

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

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U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

POSTAL RATE AND FEE CHANGES

Docket No. R2001-1

**Joint Answer Of Major Mailers Association And KeySpan Energy
In Opposition To Motions To Strike**

By motions dated February 25, 2002, the American Postal Workers Union (APWU) has moved to strike large portions of the testimony, exhibits, and library references filed by Major Mailers Association ("MMA") witnesses Richard E. Bentley and John D. Crider and KeySpan Energy ("KeySpan") witness Richard E. Bentley. For the reasons set out below, APWU's motions should be denied.

The Commission's Rules Of Practice and relevant precedent, including the rulings cited by APWU (Motion at 3)¹ make it clear that motions to strike are requests for "**extraordinary** relief" Rule 21 (c) (emphasis added). Neither the request for such relief nor the Commission's decision to grant it should be "lightly undertaken."² Despite the gravity of this matter, APWU failed to support its motions to strike with the detail and specificity that requests for such extraordinary relief deserve. Instead, APWU makes proforma arguments that the testimony filed by MMA and KeySpan is not "true surrebuttal testimony"³ but rather their cases-in-chief, that MMA and KeySpan are now proposing discounts higher than they agreed to in the S&A, and that the S&A prohibits the S&A's proponents from relying on any record evidence other than that presented by the Postal Service in its case-in-chief. These arguments are totally lacking in merit.

¹ APWU's reliance upon Order Nos. 562 and 1024 is misplaced. Both orders stand for the propositions that motions to strike testimony are granted only in exceptional circumstances and that they will be granted only where the material sought to be expunged from the record is so unreliable as to preclude any reliance upon it. That certainly is not the case here and APWU has not claimed that it is. If anything, APWU is claiming that MMA and KeySpan have been too thorough in explaining and documenting their positions.

² Order No. 1024 at 3.

³ APWU Motion at 2

Contrary to APWU's claim, the testimony, exhibits, and library references that MMA and KeySpan have filed are **directly** responsive to APWU witness Riley's specific contentions that:

1. the **only** record evidence regarding relevant measures of cost savings is that developed by USPS witness Miller; (Tr 12/4903-4)
2. he "**assume[d]** that the cost avoided are as reported by [USPS] witness Miller in his testimony;" (Tr 12/4864)
3. the workshare cost savings derived by the USPS are overstated⁴ (Tr 12/4849-50) and declining (Tr 12/4851);
4. the workshare discounts contained in the S&A are too high in relation to the relevant cost savings; and
5. the revised QBRM cost savings derived by Mr. Miller are too high (Tr 12/4862-63) and the Commission should rely upon the "lowest" number (Tr 12/4927), apparently even though the lowest number is not part of the evidentiary record.

Once Mr. Riley based his recommendations on these and similar contentions, MMA and KeySpan were entitled to present evidence refuting those contentions and explaining, for example, why Mr. Miller's estimates of workshare and QBRM cost savings that Mr. Riley relied upon (and simultaneously disparaged) are not reasonable yardsticks against which to assess the fairness of the S&A rates and what yardsticks the Commission should use, consistent with the evidence of record and applicable Commission policies. That is precisely what the witnesses for MMA and KeySpan have done, no more and no less.⁵ APWU witness Riley has criticized Mr. Miller's cost savings estimates as being **overstated**. It would be unfair to strike MMA and KeySpan testimony that takes specific issue with such criticism and points out reasons why those same cost savings estimates might be **understated**.

⁴ Both MMA witnesses explain why the USPS cost savings estimates are understated, not overstated. See Exhibit MMA-SRT-2 at 5-8; Exhibit MMA-SRT-1 at 4-5, 6-7, 23-26.

⁵ The fact that APWU's witness disregarded, whether purposely or out of ignorance, directly relevant record evidence regarding workshare and QBRM cost savings should not condemn S&A proponents or the Commission to do the same.

APWU argues that the proponents of the S&A agreed they would “not challenge the methodology, data, and testimony supporting [the S&A]” and that, in so doing, they are “argu[ing] for or support[ing] even larger discounts than those included in the [S&A] proposal.” Motion To Strike at 2. APWU’s arguments are based on a flawed reading of the S&A and fundamental misconceptions regarding the nature and purpose of MMA’s and KeySpan’s testimony.

At the outset, let us put to rest APWU’s “concern” that MMA and KeySpan are arguing for even larger discounts than those proposed in the S&A. Nothing could be further from the truth. MMA and KeySpan are signatories to, and strong supporters of, the S&A as witnesses Bentley and Crider stressed on behalf of MMA and KeySpan.⁶ Moreover, witnesses for KeySpan and MMA repeatedly made it clear that they are *not* recommending discounts that are larger than those agreed to by the signatories to the S&A.⁷ Accordingly, there simply is no substance to APWU’s argument on this score.

APWU’s related argument is based on the following provision of the S&A:

[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 herein⁸

APWU apparently does not understand the effect of this stipulation. First, this stipulation says in effect that the Postal Service’s request, testimony, and other materials provide substantial evidence in support of the rates contained in the S&A.⁹ It does not say, as APWU implies, that there is no other testimony of record that supports the S&A. Nor does the language

⁶ See e.g. Exhibit KE-SRT-1 at 1-2; Exhibit MMA-SRT-1 at 2; Exhibit MMA-SRT-2 at 2.

⁷ See Exhibit KE-SRT-1 at 5, footnote 6, 17, footnote 15, 22; Exhibit MMA-SRT-1 at 3, footnote 4.

⁸ S&A, Section II, Paragraph 3.

⁹ One purpose of this stipulation was to expedite consideration and approval of the S&A.

require the signatories to rely exclusively upon the USPS' presentation to support the S&A rates if, as has now happened, the S&A is opposed.¹⁰

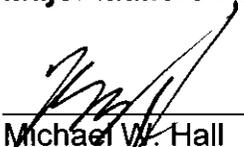
Conclusion

For all of the foregoing reasons, APWU's motions to strike KeySpan's and MMA's surrebuttal testimony and related materials should be denied.

Respectfully submitted,

**KeySpan Energy
Major Mailers Association**

By: _____

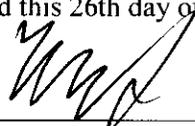

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CERTIFICATE OF SERVICE

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 26th day of February 2002.



Michael W. Hall

¹⁰ In any event, since APWU is not a signatory to the S&A, it cannot use the stipulation as a sword to cut off the rights of S&A proponents to use all available evidence to support the agreed upon discounts.