

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

Competitive Product Prices  
Priority Mail Express  
Priority Mail Express Contract 20

Docket No. MC2015-12

Competitive Product Prices  
Priority Mail Express Contract 20 (MC2015-12)  
Negotiated Service Agreement

Docket No. CP2015-15

PUBLIC REPRESENTATIVE COMMENTS ON  
POSTAL SERVICE REQUEST TO ADD PRIORITY MAIL EXPRESS  
CONTRACT 20 TO COMPETITIVE PRODUCT LIST

(December 4, 2014)

The Public Representative hereby provides comments pursuant to Order No. 2259.<sup>1</sup> 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 Priority Mail Express Contract 20 to the competitive product list.<sup>2</sup>

The Postal Service's Request includes a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. § 3633(a), a public (redacted) version of Governor's Decision No. 11-6 and related analysis, a public version of Priority Mail Express shipping service Contract 20, and proposed changes to the Mail Classification Schedule competitive product list with the addition underlined. The Postal Service filed

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<sup>1</sup> Notice and Order Concerning the Addition of Priority Mail Express Contract 20 to the Competitive Product List, November 26, 2014 (Order No. 2259).

<sup>2</sup> Request of the United States Postal Service to Add Priority Mail Express Contract 20 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, November 25, 2014 (Request).

(under seal) an unredacted version of Governors' Decision No. 11-6, the unredacted contract related to the proposed new product, and supporting financial data.

According to the Postal Service, Priority Mail Express Contract 20 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 classification underlying the instant contract are supported by Governors' Decision No. 11-6.<sup>3</sup>

The effective date of the instant contract is one business day following the day on which the Commission issues all necessary regulatory approvals. Request, Attachment B, at 2. The contract is scheduled to expire 3 years from the effective date, subject to early terminations provisions. *Id.*

## COMMENTS

The Public Representative has reviewed the Postal Service's Request, including the Statement of Supporting Justification, as well as the contract and financial model filed under seal with the Request. Based upon that review, the Public Representative concludes that Priority Mail Express Contract 20 should be categorized as a competitive product and added to the competitive product list. In addition, it appears that the instant contract should generate sufficient revenues to cover costs in its first year, and thereby satisfy the standards of 39 U.S.C. § 3633(a) during the first year.

*Product List Assignment.* Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Priority Mail Express Contract 20 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

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<sup>3</sup> Decision of the Governors of the United States Postal Service on Establishment of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, May 22, 2011 (Governors' Decision No. 11-6).

such powers are categorized as market dominant while all others are categorized as competitive.

The Postal Service makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment D, at 2. These assertions appear reasonable. Based upon these assertions, the Public Representative concludes that the Postal Service's Request to add Priority Mail Express Contract 20 to the competitive product is appropriate.

*Requirements of 39 U.S.C. § 3633.* Pursuant to 39 U.S.C. § 3633(a), the Postal Service's rates for competitive products 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 and the contract filed under seal with the request, it appears that the negotiated prices should generate sufficient revenues to cover costs during the first year of the contract, and therefore meet the requirements of 39 U.S.C. § 3633(a) during the first year.

As noted above, the instant contract is expected to remain in effect for a period of three years. However, the Postal Service's financial model does not demonstrate that the contract will comply with the requirements of 39 U.S.C. § 3633(a) during the three-year period of the contract. Moreover, the contract does not contain any mechanism for the annual adjustment of prices, and the proposed "prices apply to Customer's Contract Packages...for the full term of the contract." Request, Attachment B, at 2. Having prices unchanged for all the three years (while costs might increase) would give rise to a concern about the cost coverage during the second and third year of the contract.<sup>4</sup> The Public Representative is mindful that the Postal Service will file cost, revenue and volume data in each year's Annual Compliance Report. This will aid the Commission in ensuring that the Priority Mail Express Contract 20 complies with the requirements of 39 U.S.C. § 3633(a) over the life of the contract.

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<sup>4</sup> It may still be unlikely taking into account the high level of the product's cost coverage expected for the first year of the contract.

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

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