

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

Before Commissioners:

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

Competitive Product Prices  
Priority Mail Express, Priority Mail &  
First-Class Package Service Contract 5 (MC2016-9)  
Negotiated Service Agreement

Docket No. CP2016-11

ORDER APPROVING AMENDMENT TO A  
PRIORITY MAIL EXPRESS, PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE  
NEGOTIATED SERVICE AGREEMENT

(Issued January 11, 2017)

I. INTRODUCTION

The Postal Service seeks to amend a Priority Mail Express, Priority Mail & First-Class Package Service negotiated service agreement.<sup>1</sup> For the reasons discussed below, the Commission approves the Amendment.

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<sup>1</sup> Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Express, Priority Mail & First-Class Package Service Contract 5, with Portions Filed Under Seal, December 28, 2016 (Notice). The amendment is an attachment to the Notice (Amendment).

In Order No. 2796, the Commission approved the Priority Mail Express, Priority Mail & First-Class Package Service Contract 5 negotiated service agreement (Agreement).<sup>2</sup> On December 28, 2016, the Postal Service filed notice of a further change in prices pursuant to the Amendment. On December 29, 2016, the Commission issued a notice reopening this docket to consider the Amendment, appointing a Public Representative, and providing interested persons with an opportunity to comment.<sup>3</sup>

The Postal Service intends for the Amendment to become effective two business days after the day that the Commission completes its review of the Notice. Notice at 1. The Postal Service asserts that the Amendment will not materially affect the cost coverage of the product. *Id.*

## II. COMMENTS

Comments were filed by the Public Representative.<sup>4</sup> No other person submitted comments. The Public Representative reviewed the Notice, the Amendment, and financial data filed under seal. PR Comments at 1-2. Based on that review, she concludes that the Agreement, as further amended, should continue to generate sufficient revenue to cover costs and satisfy 39 U.S.C. § 3633(a). *Id.* at 2.

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<sup>2</sup> See Docket Nos. MC2016-9 and CP2016-11, Order Adding Priority Mail Express, Priority Mail & First-Class Package Service Contract 5 to the Competitive Product List, November 2, 2015 (Order No. 2796). The Agreement has been amended three times. See Docket No. CP2016-11, Order No. 3187, Order Approving Amendment to Priority Mail Express, Priority Mail & First-Class Package Service Negotiated Service Agreement, March 29, 2016; Docket No. CP2016-11, Order No. 3460, Order Approving Amendment to Priority Mail Express, Priority Mail & First-Class Package Service Negotiated Service Agreement, August 11, 2016; Docket No. CP2016-11, Order No. 3615, Order Approving Amendment to Priority Mail Express, Priority Mail & First-Class Package Service Negotiated Service Agreement, November 15, 2016.

<sup>3</sup> See Docket No. CP2016-11, *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, December 29, 2016.

<sup>4</sup> Docket Nos. MC2016-9 and CP2016-11, Public Representative Comments on Postal Service Request to Add Priority Mail Express, Priority Mail Service, & First-Class Package Service Mail Contract 5 to Competitive Product List, January 10, 2017 (PR Comments). The Public Representative also filed a motion for late acceptance of her comments. Docket Nos. MC2016-9 and CP2016-11, Public Representative Motion for Late Acceptance of Comments on United States Postal Service Notice Regarding Amendment to Priority Mail Express, Priority Mail Service, & First-Class Package Service Mail Contract Negotiated Service Agreement, January 10, 2017 (Motion). The Motion is granted.

### 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 Amendment replaces terms in section I.B. and adds a new section I.N. See Amendment at 1-2.

Based on a review of the record, the Commission finds that the Agreement, as amended, should cover its attributable costs. 39 U.S.C. § 3633(a)(2). For this reason, it finds that the 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 the amended agreement should allow the amended agreement's revenue to cover costs for the duration of its term. See Order No. 2796 at 5. The Commission will continue to review the cost coverage of the amended agreement in its Annual Compliance Determinations to ensure that rates cover costs.

*Other considerations.* The Postal Service states that the Amendment shall become effective two business days following the day on which the Commission issues all necessary regulatory approval. Amendment at 1. The Agreement, as amended, is

set to expire on February 2, 2019, unless, among other things, the customer terminates the contract with 30 days' written notice to the Postal Service, or it is renewed by mutual agreement.<sup>5</sup> If the 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 Agreement, as further amended.

#### IV. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission approves the Priority Mail Express, Priority Mail & First-Class Package Service Contract 5 negotiated service agreement, as further amended.
2. The Postal Service shall notify the Commission if the Agreement, as amended, terminates prior to the scheduled expiration date.

By the Commission.

Stacy L. Ruble  
Secretary

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<sup>5</sup> See Order No. 2796 at 6. 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.