

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

STATION AND BRANCH OPTIMIZATION AND  
CONSOLIDATION INITIATIVE, 2009

Docket No. N2009-1

MOTION OF THE UNITED STATES POSTAL SERVICE  
IN OPPOSITION TO THE MOTION FOR LATE ACCEPTANCE  
AND THE LATE FILING OF REBUTTAL TESTIMONY  
BY THE NATIONAL LEAGUE OF POSTMASTERS

The United States Postal Service hereby files this motion to strike the Initial Brief of the National League of Postmasters<sup>1</sup> submitted on December 3, 2009, to the extent that it includes, incorporates or references what amounts to rebuttal testimony heretofore not submitted to the Commission in accordance with the procedural schedule established for this docket.

Section 3661(c) requires that hearings by the Commission in response to a request for an advisory opinion be conducted on the record in accordance with the Administrative Procedure Act (APA), 5 U.S.C. §§ 556 and 557. A fundamental tenet of the APA is due process, particularly as it relates to assuring that all parties who take advantage of the opportunity for a hearing under section 3661(c) are notified about and afforded a reasonable opportunity to adversarially examine testimony and other evidentiary materials bearing upon the issues raised by an advisory opinion request.

Presiding Officer's Ruling No. N2009-1/11 (October 9, 2009) included a procedural schedule which established October 21, 2009, as the deadline by which intervenors in this docket were permitted to file rebuttal testimony. Such testimony was filed by several parties; written discovery on that testimony was undertaken; oral-cross-

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<sup>1</sup> Hereinafter, "The League."

examination of the sponsoring witnesses was conducted; and legal briefs commenting on that testimony were filed in accordance with that schedule.

The Postal Service does not oppose the Commission allowing the National League of Postmasters in this instance to file a brief one day late. However, the Postal Service opposes the attempt by The League to use such a brief as a vehicle for the introduction of rebuttal testimony on which The League expects the Commission to rely in this docket, should the Commission issue an advisory opinion.

Referenced at pages 3 and 4, and attached to the Initial Brief of The League is a written statement represented as having been submitted by its Executive Vice President on July 30, 2009, to the Subcommittee on Federal Workforce, Postal Service & the District of Columbia, Committee on Oversight and Government Reform, United States House of Representatives. In addition, at page 2, n.1, and on page 4, the Initial Brief of The League incorporates by reference testimony provided by its President to the Commission in Docket No. PI2008-3 on July 10, 2008.

The hearings in which both of these statements were presented did not allow for any form of adversarial cross-examination of witnesses. In order to have such statements considered by the Commission in relation to its review of the Station and Branch Optimization and Consolidation Initiative in Docket No. N2009-1, the League was obliged to file these statements in the instant docket as its rebuttal testimony, so that other parties would have an opportunity to conduct written and/or oral cross-examination, as required by section 3661(b). The League elected not to do so. Instead, its litigation strategy is now revealed as waiting until a day after the deadline for

the filing Initial Briefs to submit such statements as its rebuttal testimony for the Commission's consideration.

Perhaps unintentionally, perhaps not, this tactic has the result of depriving the Postal Service and other intervenors of any opportunity for a hearing on such testimony, contrary to the due process requirements of 3661(b). The Commission must swiftly and explicitly act to prevent such a consequence.

Accordingly, the Postal Service moves that the Commission not grant the motion for late acceptance until such time that The League withdraws its December 3<sup>rd</sup> Initial Brief and submits a version without (a) the offending attachment; (b) the offending footnote, and (c) the entire text of the final paragraph on page 3 and the first paragraph on page 4 of that brief.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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