

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 THE AMERICAN POSTAL WORKERS UNION, AFL-CIO  
FOR SUPPLEMENTAL DESIGNATION OF RESPONSES  
OF UNITED STATES POSTAL SERVICE WITNESS MILLER  
TO INTERROGATORIES OF KEYSpan ENERGY  
AND MAJOR MAILERS ASSOCIATION  
(February 26, 2002)

In the event of an adverse ruling by the Presiding Officer in response to its February 25, 2002, motion to strike portions of the "surrebuttal" testimony of KeySpan Energy witness Bentley (KE-ST-1) and Major Mailers Association witness Bentley (MMA-ST-1), the American Postal Workers Union, AFL-CIO, hereby requests permission to designate as its supplemental written-cross-examination of Postal Service witness Miller (USPS-T-22) the interrogatory responses identified in the attached list. Two copies of each response are being filed with this motion.

If parties that have signed the Stipulation and Agreement presently under consideration in this proceeding are permitted to enter into evidence today all of the "surrebuttal" testimony subject to currently pending motions to strike, then those parties that are expected to conduct oral cross-examination on that testimony at today's hearing have been severely prejudiced. As explained in the APWU motions to strike filed yesterday, the surrebuttal testimony of intervenors American Bankers Association, KeySpan Energy, Major Mailers Association, and National Association of Presort Mailers has been filed in violation of Presiding Officer's Ruling No. R2001-1/43, the

Commission's rules regarding surrebuttal testimony, and the explicit terms of the Stipulation and Agreement currently under consideration in this proceeding.

KeySpan and MMA witness Bentley's testimonies contains complex cost models that attempt to rebut the direct testimony of Postal Service witnesses Miller (USPS-T-22) and Schenk (USPS-T-43), among others. Witness Bentley's testimonies are of a nature that ordinarily would be subject to an opportunity for extensive written cross-examination. Instead, parties are being given a scant five days between the day the testimony was filed and today to analyze the testimonies and prepare only for oral cross-examination. Parties with views of First-Class Mail workshare and QBRM cost avoidance that differ from those of witness Bentley's now have no realistic opportunity to thoroughly analyze his testimonies in order to prepare for cross-examination today. If the aforementioned surrebuttal testimony is not stricken, the parties that disagree with the underpinnings of witness Bentley's testimonies will have been deprived of due process.

To diminish, if only slightly, the prejudice that would result from the admission into evidence and reliance by the Commission upon the controverted portions of KeySpan and MMA witness Bentley's testimonies, APWU hereby moves that it be permitted to file supplemental designations of Postal Service interrogatory responses that, in effect, refute some of the assertions in witness Bentley's testimonies. While these discovery responses themselves may have been filed before the deadlines for making earlier designations, 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* APWU had reviewed KeySpan and MMA witness Bentley's

testimonies and determined that the testimonies -- contrary to Presiding Officer's Ruling No. R2001-1/43 and paragraph 3 of the Stipulation and Agreement -- each constitute a blatant attempt to refute the Postal Service's costing testimony, not the rate design testimony of APWU witness Riley.

Paragraph 3 of the Stipulation and Agreement explicitly states that signatories to the agreement rely on the Postal Service's direct testimony as providing substantial evidence to support the proposed settlement rates. Thus, signatories cannot -- as signatories -- attempt to rebut the Postal Service's direct testimony. Paragraph 6 of the Stipulation and Agreement explicitly provides that the signatories "agree that they will file no pleadings or testimony that opposes this agreement, or that proposes or advocates terms other than those embodied in it." The ABA, KeySpan, MMA and NAPM testimonies violate this provision as well.

Because APWU did not intend to challenge the costing testimony of the Postal Service and had no reasonable expectation that settlement parties would be permitted to file testimony challenging the Postal Service's costing testimony, APWU did not, earlier in this proceeding, designate Postal Service interrogatory responses that refute some of the attacks in the intervenor testimony filed on February 20th. There are a many witness Miller's interrogatory responses that effectively rebut some of the assertions underlying witness Bentley's KeySpan and MMA cost analyses.

With witness Bentley's testimonies now before the Commission (subject to motions to strike) and opponents to that testimony deprived of any chance for written cross-examination, and without any realistic opportunity to fairly analyze those testimonies and prepare for oral cross-examination, opponents to his testimonies should

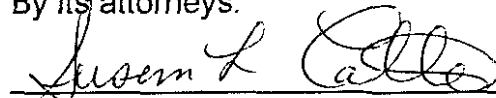
be permitted, as were KeySpan and MMA, by operation of Presiding Officer's Ruling No. R2001-1/52, to file late designations to illuminate that First-Class Mail worksharing and QBRM cost avoidance should be estimated for purposes of this proceeding in a manner different than is advocated by witness Bentley for MMA and KeySpan, respectively.

The APWU reiterates its view that a failure to strike the portions of MMA and KeySpan witness Bentley's testimonies identified in its motions to strike could have the unfortunate effect of tainting the recommended decision ultimately to be issued in this proceeding. APWU also emphasizes its belief that the Commission's granting of the instant motion in lieu of its motions to strike would not reverse such a miscarriage of due process.

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 26, 2002

  
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Susan L. Catler

Responses of USPS witness Miller (USPS-T-22) to:

KE/USPS-T22-14 through 16  
KE/USPS-T22-21  
KE/USPS-T39-1  
MMA/USPS-T22-1  
MMA/USPS-T22-4 (A), (E), (F)  
MMA/USPS-T22-5 (A), (B)  
MMA/USPS-T22-6 (A)  
MMA/USPS-T22-8 (B) to (D)  
MMA/USPS-T22-9 to 15  
MMA/USPS-T22-16 (A) to (C)  
MMA/USPS-T22-18  
MMA/USPS-T22-20 (A), (F)  
MMA/USPS-T22-22  
MMA/USPS-T22-24  
MMA/USPS-T22-26 to 27  
MMA/USPS-T22-29 (A) to (D)  
MMA/USPS-T22-31 to 32  
MMA/USPS-T22-33 (A) to (J), (L) to (N), (Q)  
MMA/USPS-T22-34 to 37  
MMA/USPS-T22-38(C), (D), (F) to (K)  
MMA/USPS-T22-40 to 41  
MMA/USPS-T22-43  
MMA/USPS-T22-44 (A) to (C1), (C2), (E)  
MMA/USPS-T22-45 to 47  
MMA/USPS-T22-48 (D)  
MMA/USPS-T22-50 to 51  
MMA/USPS-T22-52 (A) to (C)  
MMA/USPS-T22-54 to 55  
MMA/USPS-T22-56 (A) to (E)  
MMA/USPS-T22-57 to 63  
MMA/USPS-T22-66 to 69  
MMA/USPS-T22-72 to 75  
MMA/USPS-T43-19