

Before The  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

Postal Rate and Fee Changes, 2005 )

Docket No. R2005-1

OFFICE OF THE CONSUMER ADVOCATE ANSWER  
IN PARTIAL OPPOSITION TO UNITED STATES POSTAL SERVICE  
MOTION FOR WAIVER AND PROTECTIVE CONDITIONS FOR LIBRARY  
REFERENCE REGARDING FEDEX TRANSPORTATION AGREEMENT  
(May 3, 2005)

The Office of the Consumer Advocate (“OCA”) hereby answers in partial opposition to the motion of the United States Postal Service (“Postal Service”) for waiver and for protective conditions relating to its FEDEX transportation contract.<sup>1</sup> The contract is designated USPS-LR-K-85, Calculation of Fed Ex Variability, a category 2 library reference sponsored by witness Nash (USPS-T-17). The Postal Service claims the information is commercially sensitive and proprietary and thus requests the Commission to adopt the protective conditions included as Attachment A to its motion. It notes similar conditions were granted by the presiding officer in Docket No. R2001-1.<sup>2</sup>

The OCA does not oppose protective conditions related to the FEDEX contract. However, the proposed “Statement of Compliance with Protective Conditions” is not identical to the conditions imposed in Docket No. R2001-1.

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<sup>1</sup> “Motion of United States Postal Service for Waiver and for Protective Conditions for Library Reference that Includes Costs and Other Data Associated with the FEDEX Transportation Agreement,” April 8, 2005.

<sup>2</sup> “Presiding Officer’s Ruling Granting Motion for Waiver and for Protective Conditions,” Ruling No. R2001-1/5, October 31, 2001.

The Postal Service has inserted an additional paragraph:

2. Each person desiring to obtain access to these materials must file a notice with the Postal Rate Commission listing name, title and position at least one day in advance of the day that the person signs a certification at the Commission's docket section in order to receive a copy of the materials. A copy of the notice must also be served in advance on the Postal Service.

The Postal Service motion not only does not explain the need for this further complication, it even fails to point out that it has added the additional paragraph. The Postal Service does not allege any past difficulties with the previously approved protective conditions. In any event, the signed certification will be available to the Postal Service for review. Nor is it apparent that one day's advance notice to the Postal Service would provide any practical protection for the Postal Service. None of the protective conditions provide for procedures in the event of an objection by the Postal Service to unauthorized persons obtaining the contract. In any event, the Commission's docket section can, as it has in the past, determine whether a party requesting protected material is appropriately authorized. The new condition merely increases the hassle factor for those seeking to review the contract while offering no realistic advantages.

OCA also notes that in withholding the filing of the library reference pending approval of the protective conditions or other order, the Postal Service has effectively cut short the review time for the important FEDEX contract. This is especially significant where the Postal Service is attempting to push through an early settlement. The application was filed on April 8, but the Postal Service's motion has delayed the availability of that contract. Allowing additional time for

ruling on the motion, the time for review of the contract by those interested will be reduced to a matter of days before the Postal Service expects parties to be ready to indicate if they will agree to a settlement. For instance, the motion for expedition suggests that parties be prepared by June 17, 2005 to indicate whether they will oppose the settlement.

The OCA therefore requests that the Commission or the presiding officer rule on the motion regarding the FEDEX contract and remove the offending paragraph 2 from the proposed Statement of Compliance with Protective Conditions early enough that participants will have a reasonable length of time to obtain and review the contract and formulate more than one round of discovery questions.

Respectfully submitted,

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