

ORDER NO. 1661

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

Modification of Mail Classification Schedule
Regarding First-Class Mail Single-Piece
Residual Price Table

Docket No. MC2013-30

ORDER DENYING MINOR CLASSIFICATION CHANGE
CONCERNING FIRST-CLASS MAIL SINGLE-PIECE RESIDUAL PRICE TABLE

(Issued February 15, 2013)

On January 8, 2013, the Postal Service filed a notice pursuant to 39 C.F.R. §§ 3020.90 and 3020.91 of a minor classification change concerning rates applicable to presorted First-Class Mail residual pieces.¹ On January 18, 2013, the Postal Service modified its initial proposal in response to Chairman's Information Request (CHIR) No. 1.² The revised proposal was submitted after the comment period on the initial proposal closed. In light of the timing of the revised proposal, the Commission deferred

¹ Notice of the United States Postal Service of Minor Classification Changes Related to First-Class Mail Single-Piece Residual Price Table, January 8, 2013 (Notice).

² Response of United States Postal Service to Chairman's Information Request No. 1, January 18, 2013, at 5 (Response to CHIR No. 1).

its decision on the revised proposal until interested persons had the opportunity to comment, and the Postal Service responded to Commission Information Request No. 1.³

On January 29, 2013, the Postal Service responded to CIR No. 1,⁴ and on February 4-5, 2013, interested persons filed comments.⁵ After taking into consideration the complete record of this proceeding, including the Postal Service's CIR response and the most recent round of comments, the Commission concludes that the proposed revised price table for Single-Piece Residual Machinable Letters does not qualify as a minor classification change. Accordingly, the Commission rejects the proposed classification change.

Docket No. R2013-1. In Docket No. R2012-3, the Postal Service proposed, and the Commission approved, a free second ounce for all presort letters.⁶ As a result, mailers began to create presort mailings consisting of mixed weight letters, with letters weighing up to two ounces.⁷ Residual pieces from these mixed mailings were charged the Single-Piece Machinable Letter rate, with different prices for one- and two-ounce letters. *Id.* at 15-16.⁸ As a result, mailers separated one- and two-ounce residual pieces in order to correctly calculate postage. R2013-1 Notice at 16.

³ Order Deferring Decision on Minor Classification Change Concerning First-Class Mail Single-Piece Residual Price Table, January 25, 2013, at 2 (Order No. 1639).

⁴ Response of United States Postal Service to Commission's Information Request No. 1, January 29, 2013 (Response to CIR No. 1); *see also* Commission Information Request No. 1, January 25, 2013 (CIR No. 1).

⁵ Comments of the Association for Postal Commerce, February 4, 2013 (PostCom Comments); Further Comments of the National Postal Policy Council and the Major Mailers Association, February 5, 2013 (NPPC/MMA Comments).

⁶ Docket No. R2012-3, Order No. 987, Order on Price Adjustments for Market Dominant Products and Related Classification Changes, November 22, 2011, at 14.

⁷ *See* Docket No. R2013-1, United States Postal Service Notice of Market-Dominant Price Adjustment, October 11, 2012, at 15 (R2013-1 Notice).

⁸ For simplicity, this Order refers to one- and two-ounce letters. In practice, the rates discussed apply to residual letters weighing up to one- and two-ounces, respectively.

In Docket No. R2013-1, the Postal Service sought to solve this “logistical problem” by establishing a new price and price table for Single-Piece Residual Machinable Letters. *Id.* at 15. The Postal Service proposed that a uniform price of 48 cents apply “to all the residual pieces weighing up to 2 ounces.” *Id.* at 16. The price table proposed for this product as set forth in the Mail Classification Schedule (MCS) is as follows:

Single-Piece Residual Machinable Letters

Maximum Weight (ounces)	Residual Machinable Letters (\$)
1	0.48
2	0.48
3	0.86
3.5	1.06

Comments on this proposal were filed by the National Postal Policy Council (NPPC) and Pitney Bowes.⁹ NPPC raised several concerns about this proposal including that it provides presort mailers with residual pieces a choice between: (1) paying 48 cents for all residual pieces, or (2) separating the two-ounce pieces, paying 48 cents for them, and mailing the one-ounce pieces separately at the normal 46-cent First-Class single-piece rate. R2013-1 NPPC Comments at 17. NPPC also requested that the Postal Service withdraw or revise this proposal. *Id.* at 16. The Postal Service did not respond to the comments on this issue.

On November 16, 2012, the Commission issued an order accepting the Postal Service’s proposed pricing and price table for Single-Piece Residual Machinable Letters weighing up to two ounces.¹⁰ The rates approved in that proceeding were scheduled to

⁹ Docket No. R2013-1, Comments of Pitney Bowes Inc., November 1, 2012; Docket No. R2013-1, Comments of the National Postal Policy Council, November 1, 2012 (R2013-1 NPPC Comments).

¹⁰ Docket No. R2013-1, Order on Price Adjustments for Market Dominant Products and Related Mail Classification Changes, November 16, 2012, at 12-13 (Order No. 1541).

become effective January 27, 2013. See Order No. 1541 at 12-13; Order No. 1639 at 7.¹¹

Description of initial proposal. In the instant proceeding, the Postal Service initially proposed to clarify the language in the MCS by amending the price table for Single-Piece Residual Machinable Letters. Notice at 1. Stating that the clarification followed the approach of Docket No. R2013-1, the Postal Service proposed the following price table:

Mixed Single-Piece Residual Machinable Letters

Maximum Weight (ounces)	Residual Machinable Letters (\$)
1	0.48 ¹
2	0.48 ¹
3	0.86
3.5	1.06

1. This price applies only to mixed mailings of residual one-ounce and two-ounce Machinable letters. Single-Piece Machinable Letter prices apply to Residual mailings for which one-ounce residual letters are separated from two-ounce residual letters.

Id. at 3.

The changes from the language approved in Docket No. R2013-1 are underlined and indicate that the new blended price applies only to mixed mailings of residuals—that is a mixture of one- and two-ounce residual pieces. Under this proposal, if the residual consists solely of one-ounce or two-ounce pieces, the mailer would pay the applicable Single-Piece Machinable Letter retail price, *i.e.*, 46 cents for one-ounce pieces and 66 cents for two-ounce pieces.

Comments on the initial proposal. The Postal Service’s proposal generated comments from several interested parties. NPPC and the Major Mailers Association (MMA) comment that the Postal Service’s proposal “amounts to a classic bit of ‘bait and switch’” and is an attempt “to implement a rate increase through a so-called ‘minor’

¹¹ Comments, discussed *infra*, raise a question as to whether this occurred. See NPPC/MMA Comments at 6.

classification change.”¹² The Association for Postal Commerce (PostCom) and the Association for Marketing Service Providers similarly state that the proposed change is not “minor” because “it completely alters the implementing rules in a way which not only upsets any value to the category but, more importantly, nullifies the very substantial programming and other costs that mailers have incurred to be in a position to comply with the new prices.”¹³ The Association for Mail Electronic Enhancement also filed comments, urging the Commission to “reject the proposal as an improper rate increase and as inconsistent with Order No. 1541.”¹⁴

The Public Representative recommends approval of the Postal Service’s proposal, finding it consistent with 39 C.F.R. §§ 3020.90 and 3020.91.¹⁵ However, the Public Representative expresses concern that the proposal fails to eliminate “the incentive of mailers to increase the volume of two-ounce letters qualifying for the 48-cent price” by presenting residual mailings “that consist of two-ounce letters and a single one-ounce letter.” *Id.* at 2.

Description of revised proposal. CHIR No. 1 asked the Postal Service to clarify its proposal, to explain any price cap impact, and to explain why the proposed change is not a rate change.¹⁶ In response, the Postal Service proposed a revised MCS price table. Response to CHIR No. 1 at 5.¹⁷ The revised price table is reproduced below with changes from that accepted in Docket No. R2013-1 underlined:

¹² Opposition of the National Postal Policy Council and the Major Mailers Association, January 17, 2013, at 1, 5.

¹³ Comments of the Association for Postal Commerce, January 17, 2013, at 3; see also Notice of Errata to the Comments of the Association for Postal Commerce, January 18, 2013.

¹⁴ Opposition of the Association for Mail Electronic Enhancement, January 18, 2013, at 1.

¹⁵ Public Representative Comments on Postal Service Notice of Minor Classification Change Concerning First-Class Mail Single-Piece Residual Price Table, January 17, 2013, at 2 (PR Comments).

¹⁶ Chairman’s Information Request No. 1, January 15, 2013 (CHIR No. 1).

¹⁷ In light of the proposed revision, the Commission considers the initial proposal moot. The revised proposal is the focus of the remainder of this Order.

Single-Piece Residual Machinable Letters

Maximum Weight (ounces)	Residual Machinable Letters (\$)
1	0.48 ¹
2	0.48 ¹
3	0.86
3.5	1.06

1. This price applies only to residual machinable letters that are presented with a Presort mailing. Retail prices for Single-Piece Machinable Letters will apply if the residual letters presented with a mixed-weight Presort mailing are purely two-ounce items.

Id.

The revised proposal removes the initial proposal's requirement that the price table apply only to "mixed" residual mailings. As revised, the Single-Piece Machinable Letter rate would apply only to residual consisting solely of two-ounce pieces presented with a mixed-weight mailing. All other residual pieces would pay 48 cents per piece. In support of the revised proposal, the Postal Service states that "it is highly unlikely that a mixed-weight presort mailing would generate only two-ounce residual pieces." *Id.* at 8.

Order No. 1639 and the Postal Service's Response. On January 25, 2013, the Commission issued Order No. 1639, which deferred decision on the Postal Service's revised proposal until interested persons had the opportunity to comment on the revised proposal and the Postal Service responded to CIR No. 1. Order No. 1639 at 2. The Commission emphasized the importance of a comment period under Commission regulations and sought further assurance from the Postal Service that its proposal was "minor" in the spirit of 39 C.F.R. §§ 3020.91. *Id.* at 7.

On January 29, 2013, the Postal Service responded to CIR No. 1, which was issued contemporaneously with Order No. 1639. The Postal Service clarifies that under the revised proposal, mailers that present their residual letters in trays along with a presorted mailing will pay 48 cents per residual piece unless a mixed-weight presort mailing is presented with only two-ounce residual pieces. Response to CIR No. 1 at 2. If a mixed-weight presort mailing is presented with only two-ounce residual pieces then the retail price of 66 cents per residual piece applies. *Id.* at 3. Additionally, mailers can

separate their residual pieces by weight, enter those pieces with a separate postage statement, and pay the retail single-piece rates for those pieces. *Id.* In the case of a one-ounce presort mailing with one-ounce residual pieces, mailers can choose between entering the residual pieces in trays (as part of the presort mailing) at 48 cents per piece or entering the residual pieces on a separate postage statement and paying 46 cents per piece. *Id.* The Postal Service confirms that if the residual pieces from a mixed-weight presort mailing consist of a single one-ounce piece and numerous two-ounce pieces, the mailer will qualify for the 48-cent residual rate. *Id.* at 12.

Comments. Several interested persons commented on the revised proposal. PostCom urges the Commission to “simply reject the classification change the Postal Service has proposed in this Docket” and “leave the already approved Residual Rate Category in place.” PostCom Comments at 1. PostCom states that “the newly revised MCS language...only clarifies that the new proposal is not a ‘minor’ classification change and that the Postal Service has effectively filed a new rate.” *Id.* at 2. PostCom notes that the proposal does not implement the price approved by the Commission in Docket No. R2013-1 because “it is simply not true that the 48-cent rate will apply to ‘all the residual pieces weighing up to 2 ounces.’” *Id.* at 3. PostCom urges the Commission to reject the Postal Service’s proposal and to encourage the Postal Service to “work with the mailers to come up with a set of policies to implement [a solution].” *Id.* at 1, 5.

NPPC and MMA also urge the Commission to reject the Postal Service’s most recent proposal. NPPC/MMA Comments at 1. They state that the revised proposal is in “conflict with the clear language” approved by the Commission in Docket No. R2013-1 and must be viewed as a rate increase. *Id.* Calling the rates set in Docket No. R2013-1 “perfectly clear,” NPPC and MMA state that the revised proposal creates a new complex rate structure which raises rates on two-ounce residual letters from mixed mailings by 37.5 percent. *Id.* at 3, 5. They argue that the Postal Service’s proposal requires a minimum of 45 days’ notice pursuant to 39 U.S.C. § 3622(d)(1)(C). *Id.* at 6. Further, they argue that rules concerning minor classification changes, 39 C.F.R. §§ 3020.90

and 3020.91, do not apply to the proposed change because the proposal is a substantive change that does modify the market dominant product list. *Id.*

NPPC and MMA express their understanding that, notwithstanding the Commission's orders in Docket No. R2013-1 and this docket, the Postal Service implemented the revised proposal via a modification to its PostalONE software. *Id.* In addition, they report that the PostalONE software has been programmed in a manner inconsistent with the Postal Service's position by disallowing separation of residual one- and two-ounce pieces from a mixed mailing for separate entry. *Id.* at 7. As a result of the Postal Service's actions, they contend that mailers "have greater difficulty in reconciling postage fees with client bills" and have incurred and continue to incur costs in revising software to keep up with Postal Service changes. *Id.* They state that "the software changes to respond to the Postal Service's unilateral rate increase have been costly, unnecessary and uncompensated." *Id.* at 8. As a solution, NPPC and MMA propose that the Postal Service restore the rates approved in Docket No. R2013-1 in the next version of the PostalONE software and credit mailers who pay the 66-cent rate between January 27, 2013 and the release of the new software. *Id.* at 2, 9.

Postal Service response. On February 6, 2013, the Postal Service filed a response to the PostCom and NPPC/MMA Comments.¹⁸ The response reiterates the Postal Service's position that "the proposed MCS language attempts only to clarify when retail single-piece prices...apply" and "does not alter the application of the blended 48-cent rate introduced in Docket No. R2013-1." Postal Service Response at 1 (footnote omitted). The Postal Service asserts that the clarification serves only to further the objective in Docket No. R2013-1 that all one- and two-ounce residual pieces are entered at the 48-cent price. *Id.* at 1-2.

Commission analysis. Proposed classification changes filed pursuant to 39 C.F.R. §§ 3020.90 and 3020.91 are intended to ensure that product descriptions in

¹⁸ Response of United States Postal Service to Mailer Comments, February 6, 2013 (Postal Service Response). This response was accompanied by a Motion for Leave to Respond to Mailer Comments, February 6, 2013 (Motion for Leave). The Commission grants this Motion for Leave.

the MCS are accurate and are limited to changes that are minor in nature and that do not entail modifying the product lists. While the revised proposal does not modify the market dominant product list, it is more than a minor change. It seeks to modify rates approved in Docket No. R2013-1. Accordingly, the revised proposal is not properly filed under 39 C.F.R. § 3020, subpart E.

In Docket No. R2013-1, the Postal Service proposed, and the Commission approved, a uniform price of 48 cents for “all the residual pieces weighing up to 2 ounces.” R2013-1 Notice at 16; Order No. 1541 at 12-13. Specifically, the Postal Service proposed:

[a] new single-piece price for single-piece residual letters. These letters are mainly permit imprint letters which for one reason or another do not meet the presort requirements and end up paying the single piece price, including charges for additional ounces for heavier pieces. The new price will be 48 cents for up to 2 ounces.

R2013-1 Notice at 15.

The Postal Service’s arguments in this docket that its proposed classification language is clarifying in nature and “follows the approach of Docket No. R2013-1” are not persuasive in light of the unambiguous proposal that was approved in Docket No. R2013-1. Notice at 2; Order No. 1541 at 12-13.¹⁹ Both the Postal Service’s Docket No. R2013-1 Notice and the calculations supplied by the Postal Service in that docket unequivocally reflect the fact that the 48-cent price applies to all residual pieces weighing up to two ounces. Furthermore, in Docket No. R2013-1, NPPC raised the very issues that the Postal Service attempts to remedy in this docket and urged the Postal Service to withdraw or revise the proposal. R2013-1 NPPC Comments at 16-17.

The revised proposal represents a rate change. In Docket No. R2013-1, the Commission approved the Postal Service’s unambiguous proposal—a new price of 48 cents for residual pieces weighing up to two ounces. R2013-1 Notice at 15. Under

¹⁹ Furthermore, the Postal Service Response takes the Commission’s language in question 3(c) of CIR No.1 out of context. Postal Service Response at 2. As the preface to question 3 states, the Commission’s question refers to the Postal Service’s revised proposal found in its Response to CHIR No. 1, not, as the Postal Service implies, the proposal approved in Docket No. R2013-1. See CIR No. 1.

the revised proposal, residual mailings consisting of solely two ounce pieces from a mixed presort mailing would be charged 66-cents per piece.

When, as in this docket, a proposal seeks to change a rate on a select group of mailers, a minor classification change request is not the appropriate vehicle to make such a change. In addition, commenters contend that “the software changes to respond to the Postal Service’s unilateral rate increase have been costly, unnecessary and uncompensated” and have given “rise to mailing hassles” and difficulties with billing. NPPC/MMA Comments at 6, 8. The Commission is aware that software updates occasioned by rate changes impose costs on mailers and take time to execute. In this case, the fact that the revised proposal is expected to impose additional and perhaps not insignificant costs on mailers also weighs against finding that the proposal is a minor classification change.

If the allegations that the Postal Service unilaterally enacted the revised proposal are true, the Postal Service has acted without authority and in contravention of two Commission orders. Order No. 1541 at 12-13; Order No. 1639 at 7.²⁰ Pursuant to 39 U.S.C. § 3622, such changes require adequate public notice and Commission approval. Neither condition has been met in this case.

The Commission finds the relief suggested by NPPC/MMA outside the scope of this docket. NPPC/MMA’s remedy is premised on an allegation that the Postal Service is currently charging an unlawful rate. The allegation raises open questions of fact. Resolution of the factual questions and possible remedies are outside the scope of this docket, which entails only whether the Postal Service’s revised proposal is properly filed as a minor classification change.

PostCom’s suggestion that the Postal Service work with mailers to resolve the open issues with the pricing of Single-Piece Residual Machinable Letters appears to be reasonable. The Commission encourages such collaboration.

²⁰ The Postal Service Response ignores this allegation entirely. Postal Service Response at 1-2.

In conclusion, the Commission finds that the revised proposal is not a minor classification change. Therefore, the revised proposal is denied. The rates for Single-Piece Residual Machinable Letters approved in Docket No. R2013-1 are affirmed.

It is ordered:

1. The Postal Service's proposed minor classification change is denied.
2. The rates for Single-Piece Residual Machinable Letters approved in Docket No. R2013-1 are affirmed.

By the Commission.

Ruth Ann Abrams
Acting Secretary