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PRESIDING OFFICER'S
RULING NO. R2000-1/15

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268

Postal Rate and Fee Changes

Docket No. R2000-1

PRESIDING OFFICER'S RULING GRANTING MOTION OF
UNITED PARCEL SERVICE TO COMPEL RESPONSES TO
INTERROGATORIES UPS/USPS-T13-1 AND 2 TO WITNESS RAYMOND

March 15, 2000

United Parcel Service (UPS) filed Interrogatories UPS/USPS-T13-1 and 2 to Postal Service witness Raymond on February 3, 2000. The Postal Service filed objections on February 14, 2000.¹ UPS filed a motion to compel responses on February 28, 2000,² and the Postal Service filed its opposition on March 6, 2000.³

Postal Service witness Raymond supervised an effort called the Engineered Standards/Delivery Redesign project. According to witness Raymond, its purposes were to provide activity frequency information to determine the portion of time carriers spend at their various activities in order to analyze city carrier work methods, and ultimately to develop engineered methods and time standards to apply to city carrier activities. USPS-T-13 at 5. Interrogatory 1 requests copies of the final report and all interim reports regarding carrier activities developed as a result of the project. After discussions between the parties, UPS limited its request to the latest report that has been produced. Motion at 1. Interrogatory 2 asks what time standards have been

¹ Objection of United States Postal Service to UPS Interrogatories UPS/USPS-T13-1 and 2 to Witness Raymond, filed February 14, 2000.

² Motion of United Parcel Service to Compel Answers to Interrogatories UPS/USPS-T13-1 and 2 to Witness Raymond, filed February 28, 2000 (Motion).

³ Opposition of United States Postal Service to UPS Motion to Compel Answers to Interrogatories UPS/USPS-T13-1 and 2 to Witness Raymond, filed March 6, 2000 (Opposition).

developed as a result of the project, an explanation of their purpose, and how they are used. It asks the Postal Service to provide the standards that are currently being used if neither final nor interim time standards have been adopted as a result of the project.

UPS argues that carrier cost analysis should follow underlying carrier operations. If the time standards currently in effect, or those described in the Engineered Standards project report, provide a view of how long carrier operations should take, it argues, they go to the heart of analyzing the costs of carrier activities. Motion at 2. It argues that any adverse impact that disclosing time standard information might have on future labor negotiations can be avoided by providing this information under protective conditions. It says that it is willing to accept the requested information subject to the protective conditions that the Presiding Officer ultimately decides to apply to the information at issue in the Motion of United States Postal Service for Waiver and for Protective Conditions for Analysis of Witness Yezer, filed January 21, 2000. *Id.* at 2-3.

The Postal Service opposes the Motion, asserting that the report, and the standards that it contains, is confidential information collected and analyzed in support of future labor negotiations. It also asserts that “among the requested information was likely to be found” facility-specific or otherwise confidential business information that could harm Postal Service’s business interests if disclosed. Opposition at 1. The Postal Service contends that the Engineered Standards project contains data that is suitable for updating the Street Time Sampling system (STS) results that currently form the basis of carrier street time functionalized accrued cost pools. It emphasizes, however, that this was not the project’s purpose when it was undertaken. It argues that the data on observed carrier activities gathered by the project is more comprehensive than that which is needed to replace the STS results. It says that the documentation provided by witness Raymond in this docket “cull[s] out the observations of city carrier costs most relevant to updating the city carrier cost data previously relied upon in Commission rate proceedings.” *Id.* at 3. It further argues that the large majority of documentation produced consists of

hypothetical scenarios and projections of efficiency gains under alternative work methods and standards which have not been implemented, and may not be implemented. Some or all of these methods and standards may be the subject of future negotiations with the affected postal labor unions.

Id. The Postal Service describes one such report entitled "Standard Operating Procedures with Details for City Carriers" consisting of detailed descriptions of work methods and time standards "which could be applied to improve carrier operations." Id. at 4.

The Postal Service urges the Presiding Officer not to resort to protective conditions to accommodate its assertions that most of the documentation produced by the Engineered Standards project is not relevant to carrier cost analysis and is commercially sensitive. Instead, it argues, the Presiding Officer should require the Postal Service to produce additional documentation from the project "that bears on actual carrier operations, and excludes, through redactions, hypothetical scenarios and other information which cannot reasonably have a role in this case." Id. at 4-5.

The Engineered Standards project made comprehensive and detailed observations of actual carrier activity. As described by witness Raymond, the data gathered were intended to provide a basis for analyzing how carrier activities should be done and how long they should take. The Postal Service's Opposition mentions a report that appears to be responsive to Interrogatory 1, but describes it in only cursory fashion. It is difficult to determine the extent to which that report interprets and analyzes the data gathered by the project, and the extent to which its conclusions about what work methods should be followed and how long carrier activities should take are derived from those data. If the report's recommended time standards depend to a substantial degree on the project's observations of actual carrier activity, such a report would be highly relevant to the analysis of carrier street time costs.

More detailed pleadings from the Postal Service might have provided information on what kind of nexus exists between the standards recommended in the report and the observations of carrier activity that were gathered during the project. Absent such pleadings, it is reasonable to assume that the time standards that the report recommends are based in some significant way on the data that were gathered specifically to formulate them, and that those standards shed some light on the nature and quality of the data gathered.

Interrogatory 1, therefore, is reasonably calculated to lead to the discovery of admissible evidence, satisfying the threshold requirement of Rule 25(a) of our Rules of Practice. Rather than delay the relief to which UPS is entitled by soliciting more detailed pleadings from the Postal Service, it is more equitable and more efficient to require the Postal Service to file the report that is most responsive to Interrogatory 1 under the protective conditions that UPS proposes. UPS will then be in a better position to argue whether portions of that report are useful in evaluating the nature and quality of the empirical work undertaken by the time standards project, and should be publicly disclosed. Providing the report under protective conditions will also enable the Presiding Officer to make an informed evaluation of the Postal Service's claims that portions of the report may, if disclosed, have an adverse impact on future labor negotiations or be of value to its competitors. The Postal Service is directed to file the report requested in Interrogatory 1 under the protective conditions attached to this ruling.

Part (b) of Interrogatory 2 asks the Postal Service to provide the interim or final time standards that resulted from the Engineered Standards project. Part (d) asks the Postal Service to provide the time standards currently in use, if the time standards resulting from the Engineered Standards project have not been adopted. Because they may reflect on the reasonableness of the STS category estimates furnished by witness Raymond to witness Baron, they are reasonably calculated to lead to the discovery of admissible evidence, and should be provided. To avoid potential adverse impacts on future labor negotiations, the

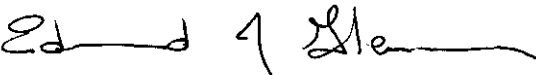
Postal Service is directed to provide them under the protective conditions attached to this ruling.

Parts (a) and (c) of Interrogatory 2 ask the Postal Service to explain the purpose of the time standards that the data gathered was designed to support, and to explain how these standards are used. This information is prima facie relevant for the same reason that parts (b) and (d) of Interrogatory 2 are relevant. The Postal Service has offered no grounds for concluding that the information requested in parts (a) and (c) should be treated as privileged. Accordingly, the Postal Service is directed to respond to parts (a) and (c) of Interrogatory 2.

RULING

1. The Motion of United Parcel Service to Compel Answers to Interrogatories UPS/USPS-T13-1 and 2, filed February 28, 2000, is granted with respect to Interrogatory 1, but only with respect to the latest report that is responsive to that interrogatory. The Postal Service's response to Interrogatory 1 will be subject to the protective conditions attached to this ruling.
2. The Motion of United Parcel Service to Compel Answers to Interrogatories UPS/USPS-T13-1 and 2, filed February 28, 2000, is granted with respect to parts (a) and (c) of Interrogatory UPS/USPS-T13-2.

3. The Motion of United Parcel Service to Compel Answers to Interrogatories UPS/USPS-T13-1 and 2, filed February 2, 2000, is granted with respect to parts (b) and (d) of Interrogatory UPS/USPS-T13-2, subject to the protective conditions attached to this ruling.


Edward J. Gleiman
Chairman

**STATEMENT OF COMPLIANCE
WITH PROTECTIVE CONDITIONS**

The following protective conditions limit access to materials provided in Docket No. R2000-1 by the Postal Service in response to Presiding Officer's Ruling No. R2000-1/15 (hereinafter, "these materials"). Individuals seeking to obtain access to such material must agree to comply with these conditions, complete the attached certifications, provide the completed certifications to the Commission, and serve them upon counsel for the party submitting the confidential material.

1. Only a person who is either:
 - (a) an employee of the Postal Rate Commission (including the Office of the Consumer Advocate) with a need-to-know; or
 - (b) a participant in Postal Rate Commission Docket No. R2000-1; or a person employee by such participant, or acting as agent, consultant, contractor, affiliated person, or other representative of such participant for purposes related to the litigation of Docket No. R2000-1; shall be granted access to these materials. However, no person involved in competitive decision-making for any entity that might gain competitive advantage from use of this information shall be granted access to these materials. "Involved in competitive decision-making" includes consulting 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 a person or entity having a proprietary interest in the protected material.
2. No person granted access to these materials is permitted to disseminate them in whole or in part to any person not authorized to obtain access under these conditions.
3. The final date of any participant's access shall be:
 - (a) the date on which the Postal Rate Commission issues its recommended decision or otherwise closes Docket No. R2000-1; or
 - (b) the date on which that participant formally withdraws from Docket No. R2000-1; or

- (c) the last date on which the person who obtains access is under contract or retained or otherwise affiliated with the Docket No. R2000-1 participant on whose behalf that person obtains access, whichever comes first. The participant immediately shall notify the Postal Rate Commission and counsel for the party who provided the protected material of the termination of any such business and consulting arrangement or retainer or affiliation that occurs before the closing of the evidentiary record.
- 4. Immediately after the Commission issues its last recommended decision in Docket No. R2000-1, a participant (and any person working on behalf of that participant) who has obtained a copy of these materials shall certify to the Commission:
 - (a) that the copy was maintained in accordance with these conditions (or others established by the Commission); and
 - (b) that the copy (and any duplicates) either have been destroyed or returned to the Commission.
- 5. The duties of any persons obtaining access to these materials shall apply to material disclosed or duplicated in writing, orally, electronically or otherwise, by any means, format, or medium. These duties shall apply to the disclosure of excerpts from or parts of the document, as well as to the entire document.
- 6. All persons who obtain access to these materials are required to protect the document by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the document 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, confidential, commercially-sensitive, and privileged information.
- 7. These conditions shall apply to any revised, amended, or supplemental versions of materials provided in Docket No. R2000-1.
- 8. The duty of nondisclosure of anyone obtaining access to these materials is continuing, terminable only by specific order of the Commission.
- 9. Any Docket No. R2000-1 participant or other person seeking access to these materials by requesting access, consents to these or such other conditions as the Commission may approve.

CERTIFICATION

The undersigned represents that:

Access to materials provided in Docket No. R2000-1 by the Postal Service in response to Presiding Officer's Ruling No. R2000-1/15 (hereinafter, "these materials" or "the information") has been authorized by the Commission.

The copy obtained is marked on every page with my name.

I agree to use the information only for purposes of analyzing matters at issue in Docket No. R2000-1.

I certify that I have read and understand the above protective conditions and am eligible to receive access to materials under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain in strict confidence these materials in accordance with all of the protective conditions set out above.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____

**CERTIFICATION UPON RETURN OF
PROTECTED MATERIALS**

Pursuant to the Certification which I previously filed with the Commission regarding information provided in Docket No. R2000-1 by the Postal Service in response to Presiding Officer's Ruling No. R2000-1/15 (hereinafter, "these materials" or "the information"), received on behalf of myself and/or the party which I represent (as indicated below), I now affirm as follows:

1. I have remained eligible to receive access to materials under paragraph 1 of the protective conditions throughout the period those materials have been in my possession. Further, I have complied with all conditions, and have maintained these materials in strict confidence in accordance with all of the protective conditions set out above.
2. I have used the information only for purposes of analyzing matters at issue in Docket No. R2000-1.
3. I have returned the information to the Postal Rate Commission.
4. I have either surrendered to the Postal Rate Commission or destroyed all copies of the information that I obtained or that have been made from that information.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____