

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

Before Commissioners:

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

Annual Compliance Report, 2018

Docket No. ACR2018

ORDER GRANTING IN PART MOTION FOR ACCESS

(Issued February 1, 2019)

On January 9, 2019, the United Parcel Service, Inc. (UPS) filed a motion pursuant to 39 C.F.R. §§ 3001.21 and 3007.50¹ requesting access to certain non-public library references filed as part of the Postal Service's Annual Compliance Report.² UPS seeks access to non-public Library References USPS–FY18–NP2, –NP3, –NP7, –NP8, –NP9, –NP10, –NP11, –NP12, –NP13, –NP14, –NP19, –NP21, –NP22, –NP23, and –NP24. UPS Motion for Access at 1. The motion includes a list of outside counsel and consultants and certifications for each. *Id.* Exhibit 1; Appendix A.

¹ This rule is no longer in effect. See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018 (Order No. 4679); Non-Public Information, 83 Fed. Reg. 31,258, 31,277-78 (July 3, 2018) (to be codified at 39 C.F.R. pt. 3007). Although UPS's motion for access cites to the rule no longer in effect, its motion complies with the new rules under 39 C.F.R. pt. 3007.

² United Parcel Service, Inc.'s Motion Requesting Access to Non-Public Materials Under Protective Conditions, January 9, 2019, at 1 (UPS Motion for Access).

UPS also requests continued access to the non-public library references granted to it in Docket Nos. ACR2014, ACR2015, ACR2016, and ACR2017, to review for purposes of filing comments in this docket.³ UPS seeks access to these library references for its outside counsel and consultants only, and represents that such access will enable its outside counsel and consultants to assist UPS in making comments in this docket. UPS Motion for Access at 2.

On January 28, 2019, the Postal Service filed a response to UPS's motion and states that it opposes UPS gaining access to non-public Library References USPS–FY18–NP2, –NP3, –NP7, –NP8, –NP9, and –NP14.⁴ The Postal Service states that UPS's motion failed to comply with the Commission's rules regarding non-public information. Postal Service Response to UPS Motion for Access at 3. Specifically, the Postal Service states that the UPS's motion does not comply with 39 C.F.R. § 3007.301. *Id.*

Additionally, the Postal Service expresses concern that granting UPS access to the materials contained in these library references would cause the Postal Service to be at a "disadvantage if customers are forced to accept an uncertain risk that such information would be shared with third parties or their representatives[.]" *Id.* at 5. The Postal Service argues that this disadvantage could result in a potential loss of business and damaged business relationships. *Id.* The Postal Service also states that it

³ UPS Motion for Access at 1. See Docket No. RM2016-2, Order Granting Unopposed Request for Continued Access to Non-Public Materials Under Seal, October 15, 2015 (Order No. 2756); Docket No. ACR2015, Order Granting First Motion for Access, January 15, 2016 (Order No. 3033); Docket No. ACR2015, Order Granting Revised Second Motion for Access, January 22, 2016 (Order No. 3044); Docket Nos. ACR2016 and RM2017-1, Order Granting Motion for Access, January 10, 2017 (Order No. 3741).

⁴ United States Postal Service Response to United Parcel Service Inc.'s Motion Requesting Access to Non-Public Materials Under Protective Conditions, January 28, 2019, at 1 (Postal Service Response to UPS Motion for Access). The Postal Service does not oppose UPS's request for access to non-public material filed in Docket Nos. ACR2014, ACR2015, ACR2016 and ACR2017.

received correspondence from several business partners opposing UPS's request for access to the above library references.⁵

On January 31, 2019, UPS filed a motion to supplement its motion for access.⁶ UPS states that the additional materials provided with its motion to supplement addresses the "specific procedural deficiencies the Postal Service identified in UPS's Motion for Access[.]" UPS Motion to Supplement at 2. UPS also requests access for an additional outside counsel. *Id.* The motion includes a statement of protective conditions (which was omitted from UPS Motion for Access), a list of outside counsel and consultants and certifications for each. *Id.*; see *id.* Exhibit 1. Additionally, UPS notes that the its motion to supplement "does not affect the substance of [UPS] Motion for Access[.]" UPS Motion to Supplement at 2.

The Commission notes that it issued new regulations related to non-public information and that these rules went into effect on August 2, 2018. 83 Fed. Reg. 31,258. These rules require that a participant seeking access to material filed non-publicly by the Postal Service must include a "description of protective conditions completed and signed by the movant's attorney or non-attorney representative[.]" *Id.* 31,284 (to be codified as 39 C.F.R. § 3007.301(b)(5)). UPS corrected this deficiency by submitting a statement of protective conditions.⁷

As the Postal Service specifically requests that the Commission deny UPS access to non-public Library References USPS–FY18–NP2, –NP3, –NP7, –NP8, –NP9,

⁵ *Id.* at 6; see *id.* Attachments 1-5; see also United States Postal Service Notice of Filing Third Party Comments, January 28, 2019, at 2.

⁶ United Parcel Service, Inc.'s Motion to Supplement its January 9, 2019 Motion Requesting Access to Non-Public Materials Under Protective Conditions, January 31, 2019 (UPS Motion to Supplement). This motion is granted insofar as it corrects procedural deficiencies discussed in the body of this Order.

⁷ UPS Motion to Supplement, Exhibit 1 at 2-4. In its response, the Postal Service states that UPS Motion for Access fails to comply with 39 C.F.R. § 3007.301(b)(4), which requires the movant specify whether he or she provided actual notice to each individual identified in the Postal Service's application for non-public treatment. Postal Service Response to UPS Motion for Access at 3; see 83 Fed. Reg. 31,258, 31,284. In absence of an affirmative statement that the movant provided actual notice to the individuals identified in the Postal Service's application for non-public treatment, the Commission will assume that actual notice was not provided.

and –NP14, the Commission grants UPS access to the remaining library references (Library References USPS–FY18–NP10, –NP11, –NP12, –NP13, –NP19, –NP21, –NP22, –NP23, and –NP24) while it continues to consider UPS’s request for access to the library references listed in the Postal Service’s response. The Commission will issue an order regarding UPS’s request for access to Library References USPS–FY18–NP2, –NP3, –NP7, –NP8, –NP9, and –NP14 shortly.

Additionally, because the Postal Service does not oppose access to the specified non-public information in previous ACRs, the Commission grants UPS’s request for continued access to non-public library references in Docket Nos. ACR2014, ACR2015, ACR2016, and ACR2017 for use in this docket.

It is ordered:

1. United Parcel Service, Inc.’s Motion Requesting Access to Non-Public Materials Under Protective Conditions (January 9, 2019), is granted in part, and access is hereby granted to the non-public materials for use in Docket No. ACR2018 for Library References USPS–FY18–NP10, –NP11, –NP12, –NP13, –NP19, –NP21, –NP22, –NP23, and –NP24.
2. United Parcel Service, Inc. is hereby granted continued access to the non-public materials in Docket Nos. ACR2014, ACR2015, ACR2016, and ACR2017 for use in Docket No. ACR2018.

3. Effective upon issuance of this Order, the outside counsel and consultants covered by the motion are each granted access to the non-public materials.

By the Commission.

Stacy L. Ruble
Secretary