

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

Before Commissioners:

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

Competitive Product Prices
Priority Mail Contract 33 (MC2011-13)
Negotiated Service Agreement

Docket No. CP2011-49

ORDER APPROVING AMENDMENT TO
PRIORITY MAIL NEGOTIATED SERVICE AGREEMENT

(Issued May 27, 2015)

I. INTRODUCTION

The Postal Service seeks to amend a Priority Mail negotiated service agreement.¹ This is the fifth amendment to the original negotiated service agreement. For the reasons discussed below, the Commission approves the Amendment.

¹ Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Contract 33, May 15, 2015 (Notice). The Amendment is an attachment to the Notice (Amendment).

In Order Nos. 641, 1744, 1942, 2109, and 2211 the Commission approved the Priority Mail Contract 33 negotiated service agreement (Existing Agreement) and four previous amendments.² On May 15, 2015, the Postal Service filed notice that it has agreed to the fifth Amendment to the Existing Agreement. On May 18, 2015, the Commission issued an order reopening this docket to consider the Amendment, appointing a Public Representative, and providing interested persons with an opportunity to comment.³

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. Notice at 1. The Postal Service filed supporting financial documentation and a certified statement, as required by 39 C.F.R. § 3015.5. *Id.* The Postal Service asserts that the Amendment will not impair the ability of the contract to comply with 39 U.S.C. § 3633. Notice, Attachment B at 1.

II. COMMENTS

Comments were filed by the Public Representative.⁴ The Public Representative reviewed the Amendment, the Existing Agreement, and the financial model filed under seal. *Id.* at 2. Based on that review, she concludes that the Existing Agreement, as amended, should continue to generate sufficient revenues to cover costs and satisfy 39 U.S.C. § 3633(a). *Id.*

² See Docket Nos. MC2011-13 and CP2011-49, Order Approving Priority Mail Contract 33 Negotiated Service Agreement, January 6, 2011 (Order No. 641). The contract was subsequently amended four more times. See Order No. 1744, Order Approving Amendment to Priority Mail Contract 33 Negotiated Service Agreement, June 11, 2013; Order No. 1942, Order Approving Amendment to Priority Mail Contract 33 Negotiated Service Agreement, January 2, 2014; Order No. 2109, Order Approving Amendment to Priority Mail Contract 33 Negotiated Service Agreement, July 1, 2014; and Order No. 2211, Order Approving Amendment to Priority Mail Contract 33 Negotiated Service Agreement, October 8, 2014.

³ Order No. 2486, Notice and Order Concerning Amendment to Priority Mail Negotiated Service Agreement, May 18, 2015.

⁴ Public Representative Comments on Postal Service Notice of Amendment to Priority Mail Contract 33, May 22, 2015 (PR Comments).

III. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the accompanying materials filed under seal, and the comments filed by the Public Representative.

Cost considerations. The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a), 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Existing Agreement concerns a contract for expedited domestic shipping services.⁵ The Amendment changes prices for those services.

Based on a review of the record, the Commission finds that the Existing Agreement, as amended, should cover its attributable costs. 39 U.S.C. § 3633(a)(2). For this reason, it finds that the Existing Agreement, as amended, should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the amended agreement is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). *See also* 39 C.F.R. § 3015.7(c). Accordingly, a preliminary review of the Amendment indicates it is consistent with section 3633(a). The annual rate adjustment provision in section I.E. of the amended agreement should allow the amended agreement's revenues to cover costs for the duration of its term. The Commission will continue to review the cost

⁵ Docket Nos. MC2011-13 and CP2011-49, Request of the United States Postal Service to Add Priority Mail Contract 33 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, December 17, 2010, Attachment B.

coverage of the amended agreement in its Annual Compliance Determination to ensure that rates cover costs.

Other considerations. The Postal Service states that the Amendment shall become effective on the day after the date that the Commission completes its review. The Existing Agreement, as amended, is set to expire on February 17, 2016, unless among other things, either party terminates the contract with 30 days' written notice to the other party or it is renewed by mutual agreement.⁶

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

In conclusion, the Commission approves the Existing Agreement, as amended.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Priority Mail Contract 33 negotiated service agreement, as amended.
2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the scheduled expiration date.

By the Commission.

Shoshana M. Grove
Secretary

⁶ *Id.* at 8. Should both parties agree to renew the agreement, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission's implementing regulations of 39 C.F.R. part 3015.