

ORDER NO. 1610

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

Before Commissioners:

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

Market Dominant Product Prices
Bilateral Agreement between United States Postal
Service and Singapore Post Limited as (MC2010-35)
Negotiated Service Agreement

Docket No. R2013-5

ORDER APPROVING AN ADDITIONAL INBOUND MARKET DOMINANT
MULTI-SERVICE AGREEMENT WITH FOREIGN POSTAL OPERATORS 1
NEGOTIATED SERVICE AGREEMENT (WITH SINGAPORE POST)

(Issued January 3, 2013)

I INTRODUCTION

The Postal Service has entered into a modification of the inbound portion of an agreement (Modified Agreement) with Singapore Post Limited, which extends the agreement filed in Docket No. R2012-1 (the Singapore Post Agreement) from January 1, 2013 to June 30, 2013.¹ The Postal Service requests that the Modified Agreement be included within the Inbound Market Dominant Multi-Service

¹ Notice of United States Postal Service of Filing Additional Functionally Equivalent Agreement, December 4, 2012 (Notice). The Notice was filed pursuant to 39 CFR 3010.40 *et seq.*

Agreements with Foreign Postal Operators 1 product. Notice at 7. For the reasons discussed below, the Commission approves the request.

II. BACKGROUND

Product history. In Order No. 549, the Commission approved the addition of the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product to the market dominant product list, and concurrently included two contracts within that product.² In subsequent dockets, the Commission approved the inclusion of additional agreements, including the Singapore Post Agreement, on grounds of functional equivalence.³

The Singapore Post Agreement covers inbound Letter Post small packets with delivery confirmation scanning. *Id.* at 4.⁴ It was scheduled to expire December 31, 2012. *Id.* at 2. The Modified Agreement reflects two changes to the Singapore Post Agreement. One extends the term to June 30, 2013. *Id.* Attachment 2 at 1. The other updates the names of the individuals to be contacted under a provision of the Agreement. *Id.*

Timing issues. Notice and filing requirements in 39 CFR 3010.41 require the Postal Service to provide public notice no later than 45 days prior to the intended implementation date of an agreement and to transmit a notice addressing the agreement to the Commission no later than 45 days prior to the intended

² 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). The two agreements included at the time the parent product was approved are the Strategic Bilateral Agreement between the United States Postal Service and Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement) and the China Post Group–United States Postal Service Letter Post Bilateral Agreement. The TNT Agreement is the baseline agreement.

³ See Order No. 995, Order Approving Rate Adjustment for Singapore Post–United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, Docket No. R2012-1, November 23, 2011.

⁴ Letter Post small packets shipped under the Agreement must conform to the size and weight limitations specified in the Universal Postal Union Letter Post Manual or as bilaterally agreed. The weight limit is 2 kilograms (approximately 4.4 pounds). Agreement, Annex 2 at 12.

implementation date of a negotiated service agreement. *Id.* at 2. In this instance, the Postal Service asserts this means the effective date for the Modified Agreement is expected to be January 18, 2013, consistent with 45 days from the filing of the Modified Agreement with the Commission. *Id.*

To bridge the gap between expiration of the Singapore Post Agreement on December 31, 2012 and the anticipated effective date for start up of the Modified Agreement on January 18, 2013, the Postal Service concurrently requested (in Docket No. R2012-1) an extension of the terms and conditions of the Singapore Post Agreement to the earlier of the effective date of the modification filed in Docket No. R2013-5 or January 18, 2013.⁵ *Id.* In Order No. 1570, the Commission granted the Motion for Temporary Relief.

The instant docket. In Order No. 1569, the Commission provided public notice of the Postal Service's filing, appointed a Public Representative, invited comments from interested persons, and took other administrative steps.⁶

III. THE POSTAL SERVICE'S POSITION

The Postal Service generally asserts that its filing is responsive to the requirements of 39 CFR 3010.42. Notice at 3. More specifically, the Postal Service asserts that other than extending the term of the Singapore Post Agreement, the Modified Agreement does not materially change the terms of the Singapore Post Agreement. *Id.* at 5.

Statutory criteria. Pursuant to 39 U.S.C. § 3622(c)(10), the Commission considers three statutory criteria when reviewing a market dominant negotiated service agreement. These are whether the agreement (1) improves the net

⁵ See Docket No. R2012-1, Motion of the United States Postal Service for Temporary Relief, December 4, 2012, (Motion for Temporary Relief), and Order Granting Motion for Temporary Relief, December 6, 2012 (Order No. 1570)

⁶ Notice and Order Concerning Bilateral Agreement with Singapore Post Limited Negotiated Service Agreement, December 6, 2012 (Order No. 1569).

financial position of the Postal Service or enhances the performance of operational functions; (2) will not cause unreasonable harm to the marketplace; and (3) will be available on public and reasonable terms to similarly situated mailers. 39 U.S.C. § 3622(c)(10)(A) and (B).

The Postal Service asserts that it provides the required information regarding expected financial improvements, costs, volumes, and revenues in financial workpapers filed under seal. *Id.* With respect to expected service performance and the possibility of unreasonable harm to the marketplace, the Postal Service asserts that other than extending the term of the Singapore Post Agreement approved in Docket No. R2012-1, the Modified Agreement does not materially change the terms of the Singapore Post Agreement, and refers to its Docket No. R2012-1 Notice for details addressing both points. *Id.*

Functional equivalence. The Postal Service observes that in Docket No. R2012-1, the Commission ordered that the Singapore Post Agreement be included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-35, R2010-5, and R2010-6) product. *Id.* at 6—7. It asserts that because the Modified Agreement does not materially change any of the relevant terms of the Singapore Post Agreement, the Modified Agreement should be deemed functionally equivalent as well. *Id.* at 7.

Reporting exceptions. Section 3010.43 of the Commission's rules requires that the Postal Service include with its Notice a detailed plan for providing data or information on actual experience under the agreement sufficient to allow evaluation of whether the agreement operates in compliance with 39 U.S.C. § 3622(c)(10). 39 CFR 3010.43. The referenced provision sets out three statutory criteria referred to above. The Postal Service requests, for reasons described in the Notice filed in Docket No. R2012-1, and consistent with the Commission's order in that docket, that the Modified Agreement be excepted from providing a data collection plan. It also seeks an exception from separate reporting on service performance under 39 CFR 3055.3(a)(3). *Id.* at 6.

The Postal Service also asks that the Commission approve an exception to the performance reporting requirements under 39 CFR 3055.3(a)(3) for all contracts added to the Mail Classification Schedule (MCS) as Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators because the performance of the products covered by those agreements is already included in the measurement of other products. *Id.* at 7.

IV. COMMENTS

The Public Representative filed comments in response to Order No. 1569.⁷ No other comments were received.

Functional equivalence. The Public Representative agrees with the Postal Service's assertion that the Modified Agreement does not change any of the relevant terms of the Singapore Post Agreement and therefore is functionally equivalent to the agreements in Docket Nos. MC2010-35, R2010-5, and R2010-6. *Id.* at 4-5.

Statutory criteria. The Public Representative concludes, with respect to criterion 1, that extension of the rates in the Modified Agreement will continue to improve the net financial position of the Postal Service. *Id.* at 4. She says this conclusion follows from replacing the negotiated rates in the financial model with the calendar year 2013 Universal Postal Union (UPU) terminal dues rates from transition system countries that would be applicable to inbound letterpost from Singapore in the absence of the Modified Agreement. *Id.*

The Public Representative asserts that with this change, the results of the financial model indicate that the negotiated rates generate additional contribution to the Postal Service than the applicable UPU terminal dues rates, and will allow the Postal Service to cover its costs, unlike the UPU rates. *Id.* She asserts that the

⁷ Public Representative Comments on Postal Service Notice Concerning Bilateral Agreement with Singapore Post Limited Negotiated Service Agreement, December 17, 2012 (PR Comments).

Modified Agreement continues to be a significant improvement over the default UPU terminal dues rates, which would apply absent a bilateral agreement, particularly as Singapore is considered a transition country in the UPU and therefore eligible for preferable terminal dues rates. *Id.* She also states that the Postal Service has included a fair cost contingency in its calculations to account for cost increases and exchange rate fluctuations during the first six months of calendar year 2013. *Id.*

The Public Representative agrees with the Postal Service that criteria (2) and (3) are not implicated by the Modified Agreement, but notes that small packets operate in a more competitive market than inbound letters and flats. *Id.* at 3.

V. COMMISSION ANALYSIS

Functional equivalence. The Modified Agreement reflects only two changes relative to the Singapore Post Agreement. One – a change in the names of individuals to be contacted – is a routine and minor change, which does not have any bearing on the functional equivalency analysis. The other change – extension of rates for a six-month period – does not alter the overall scope or nature of the underlying service, and therefore does not foreclose a finding that the Modified Agreement is functionally equivalent to the Singapore Post Agreement. In Docket No. R2012-1, the Commission found the Singapore Post Agreement functionally equivalent to previously approved Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operations. By extension, the Commission finds the Modified Agreement continues to be functionally equivalent to those agreements and approves its inclusion within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-35, R2010-5, and R2010-6) product.

Statutory criteria. Under 39 U.S.C. § 3622(c)(10), the Commission reviews the Agreement in terms of three statutory criteria: (1) whether the Agreement improves the net financial position of the Postal Service or enhances the

performance of operational functions; (2) will not cause unreasonable harm to the marketplace; and (3) will be available on public and reasonable terms to similarly situated mailers.

The Commission finds, with respect to the first criterion, that the negotiated rates underlying the Modified Agreement will improve the net financial position of the Postal Service, as they will generate higher revenues, contribution, and cost coverage than otherwise applicable UPU default rates. With respect to criteria 2 and 3, the Modified Agreement does not materially change the terms of the Singapore Post Agreement. To the extent applicable, these criteria were considered in Docket No. R2012-1 when the Commission reviewed the Singapore Post Agreement.

Reporting exceptions. The Postal Service proposes that no special data collection plan be created for the Modified Agreement, essentially seeking a waiver of section 3010.43's data collection reporting requirements. Notice at 5. Instead, it intends to report information under the Modified Agreement through the Annual Compliance Report (ACR) and agrees to provide information about mail flows from Singapore within the course of the ACR review process.⁸ Given the limited nature of this negotiated service agreement, with a foreign postal operator, the Commission grants the waiver of section 3010.43.

The Commission also approves the Postal Service's request for an exception for the Modified Agreement from the separate service performance reporting requirements in 39 CFR 3055(a)(3). The Commission has granted exceptions of this type for other negotiated service agreements with other foreign postal operators

⁸ *Id.*; see also Docket No. R2012-1, Notice of United States Postal Service of Type 2 Rate Adjustment and Notice of Filing Functionally Equivalent Agreement, October 14, 2011, at 6.

on grounds that substantially all of their components are part of a grouping of products already being measured.⁹

Follow-up submissions. The Postal Service shall promptly notify the Commission of the effective date of the Modified Agreement if the effective date differs from the intended effective date of January 18, 2013. Notice at 2. The Postal Service shall also promptly notify the Commission if the Modified Agreement terminates early.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Modified Agreement filed in this docket is included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-35, R2010-5, and R2010-6) product.
2. The Postal Service shall promptly notify the Commission of the effective date of the Modified Agreement if the effective date differs from the intended effective date of January 18, 2013.
3. The Postal Service shall promptly notify the Commission if the Modified Agreement terminates early.

⁹ The Commission finds it unnecessary to address the Postal Service's request for a blanket exception to the performance reporting requirements for all Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators. *Id.* at 7. The Commission has previously approved this request. See Order No. 996, Docket No. R2012-2, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, November 23, 2011, at 7; and Order No. 1598, Docket No. R2013-2, Order Approving an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with China Post Group), December 28, 2012, at 7-8.

4. Within 30 days of expiration, or early termination, of the Modified Agreement, the Postal Service shall file costs, volumes, and revenues associated with the Agreement.
5. The Commission grants the Postal Service's request for an exception from the data collection plan requirement in 39 CFR 3010.43 for the Modified Agreement, subject to alternative reporting in the Annual Compliance Report and cooperation in filing pertinent information with the Commission.
6. The Commission grants the Postal Service's request for an exception from separate service performance reporting under 39 CFR 3055.3(a)(3) for the Modified Agreement.

By the Commission.

Shoshana M. Grove
Secretary