

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

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES

Docket No. R2001-1

**Joint Reply Of KeySpan Energy and Major Mailers Association  
Opposing APWU's Objections To Supplemental Designations**

KeySpan Energy (KeySpan) and Major Mailers Association (MMA) hereby submit their joint reply to the American Postal Workers Union's (APWU) February 21, 2002 objections to KeySpan's and MMA's separate supplemental designations of written cross-examination. A joint reply is appropriate because APWU opposed both designations on essentially the same grounds. For the reasons set out below, APWU's objections should be denied and the materials designated by KeySpan and MMA should be included in the record of this proceeding.

**Executive Summary**

APWU argues that the designations made by KeySpan and MMA do not fit within the letter of POR 49 because the designated materials were initially filed before the Presiding Officer issued POR 23 and 30 were issued on December 17, 2001 and January 8, 2002, respectively. While the discovery responses themselves may have been filed before the deadlines for making earlier designations,<sup>1</sup> the **need** to make these designations did not arise until well after those deadlines passed. Indeed, there was no reason to file these designations until **after** KeySpan and MMA had reviewed APWU witness Riley's testimony and made determinations that they would each file surrebuttal testimony. Even assuming that APWU is right, KeySpan's and MMA's recent designations certainly fit within the spirit of POR 49. Moreover, the extraordinary circumstances of this proceeding require that KeySpan and MMA have an

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<sup>1</sup> MMA notes that revisions to USPS witness Moeller's response to POIR 2, question 6 were not filed until after POR 23 and 30 issued. Moreover, on February 15, 2002, USPS witness Robinson revised her earlier response to POIR 4, question 6. That information was used by KeySpan witness Bentley in Library Reference KE-LR-J-2.

opportunity to designate materials used and/or referred to in the surrebuttal testimony and exhibits, and other materials filed.

### **Argument**

Prior to settling with the USPS, MMA and KeySpan actively pursued discovery of the USPS' case-in-chief and designated numerous discovery responses as written cross-examination at the appropriate times,<sup>2</sup> in preparation for filing their own cases-in-chief. By the deadlines for filing designations pursuant to POR 23 and 30, KeySpan, MMA and many other participants had already reached a settlement with the USPS and a revised S&A had been filed.<sup>3</sup> A key provision of the S&A was, and remains, the following stipulation:

[f]or 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 to herein . . . .<sup>4</sup>

The signatories to the S&A also "agree[d] that they will file no pleadings or testimony that opposes this agreement, or that proposes or advocates terms other than those embodied in it. S&A, Section II, Paragraph 6. Accordingly, there was no reason for KeySpan and MMA to file further designations of written cross-examination at that time, and a very good reason why KeySpan and MMA should not have filed testimony, including written cross-examination, that might have supported rates other than those contained in the S&A.

Prior to January 14, 2002, the deadline for filing institutional responses pursuant to POR 30, MMA did designate the institutional response to

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<sup>2</sup> KeySpan filed over 70 interrogatories, most of them multipart questions. MMA filed over 160 interrogatories, most of them multipart questions. MMA filed designations of written cross-examination related to the testimony of several USPS witnesses. See Major Mailers Association's Designations Of Written Cross-Examination For USPS Witness George S. Tolley, dated December 10, 2001; Major Mailers Association's Designations Of Written Cross-Examination For USPS Witness Karen Meehan And Request To File One Day Late, dated December 13, 2001; Major Mailers Association's Designations Of Written Cross-Examination For USPS Witness Leslie M. Schenk, dated December 13, 2001; KeySpan Energy's Designation Of Written Cross-Examination For USPS Witness Linda Kingsley, dated December 27, 2001.

<sup>3</sup> See Motion Of The United States Postal Service Submitting Revised Stipulation And Agreement, dated December 26, 2001. The final version of the S&A now under consideration by the Commission was filed on January 17, 2002.

<sup>4</sup> S&A, Section II, Paragraph 3.

Interrogatory MMA/USPS-T22-76 originally directed to USPS witness Miller.<sup>5</sup> In that response, the USPS confirmed the following:

- B. Please confirm that the cost avoidance calculations shown in Column 1 of the Table exceed the discounts in the proposed Settlement, as shown in Column 2 of the Table.

Comparison of Workshare Cost Savings  
Using the Docket No. R00-1 Methodology  
With USPS Proposed Workshare Discounts

Rate Category	Workshare Cost Savings Docket No. R00-1 Methodology	USPS Proposed Discounts
Mixed AADC	7.994	6.1
AADC	9.076	6.9
3-Digit	9.439	7.8
5-Digit	10.711	9.2

MMA made this one designation because counsel for APWU had signaled that the union would be opposing the First-Class workshare discounts contained in the S&A.<sup>6</sup> Of course, MMA could not anticipate with certainty what APWU's theory of the case might be at that time. Nevertheless, MMA did feel it necessary to put APWU on notice that the Postal Service had made changes to the Commission-approved methodology for measuring workshare cost savings in Docket No. R2000-1, and that it was appropriate to place into the record what the workshare cost savings would be if the USPS had followed the Commission's methodology in this case. The interrogatory answer confirms that the workshare discounts in the S&A are **lower** than the associated cost savings.

It was only **after** January 30, 2002, the date APWU's rebuttal case was filed and not really until February 14, when cross-examination of APWU witness Riley concluded, that KeySpan and MMA knew in full the contentions with which APWU would attempt to support its proposals that First-Class workshare discounts and the QBRM discount should be slashed dramatically. For example, KeySpan was not fully aware, until February 14, of APWU witness Riley's very

<sup>5</sup> See Major Mailers Association's Designation Of USPS Institutional Interrogatory Response, dated January 11, 2002.

<sup>6</sup> It was not clear at that time that APWU would also oppose maintenance of the 3-cent discount for QBRM.

limited understanding of the manner in which, and the reasons why, USPS witness Miller revised his derived QBRM cost savings, not once but twice. See Tr 12/4927.<sup>7</sup> Thereupon, KeySpan and MMA prepared their separate surrebuttal cases, limited to refuting the rebuttal evidence submitted by APWU witness Riley. As part of the testimonies they submitted, their costing expert, Richard E. Bentley, found it necessary and appropriate to refer to certain discovery responses made by the USPS, both to KeySpan and MMA interrogatories and to questions posed by the Commission in POIR 2 and 6. As very clearly stated in their supplemental designations, KeySpan and MMA limited the materials designated just to those items that were essential to development of their respective surrebuttal cases.

Although APWU opposes inclusion of the designated materials in the record on highly technical grounds, APWU has not offered any substantive reason for excluding the information. In that regard, APWU does not claim that it will be prejudiced by having the information included in the evidentiary record. Nor could there be any legitimate basis for a claim of harm. APWU has not claimed that this information is incorrect or unreliable. All of the responses designated consist of data and factual statements provided to KeySpan, MMA, and the Presiding Officer under oath by specific Postal Service witnesses or by the USPS through institutional responses.<sup>8</sup>

APWU's implicit suggestion, that KeySpan and MMA should have designated every possibly relevant interrogatory response prior to the time

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<sup>7</sup> Many of KeySpan's supplemental designations are related to demonstrating that Mr. Miller's revisions to the QBRM savings were prompted by KeySpan's interrogatories:

KE/USPST39-14	Kingsley	Miller	11/19/01
KE/USPST22-8 C	Miller	Miller	11/21/01
KE/USPST22-28 A	Miller	Miller	12/17/01
MMA/USPST22-25	Miller	Miller	11/5/01
KE/USPS-T22-23-24	Miller	Miller	12/17/01
KE/USPS-T22-5-10	Miller	Miller	11/21/01
KE/USPS-T22-20	Miller	Miller	11/29/01

<sup>8</sup> Unlike APWU witness Riley, Mr. Bentley is not relying on witness statements and analyses that were never incorporated into the evidentiary record and were renounced by the witness. For example, the .85-cent QBRM cost savings derived by USPS witness Miller and relied upon by APWU Riley (Tr 12/4862-3), has been recanted and replaced not once but twice.

APWU witness Riley filed his rebuttal testimony and was cross-examined, makes no sense. Avoiding the significant time, expense, and uncertainty associated with litigation is one of the principal benefits of settling issues and resolving cases. APWU is entitled to a hearing on its opposition to the S&A, but it cannot force the settling parties to proceed with development and filing of the full blown cases-in-chief they would file if the S&A is not approved.

Limiting the volume of information designated just to the items relevant to the issues raised in APWU's rebuttal testimony, to which KeySpan and MMA have responded in their surrebuttal testimonies is also consistent with the interests of judicial economy.<sup>9</sup> In establishing the procedural schedule that would govern consideration of the S&A, Presiding Officer Omas stressed the importance of deciding promptly whether the S&A could and should be approved:

First and most important, the proposed stipulation and agreement must be evaluated quickly enough so that if it will not serve as a sound basis for a recommended decision to the Governors, the Commission can proceed to evaluate the Postal Service Request in this docket and provide a decision consistent with the time limit established in 39 U.S.C. § 3624. Second, the proposed stipulation provides that signatories may withdraw if the Commission fails to issue a recommended decision based on the stipulation and agreement by March 25, 2002.

POR 43, issued January 31, 2002, at 2 (footnote omitted). Burdening the record with designated written cross-examination that may never have been used, as APWU suggests KeySpan and MMA should have done over a month ago, would not have assisted the Commission in meeting its goal of processing the S&A in a timely fashion. By limiting their designations, KeySpan and MMA have acted in a responsible, cooperative fashion. They should not now be punished for doing so.

In the last analysis, the evidence that APWU seeks to exclude is information that was submitted in good faith and under oath by the USPS. Indeed, some of this information was generated at the specific request of the Commission. It is foolish to pretend that the information does not exist or to say

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The .85-cent figure has never been part of, and never will be part of, the evidentiary record in this case.

that Mr. Bentley should have relied upon anything less than the most reliable information available to him.

**Conclusion**

For all of the foregoing reasons, APWU's opposition to KeySpan's and MMA's supplemental designations should be rejected.

Respectfully submitted,

**KeySpan Energy  
Major Mailers Association**

By: \_\_\_\_\_

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Of counsel

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document in compliance with Rules 12 of the Commission's Rules of Practice.

Dated this 25th day of February 2002.

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Michael W. Hall

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<sup>9</sup> See e.g. POR 44, issued January 31, 2002.