

ORDER NO. 196

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Dan G. Blair, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Tony L. Hammond.

Annual Compliance Report, 2008

Docket No. ACR2008

ORDER CONCERNING MOTION TO MAKE CORE COST,
VOLUME, AND REVENUE MATERIALS PUBLIC

(Issued March 25, 2009)

On January 27, 2009, the Public Representative filed a motion requesting that the Commission make public core cost, volume, and revenue materials submitted by the Postal Service.¹ Previously, Commission Order No. 155, issued December 23, 2008 denied a Postal Service motion concerning the treatment of “core costing materials” and requesting specific protective conditions for access to those materials.²

¹ Motion to Make Core Cost, Volume, and Revenue Materials Public, January 27, 2009 (Motion).

² Motion of the United States Postal Service Requesting Establishment of Protective Conditions to Govern Access to Certain Core Costing Documentation, December 12, 2008 (Postal Service Motion).

The Motion requests that certain materials that the Postal Service considers sensitive and exempt from disclosure that it filed under seal should be made public. The Postal Service filed in opposition to the Motion, contending, *inter alia*, that the Public Representative “does not precisely list the nonpublic materials which...[are] covered by his motion...” and requests that the Motion be denied.³

Several other interested parties filed in response to the Motion.⁴ Valpak *et al.*, Pitney Bowes, and PSA support the further suggestion of the Public Representative that a separate proceeding be established which will allow a “comprehensive review” of the sensitivity of Postal Service financial materials. See Valpak *et al.* Response at 3; Pitney Bowes Response at 3; and PSA Response at 6. UPS and the Postal Service do not oppose the call for a separate proceeding for review. See UPS Response and Postal Service Response.

Action on this Motion is complicated by the existence of an ongoing rulemaking, Docket No. RM2008-1, which suggests a process for dealing with requests for disclosure or access to materials the Postal Service deems sensitive and files under seal. On March 20, 2009, the Commission issued a second notice in this docket, and anticipates that the process will be finalized in the reasonably foreseeable future.⁵ The Commission also has an outstanding notice of proposed rulemaking concerning the

³ Response of the United States Postal Service in Opposition to Public Representative’s Motion for Disclosure of Portions of the Non-Public Annex, February 3, 2009, at 1-2, 20 (Postal Service Response).

⁴ Valpak Direct Marketing Systems, Inc., Valpak Dealers’ Association, Inc., National Association of Presort Mailers, and Association of Priority Mail Users, Inc. Answer in Support of Motion of the Public Representative to Make Core Cost, Volume, and Revenue Materials Public, February 3, 2009 (Valpak *et al.* Response); Pitney Bowes Inc. Response to the Motion of the Public Representative to Make Core Cost, Volume, and Revenue Materials Public, February 3, 2009 (Pitney Bowes Response); Parcel Shippers Association Response to the Public Representative’s Motion to Make Core Cost, Volume, and Revenue Materials Public, February 3, 2009 (PSA Response); Answer of United Parcel Service to Motion of Public Representative to Make Core Cost, Volume, and Revenue Materials Public, February 3, 2009 (UPS Response).

⁵ See PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, March 20, 2009.

scope of data the Postal Service must file as part of the Annual Compliance Determination (ACD) process.⁶

As discussed by the Public Representative, when the Postal Service submits large quantities of data at once, and identifies significant portions as sensitive, it places a tremendous burden on individuals and organizations who wish to comment and assist the Commission in the ACD. To lessen the burden on individuals and organizations who wish to comment in the ACD, the Commission shall initiate one or more separate rulemakings following the final establishment of the rules for periodic reporting to determine what portions of those filings inherently contain sensitive information and as a matter of course should be filed under seal. Conversely, the rulemakings may identify portions of the filings which are not sensitive and will, as a matter of course, be public. These rulemakings will allow for a properly complete and focused review of relevant issues.

It is Ordered:

The Motion to Make Core Cost, Volume, and Revenue Materials Public, filed January 27, 2009, is denied.

By the Commission.

Steven W. Williams
Secretary

⁶ See PRC Order No. 104, Notice of Proposed Rulemaking Prescribing Form and Content of Periodic Reports, August 22, 2008.