

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

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POSTAL RATE AND FEE CHANGES

Docket No. R2001-1

**Reply Brief Of
KeySpan Corporation,
Automatic Data Processing, Inc.,
Electronic Data Services, and
Long Island Power Authority
In Support Of Stipulation And Agreement On QBRM Issues**

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The QBRM Coalition, consisting of KeySpan Corporation (“KeySpan”), Automatic Data Processing (“ADP”), Electronic Data Services (“EDS”), and the Long Island Power Authority (“LIPA”) hereby submits its reply brief in support of the pending Stipulation and Agreement¹ (“S&A”). The QBRM Coalition’s Initial Brief (“Coalition IB”) explained why maintaining the QBRM First-Class discount at the current level of 3 cents is fair and equitable.

The QBRM Coalition has received initial briefs filed on behalf of the Postal Service and many other active participants. In their initial briefs, the parties overwhelmingly support approval of the S&A as filed. Only one party, the American Postal Workers Union, AFL-CIO (“APWU”) opposes the settlement.

The only two parties who address the QBRM discount issue are APWU and USPS. For the most part, the QBRM Coalition’s Initial Brief anticipated and responded to the arguments made by APWU. Accordingly, we will refer the Commission to relevant portions of the Coalition’s Initial Brief where appropriate to spare the resources of the Commission.

I. The Importance Of This Settlement

As the QBRM Coalition has already discussed (IB at 4-6), the Coalition heeded the words of Chairman Omas and worked diligently with the other active parties to forge

¹ See Motion of the United States Postal Service Submitting Second Revised Stipulation and Agreement, dated January 17, 2002.

a settlement that provides substantial benefits to the Postal Service. By advancing the implementation to as early as June 30, 2002, the S&A provides the Postal Service with an **additional \$1.2 billion** in revenues through the end of FY 2003.

All mailers, including the QBRM Coalition, have taken responsibility for a portion of this **additional \$1.2 billion**. QBRM recipients still pay more (9.7%) than the average increase (8.7%). See Coalition IB at 3. The QBRM Coalition also effectively gave up its opportunity to pursue its case for an even larger QBRM discount and lower per piece fee. Tr 13/5345. Other proponents of the S&A also gave up their opportunity to litigate issues of importance to them in this case.

The members of the QBRM Coalition signed the S&A and continue to urge the Commission to approve it in its entirety. Nevertheless, the Commission must recognize the chilling effect that the APWU's opposition will have on settlement prospects in the future. The QBRM Coalition members will not be inclined to sign onto future settlements if it means risking their litigation positions as well as their settlement positions to the whims of a single party such as APWU.

In this case, the QBRM Coalition members agreed to accept less than they would have pursued in litigation, and agreed to pay more sooner than they otherwise would have. Having reached that agreement they were then forced to continue litigating the case just to maintain their lowered expectations as reflected in the S&A. In other words, the S&A effectively put the QBRM Coalition into a box; it was forced to litigate the QBRM discounts with APWU in a situation that had no upside potential (because the Coalition was not permitted to make affirmative proposals to increase the discount) but a lot of downside risk (because APWU was allowed to put on its full case, fatally flawed though it turned out to be).

The QBRM Coalition understands that the settlement proponents must be put to their proof in presenting the S&A for approval, but if the result is that the S&A is not approved, despite the record evidence that overwhelmingly supports the S&A, the Coalition will not be eager to engage in this exercise again.

The QBRM Coalition applauds the Commission for the way it has employed streamlined procedures to deal with APWU's opposition. Those procedures have provided APWU with the due process it deserves while limiting somewhat the costs for

settling parties that APWU has dragged into its controversial web of litigation. Nevertheless, if the Commission wants to foster settlements in future cases, it must devise even more effective ways of processing settlements, especially where, as here, one lone holdout that does not even pay for the S&A seeks to thwart the common good for so many active parties, who have agreed to foot the **\$1.2 billion** settlement bill.²

II. **APWU Has Not Shown Any Reason Why its Extreme Position On The QBRM Discount Should Be Adopted**

A. **On Brief, APWU Disavows Its Own Witness's Evidence**

APWU witness Riley used USPS witness Miller's 0.85 cent QBRM cost savings as the basis for his recommendation that the QBRM discount be drastically reduced from 3 cents to just 0.6 cents. During cross-examination, Mr. Riley candidly acknowledged that he had just looked for the lowest number and did not care if the number he used was a typographical error. In surrebuttal testimony, KeySpan witness Richard E. Bentley pointed out what APWU should have discovered on its own: the 0.85 cent cost savings Mr. Riley relied upon was not even part of the record in this case. Coalition IB at 6-7.

APWU finally acknowledges these facts *in a footnote*,³ in which it also makes wholesale revisions in Mr. Riley's recommendations for QBRM letters and cards. APWU IB at 5. Now APWU bases its still dramatic reductions on Mr. Miller's final QBRM cost savings figure: 1.6 cents, a decision plainly in conflict with the testimony of its own witness. Coalition IB at 8.

APWU's error filled recommendations should dispose *entirely* of APWU's case for a lower QBRM discount. As the proponent of a radically lower QBRM discount, APWU had the burden of proof. Administrative Procedure Act, 5 USC § 556 (d). Obviously, APWU has not met that burden.

² As the OCA (IB at 4) correctly points out, settlements are much more common in proceedings that come before other agencies such as the Federal Energy Regulatory Commission. Based on KeySpan's experience in rate proceedings before state regulatory agencies, where once such proceedings never settled, settlements are now common place.

³ Of course, the proper way to inform the parties and the record would have been through an appropriate, timely errata to Mr. Riley's testimony and tables at the time his gross error was discovered. That is exactly what Mr. Miller did, not once but twice. Using the Commission's normal procedures would have limited confusion on the record, not to mention additional time, effort, and expense that APWU put KeySpan to.

In any event, the QBRM Coalition anticipated that APWU might try to take a fungible approach to cost savings and has demonstrated why Mr. Miller's final 1.6 cent cost savings was *understated* by about 3.4 cents, a factor of 3. See Coalition IB at 8-12.

B. The Commission Should Disregard APWU Arguments Based On The USPS Annual Report – 2001

APWU (IB at 9-13) tries to bolster Mr. Riley's general statements about the "dire financial straits" facing the Postal Service by reference to the Service's Annual Report 2001 and claims that implementation of the S&A rates will starve the Service's capital investment program, increase the costs of "frozen" capital projects, increase operating costs, and make for "huge rate increases in the future to recover losses, pay back debt, and reduce discounts to where they should be." APWU IB at 12. Such arguments are not persuasive.

At the outset, the QBRM Coalition does not understand why Mr. Riley, the former Chief Financial Officer of the Postal Service, did not use the Annual Report to make these arguments directly. We understand that the Annual Report was released in January 2002, before Mr. Riley submitted his testimony and well before February 14 when he took the stand.

In any event, APWU's reliance on the Annual Report is misplaced. APWU's arguments neglect to mention that, in their cover letter to the Report, Postmaster General and CEO John Potter and Robert F. Rider, Chairman Of the Board Of Governors placed substantial responsibility for the Postal Service's financial difficulties squarely on rising labor costs. As that letter states, in relevant part:

Yes, we face some challenges. A changing economy and rising labor costs have driven up our costs while they have reduced our revenue.⁴

The Commission should resist APWU's suggestion that the Union's judgment be substituted for that of the Postal Service. Establishing capital budgets, setting spending priorities, managing the Service's finances, dealing with debt levels and limits, and

⁴ The members of the QBRM Coalition join Messrs. Potter and Rider in expressing their respect, gratitude, and high esteem for the 800,000 postal workers who continue to perform their essential delivery

determining the size and timing of future rate increase proposals are all operational responsibilities that lie within the purview of Postal Service management and the Board of Governors, not APWU. The Commission can and should assume that the Postal Service took *all* of these considerations into account when it agreed to the S&A that assures it will receive an additional **\$1.2 billion** in revenues.

For these reasons, APWU's efforts to engender fear about the financial health of the Postal Service should be rejected.

III. The USPS's Support of the S&A Should Override its Issues with the QBRM Discount

Section V of the USPS brief is devoted to a defense of, among other things, maintaining the current QBRM First-Class discount of 3 cents. Unfortunately, certain of the USPS arguments are misguided, counter to the terms of the S&A, or not in accord with the record evidence.

The USPS (IB at V-38-40) urges the Commission not to rely upon the surrebuttal presentations of KeySpan and others. More specifically, citing Section II, Paragraph 3 of the S&A, the USPS (IB at 40-41) urges the Commission to disregard the 5.03 cent QBRM cost savings estimate derived by MMA witness Bentley because it "conflicted with those of Postal Service witness Miller."

While the QBRM Coalition recognizes that, as a general matter, the USPS has full confidence that the Commission can approve the S&A rates based on the cost savings estimates produced by USPS witness Miller alone and a preference that the Commission do so, the QBRM Coalition is not so confident and therefore urges the Commission to consider and rely upon witness Bentley's surrebuttal testimony, exhibits, and Library References. We believe that it is far more logical for all parties to recognize, as Coalition does, that the Commission has its own policies regarding the relationship between demonstrated cost savings and discounts and its own method of determining cost savings.

The Commission now has before it all interested parties' views regarding the appropriate method for determining the QBRM cost savings against which the fairness

functions in the face of much adversity. We also express our condolences to the families of the two postal employees who lost their lives to anthrax.

of the 3 cent discount will be measured. Since the Commission has already denied APWU's motion to strike Mr. Bentley's surrebuttal testimony, it makes no sense for the Postal Service belatedly to suggest that the Commission should disregard that testimony.⁵

In an effort to bolster Mr. Miller's method of measuring QBRM cost savings, USPS counsel characterizes Mr. Miller's method in this case as a "refined QBRM cost analysis." USPS IB at V-18. The only thing that Mr. Miller has refined is new innovative ways to make real cost savings disappear. See Coalition IB at 8-11; Tr 13/5368-71. Next, counsel refers to "problems" with witness Campbell's analysis in the last case. What counsel fails to mention is the fact that the Commission adopted Mr. Campbell's method in the last case.⁶ Finally, USPS *counsel* claims (IB at V-18) that "after further review," USPS witness Miller determined that the R97-1 methodology for estimating QBRM cost savings is more appropriate. That claim is pure puffery. The evidentiary record contains no details of Mr. Miller's "review". Moreover, his entire explanation consists of a revision to his testimony that stated "I have developed QBRM and handwritten reply mail costs models that are more consistent with those used in Docket No. R97-1." Ex. USPS-T-22 at 27. Such an explanation for why he switched cost savings methods in mid stream, can hardly be categorized as evidence convincing enough for the Commission to decide that its Docket No. R2000-1 methodology must be scrapped.

In a similar vein, USPS counsel (IB at V-19) extols the virtues of Mr. Miller's decision to apply the same CRA proportional adjustment factor to the costs of HAND and QBRM letters. In doing so, he ignores the record evidence demonstrating that Mr. Miller's model severely understates RBCS costs. As a result, Mr. Miller's blind application of the same CRA adjustment factor to both sets of costs, even though

⁵ APWU has devoted a substantial portion of its initial brief to rehashing the arguments that it made in its motions to strike and its untimely suggestions regarding the procedures to be used in this phase of the case. In view of the fact that the Presiding Officer and the Commission have already ruled on these matters, no useful purpose will be served by addressing APWU's arguments. Suffice it to say that the QBRM Coalition was constrained to respond to issues raised by APWU witness Riley and limited its presentation accordingly.

⁶ Mr. Miller's discussion of "problems" with Mr. Campbell's analysis does not begin to meet the USPS' burden of proving that the Commission's existing method is inaccurate and does not produce fair

QBRM completely bypasses the RBCS, distorts the cost relationships and only makes matters worse.⁷ As Mr. Bentley testified (Tr 13/5368):

Mr. Miller compounds the inconsistent results exhibited by his models by inappropriately applying the same BMM CRA proportional adjustment factor for both the HAND and QBRM models. As discussed above, when the entry point for a rate category is the RBCS, the model will understate costs. The BMM CRA adjustment factor corrects this problem by raising the model-derived unit cost. But applying this same BMM CRA adjustment factor to QBRM, which bypasses the RBCS, only makes the problem of overstating QBRM costs worse. Therefore, in order to accurately tie the model-derived unit cost to the CRA, Mr. Miller should have applied the Automation CRA adjustment factor to the QBRM model-derived unit cost.

In other words, far from being a virtue, Mr. Miller's use of the same CRA adjustment factor is probably the largest single factor explaining the apparent precipitous drop in QBRM cost savings, from 3.4 cents in the last case to only 1.6 cents under Mr. Miller's new method. Mr. Miller's illogical application of the same CRA adjustment factor also explains the anomalous results obtained using his method. See Coalition IB at 12; Tr 13/5359-61, 5368-71.

For these reasons, the Commission should consider and accept Mr. Bentley's measurement of QBRM cost savings. At over 5 cents, those savings provide additional justification for retention of the current 3 cent QBRM discount, as agreed upon in the S&A.

and equitable results. In any event, that portion of Mr. Miller's testimony is moot because he adopted an entirely different method for estimating QBRM cost savings.

⁷ Mr. Bentley's Table 4 (Tr 13/5348) clearly proves that Mr. Miller's model overstates costs for letters that bypass the RBCS. Applying a CRA factor that raises the already overstated QBRM model-derived unit cost, as Mr. Miller does, makes no sense whatsoever.

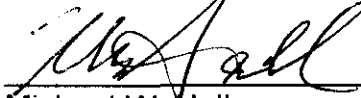
Conclusion

For the foregoing reasons and those set forth in the Coalition's Initial Brief, the S&A should be approved in its entirety before March 25, 2002.

Respectfully submitted,

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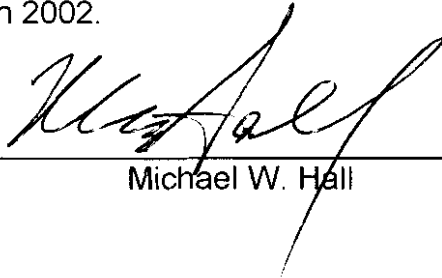
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Dated: Round Hill, Virginia
March 8, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties to this proceeding, in compliance with Rule 12 of the Commission's Rules of Practice.

Dated this 8th day of March 2002.



Michael W. Hall