

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

Before Commissioners:

Robert G. Taub, Acting Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Tony Hammond

Annual Compliance Report, 2015

Docket No. ACR2015

ORDER GRANTING REVISED SECOND MOTION FOR ACCESS

(January 22, 2016)

On January 11, 2016, United Parcel Service, Inc. (UPS) filed a motion pursuant to 39 C.F.R. §§ 3001.21, 3007.40, and 3007.50 requesting access to “a limited subset of non-public materials the United States Postal Service filed with the Commission on December 29, 2015, as part of the Postal Service’s Annual Compliance Report.”¹ The

¹ United Parcel Service, Inc.’s Second Motion for Access, January 11, 2016, at 1 (Second Motion). The subset of non-public materials to which UPS sought access (the Non-Public Materials) was identified on page 2 of the Second Motion. On January 14, 2016, UPS supplemented its Second Motion by filing copies of certifications in which its outside counsel and consultants agree to comply with the Commission’s protective conditions in Appendix A of 39 C.F.R. part 3007. United Parcel Service, Inc.’s Notice of Filing Certifications of Compliance with Protective Conditions in Connection with Motions for Access, January 14, 2016 (First UPS Notice). On January 19, 2016, UPS filed certifications of compliance with protective conditions for two additional consultants. United Parcel Service, Inc.’s Notice of Filing Additional Certifications of Compliance with Protective Conditions in Connection with Motions for Access, January 19, 2016 (Second UPS Notice).

Non-Public Materials include Postal Service library references that contain third-party information.² Second Motion at 2.

In its Second Motion, UPS alleges that access to the Non-Public Materials is “relevant to assessing whether the Postal Service complied in 2015 with the mandate of the Postal Accountability and Enhancement Act...that the Postal Service’s competitive products pay their own costs, without subsidy from market dominant products.” Second Motion at 1. UPS also states its intent to use the Non-Public Materials in both Docket No. ACR2015 and Docket No. RM2016-2.³ UPS therefore requested that access to the Non-Public Materials in Docket No. ACR2015 be permitted during the pendency of the proceedings in Docket No. RM2016-2. Second Motion at 2 n.3. The Commission has previously approved access to non-public Postal Service information from Docket Nos. ACR2014 and RM2015-7 for use in Docket No. RM2016-2.⁴

On January 19, 2016, the Postal Service filed an answer opposing the Second Motion.⁵ In its answer, the Postal Service stated that some of the third parties whose information is the subject of UPS’s Second Motion have expressed concern regarding disclosure of information which they consider highly confidential and commercially sensitive. Postal Service Answer at 2. As examples, the Postal Service attached letters from the counterparty to a negotiated service agreement that was the subject of Docket

² On the same day that it filed its Second Motion, UPS filed a separate motion seeking access to non-public Postal Service information that did not contain third-party information. United Parcel Service, Inc.’s First Motion for Access, January 11, 2016 (First Motion). The First Motion was unopposed and was granted. Order Granting First Motion for Access, January 15, 2016.

³ First UPS Notice at 1 n.1. The certifications attached as Exhibit 1 to the First UPS Notice specifically state that the information to which access is being sought will be used on in Docket Nos. ACR2015 and RM2016-2, and in any other docket to which the Commission grants such person access. *Id.* Exhibit 1.

⁴ *Id.*; see Docket No. ACR2014, Order No. 2436, Order Granting Continued Access to Non-Public Materials, April 13, 2015; Docket No. RM2016-2, Order No. 2756, Order Granting Unopposed Request for Continued Access to Non-Public Materials Filed Under Seal, October 15, 2015.

⁵ Response of United States Postal Service to United Parcel Service, Inc.’s Second Motion for Access, January 19, 2016 (Postal Service Answer).

No. CP2014-71⁶ and from Canada Post Corporation (Canada Post), the postal operator of Canada. *Id.* Attachments 1 and 2.

On January 21, 2016, UPS filed a notice in which it states that it “has conferred with the Postal Service to resolve its objection, and the parties [the Postal Service and Canada Post] have reached an agreement.”⁷ Under the agreement, UPS has agreed to withdraw its pending request for access to all but one of the library references listed in its Second Motion. *Id.* The only library reference to which it now seeks access is Library Reference USPS-FY15-NP13. *Id.* UPS states that the Postal Service and Canada Post do not object to the revised request. *Id.* On January 22, 2016, UPS filed a further notice in which it states that it is authorized to represent that the counterparty in Docket No. CP2014-71 does not oppose access to Library Reference USPS-FY15-NP13.⁸

Upon consideration of the foregoing, the Commission concludes that the Second Motion of UPS, as revised by its January 21 Notice, is granted and that the individuals whose certifications were attached to the First UPS Notice and Second UPS Notice are given access to Library Reference USPS-FY15-NP13.

It is ordered:

1. UPS’s Second Motion for Access, as revised by its January 21 Notice, is granted and access is hereby given to the non-public Library Reference USPS-FY15-NP13 – FY 2015 CRA Model (Model Files, Cost Matrices, and Reports) for use in Docket Nos. ACR2015 and RM2016-2 during the pendency of the proceedings in Docket No. RM2016-2.

⁶ See Docket No. CP2014-71, Order No. 2158, Notice and Order Concerning Additional Global Reseller Expedited Package Contracts 2 Negotiated Service Agreement, August 18, 2014.

⁷ United Parcel Service, Inc.’s Notice Regarding Second Motion for Access, January 21, 2016, at 1 (January 21 Notice).

⁸ United Parcel Service, Inc.’s Second Notice Regarding Second Motion for Access, January 22, 2016.

2. Effective upon issuance of this Order, the outside counsel and consultants covered by the Second Motion, as revised by the January 21 Notice, are each granted access to the non-public Library Reference USPS-FY15-NP13 – FY 2015 CRA Model (Model Files, Cost Matrices, and Reports).

By the Commission.

Stacy L. Ruble
Secretary