

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/NP2, USPS-LR-  
N2010-1/NP4, AND USPS-LR-N2010-1/NP8  
(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 certain Postal Service materials filed in the Non-Public Annex of this docket.

APWU seeks access to the following non-public Library References:

- USPS-LR-N2010-1/NP2 Materials Relating to Calculation of Net Volume, Revenue and Contribution Changes of Five-Day Delivery (Whiteman, USPS-T-9), filed March 30, 2010; and
- USPS-LR-N2010-1/NP4 Material Filed Under Seal In Response to ChIR No. 4, Question 9(d) (Whiteman, USPS-T-9), filed June 2, 2010; and
- USPS-LR-N2010-1/NP8 Material Filed Under Seal in Response to ChIR No. 5, Question 5 (Whiteman, USPS-T-9), filed June 30, 2010.

The Postal Service submitted Library Reference USPS-LR-N2010-1/NP2 on March 30, 2010, with an Application for non-public treatment. In its Application, the Postal Service states that Library Reference USPS-LR-N2010-1/NP2 contains "workbooks documenting market research conducted by two witnesses, one who conducted the qualitative and quantitative market research of customer reactions to five-day delivery (Witness Elmore-Yalch, USPS-T-8), and the second who further processes and discusses the significance of the former's results (Whiteman, USPS-T-9)." On June 2, 2010, the Postal Service filed Library Reference USPS-LR-N2010-

1/NP4 (Non-Public). This library reference contains material responsive to ChIR No. 4 Question 9(d), also filed under seal.<sup>1</sup> In its Notice of Filing USPS-LR-N2010-1/NP4, the Postal Service maintains that “since the question and answer both related to USPS-LR-N2010-1/NP2, the same reasons for non-public treatment as stated for that library reference apply. “ Similarly, on June 30, 2010, the Postal Service filed USPS-LR-N2010-1/NP8 (Non-Public) containing material responsive to ChIR No. 5 Question 5 and in its Notice of Filing claimed that since the materials contained in Library Reference NP8 “are of the same nature as, and are a supplement to the contents of Library Reference NP2, the Application for Non-Public Treatment of Library Reference NP2 applies.” If each of these Library References are related to or supplement each other and each relies on the same Application for Non-Public Treatment, correspondingly APWU’s reasons and support for accessing each Library Reference are the same. Therefore, in the interest of using the resources of the parties and the Commission efficiently, this Motion jointly seeks access to all three sets of non-public material.

In its Application for Non-Public Treatment of USPS-LR-N2010-1/NP2 (and by reference USPS-LR-N2010-1/NP4 and USPS-LR-N2010-1/NP8) the Postal Service argues that “[c]ompetitors able to view the market research materials would gain specific insight into Postal Service customer behavior, both past and future, enabling them both to capture the benefit of market research in which the Postal Service has invested, and to follow up by targeting postal customers for exceptionally well targeted marketing campaigns.”<sup>2</sup> Essentially, the Postal Service argues that non-public treatment of this material is warranted to protect the Postal Service from commercial harm that is “quite likely”<sup>3</sup> and requests that persons (including their consultants and attorneys) involved in competitive decision making in the competitive products market be prevented from accessing these materials.<sup>4</sup>

---

<sup>1</sup> It is assumed that in accordance with the Commission’s Rules of Practice and Procedures, the response to ChIR No. 4 Question 9(d) will contain the question filed under seal and therefore, a separate motion for access to ChIR No. 4 Question 9(d) is unnecessary.

<sup>2</sup> USPS Application for Non-Public Treatment of Library References USPS-LR-N2010-1/NP1 and NP2 at p. 5 (March 30, 2010)

<sup>3</sup> Id. at p. 4

<sup>4</sup> Id. at p. 8.

The APWU is not a competitor of the Postal Service; therefore, allowing APWU access to the materials in Library References USPS-LR-N2010-1/NP2, NP4, and NP8 poses no risk of commercial harm to the Postal Service. However, 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 provided notice that it intends to conduct oral cross-examination of several of these witnesses, including USPS witness Gregory M. Whiteman (USPS-T-9) who has sponsored all of the Library References at issue in this Motion.<sup>5</sup> APWU has also unofficially informed the Commission and other participants that it intends to file rebuttal testimony in this docket.<sup>6</sup>

Now APWU respectfully requests access to the materials contained in Library References USPS-LR-N2010-1/NP2, NP4 and NP8. These Library References contain information that speaks directly to the mailing habits (including volume) of Postal Service customers in both the six and five-day delivery environment. The changes proposed by the Postal Service amount to a dramatic alteration in postal services provided and the Commission must weigh carefully the competing interests present in this docket before issuing its Advisory Opinion. To aid in that decision, parties like the APWU, may wish to analyze materials offered by the Postal Service and test the accuracy and veracity of the information supporting the Postal Service's case. We believe that the information presented in USPS-LR-N2010-1/NP2, NP4 and NP8 may facilitate preparation of our rebuttal case, cross examination of Postal Witness Whiteman, and our arguments on brief at the conclusion on this case.

In accordance with 39 CFR 3007.40(b), the following APWU representatives, consultants and attorneys have completed a separate Statement of Compliance with

---

<sup>5</sup> APWU Notice of Intent to Conduct Oral Cross Examination of USPS Witness Gregory M. Whiteman (July 8, 2010).

<sup>6</sup> Prehearing Conference, TR Vol 1. p. 37 lines 8-11, (April 27, 2010).

Protective Conditions Certification, found in Appendix A to Part 3007 of Title 39 of the Code of Federal Regulations, for each Library Reference USPS-LR-N2010-1/NP2, NP4, and NP8:

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/NP2, NP4 and NP8 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/NP2** 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/NP2** 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/NP2** 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

**CERTIFICATION**

The undersigned represents that:

Access to these materials provided in the matter identified as **USPS-LR-N2010-1/NP2** 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 Kathryn Kobe  
Firm ECS  
Title Director of Wage Price Productivity Analysis  
Representing APWU  
Signature Kathryn L Kobe  
Date 7/13/2010

**CERTIFICATION**

The undersigned represents that:

Access to these materials provided in the matter identified as **USPS-LR-N2010-1/NP2** 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	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

## Statement of Compliance with Protective Conditions

The Postal Service has filed non-public materials identified as **USPS-LR-N2010-1/NP4** 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/NP4** 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.

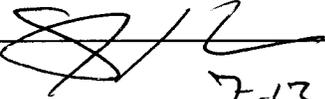
These duties shall apply to the disclosure of excerpts from or parts of the document, as well as to the entire document.

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/NP4** 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

**CERTIFICATION**

The undersigned represents that:

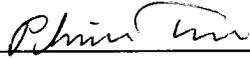
Access to these materials provided in the matter identified as **USPS-LR-N2010-1/NP4** by the Postal Service has been authorized by the Commission. The cover or label of the copy obtained is marked with my name. I agree to use the information only for purposes of analyzing matters at issue in the matter 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 Kathryn Kobe  
Firm ECS  
Title Director of Wage Price Productivity Analysis  
Representing APWU  
Signature Kathryn Z Kobe  
Date 7/13/2010

**CERTIFICATION**

The undersigned represents that:

Access to these materials provided in the matter identified as **USPS-LR-N2010-1/NP4** 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	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

## Statement of Compliance with Protective Conditions

The Postal Service has filed non-public materials identified as **USPS-LR-N2010-1/NP8** 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/NP8** 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.

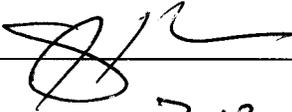
These duties shall apply to the disclosure of excerpts from or parts of the document, as well as to the entire document.

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/NP8** 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

**CERTIFICATION**

The undersigned represents that:

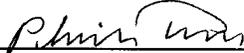
Access to these materials provided in the matter identified as **USPS-LR-N2010-1/NP8** by the Postal Service has been authorized by the Commission. The cover or label of the copy obtained is marked with my name. I agree to use the information only for purposes of analyzing matters at issue in the matter 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 Kathryn Kobe  
Firm ECS  
Title Director of Wage Price Productivity Analysis  
Representing APWU  
Signature Kathryn L Kobe  
Date 7/13/2010

**CERTIFICATION**

The undersigned represents that:

Access to these materials provided in the matter identified as **USPS-LR-N2010-1/NP8** 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	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