

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

ORDERING GRANTING MOTIONS FOR ACCESS

(Issued February 8, 2019)

I. INTRODUCTION

On January 9, 2019, United Parcel Service, Inc. (UPS) filed a motion requesting access to certain non-public library references filed by the Postal Service as part of its Annual Compliance Report (ACR).¹ On January 10, 2019, the Association for Postal Commerce (PostCom) filed a motion requesting access to certain non-public library references filed as part of the Postal Service's ACR.² For the reasons below, the Commission grants both motions.

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

² Motion of Association for Postal Commerce for Access to Nonpublic Materials, January 10, 2019, at 1 (PostCom Motion).

II. PROCEDURAL HISTORY

On January 9, 2019, UPS filed a motion requesting 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. UPS also requests continued access to the non-public library references granted to it in Docket Nos. ACR2014, ACR2015, ACR2016, and ACR2017. *Id.* The motion includes a list of outside counsel and consultants and certifications for each. *Id.* at 9.

On January 10, 2019, PostCom filed a motion requesting access to non-public Library References USPS–FY18–NP2, –NP3, –NP7, –NP8, –NP9, –NP12, –NP14, –NP20, and –NP30. PostCom Motion at 1. PostCom’s motion includes a statement of protective conditions and certifications for each individual for whom access is requested. *Id.* at 4-10.

On January 28, 2019, the Postal Service filed responses to both UPS’s and PostCom’s motions, opposing access for UPS’s and PostCom’s outside counsel and consultants to non-public Library References USPS–FY18–NP2, –NP3, –NP7, –NP8, –NP9, and –NP14.³ It expresses concern that granting either UPS or PostCom 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[.]”⁴ The Postal Service argues that this disadvantage could result in a potential loss of business and

³ 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); United States Postal Service Response to Association for Postal Commerce’s Motion Requesting Access to Non-Public Materials Under Protective Conditions, January 28, 2019, at 1 (Postal Service Response to PostCom Motion). In its response to UPS’s motion for access, the Postal Service also states that the motion failed to comply with 39 C.F.R. § 3007.301. Postal Service Response to UPS Motion for Access at 3.

⁴ Postal Service Response to UPS Motion for Access at 5; Postal Service Response to PostCom Motion at 4.

damaged business relationships.⁵ The Postal Service also states that it received correspondence from several business partners opposing UPS's and PostCom's requests for access to the above library references.⁶

On January 30, 2019, PostCom filed a reply to the Postal Service's response.⁷ In its reply, PostCom states that granting access to its outside counsel and to its president "would entail *no* risk of commercial injury to the Postal Service[] [because] PostCom does not compete with the Postal Service[]...[or] with any foreign posts." PostCom Reply at 3 (emphasis in original). Additionally, PostCom states that its access will be governed by the Commission's rules and protective conditions, which include restrictions on disclosing the information to any party not granted access. *Id.* at 4.

On January 30, 2019, the Commission granted PostCom access to Library References USPS–FY18–NP12, –NP20, and –NP30 as the Postal Service did not oppose PostCom's request for access to those library references. Order No. 4994 at 2, 3.

On January 31, 2019, UPS filed a motion to supplement its motion for access.⁸ UPS states that the additional materials provided with its motion to supplement address 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

⁵ Postal Service Response to UPS Motion for Access at 5; Postal Service Response to PostCom Motion at 4.

⁶ Postal Service Response to UPS Motion for Access at 6; Postal Service Response to PostCom Motion at 5. See Postal Service Response to UPS Motion for Access, Attachments 1-5; Postal Service Response to PostCom Motion, Attachments 1-5; see *a/so* United States Postal Service Notice of Filing Third Party Comments, January 28, 2019, at 2 (Deutsche Post Letter).

⁷ Motion for Leave to Reply and Reply of the Association for Postal Commerce to United States Postal Service Response to Motion Requesting Access to Non-Public Materials, January 30, 2019 (PostCom Reply). The motion for leave to reply was granted only to the extent it responds to new arguments raised by the Postal Service. Order Granting in Part Motion for Access, January 30, 2019, at 2 n.5 (Order No. 4994).

⁸ 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).

outside counsel. *Id.* The motion includes a statement of protective conditions (which was omitted from the UPS Motion for Access), a list of outside counsel and consultants, and certifications for each. *Id.*; *see also id.* at 4-21.

On February 1, 2019, the Commission granted UPS access to Library References USPS–FY18–NP10, –NP11, –NP12, –NP13, –NP19, –NP21, – NP22, –NP23, and –NP24 as the Postal Service did not oppose UPS’s request for access to those library references.⁹ Additionally, the Commission granted UPS continued access to the non-public library references granted to it in Docket Nos. ACR2014, ACR2015, ACR2016, and ACR2017. Order No. 4996 at 4.

The Postal Service filed an additional notice of filing third party comments on February 4, 2019, and included a second letter from Canada Post Corporation (Canada Post) that discussed concerns it has with granting UPS and PostCom access to the library references at issue.¹⁰ In its letter, Canada Post requests specific relief from the Commission. Second Canada Post Letter at 2-3.

On February 4, 2019, UPS filed a reply to the Postal Service’s response.¹¹ UPS states that the Postal Service appears to argue that non-public information relating to international products should never be disclosed to interested persons under the Commission’s non-public information rules. UPS Reply at 2. UPS asserts that there is no basis to treat non-public library references containing international product data differently than any other non-public library references. *Id.* at 3. UPS also argues that the public interest in granting this motion outweighs any harm of granting access to the library references at issue. *See generally id.* at 3-7.

⁹ Order Granting in Part Motion for Access, February 1, 2019, at 3-4 (Order No. 4996).

¹⁰ United States Postal Service Notice of Filing Third Party Comments, February 4, 2019 (Second Canada Post Letter).

¹¹ United Parcel Service, Inc.’s Motion for Leave to Reply and Reply to the United States Postal Service’s Response to Motion Requesting Access to Non-Public Materials, February 4, 2019 (UPS Reply). The motion for leave to reply is granted only to the extent it responds to new issues raised by the Postal Service.

In Order Nos. 4994 and 4996, the Commission granted access to PostCom and UPS, respectively, to library references to which the Postal Service did not specifically oppose in its responses. See Order No. 4994 at 2, 3; Order No. 4996 at 3-4. In those Orders, the Commission granted access in part to allow UPS and PostCom the ability to review those library references while the Commission considered UPS's and PostCom's requests to access Library References USPS–FY18– NP2, –NP3, –NP7, –NP8, –NP9, and –NP14. This Order resolves UPS's and PostCom's motions for access with respect to the remaining non-public library references.

III. POSITIONS OF THE PARTIES

A. UPS Motion for Access

UPS requests access for thirteen outside counsel and consultants so that “they may assist UPS in making informed comments in the Commission’s fiscal year (“FY”) 2018 [ACR] proceeding.” UPS Motion for Access at 2; see UPS Motion to Supplement at 4. UPS states that the requested materials are relevant to assessing whether the Postal Service complied with the requirement that the Postal Service’s market dominant products not subsidize its competitive products. UPS Motion for Access at 2. UPS notes that “[d]evelopments in fiscal year 2018 . . . have highlighted that public participation, investigation of, and comment on the Postal Service’s international products business is necessary.” *Id.* at 5. UPS asserts that without access to Library References USPS–FY18–NP2, –NP3, –NP7, –NP8, and –NP9, “interested parties will be unable to investigate and comment meaningfully[.]” and that “[o]nly with access to these materials will it be possible for UPS’s outside counsel and consultants to meaningfully comment[.]” *Id.* at 7. Additionally, UPS contends that if its outside counsel and consultants have access to the requested files then its comments will be helpful to the Commission. *Id.* at 8.

B. PostCom Motion

In its motion, PostCom requests access to specific non-public material filed by the Postal Service as part of its ACR so that PostCom may submit informed comments. PostCom Motion at 1. PostCom states that it plans to focus its comments on service and cost issues that impact market dominant products and that it appears that data for some international market dominant products are filed in non-public library references. *Id.* PostCom asserts that access to the requested library references “is necessary to comment effectively on relevant issues[.]” *Id.* at 1-2.

In its motion, PostCom requests access for three outside counsel and for its president and chief executive officer (CEO). *Id.* at 2. Accordingly, PostCom asserts that there are no competitive concerns associated with providing access to these individuals because they have “no role in competitive decision-making for any Postal Service competitor” and none of the individuals “are responsible for activities related to ‘sales and marketing efforts’ that could be detrimental to the Postal Service.” *Id.*

C. Postal Service Responses

In its responses to UPS’s and PostCom’s motions for access, the Postal Service opposes the requests for access to non-public Library References USPS–FY18– NP2, –NP3, –NP7, –NP8, –NP9, and –NP14.¹² It opposes any access to the non-public library references, even under the protective conditions, arguing that granting access would place commercially sensitive third party customer information at risk.¹³ Furthermore, the Postal Service claims that “it is not feasible for the Postal Service to

¹² Postal Service Response to UPS Motion for Access at 1; Postal Service Response to PostCom Motion at 1.

¹³ Postal Service Response to UPS Motion for Access at 1; Postal Service Response to PostCom Motion at 1. Although the Postal Service filed two separate responses to the UPS and PostCom motions for access, the responses and assertions therein are virtually identical.

remove, redact, or aggregate the information in a way that protects this third party information.”¹⁴

The Postal Service identifies two potential harms that could result if UPS and PostCom are granted access to the above library references. First, it cautions about the potential for UPS or PostCom to use the third party data to the detriment of the Postal Service and its third party business partners.¹⁵ Second, the Postal Service argues that granting access to third party data in the ACR proceeding could negatively affect its ability to negotiate and enter into service agreements in the future because “customers [would be] forced to accept an uncertain risk that such information would be shared with third parties or their representatives[.]”¹⁶ The Postal Service asserts that if the motions for access are granted, it “would suffer potential loss of business and damaged business relationships.”¹⁷

The Postal Service acknowledges that individuals for whom access is requested on behalf of UPS and PostCom have agreed to certain protective conditions, have certified that they will use the information solely for participation in this docket, and asserted that they are not involved in competitive decision-making.¹⁸ However, the Postal Service states that these individuals have not signed a standard non-disclosure agreement that would provide additional legal protections, including indemnification, in the event of unauthorized disclosure.¹⁹

¹⁴ Postal Service Response to UPS Motion for Access at 4; Postal Service Response to PostCom Motion at 3.

¹⁵ See *generally* Postal Service Response to UPS Motion for Access at 4; Postal Service Response to PostCom Motion at 3.

¹⁶ Postal Service Response to UPS Motion for Access at 5; Postal Service Response to PostCom Motion at 4.

¹⁷ Postal Service Response to UPS Motion for Access at 5; Postal Service Response to PostCom Motion at 4.

¹⁸ Postal Service Response to UPS Motion for Access at 5-6; Postal Service Response to PostCom Motion at 4-5.

¹⁹ Postal Service Response to UPS Motion for Access at 5-6; Postal Service Response to PostCom Motion at 4-5.

The Postal Service notes that it received correspondence from third party customers indicating concern with UPS and PostCom accessing their data.²⁰ Specifically, the Postal Service received letters from Canada Post; New Zealand Post Group; Australia Post; Le Groupe La Poste (La Poste); Royal Mail; and Deutsche Post.²¹ These third parties express concerns that competitors or industry participants could use commercial information to harm their interests;²² that improper disclosure of commercially sensitive information could significantly impact their revenues and commercial interests;²³ and that the Commission's protective conditions are inadequate.²⁴ Additionally, Canada Post and Deutsche Post state that they lack enforcement tools to ensure that the individuals granted access comply with the protective conditions.²⁵

On February 4, 2019, the Postal Service filed third party comments from Canada Post detailing additional concerns that were not included in its comments provided with the Postal Service's January 28, 2019 reply. Second Canada Post Letter. Canada Post states that the non-public library references include its data separately from data from all other postal administrations and are clearly identified as Canada Post data. Second Canada Post Letter at 2. Canada Post asserts that any disclosure poses immediate, serious, and unfair risks that are ongoing "to the extent other requests are made by third parties for access to . . . commercially sensitive [Canada Post] data." *Id.*

²⁰ Postal Service Response to UPS Motion for Access at 6; Postal Service Response to PostCom Motion at 5.

²¹ Postal Service Response to UPS Motion for Access, Attachments 1-5; Postal Service Response to PostCom Motion, Attachments 1-5; Deutsche Post Letter at 2.

²² Postal Service Response to UPS Motion for Access, Attachments 2-5; Postal Service Response to PostCom Motion, Attachments 2-5; Deutsche Post Letter at 2.

²³ Postal Service Response to UPS Motion for Access, Attachment 1; Postal Service Response to PostCom Motion, Attachments 1-5; Deutsche Post Letter at 2.

²⁴ Postal Service Response to UPS Motion for Access, Attachments 1-2; Postal Service Response to PostCom Motion, Attachments 1-2; Deutsche Post Letter at 2.

²⁵ Postal Service Response to UPS Motion for Access, Attachment 1; Postal Service Response to PostCom Motion, Attachment 1; Deutsche Post Letter at 2.

Accordingly, Canada Post requests various forms of relief from the Commission. First, Canada Posts requests that the Commission deny UPS and PostCom access to the library references at issue. *Id.* at 2-3. Second, in the alternative, if the Commission grants access, Canada Post requests that the Commission order the aggregation of Canada Post data with the data from other foreign postal operators, where feasible. *Id.* Third, Canada Post requests that the Commission order the redaction of any or all references to Canada Post and its competitive parcel products as it may be identifiable therein. *Id.* Canada Post also requests that the Commission order UPS and PostCom to negotiate separate non-disclosure agreements with Canada Post. *Id.*

D. PostCom Reply

In its reply, PostCom states that the Postal Service's response seeks to deny access, even under protective conditions, without any showing that the individuals or entities seeking access engage in competition with the Postal Service. PostCom Reply at 2. PostCom asserts that the Postal Service is "claiming that some information, simply by virtue of being associated with third parties, is too commercially sensitive for any member of the interested public to review, regardless of the protective conditions imposed." *Id.*

PostCom applies the balancing test outlined in 39 U.S.C. § 504(g)(3)(A) and argues that granting access to its outside counsel and to its president and CEO would not result in the commercial harms identified by the Postal Service in its application for non-public treatment. *Id.* at 3. Because PostCom does not compete with the Postal Service, any foreign posts, or customers of the Postal Service, PostCom argues that granting access to its representatives could not cause commercial injury without its representatives violating the protective conditions included with its motion for access. *Id.*

PostCom also questions the Postal Service's assertion that by requesting access, PostCom has "created uncertainty regarding the protective afforded to confidential information of third parties that is filed at the Commission." *Id.* at 3-4

(quoting Postal Service Response to PostCom Motion at 4). PostCom notes that access will be governed by the Commission's rules and protective conditions. *Id.* at 4. Specifically, PostCom states that its representatives will not disclose the information to any party not granted access and that they will only use the material in relation to the instant docket. *Id.* Additionally, PostCom notes that if its representatives violate the protective conditions, they will be subject to sanctions from the Commission. *Id.* PostCom also observes the concern that improper disclosure could result in commercial harm is a concern that applies to all non-public material, not just third party data, and "it is why the Commission requires parties to certify that they will prevent such disclosures." *Id.*

Furthermore, PostCom states that the Postal Service did not claim that use of the non-public library references to inform PostCom's comments on the Postal Service's compliance in the ACR docket will cause it competitive harm. *Id.* at 5. Instead, PostCom states that the Postal Service argues that "*no one* should have access to non-public information filed by the Postal Service relating to international products or [negotiated service agreements]." *Id.* at 6 (emphasis in original). PostCom asserts that the Postal Service's position is untenable because "it is inconsistent with the Postal Service's status as a regulated governmental entity." *Id.* Additionally, PostCom notes that the Commission's rules on non-public information adequately address the concerns raised by the Postal Service in its response. *Id.*

E. UPS Reply

UPS filed a reply to respond to the Postal Service's argument that the Commission should deny access to the non-public library references at issue because "international non-public data should *never* be disclosed to any interested parties under the Commission's protective conditions and rules." UPS Reply at 2 (emphasis in original). UPS asserts that there is no exception to the access rules for international data in the applicable statutes or regulations and that the rules and standards that

govern access to non-public domestic data also apply equally to international data filed under seal. *Id.* at 2-3.

Like PostCom, UPS applies the balancing test outlined in 39 U.S.C. § 504(g)(3)(A). *Id.* at 3. UPS notes that the Postal Service did not argue that any of UPS's outside counsel and consultants for whom access is requested "are engaged in any competitive decision making for a competitor or customer of the Postal Service." *Id.* at 4. UPS also observes that the Postal Service did not argue that UPS's outside counsel or consultants have previously inadvertently disclosed information filed under seal. *Id.* Because it requests access for its outside counsel and consultants who are not involved in competitive decision-making and do not have a history of violating applicable protective conditions, UPS asserts that there is no harm to the Postal Service or its international partners. *Id.* at 4-5.

UPS states that the public interest in granting access to the requested library references vastly outweighs the risk of commercial injury. *Id.* at 5. UPS asserts that it requests access "solely to inform its comments on the Postal Service's compliance" and that "meaningful substantive commentary . . . is nearly impossible without access to the [requested library references]." *Id.* at 5-6. UPS states that it also intends to analyze unexplained anomalies in the Postal Service's international package costing models. *Id.* at 6. UPS plans to review the revenue, volume, attributable cost, and contribution data by Universal Postal Union (UPU) country group and by shape the Postal Service filed under seal to assess whether it will request the Commission to require that this data be publicly disclosed.²⁶

Additionally, in response to the Postal Service's argument that the Commission's standard protective conditions are inadequate, UPS asserts that there is no basis to

²⁶ *Id.* at 6-7. As discussed *infra* at 13 n.29, the Commission's analysis focuses solely on whether to grant UPS's and PostCom's motions for access. It does not apply the balancing test of 39 U.S.C. § 504(g)(3)(A) to determine whether any of the materials contained in the requested library references should be unsealed.

require individuals to provide the Postal Service any additional contractual or financial protections to gain access. *Id.* at 5.

IV. COMMISSION ANALYSIS

A. Legal Standard

The Postal Service may seek non-public treatment for materials that are submitted to the Commission if such information would be exempt from disclosure pursuant to 39 U.S.C. §§ 410(c), 504(g), 3652(f), or 3654(f).²⁷ Under 39 U.S.C. § 504(g)(3), the Commission has specific authority to determine whether production of the non-public material is required in the course of “any discovery procedure established in connection with a [proceeding before the Commission].” 39 U.S.C. § 504(g)(3)(B). Section 504(g)(3)(B) provides that, in the context of discovery, the Commission may disclose information obtained from the Postal Service if the disclosure is found to be appropriate and consistent with the kind of balancing of interest that is performed by federal civil courts when asked to establish protective conditions under Fed. R. Civ. P. 26(c). 39 U.S.C. § 504(g)(3)(B). Specifically, the statute requires the Commission to establish procedures by regulation based on Fed. R. Civ. P. 26(c) to ensure “appropriate confidentiality for information furnished to any party.” *Id.*

²⁷ 83 Fed. Reg. 31,258, 31,282 (July 3, 2018) (to be codified at 39 C.F.R. § 3007.101(a)). These regulations went into effect on August 2, 2018. *Id.* at 31,258. All other references to the Commission’s rules relating to non-public material will refer to the section that will be codified in the Code of Federal Regulations.

The Commission's regulations governing access to non-public information codify this statutory requirement by setting forth rules providing for access to non-public materials along with strict protective conditions based on Fed. R. Civ. P. 26(c). In the rulemaking proceeding amending the rules relating to non-public information, the Commission provided an overview of how the rules function:

Recognizing that public disclosure of certain information may be commercially harmful to the Postal Service, other persons, or both, existing 39 CFR part 3007 permits the filing of commercially sensitive information to be non-public (also known as 'sealed' or 'under seal'). At the same time, acknowledging the need for transparency, existing 39 CFR part 3007 provides for procedures to allow for a person to request that non-public materials be disclosed to the public (also known as 'unsealed'). Moreover, existing 39 CFR part 3007 provides for procedures to allow for persons to request access to non-public materials, subject to protective conditions, in order to meaningfully participate in Commission proceedings.²⁸

The issue in this matter implicates the procedures relating to requests for access to non-public materials subject to protective conditions under subpart C of 39 C.F.R. part 3007. The parties do not dispute that the materials requested contain commercially sensitive information and that the material is designated by the Postal Service as non-public.²⁹ Subpart C of 39 C.F.R. part 3007 sets forth rules allowing access to non-public materials that "allow non-public materials to remain under seal and allow specific persons to access the materials subject to protective conditions."³⁰

²⁸ Docket No. RM2018-3, Notice of Proposed Rulemaking Relating to Non-Public Information, February 13, 2018, at 2 (Order No. 4403).

²⁹ In their replies, both PostCom and UPS apply the balancing test of 39 U.S.C. § 504(g)(3)(A) to their motions for access. Section 504(g)(3)(A) applies generally when the Commission is considering to disclose data filed under seal, such as whether to unseal data that the Postal Service or a third party filed non-publicly with the Commission. 39 U.S.C. § 504(g)(3)(A) ("[p]aragraph (2) shall not prohibit the Commission from *publicly* disclosing relevant information in furtherance of its duties under this title[.]") (emphasis added). Here, because the question before the Commission relates to access, the Commission will undertake analysis of parties' interests consistent with Fed. R. Civ. P. 26(c), which is the standard the Commission applies to motions for access. 39 U.S.C. § 504(g)(3)(B).

³⁰ Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, at 65 (Order No. 4679).

As directed by 39 U.S.C. § 504(g)(3)(B), the rules in subpart C of 39 C.F.R. part 3007 state that “[i]n determining whether to grant access to non-public materials, the Commission shall balance the interests of the parties consistent with the analysis undertaken by a Federal court when applying the protective conditions appearing in Federal Rule of Civil Procedure 26(c).” 39 C.F.R. § 3007.301(e). Federal Rule of Civil Procedure 26(c) provides that a “court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense,” upon a motion from “[a] party or any person from whom discovery is sought . . . [coupled with] a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.” Fed. R. Civ. P. 26(c)(1).

The party opposing access to non-public information, analogous to requesting a protective order under Fed. R. Civ. P. 26(c), “bears the burden of making the showing of good cause contemplated by the rule and therefore must make a specific demonstrative of facts in support of the request[.]”³¹ Courts reviewing a request for a protective order “must weigh the movant’s proffer of harm against the adversary’s significant interest in preparing for trial.” *Smith* at 99 (internal citations and marks omitted). When determining whether to limit or deny discovery under this rule, the Court of Appeals for the District of Columbia balances several factors including “the requester’s need for the information from this particular source, its relevance to the litigation at hand, the burden of producing the sought-after material, and the harm which disclosure would cause to the party seeking to protect the information.”³² Other federal courts consider additional factors such as whether the party benefiting from a protective order is a public entity or official and whether the information relates to issues important to the public.³³

³¹ *Smith v. Yeager*, 322 F.R.D. 96, 99 (D.D.C. 2017) (internal citations and marks omitted).

³² *Burka v. U.S. Dep’t. of Health & Human Servs.*, 87 F.3d 508, 517 (D.C. Cir. 1996). Here, because the Postal Service has already provided the library references at issue, the burden of producing the requested material is not a factor in the Commission’s analysis.

³³ *Castellani v. Atlantic City*, 102 F.Supp.3d 657, 665 (D.N.J. 2015).

Accordingly, the Commission's rules permitting access to non-public materials set forth strict conditions that must be met prior to the disclosure of any information. Section 3007.301 requires that a motion requesting access to non-public materials shall "[i]dentify the particular non-public materials to which the movant seeks access" and "[i]nclude a detailed statement justifying the request for access[.]" 39 C.F.R. § 3007.301(b)(1) and (2). Additionally, "[i]f access is sought to aid participation in any pending Commission proceeding, the motion shall identify all proceedings (including compliance proceedings) in which the movant proposes to use the materials and how those materials are relevant to those proceedings[.]" *Id.* at § 3007.301(b)(2)(i). The motion must "[a]ttach a description of protective conditions completed and signed by the movant's attorney or non-attorney representative," and it must "[a]ttach a certification to comply with protective conditions executed by each person (and any individual working on behalf of that person) seeking access[.]" *Id.* at § 3007.301(b)(5) and (6). Furthermore, for individuals to be eligible for access, they must not be involved in "competitive decision-making for any individual or entity that might gain competitive advantage from using non-public materials[.]"³⁴

In reviewing the motions for access, opposing responses, and replies, the Commission will first determine whether the parties seeking access complied with the Commission's rules governing access to non-public material. If the parties complied, the Commission will then balance the interests of the parties to determine whether access should be granted or whether good cause has been shown to deny access.

³⁴ *Id.* at § 3007.300(b). An individual is involved in "competitive decision-making" if he or she "consult[s] on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with an individual or entity having a proprietary interest in the protected material." *Id.*

B. UPS's and PostCom's Motions for Access Satisfy Section 3007.301

In accordance with section 3007.301, both UPS's and PostCom's motions for access include a list of non-public library references to which they request access,³⁵ specify that access is necessary for the purpose of filing comments in this ACR,³⁶ and provide the requisite statements of protective conditions and signed certifications from each individual for whom UPS and PostCom seek access.³⁷ Therefore, UPS's and PostCom's motions for access satisfy the requirements under section 3007.301, meeting the necessary conditions to receive access to non-public information under protective conditions.

The motions for access properly identify the non-public library references sought for the purpose of reviewing the Postal Service's compliance in this docket. UPS and PostCom have established a legitimate need for accessing the requested library references, namely to review the compliance of the Postal Service with applicable statutes and regulations in FY 2018 and to provide informed comments in the instant docket.³⁸ UPS states that without access to the library references at issue, it would be "nearly impossible" for UPS to provide meaningful substantive comments. UPS Reply at 6. The Commission previously recognized that the need to access non-public data

³⁵ UPS Motion for Access at 1; PostCom Motion at 1. UPS requested access to 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. PostCom requested access to Library References USPS–FY18–NP2, –NP3, –NP7, –NP8, –NP9, –NP12, –NP14, –NP20, and –NP30. PostCom Motion at 1.

³⁶ UPS Motion for Access at 2, 5-7; PostCom Motion at 1.

³⁷ UPS Motion to Supplement at 4-21; PostCom Motion at 2, 4-10.

³⁸ UPS Motion for Access at 2; PostCom Motion at 1. It is notable that the Postal Service did not argue that UPS and PostCom do not need to access the requested library references for them to participate in the instant proceeding. Additionally, the Postal Service did not argue that the requested library references are not relevant to the ACR proceeding.

for the purposes of participating in a proceeding is a legitimate purpose upon which the Commission may grant access.³⁹

The motions for access also comply with the Commission's strict protective conditions required in order to gain access to non-public, commercially sensitive materials. The protective conditions provided under the Commission's rules, and agreed to by both UPS and PostCom, strictly prohibit any "person involved in competitive decision-making for any individual or entity that might gain competitive advantage" from gaining access to the non-public library references at issue.⁴⁰ None of the individuals for whom UPS and PostCom request access are involved in competitive decision-making.⁴¹ UPS states that it is requesting access for only outside counsel and outside consultants. UPS Motion for Access at 2. PostCom states that it is requesting access for outside counsel and its president and CEO, but that it is not "a competitor of the Postal Service, and has no role in the competitive decision-making for any Postal Service competitor." PostCom Motion at 2.

Additionally, the named individuals for whom access is requested certify that they will not disseminate information contained in the non-public library references to any person not granted access and will act to protect the material from any person not authorized to obtain access.⁴² The certifications provide that the non-public materials will only be accessed for purposes of informing comments submitted in the instant proceeding and that any violation of the extensive protective conditions may result in

³⁹ Docket No. RM2016-10, Order Granting Motion for Access to Non-Public Materials Filed Under Seal, October 11, 2016, at 4 (Order No. 3560). In Order No. 3560, the Commission granted UPS access to information filed under seal, which included third party information, on the condition that the parties first file an agreement regarding inadvertent disclosure. Order No. 3560 at 4-5. In a later rulemaking, the Commission added the provision clarifying the rights of any aggrieved third party to seek all available remedies before the Commission or a court of law, thereby alleviating the need for any additional agreements between parties. See Order No. 4679 at 69-70.

⁴⁰ UPS Motion to Supplement at 6; PostCom Motion at 4.

⁴¹ See UPS Motion for Access at 10-21; UPS Motion to Supplement at 6, 8-21; PostCom Motion at 2, 7-10.

⁴² UPS Motion to Supplement at 6; PostCom Motion at 5.

sanctions by the Commission against any person who violates these protective conditions and/or on the persons or entities on whose behalf the individual was acting.⁴³

Therefore, both UPS and PostCom have demonstrated compliance with the Commission's rules permitting access to non-public information.

C. The Postal Service has not Made a Showing of Good Cause to Deny Access

The Postal Service has not made a showing of good cause to deny access to UPS's outside counsel and consultants and to PostCom's outside consultants and its president and CEO for the reasons discussed below.

1. Presence of Commercially Sensitive Information is not Grounds to Deny Access

In opposing the requests for access to non-public materials, the Postal Service's main assertion is that the requested library references contain "confidential and commercially sensitive" material, "which under good business practice would not be publicly disclosed."⁴⁴ In its opposition, the Postal Service includes letters from several third parties indicating their opposition to access because the materials contain commercially sensitive data that they allege UPS and PostCom could use to their detriment.⁴⁵ The third parties also express concern that the improper disclosure of their commercially sensitive information could significantly impact their revenues and commercial interests.⁴⁶

⁴³ UPS Motion to Supplement at 5; PostCom Motion at 4.

⁴⁴ Postal Service Response to UPS Motion for Access at 3-4; Postal Service Response to PostCom Motion at 2-3.

⁴⁵ Postal Service Response to UPS Motion for Access, Attachments 2-5; Postal Service Response to PostCom Motion, Attachments 2-5; Deutsche Post Letter at 2.

⁴⁶ Postal Service Response to UPS Motion for Access, Attachment 1; Postal Service Response to PostCom Motion, Attachments 1-5; Deutsche Post Letter at 2.

The presence of confidential and commercially sensitive information is not sufficient justification by itself to deny access. Contrary to the Postal Service's claim that the commercial nature of the information prevents access, subpart C of 39 C.F.R. part 3007 sets forth a process by which interested persons can gain access to commercially sensitive material under strict protective conditions.⁴⁷ To accept the Postal Service's argument would nullify subpart C of 39 C.F.R. part 3007 because no interested person could ever gain access to material filed under seal with the Commission. The rules permitting access take into consideration that information filed under seal with the Commission may contain sensitive commercial information and implement stringent safeguards to prevent the harms alleged by the Postal Service and the third parties. Moreover, the assertion that commercial harm might occur ignores the many requirements and protective conditions for any party requesting access to non-public information.

First, section 3007.300(b) provides that "[n]o person involved in competitive decision-making for any individual or entity that might gain competitive advantage from using non-public materials shall be granted access to non-public materials." 39 C.F.R. § 3007.300(b). The Commission's rules define "competitive decision-making" as including activities such as "consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals." *Id.* However, the rules explicitly state that competitive decision-making does not include "rendering legal advice or performing other services that are not directly in furtherance of activities in competition with an

⁴⁷ See Order No. 4403 at 9; Docket No. RM2008-1, Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, August 13, 2008, at 7 (Order No. 96).

individual or entity having a proprietary interest in the protected material.”⁴⁸ This strict prohibition on access mitigates concerns of commercial harm, as any person involved in competitive decision-making is not permitted access to non-public materials.⁴⁹ In their opposition to access, neither the Postal Service nor the third parties claim that the designated persons requesting access have any involvement in competitive decision-making.

Second, the Commission’s rules place restrictions on the use and misuse of any non-public information and prohibit unauthorized or public disclosure. For example, persons with access are prohibited from “disseminat[ing] the materials or the information contained therein, in whole or in part, to any person not allowed access[.]” 39 C.F.R. § 3007.302(a). Additionally, the non-public materials may only be used “for the purposes for which the non-public materials [were] supplied.” *Id.* at § 3007.302(b). Here, UPS and PostCom may only use the non-public materials to inform their comments submitted in this ACR docket. In addition, the Commission’s rules require individuals with access to take reasonable care in protecting the non-public material from any person not granted access. *Id.* at § 3007.302(c). Reasonable care is defined to be the “same degree of care . . . to prevent the unauthorized disclosure of these materials as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal,

⁴⁸ *Id.* This is consistent with federal court restrictions on access to highly confidential information to independent outside counsel. See, e.g., *W. Convenience Stores, Inc. v. Suncor Energy (U.S.A.) Inc.*, No. 11-CV-01611, 2014 WL 561850, at *1 (D. Colo. Feb. 13, 2014) (“During discovery, [the non-party competitor’s] interest was addressed by a protective order that entitled Western’s counsel and retained experts to view [the non-party competitor’s] wholesale purchase and retail sales information, but forbade the recipients of the information from sharing it with [the plaintiff’s owner] . . .”).

⁴⁹ The Supreme Court of the United States acknowledged that even when confidential commercial information is at issue, “orders forbidding any disclosure . . . are rare.” *Fed. Open Market Comm. of Fed. Reserve Sys. v. Merrill*, 443 U.S. 340, 362 n.24 (1979). The Commission’s rules are akin to an “attorney eyes only” protective order, commonly issued by trial courts. *Merrill* at 362 n.24. See *U.S. ex rel. Purcell v. MWI Corp.*, 209 F.R.D. 21, 28 (D.D.C. 2002) (Good cause shown for issuance of protective order negated by agreement to exclude plaintiff from access to certain proprietary information and having an “attorney eyes only” agreement).

confidential, commercially sensitive, and privileged information.” *Id.* These restrictions protect against concerns expressed by the Postal Service and third parties of any potential improper disclosure of the information.

Third, the Commission’s rules provide that the Commission may sanction any person that violates the protective conditions under which he or she gained access. *Id.* at § 3007.303(a). Sanctions include dismissing the proceeding, ruling by default against the person who violated the order, revoking access or restricting access in the future, and other sanctions as deemed appropriate. *Id.* The Commission’s rules also do not prevent the Postal Service or third parties harmed by any “violation of an order granting access subject to protective conditions, from pursuing any remedies available under the law against the person who violated the order, the persons or entities on whose behalf the person was acting, or both.” *Id.* at § 3007.303(b). These strict sanctions, whether delivered by the Commission or a court of law, provide adequate remedies in the event of any violation for both the Postal Service and any affected third party.⁵⁰

Finally, the Commission’s rules require interested participants seeking access to material filed under seal to comply with strict protective conditions. 39 C.F.R. § 3007.301(b)(5). The Commission provides an example of the required filing in Appendix A to subpart C of 39 C.F.R. part 3007. The sample description of protective conditions includes paragraphs incorporating sections 3007.300(b) and 3007.302(a)-(c) discussed above and acknowledges possible punishment for violating the protective conditions.⁵¹ The protective conditions are consistent with federal court precedent applying Fed. R. Civ. P. 26(c) to requests for protective orders. The statement of

⁵⁰ “Final § 3007.303(b) reserves the right of any person, including the Postal Service, to pursue other remedies.” Order No. 4679 at 28.

⁵¹ Appendix A to subpart C of 39 C.F.R. part 3007. UPS and PostCom both submitted protective conditions that are based upon Appendix A. UPS Motion to Supplement at 5-7; PostCom Motion at 4-6.

protective conditions provided by both UPS and PostCom sufficiently negates concerns regarding improper use of commercially sensitive material.⁵²

Therefore, the Postal Service and third party concerns about the commercially sensitive nature of the information and any potential improper disclosure are mitigated by the numerous protective conditions and prohibitions on improper disclosure of non-public information. Neither the Postal Service nor the third parties allege any history of improper disclosure by any individual seeking access under protective conditions that would provide grounds for denying access. To the contrary, both UPS and PostCom have an extensive history of participating in Commission proceedings and UPS has routinely been granted access to other non-public library references without issue.⁵³

2. The Commission's Rules and Protective Conditions are Adequate

In addition to its objections to access due to the commercial sensitivity of the information, the Postal Service states that access should be denied and UPS and PostCom should be required to follow more restrictive protective conditions beyond what the Commission's rules require.⁵⁴ The Postal Service asserts that, although UPS and PostCom provide statements of protective conditions and certify that the individual for whom they request access are not involved in competitive decision-making, neither UPS nor PostCom signed "standard nondisclosure agreements that provide further legal

⁵² *Castellani* at 668 (Factors for whether good cause exists to prohibit release of information (issue a protective order) are negated by confidentiality order).

⁵³ UPS Reply at 4-5. The Commission has also granted access to PostCom in previous dockets and there is no history of violations of protective conditions by its representatives. See Docket No. RM2018-1, Order Granting Motion for Access to Non-Public Materials Filed Under Seal, December 21, 2017 (Order No. 4297); Docket No. RM2018-1, Order Granting Motion for Access to Non-Public Materials, June 15, 2018 (Order No. 4648); Docket No. RM2017-3, Order Granting Unopposed Motion for Access, March 5, 2018 (Order No. 4425).

⁵⁴ Postal Service Response to UPS Motion for Access at 5-6; Postal Service Response to PostCom Motion at 4-5.

protections, as well as indemnification in the event of unauthorized disclosure.”⁵⁵ Third party letters also express concern that the protective conditions are inadequate.⁵⁶ Additionally, third parties Canada Post and Deutsche Post assert that they lack enforcement tools to ensure that UPS and PostCom representatives comply with the protective conditions.⁵⁷

Specifically, Canada Post reiterates its concerns with granting UPS and PostCom access to the library references and requests three alternative forms of relief from the Commission. Second Canada Post Letter at 2-3. First, Canada Post requests that the Commission deny UPS’s and PostCom’s requests for access. *Id.* Second, if the Commission determines to provide access, Canada Post requests that the Commission order the aggregation of Canada Post data where feasible. *Id.* Third, Canada Post requests that the Commission order the redaction of “any and all reference to [Canada Post] and such of its competitive parcel products as may be identifiable therein[.]” *Id.* If access is granted, Canada Post requests that the Commission order UPS and PostCom to negotiate a non-disclosure agreement with Canada Post. *Id.*

As discussed above in the previous section, the Commission’s regulations protect against improper use of commercially sensitive information by prohibiting individuals involved in competitive decision-making from accessing the data and placing limitations on the use of the data. 39 C.F.R. §§ 3007.300(b) and 3007.302(b). The Commission’s regulations relating to non-public information and the protective conditions submitted by UPS and PostCom are adequate to protect against the harms identified by the Postal Service and third party foreign postal operators. Although

⁵⁵ Postal Service Response to UPS Motion for Access at 5-6; Postal Service Response to PostCom Motion at 4-5.

⁵⁶ Postal Service Response to UPS Motion for Access, Attachments 1-2; Postal Service Response to PostCom Motion, Attachments 1-2; Deutsche Post Letter at 2.

⁵⁷ Postal Service Response to UPS Motion for Access, Attachment 1; Postal Service Response to PostCom Motion, Attachment 1; Deutsche Post Letter at 2.

Canada Post requests alternative relief that the Commission order the aggregation of data contained in the requested library references so that the Canada Post data is combined with rest of world data or redact all references to Canada Post, the Postal Service states that “it is not feasible for the Postal Service to remove, redact, or aggregate the information in a way that protects this third party information.”⁵⁸

Contrary to the Postal Service’s and third parties’ assertions, the protective conditions coupled with the sanctions and other remedies under the law are sufficient to protect from commercial harm. As stated previously, the Commission’s rules provide that it may sanction any person who violates the protective conditions. 39 C.F.R. § 3007.303(a). Section 3007.303 provides that such sanctions may include dismissing the proceedings, ruling by default against the person who violated the orders, revoking access, restricting future access, and other such sanctions, as deemed appropriate by the Commission. *Id.* In Docket No. RM2018-3, the Commission revised the language relating to sanctions to clarify that “persons other than the Postal Service may be adversely affected by violations of protective conditions[.]”⁵⁹ The Commission’s rules now explicitly provide that any person whose interests are harmed by a violation of protective conditions has available to them any and all remedies available under the law. Section 3007.303(b) does not prevent, “any person, including the Postal Service, whose interests are damaged by the violation of an order granting access subject to protective conditions, from pursuing any remedies available under the law against the person who violated the order, the persons or entities on whose behalf the person was acting, or both.” 39 C.F.R. § 3007.303(b).

Because the rules clarify the ability of third parties or the Postal Service to pursue civil remedies against any person who violates protective orders, it is not necessary to

⁵⁸ Postal Service Response to UPS Motion for Access at 4; Postal Service Response to PostCom Motion at 3.

⁵⁹ Order No. 4679 at 69. While participating in the rulemaking, the Postal Service did not indicate that the protective conditions were insufficient or that it wanted an indemnification clause added to the protective conditions.

require UPS or PostCom to negotiate a separate indemnification agreement with Canada Post or any of the third parties and the current protections are adequate.

3. Granting Access does not Negatively Impact the Postal Service's Ability to Contract with Customers

In opposing access to the requested library references, the Postal Service also asserts that providing access would have a chilling effect on its business relations. The Postal Service states that it would be disadvantaged were the Commission to provide access to this non-public information because potential customers would be “forced to accept an uncertain risk that [commercially sensitive] information would be shared with third parties or their representatives[.]”⁶⁰ The Postal Service argues that granting UPS and PostCom access to the requested library references “will have an adverse effect on third-party interest in pursuing business with the Postal Service” and as a result, the Postal Service will “suffer potential loss of business and damaged business relationships.”⁶¹ It appears that the Postal Service is arguing that potential customers will be deterred from doing business with the Postal Service based on the potential that other persons may access commercially sensitive data under protective conditions.

The Postal Service makes this claim despite the fact that it informs both its domestic and international business partners that it is required to report commercially sensitive data to the Commission and that this data may be subject to disclosure to third parties in certain circumstances. In Docket No. RM2018-3, the Postal Service stated that it provides notice of the potential use of its commercially sensitive data to its customers through its contractual relationships. Specifically, the Postal Service confirmed that nearly every negotiated service agreement contains a clause informing the customer that the agreement and supporting confidential data will be filed with the

⁶⁰ Postal Service Response to UPS Motion for Access at 5; Postal Service Response to PostCom Motion at 4.

⁶¹ Postal Service Response to UPS Motion for Access at 5; Postal Service Response to PostCom Motion at 4.

Commission.⁶² The Postal Service provided an example of the standard language used by the Postal Service:

The Mailer acknowledges that this Agreement and supporting documentation will be filed with the Postal Regulatory Commission ('Commission') in a docketed proceeding. The Mailer authorizes the USPS to determine the scope of information that must be made publicly available in any Commission docketed proceeding in which information related to this Agreement must be filed. The Mailer further understands that any unredacted [sic] portion of the Agreement or supporting information will be available on the Commission's public website, www.prc.gov. In addition, the USPS may be required to file information in connection with this Agreement (including revenue, cost, or volume data) in other Commission dockets, including the Commission docket number for the Annual Compliance Report (ACR) for the USPS fiscal year(s) in which this Agreement is in effect. Each ACR docket has a distinct docket number, such as ACR201#, in which "201#" signifies the USPS fiscal year to which the ACR pertains. The Mailer has the right, in accordance with the Commission's rules, to address its confidentiality concerns directly with the Commission. The procedure for making an application to the PRC for non-public treatment of materials believed to be protected from disclosure is found at Title 39, Code of Federal Regulations, Section 3007.22 found on the Commission's website: www.prc.gov/Docs/63/63467/Order225.pdf.

Id. at 13. The Postal Service stated that including such language in its contracts with third parties "enables the Postal Service and third parties to ensure a full understanding of the Commission's treatment of commercially sensitive third party information[.]" *Id.*

Furthermore, the Postal Service notifies foreign postal operators that the Postal Service is required to provide certain information about its costs, weights, shapes, revenues, and volumes to the Commission and that foreign postal operators may have a proprietary interest in some of this information via notice filed with the International

⁶² Docket No. RM2018-3, Initial Comments of the United States Postal Service, March 23, 2018, at 12-13 (Docket No. RM2018-3 Comments). In its comments, the Postal Service urged the Commission to remove the requirement that the Postal Service inform "each affected person of the nature and scope of the submission to the Commission," when the Postal Service believes that any other person has a proprietary interest in non-public materials. Docket No. RM2018-3 Comments at 11.

Bureau of the UPU.⁶³ This information is particularly relevant in the present request for access as the non-public library references at issue include international third party data involving foreign postal operators. In its notice to foreign postal operators regarding use of its commercially sensitive information, the Postal Service provides actual notice that the information may be disclosed in limited circumstances to third parties. The notice to foreign postal operators provides that the Postal Service “will file proprietary information in a redacted and non-public format[,]” and that the “proprietary information . . . will be available only to the Postal Regulatory Commission staff and *third persons who are able to certify that they are not involved in competitive decision making.*” *Id.* (emphasis added).

Thus, the Postal Service’s assertion that granting access to the requested library references will harm its relationships with its international business partners is without merit. Postal Service customers, including foreign postal operators, are aware of the potential that third parties may access their commercially sensitive materials under certain protective conditions. The Commission’s rules permitting access to non-public information are public and are referenced in the Postal Service’s standard negotiated service agreement language and annual notification to foreign postal operators.

D. Other Factors

As mentioned above, federal civil courts consider several factors when balancing the interests to determine whether to grant a request for a protective order under Fed. R. Civ. P. 26(c). Such factors include whether the party benefitting from the protective order is a public entity or official and whether the case involves issues important to the public.⁶⁴ Here, both of these factors weigh in favor of granting access under the agreed upon protective conditions. If the Commission denies UPS’s and PostCom’s requests

⁶³ UPU IB Circular No. 166, November 19, 2018, at 1. This notification also identified Docket No. ACR2018 as a relevant proceeding.

⁶⁴ *Castellani* at 657 (citing *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir. 1994)).

for access, a public entity, the Postal Service, would benefit by having less scrutiny over its actions. The instant proceeding involves issues important to the public, namely whether the Postal Service complied with applicable statutory and regulatory requirements in FY 2018.

The Commission has routinely recognized the public's interest in overseeing the Postal Service's compliance with the Postal Accountability and Enhancement Act (PAEA) and right to participate in Commission proceedings. The Commission finds that denying access to non-public materials would significantly restrict the ability of interested persons to comment on the Postal Service's compliance under the PAEA. As a portion of the Postal Service's compliance under the law relates to products that contain third party data, prohibiting access to this data on the basis of its commercial sensitivity would negatively impact the public's "interest in maintaining the financial transparency of a government establishment competing in commercial markets." 39 U.S.C. § 504(g)(3)(A).

Here, where both UPS and PostCom have requested access to non-public library references containing commercially sensitive data under the strict protective conditions and restrictions set forth by the Commission's rules, the Commission finds that its rules provide adequate protective conditions to prevent any commercial harm or unauthorized disclosure. Having balanced the public interest in the financial transparency of the Postal Service against the Postal Service's claims of commercial harm, the Commission is compelled to grant access.

V. CONCLUSION

For the above reasons, the Commission grants UPS's and PostCom's motions for access to Library References USPS–FY18–NP2, –NP3, –NP7, –NP8, –NP9, and –NP14. The deadline for UPS and PostCom to file initial comments is extended to February 19, 2019. Reply comments responding to issues raised in these comments are due March 1, 2019.

VI. ORDERING PARAGRAPHS

It is ordered:

1. United Parcel Service, Inc.'s Motion Requesting Access to Non-Public Materials Under Protective Conditions, filed January 9, 2019, is granted, and access is hereby granted to the non-public materials for use in Docket No. ACR2018 for Library References USPS–FY18–NP2, –NP3, –NP7, –NP8, –NP9, and –NP14.
2. The Motion of Association for Postal Commerce for Access to Nonpublic Materials, filed January 10, 2019, is granted, and access is hereby granted to the non-public materials for use in Docket No. ACR2018 for Library References USPS–FY18–NP2, –NP3, –NP7, –NP8, –NP9, and –NP14.
3. Effective upon issuance of this Order, the individuals covered by the motions are each granted access to the non-public materials.
4. The deadline for United Parcel Service, Inc. and the Association for Postal Commerce to file initial comments is extended to February 19, 2019. Reply comments responding to issues raised in these comments are due March 1, 2019.

By the Commission.

Stacy L. Ruble
Secretary