

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

Market Dominant Product Prices
Exprès Service Multilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2011-6

PUBLIC REPRESENTATIVE COMMENTS REGARDING UPDATE
CONCERNING EXPRÈS SERVICE AGREEMENT
(July 18, 2016)

The Public Representative hereby provides comments pursuant to Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings.¹ The Postal Service's Update includes

In Order No. 876, the Commission added Inbound Market Dominant Exprès Service Agreement 1 as a new market dominant product to the market dominant product list, and included the Exprès Service Agreement within that product.²

The Exprès Service Agreement is a multilateral agreement that "covers the delivery of cross-border LC/AO items weighing up to 2 kilograms tendered as Exprès items and braded with the Common Logo ("Exprès Items")."³

In its original notice, the Postal Service provided an agreement indicating that the Postal Service's participation in the Exprès Agreement was subject to various conditions, including the condition that its obligations under the agreement were subject to regulatory approval. Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, August 12, 2011, Attachment 3 at 2.

¹ Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, July 8, 2016.

² PRC Order No. 876, Order Adding Inbound Market Dominant Exprès Service Agreement 1 to the Market Dominant Product List, Docket No. R2011-6, September 26, 2011, at 9.

³ Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, Docket No. R2011-6, August 12, 2011, at 1, and Attachment 2 Exprès Service Agreement made and entered into December 10, 1999, Articles 2 and 5.

The Postal Service filed the instant notice to inform the Commission of updated versions and revisions to some of the documents that were included in the Postal Service's initial notice in this docket, which have occurred since the Commission issued Order No. 876. The filing includes among other changes, two revised versions of Annex 6 which set out the prices and conditions for remuneration for the Exprès product. The Postal Service one version went into effect on January 1, 2014, the other went into effect on January 1, 2015. The Postal Service also included revised financial workpapers based on the later version.

COMMENTS

The Public Representative does not believe the Postal Service's filing is adequate. Changes to the thresholds for remuneration in Annex 6 are de facto price changes. As such, the Postal Service should have treated changes to Annex 6 as a modification to the original agreement.

Although the original agreement included a provision that the prices may be changed by the Steering Committee, that does not absolve the Postal Service from its responsibility to file a notice of price change with the Commission each time the applicable prices change. Pursuant to the Commission's rules, the Postal Service should file a Type 2 rate adjustment with the Commission each time the prices are changed by the Steering Committee. Additionally, when there are modifications to the prices in a Market Dominant NSA, the Commission's rules require the Postal Service to file information with the Commission as set forth under 39 C.F.R. 3010.41-42.

In addition to the Commission's rules, the order adding the Exprès Agreement to the market dominant product list indicated that the Postal Service was to file any similar multilateral agreements within this product. The Commission stated, "[t]o the extents it does, it shall, consistent with the current practice, identify all significant differences between any new agreement and the instant Agreement. Such differences would include terms and conditions that impose new obligations, services, or new requirements on any party to the Agreement. Order Adding Inbound Market Dominant

Exprès Service Agreement 1 to the Market Dominant Product List, September 26, 2011 (Order No. 876) at 8, n.8. Although the Postal Service characterizes the changes to the original agreement as “revisions,” the Postal Service should treat them as modifications under the Commission’s rules.

The Postal Service includes in its instant filing, two versions of Annex 6, the first of which went into effect on January 1, 2014, and the second of which went into effect on January 1, 2015. Notice at 3. Annex 6 sets out the prices and conditions for remuneration for the Exprès service. Although the prices did not change from the original agreement, the minimum performance threshold to qualify for remuneration has increased. Changes to the threshold are de facto price changes, as they directly affect revenue for the Exprès product.

In its instant filing, the Postal Service states that it is “not certain whether it is necessary to include revised financial workpapers with this filing, but includes them in the event the Commission wishes to explore the effect of the revisions discussed in the filing.” Notice at 2. The Postal Service gave no indication in its filing as to why it considers changes to the threshold to be different from any other Type 2 rate adjustment. Thus, the Public Representative is perplexed by the Postal Service’s confusion as to whether financial workpapers demonstrating compliance with 39 U.S.C. § 3622(c)(10)(2) should be filed.

The Public representative notes that the requirement that the Postal Service seek approval prior to the implementation of new prices is an integral part of the modern system of rate regulation. Although international mail is subject to unique circumstances, the Postal Service nonetheless must follow the Commission’s rules. The Postal Service’s participation in in the Exprès Agreement is voluntary. As such, if the Commission found that prices set forth in the Exprès agreement were inconsistent with the 39 U.S.C. § 3622(c)(10), its ability to prescribe a remedy would not be constrained by the UPU treaty.

Fortunately, the Exprès product has covered its cost since its inclusion on the market-dominant product list⁴. Additionally, based on its review of supporting financial data filed under seal, the Public Representative concludes that the projected cost coverage of the Exprès Service Agreement is still sufficient.

The Commission should order the Postal Service to file future changes to the Exprès agreement as modifications to the agreement. It should treat the instant filing as a modification and rely on the most up to date prices and thresholds. The Public Representative recommends that the Commission approve the modification.

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

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⁴ The Public Representative notes that at this time, filing a modification retroactively for the price change that went into effect January 1, 2014 would be as useful as a steering wheel on a mule.