

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

**Six-Day to Five-Day Street Delivery
And Related Service Changes, 2010**

Docket No. N2010-1

**AMERICAN POSTAL WORKERS UNION, AFL-CIO, MOTION FOR ACCESS TO
NON-PUBLIC INFORMATION IDENTIFIED AS USPS-LR-N2010-1/NP6
(July 13, 2010)**

Pursuant to 39 CFR 3007.40 and Rule 21 of the Commission's Rules of Practice and Procedure, the American Postal Workers Union, AFL-CIO (APWU) hereby moves for access to Postal Service materials filed in the Non-Public Annex of this docket as Library Reference USPS-LR-N2010-1/NP6 Unredacted Electronic Diversion Materials Provided Under Seal in Response to NALC/USPS-T2-32 and 33 (Non-Public Version). A redacted version has been filed in the public record as Library Reference USPS-LR-N2010-1/17.

The Postal Service submitted Library Reference USPS-LR-N2010-1/NP6 on July 1, 2010, accompanied by an Application for non-public treatment. In its Application, the Postal Service states that Library Reference USPS-LR-N2010-1/NP6 contains past market research on the electronic diversion of the mail and includes a comparison of "the value of the mail by application (remittances, advertising, etc.) and by demographics (age, income and education) to the use of other media – ISP, internet advertiser, RSSer, financial institutions trying to get customers to switch to electronic payment, etc."¹ These materials also contain information "reflecting how the Postal Service evaluates critical marketplace factors for its products, including competitive threats and marketplace conditions"² as well as is a "small amount of information ... which does not belong to the Postal Service, but remains the property of the entity

¹ USPS Application for Non-Public Treatment of Library References USPS-LR-N2010-1/NP6 at p.4 (July 1, 2010).

² Id.

providing the material to the Postal Service.”³ The portion of information not owned by the Postal Service is redacted in both the public (USPS-LR-N2010-1/17) and non-public (USPS-LR-N2010-1/NP6) versions of the materials. At this time, APWU does not seek access to this information and seeks only the unredacted information provided in USPS-LR-N2010-1/NP6.

In its Application for non-public treatment, the Postal Service contends that “it is eminently likely that it would suffer commercial harm” if the materials included in USPS-LR-N2010-1/NP6 were publicly disclosed and requests that they be withheld “from persons involved in competitive decision-making in the relevant markets for alternative delivery products, as well as their consultants and attorneys.”⁴ While it is true that commercially sensitive information, if disclosed to competitors, could result in commercial harm to the Postal Service, the APWU is not a competitor and poses no risk to the commercial success of the Postal Service.

APWU is the exclusive collective bargaining representative of postal employees in the clerk, maintenance, and motor vehicle service crafts nationwide. APWU also mails millions of letters, periodicals, and packages each year and APWU members and retirees make extensive use of postal products and services. The changes proposed in this docket will have a significant impact on APWU represented employees and on the APWU and its members as a large user of the mail. Accordingly, APWU is an active participant in this docket, engaging in extensive discovery from Postal Service witnesses. APWU has also unofficially informed the Commission and other participants that it intends to file rebuttal testimony in this docket.⁵ Now APWU respectfully requests access to the materials contained in Library Reference USPS-LR-N2010-1/NP6. This Library Reference contains information that speaks directly to electronic diversion, a topic of extreme relevance to the proposed changes in postal services at issue in this docket. The likelihood that a change from six to five-day delivery will greatly increase the amount of mail being electronically diverted and thus removed from the Postal Service is of grave importance and must be evaluated. Electronic diversion has the potential to reduce volume and revenue, thus jeopardizing the financial position of the

³ Id. at p. 3.

⁴ Id. at p. 6.

⁵ Prehearing Conference, TR Vol 1. p. 37 lines 8-11, (April 27, 2010).

Postal Service further. We believe that the information presented in USPS-LR-N2010-1/NP6 will facilitate preparation of our rebuttal case, possible cross examination of postal witnesses and our arguments on brief at the conclusion on this case. Parties should be entitled to examine past research on electronic diversion to see the likely future use of such alternatives to postal products. In addition, examination of this material may enable parties to challenge Postal Service assumptions regarding electronic diversion and the ability of the Postal Service to remain competitive in a five-delivery day environment.

In accordance with 39 CFR 3007.40(b), the following APWU representatives, consultants and attorneys have completed a Statement of Compliance with Protective Conditions Certification, found in Appendix A to Part 3007 of Title 39 of the Code of Federal Regulations, for Library Reference USPS-LR-N2010-1/NP6:

Phillip A. Tabbita,
Manager, Negotiation Support and Special Projects
American Postal Workers Union, AFL-CIO

Kathryn Kobe,
Director of Price, Wage and Productivity Analysis ECS,LLC
Economic Consultant for American Postal Workers Union, AFL-CIO

Darryl J. Anderson, Esq.
O'Donnell, Schwartz & Anderson, PC
Counsel for the American Postal Workers Union, AFL-CIO

A copy of each Certification is attached hereto. The original Certifications have been filed with the Commission today. Persons identified by the Postal Service pursuant to Section 3007.2(c) have also been provided with a copy of this Motion and accompanying certifications today by email.

Conclusion

For the forgoing reasons, APWU respectfully requests that access to Library References USPS-LR-N2010-1/NP6 be granted to the above named individuals.

Respectfully submitted,

Darryl J. Anderson
Jennifer L. Wood
Counsel for American Postal Workers Union, AFL-CIO

Statement of Compliance with Protective Conditions

The Postal Service has filed non-public materials identified as **USPS-LR-N2010-1/NP6** in Commission Docket No. **N2010-1**. The Postal Service requests confidential treatment of the materials (hereinafter “these materials”)

The following protective conditions apply to these materials identified as **USPS-LR-N2010-1/NP6** by the Postal Service. Each person seeking to obtain access to these materials must agree to comply with these conditions, complete the attached certifications, and provide the completed certifications to the Commission and counsel for the Postal Service.

1. Access to these materials is limited to a person as defined in 5(f), 39 CFR 3001.5(f), or an individual employed by such person, or acting as an agent, consultant, contractor, affiliated person, or other representative of such person for purposes related to the matter identified as **PRC Docket No. N2010-1**. However, no person involved in competitive decision-making for any entity that might gain competitive advantage from use of this information shall be granted access to these materials. “Involved in competitive decision-making” includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with a person or entity having proprietary interest in the protected material.
2. No person granted access to these materials is permitted to disseminate them in whole or in part to any person not authorized to obtain access under these conditions.
3. Immediately after access has terminated under 39 CFR 3007.41 or 3007.51, a person (and any individual working on behalf of that person) who has obtained a copy of these materials shall certify to the Commission:
 - (a) That the copy was maintained in accordance with these conditions (or others established by the Commission); and
 - (b) That the copy (and any duplicates) either have been destroyed or returned to the Commission.
4. The duties of each person obtaining access to these materials shall apply to material disclosed or duplicated in writing, orally, electronically, or otherwise, by any means, format, or medium.

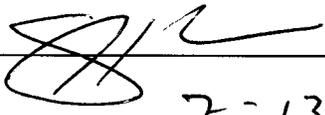
These duties shall apply to the disclosure of excerpts from or parts of the document, as well as to the entire document.

5. All persons who obtain access to these materials are required to protect the document by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the document as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.
6. These conditions shall apply to any revised, amended, or supplemental versions of these materials provided in the matter identified as **PRC Docket No. N2010-1**.
7. The duty of nondisclosure of each person obtaining access to these materials is continuing, terminable only by specific order of the Commission, or as specified in paragraphs 9 and 10, below.
8. Each person granted access to these materials consents to these or such other conditions as the Commission may approve.
9. Any written materials that quote or contain materials protected under these protective conditions are also covered by the same protective conditions and certification requirements, and shall be filed with the Commission only under seal. Documents submitted to the Commission as confidential shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents.
10. If a court or other administrative agency subpoenas or orders production of confidential information which a person has obtained under the terms of this protective order, the target of the subpoena or order shall promptly (within 2 business days) notify the Postal Service of the pendency of the subpoena or order to allow it time to object to that production or seek a protective order.

CERTIFICATION

The undersigned represents that:

Access to these materials provided in the matter identified as **USPS-LR-N2010-1/NP6** by the Postal Service has been authorized by the Commission. The cover or label of the copy obtained is marked with my name. I agree to use the information only for purposes of analyzing matters at issue in the matter identified as **PRC Docket No. N2010-1**. I certify that I have read and understand the above protective conditions and am eligible to receive access to materials under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain these materials in strict confidence in accordance with all of the protective conditions set out above.

Name	Darryl J. Anderson
Firm	O'Donnell, Schwartz & Anderson, P.C.
Title	Attorney
Representing	American Postal Workers Union, AFL-CIO
Signature	
Date	7-13-10

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Name Kathryn Kobe
Firm ECS
Title Director of Wage Price Productivity Analysis
Representing APWU
Signature Kathryn Z Kobe
Date 7/13/2010

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Name	Phillip A. Tabbita
Firm	American Postal Workers Union, AFL-CIO
Title	Manager, Negotiation Support and Special Projects
Representing	American Postal Workers Union, AFL-CIO
Signature	
Date	7/13/2010