

BEFORE THE
POSTAL RATE COMMISSION

RECEIVED

APR 24 11 15 AM '00

POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 2000

DOCKET NO. R2000-1

MOTION OF UNITED PARCEL SERVICE TO AMEND
PROTECTIVE CONDITIONS ADOPTED IN PRESIDING
OFFICER'S RULING NO. R2000-1/15 REGARDING
INFORMATION AND MATERIALS RELATED TO THE
ENGINEERED STANDARDS/DELIVERY REDESIGN PROJECT
(April 24, 2000)

United Parcel Service ("UPS") hereby moves that the Presiding Officer modify the protective conditions in effect pursuant to Presiding Officer's Ruling No. R2000-1/15 (March 15, 2000) with respect to the Engineered Standards Data Base that is the subject of United States Postal Service witness Raymond's testimony by eliminating the "involved in competitive decision-making" restriction, on the ground that this restriction is not necessary or appropriate for the report at issue (Library Reference USPS-LR-I-242, entitled, "Standard Operating Procedures with Details for City Carriers") ("First SOP Report"). Because the only legitimate reason to restrict access to the First SOP Report relates to the Postal Service's collective bargaining process rather than to any justifiable concern that disclosure of the information to competitors would threaten the Postal Service's competitive interests, access should not be restricted on the basis of

whether an individual is involved in competitive decision-making as long as public disclosure is prohibited and use of the materials is limited to this proceeding.

THE DISCOVERY REQUEST

On February 3, 2000, UPS filed interrogatory UPS/USPS-T13-1, which requested, *inter alia*, a copy of the final report on carrier activities developed as a part of the Engineered Standards/Delivery Redesign project relied on by Postal Service witness Raymond. The Postal Service objected on February 14, 2000, on the ground that the report contained "information collected in part to support negotiations with postal labor unions." Objection of United States Postal Service to UPS Interrogatories UPS/USPS-T13-1 and 2 to Witness Raymond (filed February 14, 2000) ("Postal Service Objection") at 1. The Postal Service also suggested that "Responsive reports are also [sic] **may** contain facility-specific or otherwise confidential business information," *id.* (emphasis added), although all but this one sentence of the Objection addressed the Postal Service's labor concerns.

UPS filed a motion to compel on February 28, 2000. Motion of United Parcel Service to Compel Answers to Interrogatories UPS/USPS-T13-1 and 2 to Witness Raymond (February 28, 2000) ("UPS Motion"). In its motion, UPS limited its request in interrogatory UPS/USPS-T13-1 to the final report. UPS Motion at 1. The Postal Service's opposition to the UPS Motion argued that the report contains information that "could have commercial value to competitors of the Postal Service" 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) ("Postal Service Opposition") at 4.

On March 15, 2000, the Presiding Officer granted the Motion, subject to the same protective conditions that were being applied to other allegedly confidential information. Those protective conditions provide that any person "involved in competitive decision-making" on behalf of Postal Service competitors is prohibited from having access to protected materials. POR 15, Attachment A at 1, ¶ 1(b). However, the Presiding Officer indicated that further review of the Postal Service's claim that the report was confidential could be obtained, since the Postal Service's pleadings described the report "in only cursory fashion." POR 15 at 4 (stating that "Providing the report under protective conditions will . . . 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 competitors").

UPS requests that the Presiding Officer undertake that review now, and submits that there is nothing in the First SOP Report which could possibly be of benefit to the Postal Service's competitors. Since UPS is not challenging the Postal Service's claim that public disclosure of the First SOP Report could "adversely affect the bargaining position of the Postal Service in future [labor] negotiations," Objection at 1, UPS agrees that protective conditions are appropriate. However, UPS submits that the protective conditions now in place do not comport with the reason for protecting the First SOP Report from public disclosure, and that they should therefore be modified to eliminate

the "involved in competitive decision-making" limitation on access. Instead, the protective conditions should (1) prohibit public disclosure, (2) limit access to individuals who are not involved in collective bargaining with the Postal Service, and (3) restrict the use of the protected information for any purpose other than to litigate the issues in this proceeding.

A suggested form of protective conditions as proposed herein is attached hereto.

ARGUMENT

Initially, the Postal Service's primary objection to interrogatory UPS/USPS-T13-1 was that disclosure of the information contained in the First SOP Report might adversely affect its negotiations with labor unions. Objection at 2. The Postal Service's bargaining position with its unions would not be compromised by disclosure of the First SOP Report to those involved in competitive decision-making on behalf of a participant in this proceeding, as long as the report is not also disclosed to representatives of the postal labor unions. Thus, as long as protective conditions were designed to prevent such disclosures, additional restrictions are inappropriate.

While the Postal Service later asserted that the information in question "would likely be of more than casual interest to the Postal Service's competitors" and would reveal proprietary delivery processes and procedures to the Postal Service's competitors, Opposition at 4, it never explained why. The Postal Service cannot seriously contend that "work methods and time standards" developed for Postal Service city carrier operations could possibly "have commercial value to competitors . . . in the

parcel handing and delivery market" whose operations are not at all like those of postal city delivery carriers. Objection at 4.

The report at issue could possibly be of benefit only to those who provide a large-scale, routine letter delivery service of the scope and magnitude of the Postal Service's First Class Mail operations. There is no such entity in this case. Indeed, as a result of its statutory monopoly, only the Postal Service is in that business. No other entity has daily operations comparable to the Postal Service's city carrier operations, either in terms of scope or configuration. Simply put, the only entities that might commercially gain an unfair advantage from disclosure of the First SOP Report are the Postal Service's labor unions.

The Postal Service's claim that the First SOP Report contains commercially sensitive information (Objection at 4) is belied by the contents of the report. A review of the First SOP Report demonstrates that it does not contain any facility-specific, mailer-specific, or otherwise competitively sensitive information.

Moreover, the contents of the First SOP Report are similar to those in a number of publicly available descriptions of city carrier methods and work flows. See, e.g., Docket No. R97-1, USPS-LR-H-239 (filed August 29, 1997), consisting of Handbook M-39, Management of Delivery Service, and Handbook M-41, City Carrier Duties and Responsibilities. Indeed, the data in the CCS analysis presented in this and prior cases is more revealing in many respects than the First SOP Report. Disclosure of the similar information in the First SOP Report poses no additional risk.

Finally, the Postal Service argues that the First SOP Report might contain "hypothetical scenarios and projections of efficiency gains under alternative work methods and standards" which, the Postal Service claims, are commercially sensitive. Opposition at 4. Again, a review of the report makes clear that no information that could be of assistance to competitors (as opposed to postal unions) is contained in the report.

CONCLUSION

The Commission should impose "as narrow a protective order as is necessary under the facts." 6 *Moore et al.*, Moore's Federal Practice ¶ 26.102 (3d ed. 1997) and cases cited therein (footnote omitted). A review of the First SOP Report demonstrates that the protective conditions now in effect are overly restrictive. The report does not contain any facility-specific, mailer-specific, or other commercially sensitive information. The Postal Service's concerns about disclosure to postal labor unions can be adequately addressed without unnecessary limitations that do not relate to those concerns.

The "involved in competitive decision-making" restriction is just such an unnecessary limitation. UPS submits that the protective conditions applicable to USPS-LR-I-242 as adopted in POR 15 should be modified to exclude the language prohibiting access for those "involved in competitive decision-making," and to substitute instead the restrictions embodied in the proposed protective conditions attached hereto.

WHEREFORE, United Parcel Service respectfully requests that the Presiding Officer modify Presiding Officer's Ruling No. R2000-1/15 to conform to the protective conditions attached hereto.

Respectfully submitted,



John E. McKeever
William J. Pinamont
Phillip E. Wilson, Jr.
Attorneys for United Parcel Service

Piper Marbury Rudnick & Wolfe LLP
3400 Two Logan Square
18th and Arch Streets
Philadelphia, PA 19103-2762
(215) 656-3310
(215) 656-3301 (FAX)
and
1200 Nineteenth Street, N.W.
Washington, D.C. 20036-2430
(202) 861-3000

Of Counsel

STATEMENT OF COMPLIANCE
WITH PROTECTIVE CONDITIONS
[Material to be deleted in brackets; added material underlined.]

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 employed 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.] collective bargaining with the Postal Service shall be granted access to these materials. "Involved in collective bargaining" includes consulting or advising on negotiating strategies.
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. Persons granted access shall use these materials solely for the purpose of litigating issues in this proceeding, and not for any other purpose.
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 _____

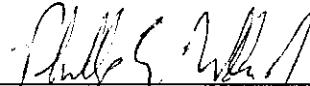
Representing _____

Signature _____

Date _____

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document by first class mail, postage prepaid, in accordance with Section 12 of the Commission's Rules of Practice.



Phillip E. Wilson, Jr.
Attorney for United Parcel Service

Dated: April 24, 2000
Philadelphia, Pa.

61902