

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 2000

Docket No. R2000-1

**UNITED STATES POSTAL SERVICE
NOTICE OF FILING CORRECTION TO OBJECTION TO INTERROGATORY
OF UNITED PARCEL SERVICE UPS/USPS—12 [ERRATUM]**

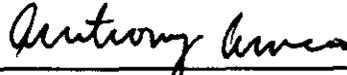
On April 20, the Postal Service filed its Objection to in interrogatory UPS/USPS-12. Several references in the Objection incorrectly refer to interrogatory UPS/USPS-5 instead of interrogatory UPS/USPS-12. Attached to this Notice is a corrected copy of the Objection with corrections underlined.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

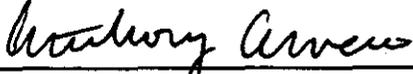
Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking



Anthony Alverfo
Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.



Anthony Alverfo

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April 21, 2000

Corrected 4/21/00

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

POSTAL RATE AND FEE CHANGES 2000

Docket No. R2000-1

**UNITED STATES POSTAL SERVICE
OBJECTION TO INTERROGATORY OF UNITED PARCEL SERVICE
UPS/USPS—12**

On April 10, 2000, United Parcel Service (UPS) filed institutional interrogatory UPS/USPS-12. Subpart (a) of interrogatory 12 requests the production of twenty-two reports of the Inspector General, twenty of which are financial installation audits in specific postal units (in some cases including subordinate units) throughout the country, and two of which are related to commercial mail receiving agencies. Subpart (b) of interrogatory 12 requests twenty-nine Inspection Service reports ranging from financial installation audits of post offices, investigations of mailers in specific localities, investigations of postal units in specific localities, and a postal-wide report on the plant verified drop shipment system. The Postal Service objects to interrogatory 12 on grounds of timeliness, relevance, commercial sensitivity and privacy (in part), law enforcement privilege (in part), and burden.

Interrogatory 12 is neither styled as follow-up discovery, nor does the question itself cross-reference any prior response of the Postal Service to discovery. The Postal Service accordingly objects to this interrogatory on grounds that it is untimely filed under the procedural schedule in P.O. Ruling No. R2000-1/4 and under Rule 25(a) of the Commission's Rules of Practice and Procedure.

Rule 25(a) is the successor to Special Rule of Practice 2E, which was routinely used in Commission practice.¹ Rule 25(a) provides that “[g]enerally, discovery against a participant will be scheduled to end prior to the receipt into evidence of that participant’s direct case.” This date was set as March 23 under P.O. Ruling No. R2000-1/4. An exception in Rule 25(a), which is identical to former Special Rule 2E, permits participants to request “information (such as operating procedures or data) available only from the Postal Service.” As clearly stated in Rule 25, however, the exception for operating procedures or data is “permissible only for the purpose of the development of *rebuttal testimony*” Rule 26(a) (emphasis added). PRC Order No. 1284 makes clear the intent of this wording of this exception is to maintain consistency with prior precedent. PRC Order No. 1284 at 8. Thus, under longstanding Commission precedent interpreting Special Rule 2E, discovery would not be permissible for the purpose of preparing rebuttal to *the Postal Service’s* direct case. Rather, discovery under the exception for data and operating procedures is available only for the purpose of rebutting *other participants’* cases-in-chief, *not* the Postal Service’s direct case. See, e.g., P.O. Ruling Nos. R97-1/85, R97-1/89, MC96-3/36 at 3, MC96-3/21.² As clearly provided in P.O. Ruling No. R97-1/85, if discovery against the

¹ Rule 25(a) was adopted in its present form in accordance with Order No. 1284, which was issued on February 3, 2000, at the conclusion of Docket No. RM98-3.

² P.O. Ruling No. MC96-3/36 explained that Special Rule 2E “is limited to when a participant needs data available only from the Postal Service *in order to prepare testimony to rebut participants other than the Postal Service.*” (emphasis added)); Presiding Officer’s Ruling No. MC96-3/21 similarly provides that:

Rule 2.E was generally intended to extend the otherwise applicable discovery period for information that can be obtained only from the Postal

Postal Service were permitted to continue after the close of discovery on the Postal Service's case-in-chief, "the discovery cutoff date [on the Postal Service's direct case] would have little meaning." See P.O. Ruling No. R97-1/85 at 4.

Indeed, Order No. 1284 embodies this, as the Commission deliberately modified the language in former Special Rule 2E when it adopted Rule 25(a) so as to make clear that discovery under the exception is available *only* for the purpose of the preparation of rebuttal testimony. PRC Order No. 1284 at 8.

Here, UPS cannot possibly direct discovery to the Postal Service for purposes of the preparation of rebuttal testimony to other participants' cases-in-chief, since the other participants have not even filed any cases-in-chief. To the extent UPS intends interrogatory 12 for the purpose of rebutting the Postal Service's direct case or preparing its case-in-chief, its opportunity to pose interrogatory 12 expired on March 23, seventeen days prior to the date on which interrogatory 12 was actually filed. UPS, moreover, did not accompany its discovery request with a request for leave to file its discovery out of time, and on the face of the question, there is no reason why interrogatory 12 could not have been filed on or before March 23. Hence, interrogatory 12 is clearly filed out-of-time.

The requested reports are, moreover, irrelevant. With one exception,³ the reports are confined to financial audits or criminal investigations in specific

Service that is *needed to prepare rebuttal testimony*.

P.O. Ruling No. MC96-3/21 at 2 (emphasis added).

³ The report entitled "Plant Verified Drop Shipment System" (AC-AR-89-001) is

facilities or limited geographic areas. Reports of the activities of a specific postal unit or geographic area are far too attenuated to be useful in a ratemaking context. Furthermore, the subject matter of the audits is unrelated to ratemaking purposes. As a general matter, the audit reports requested in subpart (a), as well as those in subpart (b) bearing the designation "AF" or "PA",⁴ consist of financial audits of plants or facilities to determine whether internal controls are effective; revenue is properly collected, reported, and deposited; expenses are reasonable and proper; employees' work time is accurately recorded; assets are properly protected; and the unit's statements of account fairly represent the results of the financial operation for the performance period. None of these unit-specific topics is of any use in this proceeding. The reports in subpart (b) are also of no utility here. The reports bearing the designation "RI" in the case number in subpart (b) are findings of criminal investigations, such as fraud by mailers or postal employees. Simply put, these reports are wholly unrelated to the Postal Service's rate and classification proposals in this docket.

Subpart (a) of interrogatory 12 is also objectionable on grounds of commercial sensitivity and individual privacy. For example, the reports contain facility-specific figures for excess cash; facility and employee-specific inventory figures; employees' accountability; specific figures for mailer-, permit number-, or Periodical-specific revenue deficiencies found during the audits; names of employees at facilities subject to audits, and names of individual employees

not limited to a geographic area.

⁴ The Plant Verified Drop Shipment System Report (AC-AR-99-001) is an Inspector General Report. For purposes of this objection, the grounds applicable

conducting audits. Such facility- and employee-specific is either sensitive commercially to the Postal Service or to mailers, or involves individuals' privacy, and must therefore not be disclosed.

Subpart (b) of interrogatory 12 is also objectionable on grounds that it requires the production of law enforcement records. Most the documents (those marked with "RI" in the case report number) requested under subpart (b) involve criminal investigations, several of which could still be part of ongoing investigations. Disclosure of the documents could potentially reveal, *inter alia*, the identity of confidential informants; the identity of persons or entities that were the subject of criminal investigations for which criminal prosecutions were not, or have not yet been, initiated; and law enforcement methods, techniques, and procedures. To the extent that any of the criminal investigations are pending or not closed, disclosure would unduly interfere with potential prosecutions.

The Postal Service also objects to subparts (a) and (b) on grounds of burden. It would be unduly burdensome to review the documents in both subparts (a) and (b) for redactions, such as those necessary to protect law enforcement records that would ordinarily be withheld from disclosure under FOIA Exemption (b)(7).⁵ The Postal Service estimates that it would consume

to those raised in connection with subpart (a) should generally apply to it.

⁵ 5 U.S.C. § 552(b)(7) permits agencies to withhold:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a

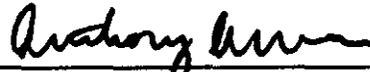
approximately 5 person-hours per Inspection Service report to review the documents to determine which types of information must be redacted. The exercise would likely be similar for the documents requested in subpart (a). In addition to the time spent by the reviewer performing the redactions, this could also include time to conduct consultations with local officials and other responsible persons to advise on the sensitivity of the information included in the reports. Thus, in total, the Postal Service estimates that reviewing the documents would consume 255 hours of postal employees' time, which is unduly burdensome given the immateriality of the requested information.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking

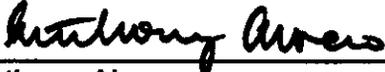


Anthony Alverno
Attorney

confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

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