

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

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POSTAL RATE AND FEE CHANGES, 2001

Docket No. R2001-1

MOTION OF AMERICAN POSTAL WORKERS UNION, AFL-CIO
TO STRIKE TESTIMONY OF
KEYSPAN ENERGY WITNESS BENTLEY (KE-ST-1)
(February 25, 2002)

The American Postal Workers Union, AFL-CIO ("APWU") hereby moves to strike the written testimony of Keyspan Energy witness Richard E. Bentley that is not surrebuttal testimony, specifically, page 4, last line of Table 1; page 5, line 17 through page 22, line 9. In addition, the APWU moves to strike all library references, exhibits and workpapers filed to support this testimony. In this testimony, he develops his own methodology for measuring QBRM cost savings. This is a direct challenge to the cost avoided methodology relied on to support the proposed stipulation and agreement.

Presiding Officer's Ruling No. 43, establishing the current schedule for these proceedings, rejected the APWU's suggestion that the intervenors who would file testimony in response to the APWU's challenge to the proposed settlement would file their case-in-chief. The Ruling stated at page 4: "The testimony to be filed on February 20, 2002 will be limited to challenging the propositions put forward in APWU-T-1. It cannot be characterized fairly as the case-in-chief of any participant." This statement was based on the Ruling's earlier conclusions about the status of the proposed stipulation and agreement and the participants who are supporting it:

Surrebuttal testimony. The proposed stipulation and agreement is offered as a settlement in substitution for the Postal Service request in this case. APWU is the only participant that has chosen to file testimony in opposition to any aspect to the stipulation and agreement. As such, its testimony is in rebuttal to the proposal offered as a settlement in this case. Under Commission practice,

and consistent with Administrative Procedures Act, proponents have the opportunity to file surrebuttal testimony. Participant intending to submit surrebuttal testimony are to provide notice to that effect by close of business, February 15, 2002. Surrebuttal testimony will be due on February 20, 2002.

Id. In other words, the Ruling contemplated that the participants who would file testimony on February 20, 2002, would be proponents of the proposed stipulation and agreement, not argue for or support even larger discounts than those included in the proposal. The Ruling contemplated that testimony filed on February 20, 2002, would challenge the APWU's assertions, not the methodology, data and testimony supporting the proposed stipulation and agreement. The Ruling contemplated that the testimony filed on February 20, 2002, would be true surrebuttal testimony. To the extent it is not, the APWU moves to strike it.

Presiding Officer's Ruling No. 43 may have assumed that endorsers of the proposed stipulation and agreement would not challenge the methodology, data and testimony supporting it in testimony filed on February 20, 2002, based on the language in the proposed stipulation and agreement itself. It provides at paragraph 3:

3. For the purposes of this proceeding only, the undersigned parties agree that, taken in their entirety, the Request, testimony, and materials filed on behalf of the Postal Service in this docket provide substantial evidence for establishing rates and fees, as agreed herein and set forth in Attachment B to the Postal Service's Request as revised, and for establishing the classification changes set forth in Attachment A to the Request, as revised. The undersigned parties stipulate that the Request, the attachments thereto (as revised), and the accompanying testimony and exhibits, to whatever extent not entered into evidence during hearings, be entered into evidence in this proceeding, pursuant to this Stipulation and Agreement. (footnote omitted)

However, as they have now filed case-in-chief testimony, challenging the methodology, data and testimony supporting the proposed stipulation and agreement, the APWU moves to strike the non-surrebuttal testimony.

The Commission has grappled with motions to strike before, granting motions in Docket No. R84-1 (PRC Order No. 562) and Docket No. R94-1 (PRC Order No. 1024). In Docket No. R2000-1, Presiding Officer's Ruling No. R2000-1/89 denied a motion to strike, but in doing so provided the justification for striking the testimony in this case:

Only when data or analyses are submitted for the record with documentation that is so lacking, or is provided so late in the hearing process, as to effectively disable participants from testing or rebutting them, will the Commission strike them from the record. (emphasis supplied)

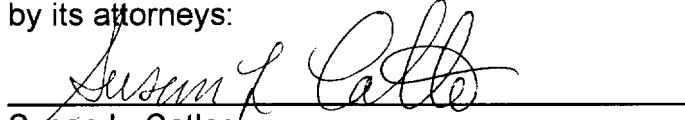
Presiding Officer's Ruling No. R2000-1/89 at page 10. It is hard to imagine data and analyses provided later in the hearing process than the February 20, 2002 testimony in this case. It is also clear that the testimony being challenged by this motion to strike cannot effectively be tested or rebutted in the limited time or with the limited procedures available to the APWU. The APWU will have from February 20 until February 26, 2002 to prepare oral cross examination. No written cross examination and no rebuttal testimony will be permitted. Briefs are due on March 4, 2002. This is simply insufficient to test or rebut the testimony that is really case-in-chief testimony, not surrebuttal.

The APWU's motion to strike should be granted in accordance with the Commission's prior rulings and in order to provide due process to the participants in this case.

Respectfully submitted,

AMERICAN POSTAL WORKERS UNION, AFL-CIO

by its attorneys:



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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice.

Date: February 25, 2002


Susan L. Catler