive Product Prices — Docket No. CP2013-29
First-Class Package Service Contract 31 (MC2013-21)
Negotiated Service Agreement

PUBLIC REPRESENTATIVE COMMENTS ON POSTAL SERVICE REQUEST TO ADD FIRST-CLASS PACKAGE SERVICE CONTRACT 31 TO COMPETITIVE PRODUCT LIST

(December 21, 2012)

The Public Representative hereby provides comments pursuant to Order No. 1583.[1] In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add First-Class Package Service Contract 31 to the competitive product list.[2] The Postal Service's Request includes a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. § 3633(a), and a copy of Governor's Decision No. 11-6. The Postal Service also filed (under seal) a contract related to the proposed new product, and supporting financial data.

According to the Postal Service, First-Class Package Service Contract 31 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. The Postal Service also maintains that the prices and

[1] PRC Order No. 1583, Notice and Order Concerning Addition of First-Class Package Service Contract 31 to the Competitive Product List, December 18, 2012.
[2] Request of the United States Postal Service to Add First-Class Package Service Contract 31 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 17, 2012 (Request).

classification underlying the instant contract are supported by Governors' Decision No. 11-6.[3] The Postal Service further asserts that the Statement of Supporting Justification provides support for adding First-Class Package Service Contract 31 to the competitive product list and the compliance of the instant contract with 39 U.S.C. § 3633(a). Request at 2.

The instant contract's effective date is the day on which the Commission issues all necessary regulatory approvals. *Id.*, Attachment B at 2. The contract is scheduled to expire 3 years from the effective date unless either party terminates the contract on 30 days' prior written notification. *Id.*

COMMENTS

The Public Representative has reviewed the instant contract, the Statement of Supporting Justification, and the financial data and model filed under seal that accompanies the Postal Service's Request. Based upon that review, the Public Representative concludes that First-Class Package Service Contract 31 should be categorized as a competitive product and added to the competitive product list. In addition, it appears that the instant contract in its first year should generate sufficient revenues to cover costs and thereby satisfy the requirements of 39 U.S.C. § 3633(a).

Product List Assignment. Pursuant to 39 U.S.C. § 3642, the Postal Service requests that First-Class Package Service Contract 31 be added to the competitive product list. 39 U.S.C. § 3642 requires the Commission to 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). Products over which the Postal Service exercises such power are categorized as market dominant while all others are categorized as competitive.

[3] Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors' Decision No.11-6).

The Postal Service makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment D. These assertions appear reasonable. Based upon these assertions, the Public Representative concludes that the Postal Service's Request to add the First-Class Package Service Contract 31 to the competitive product list is appropriate.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service's competitive prices must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial model filed under seal with the Postal Service's Request, it appears the negotiated prices in the instant contract should generate sufficient revenues to cover costs during its first year.

The instant contract is expected to remain in effect for a period of three years. The Postal Service provides no data to demonstrate that the instant contract will comply with the requirements of 39 U.S.C. § 3633(a) during the three-year period of the contract. In fact, the contract vaguely references potential price increases. The contract would have been more transparent and benefited all parties reviewing it, if the Postal Service had clearly identified a price escalation clause, for years 2 and 3. As written, the contract has a passing reference to Commercial Plus prices when the contract refers to the customer's method of payment exception. Request, Attachment B section I, part C. Therefore, the Public Representative recommends that the Postal Service clearly identify price escalation clauses in future contracts.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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