

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

Competitive Product Prices  
Parcel Return Service  
Parcel Return Service Contract 3

Docket No. MC2013-39

Competitive Product Prices  
Parcel Return Service Contract 3 (MC2013-39)  
Negotiated Service Agreement

Docket No. CP2013-51

ORDER ADDING PARCEL RETURN SERVICE CONTRACT 3  
TO THE COMPETITIVE PRODUCT LIST

(Issued March 1, 2013)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Parcel Return Service Contract 3 to the competitive product list.<sup>1</sup> For the reasons discussed below, the Commission approves the Request.

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<sup>1</sup> Request of the United States Postal Service to Add Parcel Return Service Contract 3 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, February 15, 2013 (Request).

## II. BACKGROUND

On February 15, 2013, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 *et seq.*, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Parcel Return Service Contract 3 is a competitive product that establishes rates “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). *Id.* at 1. The Postal Service further asserts that the prices and classification underlying the contract are supported by Governors’ Decision No. 11-6.<sup>2</sup> Among the supporting documents, the Postal Service included a copy of Governors’ Decision No. 11-6, a contract related to the proposed new product (Agreement), requested changes to the competitive product list, a statement supporting the Request, and a certification of compliance with 39 U.S.C. § 3633(a). In addition, the Postal Service submitted an application for non-public treatment of materials to maintain redacted portions of Governors’ Decision No. 11-6, the contract, customer-identifying information, and related financial information filed under seal. Request, Attachment F.<sup>3</sup>

On February 19, 2013, the Commission issued an order establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.<sup>4</sup> On February 22, 2013, the Commission requested additional information concerning volume data to allow the Commission to verify the contract’s

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<sup>2</sup> 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).

<sup>3</sup> In its application for non-public treatment of materials, the Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7. The Commission has consistently denied similar requests for indefinite protection. *See, e.g.*, Order No. 563, Docket Nos. MC2011-1 and CP2011-2, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6-7.

<sup>4</sup> Order No. 1663, Notice and Order Concerning Parcel Return Service Contract 3 Negotiated Service Agreement, February 19, 2013.

cost coverage.<sup>5</sup> The Postal Service responded to CHIR No. 1 on February 27, 2013 and provided the requested data.<sup>6</sup>

### III. COMMENTS

The Public Representative filed comments on February 26, 2013.<sup>7</sup> No other interested person submitted comments.

The Public Representative states that he has reviewed the Agreement and the supporting materials. *Id.* at 2. Based on this review, the Public Representative concludes that the Agreement should be added to the competitive product list and that it should cover costs. *Id.* He calculates that, although “no volumetric profile was filed,” the Agreement will cover its costs even if volume is at the lowest rate allowable under the Agreement. *Id.* at 3.

In addition, the Public Representative expresses some concern about the ability of the Agreement to cover costs in its second year, given the lack of data concerning the second year. *Id.* However, he states that his concern is largely mitigated by the annual rate adjustment provision included in the Agreement and the Commission’s ability to review the contract as part of its Annual Compliance Determination. *Id.*

### IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the Agreement, the supporting data filed under seal, the Public Representative’s comments, and the Response to CHIR No. 1.

*Product list requirements.* The Commission’s statutory responsibilities when evaluating the Request include assigning Parcel Return Service Contract 3 to either the

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<sup>5</sup> Chairman’s Information Request No. 1, February 22, 2013 (CHIR No. 1).

<sup>6</sup> Response of the United States Postal Service to Chairman’s Information Request No. 1, with Portions Filed Under Seal, February 27, 2013 (Response).

<sup>7</sup> Public Representative Comments on Postal Service Request to Add Parcel Return Service Contract 3 to Competitive Product List, February 26, 2013 (PR Comments).

market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34. In addition, the Commission must consider the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. §§ 3020.32(f), (g), and (h).

The Postal Service asserts that it provides Parcel Return Service in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it can, therefore, neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service states that the contract partner supports the Request, that the market for expedited delivery services is highly competitive and requires a substantial infrastructure, and that the Postal Service is unaware of any small business concerns that could offer comparable services to the contract partner. *Id.* at 3.

Having considered the relevant statutory and regulatory requirements and the Postal Service's supporting justification, the Commission finds that Parcel Return Service Contract 3 is appropriately classified as competitive and is added to the competitive product list.

*Cost considerations.* Because Parcel Return Service Contract 3 is a competitive product, the Postal Service must also show that the Agreement covers its attributable costs, contributes to the Postal Service's institutional costs, and does not cause any market dominant products to subsidize competitive products. 39 U.S.C. § 3633(a); 39 C.F.R. § 3015.5.

As part of its Request, the Postal Service submitted a certified statement that the Agreement complies with the requirements of 39 U.S.C. § 3633(a). Request, Attachment E. In addition, the Postal Service filed supporting revenue and cost data showing that the contract is expected to cover its costs. In Response to CHIR No. 1, the Postal Service filed the necessary volume data to allow the Commission to verify the cost coverage estimate shown in the contract's supporting workpapers.

The Public Representative raises concerns about the lack of data for subsequent years of the contract. PR Comments at 3. As noted by the Public Representative, however, the contract includes an annual rate adjustment provision. *Id.* This provision should allow the contract's revenues to cover costs in year two. Thus, the Commission finds that Parcel Return Service Contract 3 complies with the provisions applicable to rates for competitive products. As part of its Annual Compliance Determination proceedings, the Commission will review the contract's financial performance for consistency with section 3633(a).

*Other considerations.* By its terms, the Agreement becomes effective on the day after the date that the Commission issues all necessary regulatory approvals. Request, Attachment B at 3. The Agreement is scheduled to expire 2 years after the effective date, unless, among other things, either party terminates the contract with 6 months' written notice to the other party. *Id.*

If the Agreement is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

Within 30 days after the Agreement terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by rate category and weight associated with the contract.

In conclusion, the Commission approves Parcel Return Service Contract 3 as a new product. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

V. ORDERING PARAGRAPHS

*It is ordered:*

1. Parcel Return Service Contract 3 (MC2013-39 and CP2013-51) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic. The revision to the competitive product list appears below the signature of this Order and is effective immediately.
2. The Postal Service shall notify the Commission if the Agreement terminates prior to the scheduled expiration date as discussed in this Order.
3. Within 30 days after the Agreement terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by rate category and weight associated with the Agreement.
4. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Shoshana M. Grove  
Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE  
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 C.F.R. part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission’s order in Docket Nos. MC2013-39 and CP2013-51. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

Domestic

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Parcel Return Service Contract 3

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