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ORDER NO. 1337

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

Before Commissioners:

George A. Omas, Chairman;
Ruth Y. Goldway, Vice Chairman;
and Dana B. Covington, Sr.

Postal Rate and Fee Changes

Docket No. R2001-1

ORDER RESOLVING MOTIONS TO STRIKE
SURREBUTTAL TESTIMONY

(Issued February 27, 2002)

On February 26, 2002 the Presiding Officer certified to the full Commission five motions to strike surrebuttal testimony filed by American Postal Workers Union, AFL-CIO (APWU) on February 25, 2002.¹ Tr. 13/4955. The substantially identical motions contend that large portions of the testimony of five surrebuttal witnesses should be excluded from the record as they do not challenge the rebuttal presentation of APWU in opposition to the pending proposed stipulation and agreement. APWU further contends that the identified testimony should be excluded because it presents analyses at such a late date in the hearing process that it has been effectively prevented from testing or rebutting them. Motions at 3, citing Docket No. R2000-1 (P.O. Ruling R2000-1/89).

¹ Motion of American Postal Workers Union, AFL-CIO to Strike Testimony of NAPM Witness Gillotte (NAPM-SRT-2); Motion of American Postal Workers Union, AFL-CIO to Strike Testimony of MMA Witness Crider (MMA-ST-2); Motion of American Postal Workers Union, AFL-CIO to Strike Testimony of MMA Witness Bentley (MMA-ST-1); Motion of American Postal Workers Union, AFL-CIO to Strike Testimony of ABA&NAPM Witness Clifton (ABA&NAPM-SRT-1); Motion of American Postal Workers Union, AFL-CIO to Strike Testimony of KeySpan Energy Witness Bentley (KE-ST-1). These pleadings shall be referred to collectively as APWU Motions.

Two responses were filed the morning after APWU submitted its motions.² The ABA/NAPM Opposition argues that each affected portion of the testimony of witnesses Clifton and Gillotte is directly responsive to arguments raised by APWU witness Riley, and provides specific citations to support its position. The MMA/KE Opposition also argues that witness Riley raised the issues dealt with in the challenged portions of the testimony of witnesses Crider and Bentley (two pieces of testimony) and that APWU has not shown that the extraordinary relief of striking evidence is justified. See Rule 21(c). Both Oppositions emphasize that this testimony is offered in support of the proposed settlement rates. On review of the contested material, the motions to strike are denied.

Witness Gillotte (NAPM-SRT-1). The APWU Motions challenge two sections of this testimony. Page 1, line 17 through page 2 line 3 is a statement of purpose describing his contention that the cost avoidance measure relied on by APWU witness Riley omits worksharing activities that justify the First-Class discounts contained in the proposed stipulation and agreement. Page 2 line 6 through page 9 line 14 presents this argument.

APWU witness Riley argues that worksharing discounts should not be larger than the amount of costs the Postal Service saves as a result of mailer worksharing. He recommends a set of First-Class rates purportedly based on workshare cost savings developed by Postal Service witness Miller. Beyond that, he argues that "the actual" costs avoided by worksharing are less than the "should cost" estimates presented by the Postal Service. ABA/NAPM Opposition at 3. See Tr. 12/4849-50.

The contested portions of witness Gillotte's testimony directly rebut APWU witness Riley's contention that a complete measurement of the actual Postal Service

² Opposition of American Bankers Association and National Association of Presort Mailers to APWU Motion to Strike Portions of ABA&NAPM Witness Clifton's Testimony and Portions of NAPM Witness Gillotte's Testimony (ABA/NAPM Opposition), February 26, 2002; Joint Answer of Major Mailers Association and KeySpan Energy in Opposition to Motions to Strike (MMA/KE Opposition), February 26, 2002.

costs saved as a result of mailer worksharing activities would show that the discounts in the proposed settlement are too large. They shall not be stricken.

Witness Crider (MMA-SRT-2). The APWU Motions challenge page 5 line 8 through page 8 line 16 in which witness Crider describes the costs of activities undertaken by his employer, Sprint Mailing Services, to participate in worksharing programs with the Postal Service. He contends that these activities produce savings for the Postal Service that are not recognized in the cost avoidance measure relied on by APWU witness Riley. He also presents these costs as support for his testimony that his management is aware of and concerned about the return generated by participation in worksharing programs.

This testimony is directly responsive to witness Riley's contentions that a complete measurement of the actual Postal Service costs saved as a result of mailer worksharing activities would show that the discounts in the proposed settlement are too large, Tr. 12/4849-50, and that mailers are unlikely to reduce worksharing even if discounts were dramatically reduced. Tr. 12/4859. They shall not be stricken.

Witness Bentley (MMA-SRT-1). The APWU Motions challenge portions of this testimony that develop two different methodologies for deriving First-Class workshare cost savings. It also moves to strike exhibits appended to this testimony.

APWU witness Riley relies on workshare cost savings developed by Postal Service witness Miller. Witness Bentley points out that witness Miller used an analysis different from the method accepted by the Commission in previous rate cases. He argues that use of accepted precedents in developing workshare cost savings will show that the First-Class discounts contained in the proposed settlement are cost justified. He has developed workshare cost savings that he believes reflect accepted Commission methodology. He has also developed an alternative measure of workshare cost savings that includes suggested improvements to accepted Commission methodology.

Bentley's testimony that attempts to develop cost savings using accepted Commission methodology is responsive to witness Riley's implicit assumption that the Commission must find witness Miller's estimates of First-Class workshare cost savings reliable. Bentley's alternative methodology is responsive to witness Riley's contention that current measurements of Postal Service costs saved as a result of mailer worksharing are overstated.

Witness Clifton (ABA&NAPM-SRT-1). Witness Clifton presents several analyses that contest positions he ascribes to APWU witness Riley. A review of the specific portions of the testimony of witness Riley cited by witness Clifton allows for the possibility, or even the probability, that some of witness Clifton's interpretations of witness Riley's views are not what witness Riley intended. During cross-examination APWU counsel reviewed this material with witness Clifton. It appeared during that cross-examination that witness Clifton believes that his interpretation of witness Riley's testimony is correct. Tr. 13/5329.

This testimony shall not be stricken. The nexus between witness Riley's testimony and portions of witness Clifton's analyses is somewhat tenuous. However, as an expert agency the Commission is fully capable of limiting its use of this material to its evaluation of the merits of witness Riley's presentation.

Witness Bentley (KE-ST-1). The APWU Motions challenge a separate analysis of costs avoided by QBRM mail developed by witness Bentley and presented in his testimony at page 5, line 17 through page 22, line 9. APWU contends that this study is inconsistent with the limited record offered in support of the proposed settlement, and that a cost study of this complexity should not be allowed at this late stage of the case.

APWU witness Riley relies on an initial cost avoidance cited by Postal Service witness Robinson in developing his proposed QBRM discount. Tr. 12/4862-3. This measure of cost avoidance, subsequently amended, reflected a new analysis of QBRM costs performed by Postal Service witness Miller. The Bentley analysis challenges

witness Miller's work and suggests that the existing (Docket No. R2000-1) method for measuring savings should form the basis for developing discounts. It is clear that this testimony is directed toward undermining the support for witness Riley's proposal to reduce the current 3.0 cents QBRM discount to .06 cents. Tr.13/5344. As such it is proper surrebuttal.

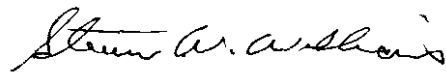
The thrust of witness Riley's presentation is that discounts should reflect no more than 80% to 100% of Postal Service cost savings. Witness Riley does not contend that cost savings, if they exist, should not be shared with mailers. His testimony does not affirmatively espouse the accuracy of the initial cost avoidance cited by witness Robinson. Witness Bentley's QBRM cost analysis is not simple, but in relation to much of the evidence before the Commission it can not be characterized as overly complex. It largely reflects existing methods approved by the Commission. Tr. 13/5379-80. APWU should be able to understand this evidence and respond appropriately without undue difficulty. This testimony shall not be stricken.

It is ordered:

1. The Motion of American Postal Workers Union, AFL-CIO to Strike Testimony of NAPM Witness Gillotte, filed February 25, 2002 is denied.
2. The Motion of American Postal Workers Union, AFL-CIO to Strike Testimony of MMA Witness Crider, filed February 25, 2002 is denied.
3. The Motion of American Postal Workers Union, AFL-CIO to Strike Testimony of MMA Witness Bentley, filed February 25, 2002 is denied.
4. The Motion of American Postal Workers Union, AFL-CIO to Strike Testimony of ABA&NAPM Witness Clifton, filed February 25, 2002 is denied.

5. The Motion of American Postal Workers Union, AFL-CIO to Strike Testimony of KeySpan Energy Witness Bentley, filed February 25, 2002 is denied.

By the Commission
(SEAL)



Steven W. Williams
Secretary