

ORDER NO. 3457

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

Before Commissioners:

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

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

Docket No. R2011-6

ORDER APPROVING MODIFICATION OF EXPRÈS SERVICE AGREEMENT

(Issued August 8, 2016)

I. INTRODUCTION

On July 7, 2016, the Postal Service filed notice of revisions to the Exprès Service Agreement (the Existing Agreement), which is included within the Inbound Market Dominant Exprès Service Agreement 1 product on the market dominant product list.¹ For the reasons discussed below, the Commission approves the modification to the Existing Agreement.

¹ Notice of United States Postal Service Providing Update Concerning Exprès Service Agreement, July 7, 2016 (Notice).

II. BACKGROUND

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 [branded] with the Common Logo.”² The Commission added Inbound Market Dominant Exprès Service Agreement 1 to the market dominant product list as a new product on September 26, 2011, and included the Existing Agreement within that product.³

In its Notice, the Postal Service provides notice of updated versions of, and revisions to, some of the documents that were included in the original August 12, 2011 Notice. Notice at 1. Accompanying the Notice are four redacted versions of Annex 2 to the Existing Agreement, which set forth delivery targets that went into effect in May 2013; April 2015; March 2016; and April 2016.⁴ Attachment 1 to the Notice is a redacted copy of an updated version of Annex 3, which concerns technical specifications related to the Postal Service’s participation in the Exprès Service Agreement. Notice, Attachment 1. Also included with the Notice are Attachments 2 and 3, which consist of redacted versions of Annex 6 concerning enhanced payments under the Exprès Service Agreement and have effective dates of January 1, 2014, and

² Notice at 1 (*citing* Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, August 12, 2011, at 1 (August 12, 2011 Notice); and August 12, 2011 Notice, Attachment 2, Articles 2 and 5). The acronym “LC/AO” stands for “*lettres et cartes/autres objets*.” These are air and surface Inbound Letter Post items.

³ See Order Adding Inbound Market Dominant Exprès Service Agreement 1 to the Market Dominant Product List, September 26, 2011 (Order No. 876). The Postal Service initially sought to add the Exprès Service Agreement to the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (Foreign Postal Operators 1) product as a functionally equivalent product. Order No. 876 at 1. In Order No. 876, the Commission found that the Exprès Service Agreement was not a functionally equivalent agreement within the Foreign Postal Operators 1 product and instead established Inbound Market Dominant Exprès Service Agreement 1 as a new market dominant product and included the Exprès Service Agreement within that product. *Id.* at 9.

⁴ See Notice at 3-4; *see also id.* “Annex2, effctv 2013-05 Expres US Pb.xls,” “Annex2, effctv 2015-04, Expres US Pb.xls,” “Annex2, effctv 2016-03, Expres US Pb.xls,” and “Annex2, effctv 2016-04, Expres US Pb.xls.”

January 1, 2015, respectively. Notice, Attachment 2 and Attachment 3. A redacted copy of updated financial documentation is also included as part of the filing.⁵

Unredacted versions of each of the redacted documents have been filed under seal. See Notice at 3-4. In its Notice, the Postal Service incorporates by reference the application for non-public treatment filed in conjunction with the August 12, 2011 Notice and requests non-public treatment of the redacted portions of the revisions to Annex 2, Annex 3, and Annex 6 of the Express Service Agreement and the redacted portions of the supporting financial documentation included with its Notice. *Id.* at 5-6.

In a companion filing,⁶ the Postal Service provides an unredacted, non-public annex that documents the Inbound Air Letter Post cost by shape used in international negotiated service agreement (NSA) financial models. See Notice at 4; see also Cost-by-Shape Notice at 1. The Postal Service also requests non-public treatment of this annex. Cost-by-Shape Notice at 1.

On July 8, 2016, the Commission provided public notice of the Postal Service's filing, appointed a Public Representative, and provided interested persons with an opportunity to comment.⁷

III. COMMENTS

The Public Representative filed comments on July 18, 2016.⁸ No other person filed comments. The Public Representative challenges the adequacy of the Postal Service's filing, asserting that changes to the thresholds for remuneration in Annex 6 to the Express Service Agreement are *de facto* price changes that require the Postal Service to file a notice of a Type 2 rate adjustment in advance of the applicable price

⁵ See Notice at 4; see also *id.* "1B PRIME_IncrmtlExpresFY2016 Pub.xls."

⁶ See Notice of the United States Postal Service of Filing of USPS-LR-R2011-6/NP1, July 7, 2016 (Cost-by-Shape Notice).

⁷ See Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, July 8, 2016.

⁸ Public Representative Comments Regarding Update Concerning Express Service Agreement, July 18, 2016 (PR Comments).

changes rather than after the changes have gone into effect. PR Comments at 2, 3. The Public Representative relies upon footnote 8 in Order No. 876 to support her position that the Postal Service “was [required] to file any similar multilateral agreements within this [Inbound Market Dominant Express Service Agreement 1] product.” *Id.* at 2-3.

Based on her review of the supporting financial data filed under seal, the Public Representative concludes that “the projected cost coverage of the Express Service Agreement is still sufficient.” *Id.* at 4.

The Public Representative requests the Commission to order the Postal Service to file future changes to the Express Service Agreement as modifications to the agreement. *Id.* In light of the sufficiency of the agreement’s cost coverage, she recommends approval of the modifications that are the subject of the Postal Service’s Notice. *See id.*

IV. COMMISSION ANALYSIS

A. Filing Requirements

The Existing Agreement contains a provision that empowers the Steering Committee for the Existing Agreement “to amend the Annexes to this Agreement.” August 12, 2011 Notice, Attachment 2 at 7. In accordance with the Existing Agreement, the Postal Service is a member of the Steering Committee. *Id.* at 4. Decisions of the Steering Committee require a majority vote of all parties to the Existing Agreement. *Id.* The Existing Agreement has an indefinite term and allows any party to withdraw at “the end of the third full calendar month” following a notice of withdrawal. *Id.* at 5.

In its Notice, the Postal Service provided notice of revisions to Annexes 2, 3, and 6, at least two of which appear to have gone into effect prior to the Postal Service’s filing of the Notice. Notice at 3. The Postal Service acknowledges that the filing of these revisions was untimely and notes its regret for its oversight in filing late. *Id.* at 1 n.3. The Postal Service states that it is filing updated financial workpapers “in the event the

Commission wishes to explore the effect of the revision discussed in this filing.” *Id.* at 1. The Public Representative views the revisions to the *Exprès Service Agreement* as a Type 2 rate change subject to the requirements of 39 C.F.R. part 3010, subpart D. PR Comments at 2-3.

Market dominant NSAs, such as the Existing Agreement, are regulated in accordance with 39 U.S.C. § 3622(c)(10) and 39 C.F.R. part 3010, subpart D. In accordance with those requirements, market dominant NSAs must “improve the net financial position of the Postal Service through reducing Postal Service costs or increasing the overall contribution to the institutional costs of the Postal Service” or “enhance the performance of mail preparation, processing, transportation, or other functions.” 39 U.S.C. § 3622(c)(10)(A). In addition, market dominant NSAs must be available “on public and reasonable terms to similarly situated mailers” and cannot “cause unreasonable harm to the marketplace.” 39 U.S.C. § 3622(c)(10).

In Order No. 876, the Commission found the Existing Agreement met the statutory requirements of 39 U.S.C. § 3622(c)(10), had sufficient cost coverage, and afforded “the Postal Service an opportunity for increased remuneration.” Order No. 876 at 5. The Commission also found the agreement would not cause unreasonable harm to the marketplace. *Id.*

The revisions to the annexes are modifications of the Existing Agreement and necessitate the Commission reassessing the agreement under 39 U.S.C. § 3622(c)(10). For example, although the maximum prices set forth in Annex 6 and used to calculate remuneration under the *Exprès Service Agreement* have not themselves changed since the issuance of Order No. 876, the changes to the remuneration criteria filed by the Postal Service are such that they affect the net financial benefit analysis and the cost coverage of the Existing Agreement, as modified. This conclusion is supported by the changes shown in the revised financial workpapers included with the Notice. The effect of changes to the *Exprès Service Agreement* and its annexes on the “net financial position” of the Postal Service is subject to Commission review and approval under 39 U.S.C. § 3622(c)(10)(A). Accordingly, any future changes to the *Exprès Service*

Agreement that affect the net financial effect of the Existing Agreement, as modified, are to be filed as modifications for timely Commission review.

B. Financial Analysis

The Postal Service asserts that the Exprès Service Agreement rates continue to represent an improvement over default rates established by the Universal Postal Union for Inbound Letter Post items. Notice at 1-2. It filed supporting financial data under seal. The Public Representative concurs with this assessment. PR Comments at 4. Based on its review of supporting financial data filed under seal, the Commission concludes that the projected cost coverage of the Exprès Service Agreement is sufficient and that the Existing Agreement, as modified, should continue to enhance the net financial position of the Postal Service in accordance with 39 U.S.C. § 3622(c)(10)(A). The Commission also finds the modification does not alter its analysis in Order No. 876 that the Exprès Service Agreement complies with the other requirements of 39 U.S.C. § 3622(c)(10).

The Commission also finds that in the future, additional information concerning the calculation of remuneration should be filed with the financial workpapers. Therefore, future workpapers pertaining to the Exprès Service Agreement should include the following: volume, revenue, and cost data, disaggregated by country of origin, for each component of remuneration gathered in accordance with Annex 6 of the Existing Agreement, as modified.

V. ORDERING PARAGRAPHS

It is ordered:

1. The updated versions of, and revisions to, the Exprès Service Agreement filed by the Postal Service are approved.

2. The Postal Service shall file workpapers in future filings that include the following: volume, revenue, and cost data, disaggregated by country of origin, for each component of remuneration gathered in accordance with Annex 6 of the Existing Agreement, as modified.

By the Commission.

Ruth Ann Abrams
Acting Secretary