

**BEFORE THE
POSTAL RATE COMMISSION**

POSTAL RATE AND FEE CHANGES, 2001

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DOCKET NO. R2001-1

**MOTION OF UNITED PARCEL SERVICE TO COMPEL
PRODUCTION OF DOCUMENTS REQUESTED IN
INTERROGATORIES UPS/USPS-2(a) AND 2(b)
(November 27, 2001)**

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 interrogatories UPS/USPS-2(a) and 2(b), filed on November 1, 2001, and to produce the materials requested therein. A copy of each of the interrogatories is attached hereto as Exhibit A. The Postal Service filed its objection on November 13, 2001 ("Objection").

UPS submits that the requested information, consisting of Office of Inspector General audit reports regarding the Postal Service's estimates of transportation costs under the FedEx transportation contract, is highly relevant to the determination of the accuracy of the Postal Service's cost estimates under that contract which underlie the Postal Service's proposed rates for Express Mail, Priority Mail, and First Class Mail. Furthermore, any concerns the Postal Service may have regarding release of this information into the public domain can be accommodated by appropriate redactions accompanied by a redaction or privilege log.

THE DISCOVERY REQUESTS

Interrogatory UPS/USPS-2 requests copies of two Office of Inspector General audit reports listed in an attachment to the Postal Service's response to interrogatory DFC/USPS-1.

Interrogatory UPS/USPS-2(a) requests a copy of a report identified as "Interim Audit Results of FedEx Transportation Agreement (1st letter), Issued 6/26/01, Final Report No. TR-LA-01-001, Project No. 01NR008TR000." UPS/USPS-2(a).

Interrogatory UPS/USPS-2(b) requests a copy of a report identified as "Interim Audit Results on Excise Taxes and Third Party Ground Handling Costs Under the FedEx Transportation Agreement (2nd letter), Issued 8/8/01, Final Report No. TR-MA-01-002, Project No. 01NR008TR001." UPS/USPS-2(b).

ARGUMENT

1. Interrogatories UPS/USPS-2(a) and 2(b) Seek Information That Is Relevant and That Can Be Disclosed Without Harm to the Postal Service.

The Postal Service argues that the Office of Inspector General reports requested in interrogatories UPS/USPS-2(a) and UPS/USPS-2(b) should not be produced because they contain information that is proprietary and irrelevant to the determination of issues in this proceeding. These arguments should be rejected.

(a) The Report Requested in Interrogatory UPS/USPS-2(a) Should Be Produced Because the Postal Service Has Not Provided a Sound Basis for Withholding It.

Interrogatory UPS/USPS-2(a) requests a copy of a report identified as “Interim Audit Results of FedEx Transportation Agreement.” The Postal Service objects to its disclosure on the basis that the information is proprietary and irrelevant. Objection at 1-2.

Formulating a response to the Postal Service’s objection is made difficult by the fact that the Postal Service provided very little detail about what the report contains. If the report contains estimates of the costs of terminating the Postal Service’s dedicated air transportation contracts, Objection at 1, there would be no need for the Postal Service’s objection since the dispute over this specific information has been resolved by agreement of the parties. See Revised Response of Postal Service Witness Takis to Interrogatory UPS/USPS-T19-4, filed November 20, 2001 (providing some actual termination costs and agreeing to provide additional actual termination costs as they become available). What else is contained in the report is unknown. However, based on the title of the report, “Interim Audit Results of FedEx Transportation Agreement,” it is reasonable to assume that this report contains a potentially critical analysis of the Postal Service’s approach to estimating the costs of the FedEx transportation contract and of the estimates resulting from that approach.

All information about the Postal Service’s estimates of the costs of the FedEx transportation contract is highly relevant to this proceeding because the costs of the FedEx transportation contract factor directly into the cost of providing Express Mail, First Class Mail, and Priority Mail service, and therefore factor into the development of the proper rates for those services. Postal Service witness Hatfield claims that “the FedEx transportation agreement will tend to decrease overall purchased transportation costs.” USPS-T-18 at 3, lines 8-9. To reach this conclusion, Postal Service witness Hatfield considers a number of

costs, including excise taxes and third party ground handling costs, in his calculation of the rollforward adjustment relating to the FedEx transportation contract. Witness Patelunas uses witness Hatfield's FedEx rollforward adjustment to develop the rollforward which witness Tayman then uses to estimate the test year revenue requirement. The accuracy of test year costs is indisputably one of the most significant issues in every rate case. Therefore, any information dealing with how these costs are developed and whether they were developed correctly is highly relevant to the issues in this case.

These cost estimates are particularly significant to the calculation of the attributable costs of Express Mail and Priority Mail. The costs of the FedEx contract are found in the Postal Service's Cost Segments and Components Report in Cost Segment 14, Purchased Transportation. In the Test Year After Rates under the Postal Service's methodology, Purchased Transportation costs are estimated to constitute more than 37% of Priority Mail's total volume variable costs (with contingency) and nearly 25% of Express Mail's total volume variable costs (with contingency).¹ Therefore, even a small change in the way these costs are estimated has a major impact on the amount of costs attributable to these classes of mail, and thus on their rates.

1. These percentages were calculated from the following data in witness Patelunas' testimony:

	Purchased Transportation, C/S 14, TYAR (USPS-T-12, Exhibit 12H)	Total Vol. Var. Costs, TYAR, with contingency (USPS-T-12, Exhibit 12I)	C/S 14 as % of Total Costs, TYAR
Priority Mail	1,325,669	3,567,868	37.2%
Express Mail	123,480	494,779	24.9%

The Postal Service argues that the requested information is irrelevant because “[m]ost of the recommendations from the audits have been followed by Postal Service management” and “[s]ome of the savings figures associated with the FedEx contract were adjusted downward in response to the audits.” Objection at 2. The Postal Service says nothing about the OIG recommendations that were not incorporated into the Postal Service’s cost estimates, or why they were rejected. The fact that the Postal Service incorporated some but not all of the OIG’s suggestions in its rate case filing establishes that all of the recommendations contained in the OIG report are relevant. The suggestions that the Postal Service ignored or disregarded are relevant to a determination of the accuracy of the Postal Service’s cost presentation because those OIG suggestions will reflect criticisms or concerns about the Postal Service’s analysis of the impact of the FedEx contract. Indeed, this selective inclusion of the OIG’s recommendations highlights the importance of information about the recommendations which the Postal Service rejected, as it is likely that the areas of disagreement between the Postal Service and the OIG will yield the most useful information for the Commission. The Commission and the parties are entitled to the assistance of the reports of trained auditors, such as those employed by the OIG, when undertaking this analysis. Only with this information can the Commission assess whether the recommendations that were followed were properly made.

The Postal Service also argues that “the audit reports are unnecessary for an examination of the cost impact of the FedEx transportation agreement, as they do not fully

reflect the final cost savings estimates and the best available information.” Objection at 2. The claim that more recent information has become available does not necessarily mean that previous adjustments (and non-adjustments) should not be scrutinized. In fact, more recent information might provide a basis for reconsidering or revisiting the Postal Service’s earlier decision to reject the OIG’s recommendations. The Postal Service’s suggestion that the information contained in the OIG report is “stale” might be more compelling if the reports were several years old, or even a year old. However, these reports were issued less than six months ago. It is unlikely that the “new information” is so different as to require the Commission to conclude that the OIG’s recent analysis is completely divorced from present realities.

2. The Report Requested in Interrogatory UPS/USPS-2(b) Should Be Produced Because It Contains Relevant Information, and Any Concerns About the Release of the Information Can Be Easily Addressed.

According to the Postal Service, the audit report requested in interrogatory UPS/USPS-2(b) contains information about estimates of third party ground handling costs and excise taxes under the FedEx transportation contract. The Postal Service argues that this information is irrelevant and proprietary.

(a) Both Third Party Ground Handling Costs and Excise Tax Amounts are Relevant to Evaluating the Postal Service’s Request in this Case.

The Postal Service’s argument that information about third party ground handling costs and excise taxes is irrelevant fails for the same reasons set forth above – that these costs are integral to the calculation of costs for Postal Service products and therefore are

highly relevant. See USPS-T-18, at 24-25 (discussing inclusion of these costs in rollforward calculation). Therefore, the Commission is entitled to know as much about how the Postal Service estimated those costs as possible. Information from an objective source such as the OIG should be particularly useful in evaluating the Postal Service's request.

The same holds true for estimates of excise taxes. The excise tax is a bottom-line cost of the FedEx transportation contract. Witness Hatfield explicitly includes this cost in the FedEx rollforward adjustment calculation. USPS-T-18, at 24. Therefore, recommendations of the OIG on how these costs should be estimated, whether accepted or not, are directly relevant to the Commission's evaluation of the cost calculations that are at the heart of this proceeding. Furthermore, in its Objection the Postal Service provided no specific reason why this information should not be provided. As taxes are an additional cost of the FedEx transportation contract, information about the estimate of the amount of taxes is necessary to assess the accuracy of the Postal Service's cost estimates in this case. Therefore, information on the amount of excise taxes should be provided.

(b) Third Party Ground Handling Information Can Be Provided Without Harm to the Postal Service's Business Interests.

The Postal Service further argues that the estimates of third party ground handling costs in the OIG report should not be disclosed because if those estimates differ from the estimates based on the actual contracts, there may be an adverse effect on the performance of existing contracts and bidding on future contracts. Objection at 1-2. To avoid this, the Postal Service could provide a redacted copy of the OIG report with a

redaction or privilege log describing the redacted information and stating the specific reason for its redaction. The percentage of volume to be handled under the contract -- one of the pieces of information specifically mentioned by the Postal Service, Objection at 2 -- is highly relevant to the costs incurred under the contract.

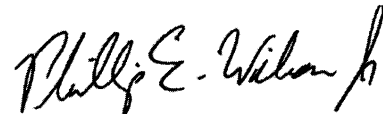
The Postal Service also argues that information about volume handled by third party ground handlers “could be used by Postal Service competitors attempting to gain insight into volume flows.” Objection at 2. Although it is difficult to understand the Postal Service’s argument without knowing more about the report’s contents, presumably the costs are presented in a facility-specific or geographically identifiable manner. This concern can be resolved as it has been in past proceedings, with the redaction of information that could allow intervenors to relate costs to specific facilities.

CONCLUSION

Given the clear relevance of these audit reports to the issue of the accuracy of the Postal Service’s cost estimates for Express Mail and Priority Mail, 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-2(a) and 2(b).

Respectfully submitted,



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UPS/USPS-2. Refer to DFC/USPS-1, Response of United States Postal Service to Interrogatory of Douglas F. Carlson and the attachment thereto. Provide the following Final Reports referenced in that interrogatory response:

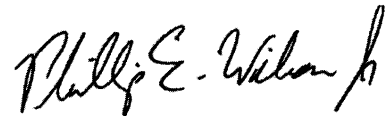
(a) Interim Audit Results of FedEx Transportation Agreement (1st letter), Issued 6/26/01, Final Report No. TR-LA-01-001, Project No. 01NR008TR000.

(b) Interim Audit Results on Excise Taxes and Third Party Ground Handling Costs Under the FedEx Transportation Agreement (2nd letter), Issued 8/8/01, Final Report No. TR-MA-01-002, Project No. 01NR008TR001.

EXHIBIT "A"

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: November 27, 2001
Philadelphia, PA

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