

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

MAIL PROCESSING NETWORK
RATIONALIZATION SERVICE CHANGES, 2012

Docket No. N2012-1

**MOTION OF THE UNITED STATES POSTAL SERVICE
TO STRIKE A PORTION OF THE INITIAL BRIEF
OF THE PUBLIC REPRESENTATIVE**
(July 20, 2012)

The United States Postal Service (“Postal Service”) respectfully moves to strike page 36 (lines 12 – 20), pages 37 – 45, and the technical appendix of the Initial Brief of the Public Representative, filed July 10, 2012. In these sections, the Public Representative (“PR”) improperly attempts to introduce an alternative method for calculating mail processing labor cost savings after the evidentiary record has already been closed. While the PR claims that its method is based partly on the testimony of several witnesses, the PR also includes new, undocumented, and untested changes that distinguish its analysis from anything previously offered into evidence. The PR makes no attempt to support these changes with citations to the record.

If interested parties/observers are to have faith in the Commission’s advisory opinion, it must ensure that the opinion is a product of a process that satisfies the procedural requirements currently in place under the Commission’s Rules of Practice & Procedure. To allow the PR to rely on extra-record evidence presented to the Commission, in an *initial brief* filed after the close of the

evidentiary record, would be contrary to the most basic norms of due process. Without a timely opportunity to review the data and analysis underlying the figures, probe them through existing discovery processes, and submit rebuttal testimony, the Postal Service has no meaningful way to challenge the PR's calculations at this late date. Nor does the Commission have any principled way to assess their validity.

I. The Public Representative Does Not Cite to Record Evidence to Support Its Method for Calculating Cost Savings.

On pages 36 through 45 of its initial brief, the PR presents its own method for calculating mail processing labor cost savings. The PR's brief indicates that it is adopting but modifying Postal Service witness Neri's productivity estimates,¹ adopting but modifying Postal Regulatory Commission witness Weed's approach to workload transfer,² and adopting the computational structure of witness Bradley's cost savings model to calculate the impact of combining the modified analyses of witnesses Neri and Weed.³ The PR uses the significantly different results generated by its analysis to question the validity of the Postal Service's calculations.⁴ However, the PR's modifications are new, untested, and undocumented in the record.

First, the PR's modification of witness Neri's productivity analysis contains unsupported assumptions and at least one computational error. The PR argues that the actual excess capacity in mail processing is 20.6 percent instead of the

¹ Docket No. N2012-1, Initial Brief of the Public Representative, at 36 (July 10, 2012).

² *Id.* at 37.

³ *Id.*

⁴ *Id.* at 44-45 ("The Public Representative maintains...that the cost savings from the proposed network realignment will be substantially lower than presented by the Postal Service...").

28.06 percent found by witness Neri.⁵ Since 20.6 percent is 73.4 percent of 28.06, the PR apparently reduced witness Neri's estimated overall productivity gain from 15 percent to 11 percent by multiplying it by 73.4 percent.⁶ However, such a proportional reduction in productivity gain is based upon a speculative assumption that the change in productivity resulting from the revised service standard is directly proportional to the amount of excess capacity. The PR has not cited to any record evidence to support this assumption.

Even worse, the PR's other modification of witness Neri's productivity analysis is both conceptually and computationally erroneous. The PR's brief indicates that it reduces witness Neri's productivity gains by 25 percent to account for the "step function" nature of operations.⁷ Unfortunately, the PR provides no basis for the use of 25 percent for such an adjustment. Moreover, when the PR attempts to apply this adjustment, it miscalculates it. The PR's brief states that it will reduce witness Neri's estimate of productivity for non-volume operations by a factor of 0.58, because $0.75 * 11\% = 0.58$.⁸ However, $0.75 * 11\%$ equals 0.0825 not 0.58. This miscalculation alone throws into question the validity of the PR's entire set of calculated productivities and cost savings, and highlights the need to test the validity of the PR's analysis.

The PR next goes on to modify witness Weed's analysis of workload transfer. Once again, the PR's modifications contain unsupported assumptions.

⁵ *Id.* at 36.

⁶ Initial Brief of the Public Representative, *supra* note 1 at 36, n.33.

⁷ *Id.* at 36.

⁸ *Id.* at 36, n.34.

For instance, when describing its use of MODS data to create cost pools, the PR states that “[u]nlike Witness Weed, the Public Representative considers volumes recorded as Non-Add Total Pieces Handled (NA TPH) to be valid volumes.”⁹ Though the PR does offer an explanation for why it believes NA TPH volumes should be included, it does not cite a single piece of record evidence to support its rationale. Indeed, both witnesses Bradley and Weed did not treat NA TPH volumes in this manner. The PR continues this disturbing trend by making further unsupported changes, including breaking out “no-volume” operations more finely than witness Weed.¹⁰ Nevertheless, the PR expresses the hope “that these modifications will add to the record.”¹¹ Unfortunately for the PR, the evidentiary record closed on July 5, 2012.¹²

Further complicating matters, the PR has failed to provide critical materials that are required by rule 31(k) of the Commission’s rules of Practice & Procedure.¹³ For instance, the computer program underlying the analysis is not provided, nor is the output or “listing” of that computer program.¹⁴ In addition, the electronic spreadsheets used to execute the calculations are not provided. Thus, it is impossible to replicate the PR’s analysis, let alone understand how the numbers are calculated.

Given the significance of the proposals in this docket, the PR’s eleventh-hour attempt to supplement the record cannot be permitted. The PR does not

⁹ *Id.* at 38.

¹⁰ *Id.* at 43.

¹¹ *Id.*

¹² Docket No. N2012-1, Presiding Officer’s Ruling No. N2012-1/74, at 3 (July 5, 2012).

¹³ See 39 C.F.R. § 3031(k)(i).

¹⁴ Though the Technical Appendix to the PR’s brief presents the “log” of the SAS program that was run, this is not executable and does not contain the output of the results. The output is contained in the “listing” of the SAS program.

simply make minor alterations to existing calculations offered into the record, but instead makes self-championed changes that ultimately result in calculations materially different from those presented by other witnesses. Moreover, the significance of the changes made, the impact they have on the cost savings estimates, and the existence of computational errors immediately call into question their validity. Since the Postal Service and other participants have not been afforded an opportunity to subject the PR's calculations to cross-examination or rebut them, the PR's analysis must remain excluded from the evidentiary record and cannot be relied upon by the Commission.

II. The Commission Cannot Rely on the Disputed Calculations Without Record Support or an Opportunity for Adversarial Testing and Rebuttal.

The Commission's Rules of Practice and Procedure establish the procedures for determining the evidentiary status of relevant information submitted by parties, limited participators, or commenters. See 39 C.F.R. §§ 3001.20, .20a, .20b. For instance, relevant information presented to the Commission by limited participants can have evidentiary status on par with testimony submitted by parties only if such information is "subject to cross-examination *on the same terms applicable to that of formal participants.*" 39 C.F.R. § 3001.20a(c) [Emphasis added]. Otherwise, the Commission is required to maintain such material in such a manner that it is "segregated from the evidentiary record." 39 C.F.R. § 3001.20b(c).

Indeed, the Commission has reached the same conclusion in similar contexts. For instance, in Docket No. R2006-1, the Commission declined to

admit into the record certain Postal Service responses to Presiding Officer's Information Requests ("POIRs").¹⁵ The Postal Service's responses updated certain statistical datasets with FY2004 information.¹⁶ Analogous to the situation here, intervenors objected to the inclusion of the updated data set, because it was filed after the close of the record and made significant changes, thereby entitling the intervenors to cross-examination and rebuttal.¹⁷ In declining to admit the responses, the Commission noted that the responses were offered too late to "afford the intervenors the full panoply of procedural due process rights,"¹⁸ which includes the rights to "cross-examine the attesting witnesses, and prepare rebuttal evidence."¹⁹

Unfortunately, the remaining time in this proceeding does not afford the Postal Service a meaningful opportunity to respond to the PR's unsupported changes. Although reply briefs are due today, it would be inappropriate for the Postal Service to offer rebuttal testimony at that time, since it would be contrary to the same rules that the PR has not followed. If the PR had wanted to rebut the testimony of witness Neri, the deadline was April 23, 2012.²⁰ If the PR had wanted to rebut the testimony of witness Weed, the deadline was June 22,

¹⁵ Docket No. R2006-1, Order No. 1482: Accepting Certification and Sustaining, in Part, Objection of Intervenor to Designation of Responses to Presiding Officer's Information Requests For Inclusion In the Record (November 8, 2006).

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 3-4.

¹⁸ *Id.* at 4.

¹⁹ *Id.*

²⁰ Docket No. N2012-1, Presiding Officer's Ruling Establishing Procedural Schedule, at 8 (January 12, 2012).

2012.²¹ The PR did not do so. Consequently, the Commission is left with no choice but to decline to admit the contested material into the record.

III. Conclusion

As discussed above, the appropriate remedy for the inclusion of new evidence in the PR's initial brief is for the Commission to strike the content from the record or, alternatively, to rule specifically that the information will be given no weight in the Commission's advisory opinion. Presiding Officer's Ruling No. 74 decreed that "[t]he evidentiary record in Docket No. N2012-1 is hereby closed." Compliance with its ruling, and fundamental principles of due process, require that the mail processing labor cost savings calculations and the corresponding estimates on page 36 (lines 12-20), pages 37-45, and the technical appendix of the PR's initial brief be stricken.

Respectfully submitted,

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²¹ *Id.*