

BEFORE THE
POSTAL RATE COMMISSION

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 2000

DOCKET NO. R2000-1

MOTION OF UNITED PARCEL SERVICE TO COMPEL
PRODUCTION OF INFORMATION AND DOCUMENTS
REQUESTED IN INTERROGATORY UPS/USPS-6
OR, IN THE ALTERNATIVE, TO EXTEND DISCOVERY
DEADLINE ON BRPW PARCEL POST ESTIMATES
(April 28, 2000)

Pursuant to the Commission's Rules of Practice, United Parcel Service ("UPS") hereby moves that the Presiding Officer order the United States Postal Service to answer interrogatory UPS/USPS-6, filed on April 5, 2000, and to produce the materials requested therein. A copy of the interrogatory is attached hereto as Exhibit A. The Postal Service filed its objection on April 17, 2000 ("Objection").

UPS submits that the requested information is highly relevant to the determination of the accuracy of the revenue and volume estimates used to develop the Postal Service's proposed rates for Parcel Post and that this information can be provided without undue burden. Furthermore, the interrogatory was timely filed under Commission Rule 25(a).

THE DISCOVERY REQUEST

Interrogatory UPS/USPS-6(a) requests "all programs, documents, analyses and any other information used to aggregate each postage statement transaction for each record provided as part of LR-I-194." Interrogatory UPS/USPS-6(b) requests the "documents, programs, analyses, and any other information used in correcting Permit System and manual data before it is aggregated and sent to [Postal Service witness] Hunter." Subparagraph 6(c) requests "all documents, programs, analyses, and any other information used in correcting Permit System and manual data after it is aggregated and sent to Mr. Hunter but before Mr. Hunter performs the iterative 'correction' process he described in the technical conference held on March 20, 2000[.]" Finally, interrogatory UPS/USPS-6(d) requests the "documents, programs, analyses, and any other information (including, if available, SAS log files of LR-I-194 SAS programs JOB1 JOB2 and JOB3) resulting from the iterative 'correction' process Mr. Hunter described in the technical conference held on March 20, 2000."

In short, the interrogatory requests information on (1) the process used to aggregate the postage statement data provided in library reference USPS-LR-I-194 and relied on by Mr. Hunter to arrive at his BRPW estimates of Parcel Post volume and revenue, and (2) how the postage statement data was checked for inaccuracies in the PERMIT System database, both before and after it was aggregated, and how it was changed as it moved through the PERMIT System data base and into the aggregated BRPW data base used by Mr. Hunter. The Postal Service has objected to all four

subparts of the interrogatory, arguing that they are “untimely, redundant, overbroad, immaterial and unduly burdensome.” Objection at 1.¹

ARGUMENT

A. Interrogatory UPS/USPS-6 Is Timely.

The Postal Service argues that interrogatory UPS/USPS-6 is untimely because it was served after March 23, 2000. UPS submits that the interrogatory is permitted by Commission Rule 25(a), which provides,

“Generally, discovery against a participant will be scheduled to end prior to the receipt into evidence of that participant’s direct case. An exception to this procedure shall operate . . . when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature are permissible only for the purpose of the development of rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony.”

39 C.F.R. § 3001.25(a).

The Postal Service does not dispute that the interrogatory seeks “operating procedures or data” available only from the Postal Service, nor does it suggest that the requested information cannot possibly be used to develop rebuttal testimony. It also concedes the relevance of the information. Objection at 2-3. Rather, the Postal Service argues that “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.” Objection at 7, citing Presiding Officer rulings in prior cases. The Postal Service goes on to argue, “UPS cannot possibly direct discovery for

1. The Postal Service does not assert commercial sensitivity.

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." Objection at 7.

Even under the Postal Service's interpretation that the Rule 25(a) exception for data available only from the Postal Service does not apply to discovery of information to rebut the Postal Service's case, the interrogatory is timely. Rule 25(a) does not require a participant who wishes to rebut another participant's case to wait to request information available only from the Postal Service until that other participant's case-in-chief has been filed, at least where it is clear that the requested information is relevant to an argument already being made by the participant to be rebutted.

Here, it is clear beyond doubt that at least one participant other than the Postal Service will present arguments based on the Parcel Post volume and revenue estimates generated from the postage statement data entered into the PERMIT System data base. Relying on the BRPW Parcel Post estimates, the Parcel Shippers Association ("PSA") has already asserted that the Postal Service's proposed Parcel Post rate increase is not justified. Indeed, PSA has argued that, based on the PERMIT System data, Parcel Post rates should be **decreased**. See, e.g., PSA/USPS-T32-2(b) (Response filed March 2, 2000) ("Would it not have been 'fair and equitable' to remedy the Postal Service's past overcharging of Parcel Post by reason of faulty data collection to have proposed a rate reduction in Parcel Post in this proceeding?"); Tr. 11/4543-53, 4563-65 (PSA cross-examination of Postal Service witness Mayes).

To rebut PSA's argument that the Postal Service's proposed rate increase is not justified, UPS is certainly entitled to the data needed to determine the accuracy of the information in the PERMIT System and the BRPW system on which PSA relies. PSA

cannot provide this data -- it can only be obtained from the Postal Service. It is exactly this situation that the Rule 25(a) exception was intended to address.

The mere fact that PSA has not yet filed its case-in-chief does not mean that discovery that is clearly relevant to the claim it has already made should grind to a halt. PSA has already vigorously asserted its reliance on the PERMIT System/BRPW data. The Postal Service's argument leads to the nonsensical result that even though PSA's position is clear, UPS would not be able to obtain relevant information to rebut that position now, in time to use the information in UPS's direct case so that other parties could conduct discovery on UPS's use of the data, whereas UPS could file these very same requests after intervenors' cases are filed and then use the data in the final rebuttal stage, when discovery on UPS's use of the data would not be available. That hardly comports with a sensible and fair development of the record.

In short, while Rule 25(a) establishes a discrete ending point for rebuttal discovery, the rule does not limit when rebuttal discovery can begin, so long as the requested information is relevant to a claim being made by another intervenor. Accordingly, the Presiding Officer rulings relied on by the Postal Service (Objection at 1) are not relevant here.

Moreover, the Postal Service's interpretation of the rule is too restrictive. The term "rebuttal testimony" in Rule 25(a) is not limited to testimony filed in opposition to intervenors' cases, but also includes testimony filed to rebut the Postal Service's case. "Rebuttal" is defined as "the act of rebutting; refutation." *The New International Webster's Comprehensive Dictionary of the English Language* (1996 ed.) at 1052. To "rebut" means "To overthrow by contrary evidence; contradict by countervailing proof;

disprove; refute.” *Id.* When participants file their cases-in-chief on May 22, they may present affirmative proposals of their own, or they may seek to “disprove” or “refute” the Postal Service’s claims. The information requested by UPS concerning what Postal Service personnel *other than Mr. Hunter* did to edit the data later used by him in *aggregated form could well contain “contrary evidence” that would “contradict” Mr. Hunter’s estimates “by countervailing proof.”* That stands in contrast to an interrogatory which asks Mr. Hunter what he did, or why he did it, or how he did it. It is this latter type of discovery that is foreclosed by the March 23 deadline.

The practical effect of adopting the Postal Service’s position would be that virtually all discovery (except follow-up interrogatories) would be “stayed” for two months until the cases-in-chief of intervenors are filed. That is inefficient, unnecessarily wastes precious time, and runs at cross purposes with the overriding goal of creating a record that is as complete as possible within the severe time constraints imposed by 39 U.S.C. § 3624(c)(1). The Commission’s rules should encourage and facilitate full *discovery at the earliest possible stage in the proceedings, rather than force an intervenor to wait to obtain clearly relevant data that the intervenor will be able to obtain later.* To do otherwise needlessly postpones discovery and further compresses intervenors’ opportunities to obtain needed data from the only real source of such data – the Postal Service.

Mr. Hunter has repeatedly disclaimed any expertise in the PERMIT System. Tr. 2/972-75, 988, 1050. UPS is seeking *from the Postal Service* unaggregated PERMIT System Data Mr. Hunter knows little or nothing about, in order to refute any claim that the aggregated data Mr. Hunter used accurately estimates Parcel Post’s FY

1998 revenue and volume. Discovery of this type falls within the expanded discovery period of Rule 25(a).

That discovery “for the purpose of the development of rebuttal testimony” directed to the Postal Service’s case may be conducted during the period leading up to as well as after the filing of intervenors’ cases-in-chief is clear from the language of the rule itself. Rule 25(a) states that “rebuttal testimony” is permitted “up to 20 days prior to the filing date for *final* rebuttal testimony” (emphasis added). Thus, under Rule 25(a) there are two types of rebuttal testimony to which the rebuttal testimony discovery exception applies: testimony rebutting the Postal Service’s direct case, and “final” rebuttal testimony filed by the Postal Service or others in the very last stage of the evidentiary part of the case.

The Presiding Officer rulings relied on by the Postal Service are easily distinguishable from the situation in this case. For example, in the case of Presiding Officer’s Ruling No. MC96-3/36, the discovery in question was filed after intervenors’ cases-in-chief were filed, thus negating any claim that the information was needed to rebut *the Postal Service’s* direct case and prompting the Presiding Officer to find that “These questions properly could have been asked during the initial phase of discovery on the Postal Service.” Presiding Officer’s Ruling No. MC96-3/36 (December 27, 1996) at 3 (interrogatories filed almost two months after “evidence in rebuttal to the direct case of the Postal Service was filed,” *id.* at 2). See also Presiding Officer’s Ruling No. R97-1/85 (January 7, 1998) at 4 (“[A]s a practical matter, there is no reason those discovery requests could not have been filed earlier”); Presiding Officer’s Ruling No. MC96-3/21 (October 18, 1996) at 2 (noting that “the time for the [parties] to submit testimony

rebutting the Postal Service's case is past"). To the extent those rulings may suggest that the Rule 25(a) exception authorizes discovery only for the purpose of obtaining information to rebut intervenors and not the Postal Service, those suggestions are erroneous dicta and should be disregarded.

The history of UPS's efforts to discover information on the accuracy of the BRPW Parcel Post estimates shows that interrogatory UPS/USPS-6 could not have been asked prior to March 23, as is evident from the chronology of UPS's efforts to examine the accuracy of the BRPW Postal Post estimates that is attached hereto as Exhibit B. Indeed, UPS did not know until the RPW technical conference held on March 20 – only three days before the initial discovery phase ended – that the BRPW data base consisted of *aggregated* records rather than a separate record for each underlying postage statement. To hold that interrogatory UPS/USPS-6 is untimely now (but will become timely after intervenors file their cases) would be to allow the Postal Service to benefit from its "sharp practice" in discovery. *See also* Tr. 2/746-55, 985-87.

In light of the history of UPS's diligent efforts to obtain information on the accuracy of the Postal Service's BRPW Parcel Post estimates, UPS moves in the alternative that, should the Presiding Officer adopt the Postal Service's view of Rule 25(a), the March 23 discovery deadline be extended *nunc pro tunc* for discovery on the Postal Service's BRPW Parcel Post estimates to April 14, when UPS last filed a discovery request concerning the RPW Parcel Post estimates.

Interrogatory UPS/USPS-6 Is Otherwise Proper.

The Postal Service argues that interrogatory UPS/USPS-6(a) is “redundant, overbroad, immaterial and unduly burdensome.” Objection at 1.² It argues that responding to the interrogatory “would start with the tens of millions of postage statements, include more than 2,300 PERMIT System offices, the 85 district offices, and the mainframe computer. As such, many months of effort would be required.” Objection at 4.

*This strident hyperbole is just plain wrong. Interrogatory UPS/USPS-6 does **not** request any hard copy postage statements, nor does it require a review of any such documents. Rather, the interrogatory seeks the programs and analyses used to aggregate and edit or “correct” electronic postage statement data. The Postal Service has provided no explanation of why it would take “months of effort” to provide the requested programs and analyses, which already exist and much (if not all) of which probably resides somewhere on a Postal Service computer.*

The Postal Service’s claim that the requested information is “immaterial” is unsupported. On the contrary, the reliability of the PERMIT System Parcel Post data -- data which is the basis for the BRPW Parcel Post estimates -- is highly relevant to the accuracy of the Postal Service's estimates of Parcel Post revenue and volume.

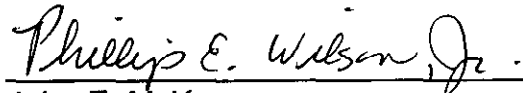
2. If UPS/USPS-6 is merely “redundant” of other interrogatories that were timely filed (as the “redundant” interrogatories identified by the Postal Service were), the Postal Service’s “untimely” argument seems out of place. One wonders why the Postal Service did not fully respond to the earlier questions, rendering UPS/USPS-6 unnecessary, especially since it has not asserted commercial sensitivity in its instant Objection.

The Postal Service characterizes UPS's request as asking "for virtually everything that witness Hunter has done for the last few years." Objection at 5. In doing so, it is attacking a demon of its own creation. The interrogatory seeks only information regarding the aggregation and data editing process for the PERMIT System data base made during FY1998. Correcting PERMIT System data is not "virtually everything that witness Hunter has done for the last few years." Indeed, Mr. Hunter has repeatedly professed a total lack of involvement with the PERMIT System data base. Tr. 2/972-75, 988, 1050.

In short, the Postal Service's substantive objections are unfounded. They should be overruled.

WHEREFORE, United Parcel Service respectfully requests that the Presiding Officer order the United States Postal Service to provide the information and documents requested in interrogatory UPS/USPS-6.

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 & Arch Streets
Philadelphia, PA 19103-2762
(215) 656-3310
(215) 656-3301 (FAX)
and
1200 Nineteenth Street, NW
Washington, DC 20036-2430
(202) 861-3900

Of Counsel.

INTERROGATORY OF UNITED PARCEL SERVICE
TO THE UNITED STATES POSTAL SERVICE

UPS/USPS-6. (a) Provide all programs, documents, analyses and any other information used to aggregate each postage statement transaction for each record provided as part of LR-I-194. If no such programs, documents, analyses, or other information exists, explain in detail why it does not exist. If such information existed at one time but no longer exists, explain in detail why it no longer exists and why it was destroyed, lost, or not kept.

(b) Provide all documents, programs, analyses, and any other information used in correcting Permit System and manual data before it is aggregated and sent to Mr. Hunter. If such information existed at one time but no longer exists, explain in detail why it no longer exists and why it was destroyed, lost, or not kept.

(c) Provide all documents, programs, analyses, and any other information used in correcting Permit System and manual data after it is aggregated and sent to Mr. Hunter but before Mr. Hunter performs the iterative "correction" process he described in the technical conference held on March 20, 2000

(d) Provide all documents, programs, analyses, and any other information (including, if available, SAS log files of LR-I-194 SAS programs JOB1 JOB2 and JOB3) resulting from the iterative "correction" process Mr. Hunter described in the technical conference held on March 20, 2000.

RPW DISCOVERY CHRONOLOGY

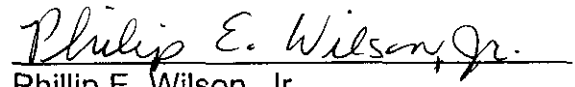
DATE	SUBJECT
2/10 (Thursday)	Interrogatories UPS/USPS-T5-6-17 filed, requesting BRPW data.
2/22 (Tuesday)	Partial objection to production of BRPW data – “the data is commercially sensitive.”
3/1 (Wednesday)	UPS motion on consent for protective conditions filed.
3/2 (Thursday)	UPS motion granted.
3/3 (Friday)	Library Reference I-194 filed.
3/7 (Tuesday)	UPS filed certifications and attempted to obtain a copy of LR-I-194, but was only able to obtain CD-ROM 1 and CD-ROM 2. Commission's CD writer could not copy CD-ROM 3.
3/7	UPS asks by telephone that USPS provide a copy of the CD-ROMs directly to UPS's certified representative. USPS stated: “standard operating procedures require your agents to visit the docket section at the Commission instead.”
3/9 (Thursday)	The Commission notified USPS that there was a problem reading CD-ROM 3 provided in Library Reference I-194. USPS stated: “It was unclear where the problem was (regarding copying of CD-ROM 3)...PRC hardware...CD-ROMs themselves, the write process, or otherwise...” USPS was unwilling to provide another copy of the CD-ROM “without first getting some understanding of what the problem was...”
3/10 (Friday)	UPS picked up CD-ROM 3.

3/16 (Thursday)	UPS sends error codes for quarter 4 Job 2 and Job 3 to USPS for review and technical assistance.
3/16	UPS advised USPS that it has run Jobs 1 and 2 without error messages. Job 3 is still giving abort and error messages that derive from data contained in Job 2.
3/16	Telephone technical conference advising USPS that UPS has not been able to run the entire RPW program successfully. UPS requested SAS logs for Jobs 1, 2, and 3 to solve abort message and error codes.
3/17 (Friday)	Telephone technical conference between UPS and USPS. UPS advised USPS that the solutions suggested on March 16 did not solve Job 3 program problems. Discussions relating to log file of Job 2. UPS indicated that there may be contaminated inputs. USPS agreed that, based on given inputs and code, error messages were inevitable and undoubtedly led to other problems.
3/20 (Monday)	RPW technical conference (three days before discovery deadline). USPS states, "The programmer may not be able to finish unless he realizes a related simple modification is necessary to the code (or rate file), . . . attached are the exact rate files (8) believed to have been used in Job 2 for FY1998."
3/21 (Tuesday)	USPS provides an answer to UPS's question on Job 3 code.
3/21	The latest sets of rate files sent by USPS yielded a big improvement toward goal of replicating the output of Job 2 for quarter 4. However, there are still differences in some files.
3/22 (Wednesday)	USPS forwarded to UPS two different/new files to be used in place of BRPW 59 and BRPW 60. USPS notes: "If needed, you can use a CLASS='PD' subset of the data to run the job faster. I unloaded these two files from the original tape backups. I didn't find any differences; however, it's worth a try."
3/23 (Thursday)	UPS requests another telephone technical conference with USPS. USPS responds that "The file we previously provided may be truncated somehow. Since you have reproduced the correct output file, there would seem to be no purpose served in resending what you have produced yourselves, which in any event is a file generated internally to the job stream and isn't necessary to the replication process."

3/24 (Friday)	UPS reports that it cannot obtain an exact replication of the RPW data.
3/28 (Tuesday)	USPS advises that the blowup factor provided in UPS/USPS-T4-8 and 23 should be applied to the RPW data results.
4/3 (Monday)	USPS categorizes as "trivial in the context of the significant digits in a rate case" UPS's requests for information to produce an exact replication of the BRPW result.
4/5	UPS/USPS-6 filed.

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 28, 2000.
Philadelphia, Pa.

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