

PRESIDING OFFICER'S
RULING NO. 897-1/12

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

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Postal Rate and Fee Changes

Docket No. R97-1

PRESIDING OFFICER'S RULING CONCERNING
UPS MOTION TO COMPEL RESPONSES TO
INTERROGATORIES UPS/USPS-T33-1(C) AND T33-2(A)-(C)

(August 29, 1997)

On August 15, United Parcel Service submitted a motion to compel responses to portions of its interrogatories UPS/USPS-T33-1 and 2. Generally, the material sought by UPS consists of the contract (or contracts) between the Postal Service and its contractors for operation of the Postal Service's Priority Mail Processing Center ("PMPC") network, together with any other documents bearing on services to be performed and the costs of those services to the Postal Service. The Service objected to these interrogatories on August 4 and 7, primarily on the ground that the requested information is confidential business information containing trade secrets of the Postal Service, of the PMPC contractor Emery Worldwide Airlines, and of other affected business entities which submitted proposals for the PMPC bid.

In its motion to compel, UPS states that it has withdrawn its request for the pre-contract award materials requested in subparts (d) of UPS/USPS-T33-1 and of UPS/USPS-T33-2, and therefore that those subparts are no longer at issue. Appended to the motion are draft forms for the provision of the material sought under protective conditions.

Notwithstanding its strenuous objections, which the Postal Service reasserts in the Opposition it filed on August 22, the Service states that it has collected and initially

reviewed much information in an attempt to determine which portions, if any, can be produced without compromising its commercial interests and those of the contractor, and without undue burden. The Service also announces its intention to file a redacted version of the PMPC contract with Emery Worldwide Airlines, states a hope that this material will be sufficient to serve the purposes of the requesting party, and requests that any ruling on the motion to compel "be deferred until such time as counsel for UPS has reviewed this library reference, made a determination regarding its adequacy, and consulted informally with undersigned counsel regarding any request for further disclosure." Opposition of August 22 at 6.

In the event movant were to seek production of material beyond that produced in the library reference, the Postal Service states that it maintains its objections, and insists that the production of any additional compelled information would require "rigid protective conditions designed to ensure its confidentiality" beyond the customary conditions suggested in the attachment to the UPS motion, including a special oath. *Id.* at 7 and note 4.

The Postal Service filed its Library Reference H-235, which contains a redacted version of the contract with Emery Worldwide Airlines, on August 28.¹ I commend the efforts of the Postal Service and UPS to resolve this controversy by informal means, and encourage other parties to pursue similar cooperative avenues in their discovery practice.

At this point, it is not possible to foresee whether UPS, after reviewing this material, will move to compel the production of additional information. However, in that event, I direct the movant to do so by September 8, 1997. Any such motion shall specify, with particularity, the relevance of any requested additional material to the

¹ It appears that the Postal Service's contract with Emery is the master contract for operation of the PMPC network, inasmuch as it specifies that the contractor is responsible for furnishing transportation, facilities, equipment, staffing, network management, and "[a]ll processing and distribution of Priority Mail originating and/or destinating within the Phase 1 PMPC network service area." LR-H-235, Attachment 1, at 5-6 (section B.2.2.1).

issues to be considered and resolved by the Commission in this proceeding. In addition to responding to these arguments, I also direct the Postal Service to elaborate upon its position that extraordinary protective conditions would be required for any additional information produced, and to specify all provisions it believes to be appropriate.

RULING

1. Should it desire to move for the production of additional information in response to its interrogatories UPS/USPS T33-1(c) and T33-2(a)-(c), United Parcel Service shall file its motion, and address the topics specified in the body of this ruling, by September 8, 1997.

2. Any responsive pleading of the United States Postal Service shall also address the topics specified in the body of this ruling.

A handwritten signature in black ink, appearing to read 'Edward J. Gleiman', with a long horizontal flourish extending to the right.

Edward J. Gleiman
Presiding Officer