

BEFORE THE
POSTAL RATE COMMISSION

RECEIVED

MAY 1 4 16 PM '00

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 DOCUMENTS REQUESTED IN
INTERROGATORY UPS/USPS-12, FILED APRIL 10, 2000
(May 1, 2000)

Pursuant to the Commission's Rules of Practice, United Parcel Service ("UPS") hereby moves the Presiding Officer to order the United States Postal Service to answer interrogatory UPS/USPS-12, filed on April 10, 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 20, 2000 ("Objection").

UPS submits that the requested information, consisting of Office of Inspector General and Inspection Service audit reports regarding bulk mail entry facilities and practices, is highly relevant to the determination of the accuracy of the postage statement data used by the Postal Service to estimate the Parcel Post revenue and volume information which underlies the Postal Service's proposed Parcel Post rates.¹ Since these audit reports can all be obtained from the offices of the Inspection Service

1. UPS withdraws its request for the eight reports on presort bureaus or on commercial mail receiving agencies, as well as its request for the first report listed in the interrogatory, No. 1222661-AF(1).

and of the Inspector General, they certainly can be provided without any undue burden. Furthermore, the interrogatory was filed in a timely manner under Commission Rule 25(a).²

THE DISCOVERY REQUEST

Interrogatory UPS/USPS-12 requests copies of Office of Inspector General audit reports and Inspection Service audit reports listed in the Office of Inspector General's Semiannual Report to Congress for October 1, 1998 – March 30, 1999, and in the Semiannual Report to Congress for April 1, 1999 – September 30, 1999, filed as Library Reference USPS-LR-I-181.

ARGUMENT

1. Interrogatory UPS/USPS-12 Was Timely Served.

The Postal Service argues that interrogatory UPS/USPS-12 is untimely because it was served after March 23, 2000, and thus is barred by Commission Rule 25(a).

Commission Rule 25(a) 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

-
2. The Postal Service's objection to this interrogatory is somewhat curious, in that the Postal Service itself invited UPS to file it. See Objection of United States Postal Service to Interrogatory UPS/USPS-T5-28 (filed March 23, 2000) at 2.

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).

UPS submits that the interrogatory is permitted under Commission Rule 25(a) because the information will be used not only to rebut the Postal Service's case, but also to rebut a different claim already made by a participant other than the Postal Service. In particular, the Parcel Shippers Association has claimed that, in light of the Postal Service's BRPW Parcel Post estimates for FY 1998, the existing Parcel Post rates should be reduced. See PSA/USPS-T32-2(b) (Response filed March 2, 2000); Tr. 11/4543-53, 4563-65 (PSA cross-examination of Postal Service witness Mayes).

UPS has already answered the Postal Service's arguments that Commission Rule 25(a) bars discovery in situations such as this. We will not repeat our arguments here, but rather incorporate herein by reference pages 3-8 of the Motion of United Parcel Service to Compel Production of Documents Requested in Interrogatory UPS/USPS-6 filed on April 28, 2000. The arguments we made there are equally applicable here because in both cases the requested information concerns the accuracy of the PERMIT System data and therefore may be used to rebut PSA's claim (as well as the Postal Service's Parcel Post proposal).

2. Interrogatory UPS/USPS-12 Is Otherwise Proper.

The Postal Service argues that the Office of Inspector General and the Inspection Service audit reports requested in interrogatory UPS/USPS-12 are irrelevant

and contain information that is commercially sensitive, that disclosure would infringe on the privacy rights of individuals, that some of the reports are exempt from disclosure under the Freedom of Information Act's "law enforcement privilege," and that responding to the interrogatory would be unduly burdensome. Every single one of the Postal Service's litany of objections should be rejected.

A. Interrogatory UPS/USPS-12 seeks relevant information.

The Postal Service argues that these audit reports are not relevant here because "[r]eports of the activities of a specific postal unit or geographic area are far too attenuated to be useful in a ratemaking context." Objection at 4. This argument ignores the fact that the processes and procedures in question are standardized across all postal units and geographical areas. Those procedures are not unique to the postal units or geographical areas covered by the audits. Problems at one office certainly may be indicative of problems endemic to all offices.

Moreover, there are a substantial number of such audit reports covering a substantial number of different offices or areas. All of the reports taken together are likely to establish a pattern that throws doubt on the accuracy of the Postal Service's PERMIT System-based estimates. Clearly, then, these reports are "reasonably calculated to lead to the discovery of admissible evidence." 39 C.F.R. § 3001.27(a).

Indeed, the Presiding Officer has already ruled in this proceeding, in the context of a request for a single audit report involving acceptance procedures, that "audit results concerning the accuracy [of data and data collection procedures are] plainly

relevant” Presiding Officer’s Ruling No. R2000-1/48 (April 24, 2000). In short, the Postal Service’s argument that the requested audits are irrelevant is frivolous.

The Postal Service also argues that the reports identified with “AF” or “PA” are not “of any use in this proceeding” because they are financial audits of plants or facilities which address subjects such as “whether internal controls are effective,” and whether “revenue is properly collected, reported, and deposited.” Objection at 4. Since the audit report titles establish that these audits are of bulk (or business) mail entry units, these are exactly the types of matters that go to the heart of the accuracy of the information reported on postage statements. The effectiveness of such internal controls are directly related to the accuracy of PERMIT System postage statement data.

The Postal Service’s claim that “findings of criminal investigations, such as fraud by mailers or postal employees . . . are wholly unrelated to the Postal Service’s rate and classification proposals in this docket” is similarly off-base. Objection at 4. Fraud by mailers or postal employees likely includes falsification of postage statements and intentionally erroneous data entry. Such misrepresentations bear directly on the accuracy and reliability of the PERMIT System data and thus are *directly* related to the validity of the Postal Service’s Parcel Post rate proposal.

- B. UPS does not seek commercially sensitive information or information that would infringe on the privacy rights of individuals.

The Postal Service next asserts its oft-repeated claim that the requested audits contain commercially sensitive “facility-specific figures.” Objection at 4.

As UPS has repeatedly demonstrated, it has bent over backwards to accommodate even highly attenuated Postal Service assertions of disclosure of facility and mailer specific information by agreeing that facility or mailer identifying information may be redacted. UPS has even gone so far as to agree to protective conditions for highly aggregated data that in all probability could not possibly reveal facility or mailer identities.³

As to the names of employees, “[i]t cannot be seriously contended that postal employees have an expectation of privacy with respect to their names and duty stations.” *National Western Life Ins. Co. v. United States*, 512 F. Supp. 454, 461 (N.D. Tex. 1980); see also *Ferguson v. Kelly*, 448 F. Supp. 919 (N.D. Ill. 1977) (holding that privacy considerations did not require redaction of names of FBI agents from materials produced in response to a FOIA request). Only where the disclosure of an employee’s name would also reveal information that would cause “extreme embarrassment” to the employee is withholding justified. *National Western Life*, 512 F. Supp. at 461.

It is difficult to imagine how these audit reports could cause “extreme embarrassment” to the auditor. Nevertheless, UPS is not interested in any employee names, and that information may be redacted. If redaction is not practical -- which UPS seriously doubts -- protective conditions are available, as has been repeatedly demonstrated in this proceeding.

3. UPS continues to wonder why facility-specific information is so confidential, given the other types of such information the Postal Service reveals in other contexts.

- C. The Postal Service has fallen far short of establishing that FOIA's "law enforcement privilege" applies to the requested Reports.

The Postal Service asserts that some of the audit reports are exempt from disclosure under FOIA's "law enforcement privilege," 5 U.S.C. § 552(b)(7) ("FOIA Exemption 7"). FOIA Exemption 7 provides only a limited exemption for "records or information compiled for law enforcement purposes." This exemption applies:

"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 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"

5 U.S.C. § 552(b)(7) (emphasis added).

But the Postal Service asserts only that several of the reports "*could* still be part of ongoing investigations," and that disclosure "*could potentially reveal*" confidential law enforcement information. Objection at 5 (emphasis added). It is clear that the Postal Service does not actually know if any of the reports contain information that is exempt from disclosure under any of the categories of FOIA Exemption 7. If these reports resulted from investigations conducted for "general agency internal monitoring"

purposes and were not directed at “specifically alleged illegal acts,” FOIA Exemption 7 would not apply at all. *Stern v. FBI*, 737 F.2d 84, 89 (D.C. Cir. 1984).

To the extent that the Postal Service is able to establish that any of these reports actually falls within FOIA Exemption 7, UPS will withdraw its request for those specific reports. However, the Postal Service has not done so, and all of the requested reports (except as indicated at page 1, footnote 1, above) should be produced.

- D. Responding to interrogatory UPS/USPS-12 could not possibly be unduly burdensome.

Finally, the Postal Service argues that it would be unduly burdensome to review these reports and make the redactions necessary to prevent the disclosure of commercially sensitive or other protected information. The Postal Service claims that such a review would take approximately 5 person-hours per report. Objection at 6.

This estimate -- apparently made without the benefit of first actually reviewing the reports -- appears to be overstated. But even if the Postal Service’s “guesstimate” were correct, the high degree of relevance justifies their production in this proceeding, which involves tens of billions of dollars. If redaction is deemed to be unduly burdensome, then the application of protective conditions would eliminate the need to make any redactions.

CONCLUSION

Given the clear relevance of these audit reports to the issue of the accuracy of the BRPW Parcel Post postage statement data relied on by the Postal Service, they should be produced.

WHEREFORE, United Parcel Service respectfully requests that the Presiding Officer order the United States Postal Service to provide the documents requested in interrogatory UPS/USPS-12.

Respectfully submitted,

Phillip E. Wilson, Jr.

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.

UPS/USPS - 12. Provide the following reports listed in Library Reference USPS-

LR-I-181:

a) Office of Inspector General Reports:

Report Date	Report Number	Condition
09/03/98	1222661-AF(1)	Financial Installation Audit, Greenville, SC - work is in progress to move operations and provide the additional space needed to properly perform operations.
6/30/98	1223267-AF(1)	Financial Installation Audit, Boston, MA - Management is reviewing procedures and providing training to ensure proper financial management of the Bulk Mail Entrance Unit.
08/13/98	1223405-AF(1)	Financial Installation Audit, Washington, DC - Management is implementing the Meter Accounting Tracking System. Procedures are being developed for the Bulk Mail Entrance Unit to strengthen internal controls.
07/01/98	1223482-AF(1)	Financial Installation Audit, New London, CT - Management is developing procedures and conducting training in business mail acceptance.
8/19/98	1223262-AF(1)	Financial Installation Audit, New London, CT - Management is developing procedures and conducting training in business mail acceptance.
06/01/98	1223708-AF(1)	Financial Installation Audit, Lancaster, CA - Management is implementing procedures in Bulk Mail Entrance Unit operations.
04/07/98	1229348-AF(1)	Financial Installation Audit, Conshohocken, PA - Management has begun implementing numerous Bulk Mail Entrance Unit procedures.
08/03/98	12405850-AF(1)	Financial Installation Audit, Sioux City, IA - Management is developing procedures to ensure proper financial management of the Bulk Mail Entrance Unit.
09/02/98	1222998-AF(1)	Financial Installation Audit, South Elgin, IL - Management is acquiring new equipment for Collect on Delivery operations. Training is being given in Bulk Mail Entrance Unit operations.

04/27/98	1223429-AF(1)	Financial Installation Audit, Severna Park, MD - Management is providing training to ensure proper administration of the Bulk Mail Entrance Unit.
07/02/98	1224025-AF(1)	Financial Installation Audit, Clearlake, CA - Management is providing training in business mail acceptance operations.
05/05/98	1229351-AF(1)	Financial Installation Audit, Temple, PA - Management is implementing procedures in business mail operations.
08/25/98	1224037-AF(1)	Financial Installation Audit, Haines, AK - Management is implementing procedures in business mail operations.
06/30/98	1245456-PA(3)	Commercial Mail Receiving Agencies, Long Beach District - Management agreed with the recommendations and will provide attention to improve controls.
02/13/98	1155587-RI(1)	Nonprofit Mailing, Boston, MA - Management has not implemented findings regarding the Nonprofit Permit System.
08/13/98	1223405-AF(1)	Financial Installation Audit, Washington, DC - Management is developing procedures for the BMEU to strengthen internal controls.
06/04/98	1225186-AF(1)	Financial Installation Audit, Atlanta, GA - Management is providing attention to ensure proper administration and collection of fees on mailings.
07/01/98	1245454-PA(3)	Commercial Mail Receiving Agencies, Van Nuys District - Management indicated that training will be provided.
07/28/98	1245455-PA(3)	Commercial Mail Receiving Agencies, San Diego District - Management is working to improve CMRA controls.
03/29/99	1261754-AF(1)	Financial Installation Audit, royal Oak, MI - Management is providing attention to internal controls in the BMEU.
2/26/99	1256273-AF(1)	Financial Installation Audit, Franklin Park, IL - Management is reviewing procedures and providing training for BMEU, employee accountabilities, postage due/business reply mail, post office box/caller service, and COD mail.
12/18/98	1256726-AF(1)	Financial Installation Audit, Mission Hills, CA - Management is providing attention to ensure proper administration of business mail acceptance procedures.

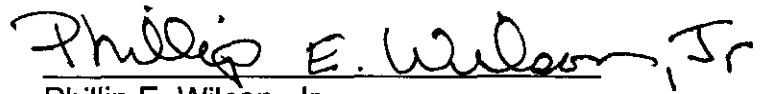
b) Inspection Service Reports:

Case/Report Number	Subject Title/Project Type	Location/Contract	Issue Date
011-1256279-AF(1)	A financial installation audit of a post office.		
011-1259853-AF(1)	A financial installation audit of a post office.		
011-1256430-AF(1)	A financial installation audit of a post office.		
011-1256584-AF(1)	A financial installation audit of a post office.		
052-1234653-PA(3)	Commercial Mail Receiving Agencies	Miramar, FL 33027	10/28/98
062-1260835-RI(1)	Standard Mail	Montgomery, AL 36119	11/16/98
069-1266708-RI(2)	Presort Bureaus	Los Angeles, CA 90058	12/18/98
069-1266708-RI(2)	Presort Bureaus	Orange, CA 92868	12/18/98
924-1254111-RI(1)	Presort Bureaus	Santa Ana, CA 92702	10/27/98
046-1245790-PA(2)	Business Mail Entry Units	Washington, DC 20066	11/24/98
006-1250049-RI(1)	Business Mail Entry Unit	Miami, FL 33152	12/23/98
064-1281435-RI(1)	Business Mail Entry Unit	Atlanta, GA 30304	03/15/99
066-1265079-RI(1)	Bulk Mail Acceptance Unit	Forest Park, IL 60130	12/10/98
069-1272194-RI(2)	Business Mail Entry Unit	Fort Lee, NJ 07024	02/22/99
924-1281479-RI(1)	Presort Bureaus	Trenton, NJ 08618	03/19/99
924-1257646-RI(1)	Bulk Mailing Entry Unit	Cleveland, OH 44101	12/01/98
AC-AR-99-001	Plant Verified Drop Shipment System	Postal-wide	9/28/99
IS 920-1207670-RI(1) and IS 069-1296866-RI(1)	Investigation by inspectors - mailer knowingly underreported additional per-piece charges that were due the Postal Service.		
IS 924-1170790-RI(1)	The investigation that revealed that the mailer routinely understated a portion of the		

	mail requiring additional postage.		
IS 064-1290439-RI(1)	Inspectors identified numerous mailings presented by a third-party mailer claiming unqualified discounts. Analysis showed that the mail was not presorted to the extent claimed.		
064-1289899-RI(1)	Business Mail Entry Unit	San Francisco, CA 94120	5/28/99
066-1284083-RI(1)	Business Mail Entry Unit	Denver, CO 80266	4/07/99
066-1286157-RI(1)	Business Mail Entry Unit	Fortuna, CA 95540	9/10/99
068-1275423-RI(1)	Business Mail Entry Unit	Boston, MA 02205	6/10/99
069-1278476-RI(1)	Bulk Mail Permits and Fees	Rocky Mount, VA 24151	3/05/99
923-1221400-RI(1)	Business Mail Entry Unit	Holliston, MA 01746	9/22/99
923-1274894-RI(1)	Business Mail Entry Unit	Richmond, VA 23232	4/26/99
924-1240141-RI(1)	Business Mail Entry Unit	Seattle, WA 98111	3/25/99
924-1266353-RI(1)	Business Mail Entry Unit	Seattle, WA 98134	3/25/99

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: May 1, 2000.
Philadelphia, Pa.

62135