

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

Six-Day to Five-Day Street Delivery
and Related Service Changes

Docket No. N2010-1

PRESIDING OFFICER'S RULING ON AMERICAN
POSTAL WORKERS UNION, AFL-CIO MOTION TO STRIKE

(Issued October 20, 2010)

On October 19, 2010, the American Postal Workers Union, AFL-CIO (APWU), filed a motion to strike portions of the Initial Brief of the United States Postal Service (Initial Brief).¹ In the alternative, APWU asks the Commission to treat its motion as a "Partial Response" to the Postal Service's Initial Brief. *Id.* at 1.

APWU contends that the arguments it seeks to strike from the Postal Service's Initial Brief are "exceedingly untimely" and are barred by the doctrines of waiver and estoppel. *Id.* at 1-2. It argues that the sections of the Postal Service's Initial Brief at issue in its Motion are "an attempt to reform the evidentiary record in this case at the last minute to eliminate unfavorable testimony." *Id.* at 1. APWU also argues that it, other parties, and the general public would be prejudiced if the Postal Service were permitted to raise such arguments at this late stage of the case, as the evidentiary record is closed and parties cannot now offer evidence to replace the testimony that the Postal Service is seeking to exclude via its Initial Brief.

¹ American Postal Workers Union, AFL-CIO Motion to Strike Portions of USPS Initial Brief, October 19, 2010 (Motion).

APWU notes that rule 21(c) of the Commission's Rules of Practice and Procedure identifies motions to strike as "requests for extraordinary relief," and it is only proper to grant such relief under exceptional circumstances.

Currently, this complex case is at the very end of its last briefing stage. Reply briefs are due on October 25, 2010, less than five days from now. Other parties may also choose to weigh in on the issues raised in the Motion. Given this procedural posture, the best way for the Commission to thoroughly consider the arguments raised by the Postal Service and APWU are as part of the briefs. Accordingly, the Commission grants APWU's alternative request to consider its filing a partial response to the Postal Service's Initial Brief.

RULING

It is Ordered:

The American Postal Workers Union, AFL-CIO, Motion to Strike Portions of USPS Initial Brief, filed October 18, 2010, will be treated as a partial response to the Postal Service's Initial Brief.

Ruth Y. Goldway
Presiding Officer