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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

PRESIDING OFFICER'S  
RULING NO. R2000-1/102

UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

Postal Rate and Fee Changes

Docket No. R2000-1

PRESIDING OFFICER'S RULING DENYING  
MOTION OF PARCEL SHIPPERS ASSOCIATION

(Issued July 31, 2000)

On July 6, 2000, Parcel Shippers Association (PSA) filed a motion to compel United Parcel Service (UPS) to respond to four interrogatories, which, generally, seek information concerning UPS's domestic operations.<sup>1</sup> UPS objected to these interrogatories, stating, *inter alia*, that in Docket No. R97-1 the Presiding Officer sustained UPS's objection to essentially the same interrogatories.<sup>2</sup> UPS further contends that "[t]he Presiding Officer agreed with UPS's position that the requested information is commercially sensitive, is not relevant to the establishment of proper postal rates, and could not possibly lead to the discovery of admissible evidence."<sup>3</sup>

Conceding that the previous rulings found the information requested to be commercially sensitive, PSA argues that Presiding Officer's Ruling No. R97-1/104 did not find the information sought to be irrelevant, but rather turned on PSA's failure to

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<sup>1</sup> Parcel Shippers Association Motion to Compel Response of United Parcel Service to Request for Production of Information and Documents, July 6, 2000 (Motion). The interrogatories at issue are PSA/UPS-1, 4, 5, and 6(b)-(e).

<sup>2</sup> Objection to Parcel Shipper's Association Interrogatories PSA/UPS-T-1, 4 (in part), 5 (in part), and 6(b)-(e), June 29, 2000 (Objection). In addition, UPS cites rulings from prior rate proceedings holding UPS's volume information to be proprietary and commercially sensitive and thus not discoverable. *Id.* at 1.

<sup>3</sup> Objection at 1-2.

provide "a convincing explanation why the information [it requested] was 'sufficiently central' to the application of the non-cost factors of the Act 'to overcome either the burden or the sensitive business information objections.'"<sup>4</sup> In support of its instant motion, PSA elects to rely on its motion to compel from Docket No. R97-1.<sup>5</sup>

Quoting the same passage as PSA, UPS argues that circumstances are unchanged since that ruling, that PSA failed to provide new arguments, and, therefore, that its motion should be denied.<sup>6</sup> In addition, UPS addresses the relevance of the information requested, contending, first, that it "is not sufficiently relevant to require disclosure," and, second, that "[e]ven if the relevance issue had not been decided in prior proceedings," PSA fails to demonstrate that production is warranted in this proceeding.<sup>7</sup> The motion is denied.<sup>8</sup>

The Commission's policy regarding the discovery of intervenors' commercially sensitive information has been reiterated in a series of rulings – absent exceptional circumstances, such data need not be produced. See POR R90-1/66, September 7, 1990, at 2;<sup>9</sup> POR R94-1/64, August 19, 1994, at 5. See also POR R87-1/148, November 10, 1987 at 2.

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<sup>4</sup> Motion at 1-2, paraphrasing Presiding Officer's Ruling (POR) No. R97-1/104, February 27, 1998, at 3.

<sup>5</sup> Motion at 2. PSA attached a copy of its prior motion to its current motion. PSA also volunteers to withdraw its request should the Presiding Officer conclude that "it is not relevant to the determination of proper parcel post rates . . . to know what the effect on United Parcel Service . . . would be from the recommended Parcel Post rates." *Id.*

<sup>6</sup> Response of United Parcel Service in Opposition to Parcel Shippers Association Motion to Compel Response of United Parcel Service to Request for Production of Information and Documents, July 17, 2000 (Response) at 3.

<sup>7</sup> *Id.* at 3-4. UPS also argued that production of the data requested in PSA/UPS-6(b)-(e) would require a special study and, therefore, pose an undue burden on UPS.

<sup>8</sup> Although the motion is denied, UPS's contentions regarding the relevance of the information are misplaced. See, e.g., Objection at 2 and Response at 3. PSA correctly notes that POR R97-1/104 did not hold that the information requested was not relevant. Nor did any of the prior rulings cited by UPS. Moreover, in Docket No. R87-1, the Presiding Officer specifically found the information requested therein to be relevant. POR R87-1/148, November 10, 1987, at 3.

<sup>9</sup> "The Commission's policy is to refrain, absent exceptional circumstances, from compelling participants to file data that reasonably can be found commercially sensitive." *Id.*

In prior rate proceedings PSA, among others, has requested data concerning UPS's domestic operations, *e.g.*, volumes transported by air and ground transportation, and the average discount from and surcharge above published tariff rates.<sup>10</sup> In each of the prior proceedings, the result was the same. Following motions practice, PSA's motions to compel were denied not because the data requested were not relevant, but rather because PSA failed to demonstrate exceptional circumstances that would warrant the production of an intervenor's commercially sensitive information.<sup>11</sup>

Plainly, the data PSA seeks are commercially sensitive. That alone, of course, does not foreclose discovery. The balance between disclosure and commercial sensitivity rests, initially, on whether the data are essential for the Commission's deliberations, including, importantly, evaluating the direct case of the party resisting disclosure. PSA argues that that the Commission needs the data requested to properly employ the non-cost factors of the Act.<sup>12</sup> As UPS notes, however, the record includes, *inter alia*, evidence concerning the cross-price elasticities of demand for Parcel Post relative to available alternatives as well as PSA witness Zimmerman's testimony concerning parcel markets.<sup>13</sup> Moreover, although UPS has submitted an extensive direct case, it makes no claim that the Postal Service's proposed Parcel Post rates would cause it competitive injury. Rather, UPS has addressed, *inter alia*, the Postal Service's costs, its data collection systems, and the proposed pricing of Priority and Parcel Post Mail. The Commission can resolve these and other issues affecting Parcel Post Mail without recourse to the data PSA seeks.<sup>14</sup> Consequently, under the

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<sup>10</sup> See PSA interrogatories PSA/UPS-1, 4-6 in Docket No. R2000-1, PSA/UPS-4-6 in Docket No. R97-1, and PSA/UPS-1, 4-5 in Docket No. R94-1.

<sup>11</sup> POR R94-1/64 at 5; and POR R97-1/104 at 3.

<sup>12</sup> Attachment to Motion at 3. For example, PSA notes that it "do[es] not understand how the [Commission] can employ the noncost factors of the Act in fixing parcel post rates if it knows nothing of the size of the market and the relative strength of the only competitor in that market." *Id.*

<sup>13</sup> Response at 4.

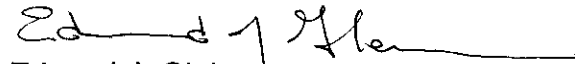
<sup>14</sup> PSA apparently concurs. In its Trial Brief, PSA argued that "[i]n the application of Criterion 4 of the Act, the important consideration is competition, not the impact on individual competitors." Trial Brief of PSA, June 29, 2000, at 2.

circumstances, as with the prior PSA's motions, disclosure is neither required for the Commission to properly evaluate the non-cost factors of the Act nor to recommend fair and equitable Parcel Post rates.

Ordinarily, absent a claim of competitive harm, commercial sensitivity trumps the need for disclosure. This general rule, however, may be overcome upon a showing of exceptional circumstances. PSA has not done so. Notwithstanding a specific finding in Docket No. R97-1 that it "[did] not provide a convincing explanation of why any of the specific information it request[ed] is sufficiently central any of those [non-cost] factors to overcome . . . the sensitive business information objections," PSA chose to rely exclusively on its earlier, previously considered motion. Having added nothing new to consider, there is no basis to justify a different result. Accordingly, the motion is denied.

#### RULING

Parcel Shippers Association Motion to Compel Response of United Parcel Service to Request for Production of Information and Documents, filed July 6, 2000, is denied.

  
Edward J. Gleimah  
Presiding Officer