decontamination and decommissioning activities in accordance with the conditions specified therein.

II

An investigation of the Licensee's activities was completed on September 29, 1999. The results of this investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated September 24, 2001. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter dated October 17, 2001. In its response, the Licensee denied the violation and protested the civil penalty. The Licensee claimed the employment action was taken for legitimate business reasons, the manager was unaware that the complainant had contacted the NRC, and the complainant did not have a material loss of benefits because he was placed on paid medical leave.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $17,600 within 30 days of the date of this Order, in accordance with NUREG/BR–0254. In addition, at the time of making the payment, the Licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532–4351.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated this 15th day of January 2002.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Deputy Executive Director for Materials, Research and State Programs.

[FR Doc. 02–2020 Filed 1–25–02; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Order No. 1320; Docket No. C2001–3]

First-Class Mail Service Standards

AGENCY: Postal Rate Commission.

ACTION: Notice and order concerning complaint.

SUMMARY: The Commission has initiated a case to consider a complaint concerning the consistency of certain recent changes in First-Class Mail service standards with controlling statutory provisions. This will allow pertinent allegations to be reviewed. Rates are not affected. Notice of this action has also been mailed to persons on the Commission's mailing list and has been posted on the Commission's Web site.

DATES: See Supplementary Information section.

ADDRESSES: Send correspondence regarding this document to the attention of Steven W. Williams, secretary, 1333 H Street NW., suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, general counsel, 202–789–6820.

SUPPLEMENTARY INFORMATION:

I. Introduction

This order addresses Douglas F. Carlson's formal request for institution of a service complaint proceeding, under 39 U.S.C. 3662, to address certain recent changes in First-Class Mail service standards.[1] The referenced changes, implemented in 2000 and 2001, affect two- and three-day service standards for delivery of First-Class Mail.

Scope and Extent of Changes

Carlson asserts that these changes entail a net decrease in the volume of First-Class Mail subject to a two-day service standard, and a net increase in the volume of First-Class Mail subject to a three-day standard. Carlson Complaint at 11. Carlson also says the changes affect over 76,440 origin-destination three-digit ZIP Code pairs in all postal areas, and all states except Alaska and Hawaii. Id. at 2–3, 11. He asserts:

> The changes in First-Class Mail standards result in a net increase of approximately 22,250 origin-destination three-digit ZIP Code pairs for which the service standards is two days. However, the net *volume* of First-Class Mail subject to a two-day delivery standard instead of a three-day delivery standard has decreased by approximately 1.5 billion pieces per year. Moreover, the changes in First-Class Mail service standards have shifted over 3.4 billion pieces of mail per year from a two-day delivery standard to a three-day delivery standard.

Id. at 11, paragraph 53 (emphasis in original).

Rationale for seeking to explore recent changes in a service complaint.

In brief, Mr. Carlson's theory is that the Service should have requested an advisory opinion from the Commission,

[1] Douglas F. Carlson Complaint on First-Class Mail service standards, June 15, 2001 (Carlson complaint). The complaint includes an appendix, and was accompanied by two library references. DFC–LR–1 consists of correspondence with the Postal Service under the Freedom of Information Act (FOIA). DFC–LR–2 consists of service commitment diskettes and a service standards CD–ROM. Douglas F. Carlson notice of filing of library references, June 15, 2001. This order does not address FOIA issues.

pursuant to 39 U.S.C. 3661(b), within a reasonable time prior to making the 2000–2001 changes, as these materially changed, departed from or abandoned the standards proposed by the Service in docket no. N89–1, and did so on a nationwide basis within the meaning of the Postal Reorganization Act. Although the Service did not request such an opinion, Carlson contends that the Commission nevertheless has jurisdiction to address the changes in the alternative setting of a service complaint proceeding—and should do so—as 39 U.S.C. 3662 provides: ''Interested parties * * * who believe they are not receiving postal service in accordance with the policies of this title may lodge a complaint with the Postal Rate Commission * * *.''

Policies in Issue

The policies allegedly implicated by the Service's actions, and cited in Mr. Carlson's original complaint, include 39 U.S.C. 3361(a), which requires the Service to provide ''adequate postal services'' and 39 U.S.C. 403(c), which proscribes undue and unreasonable discrimination among users of the mail. A proposed amendment to the complaint also alleges that the service standard changes violate 39 U.S.C. 101(e) and (f).[2] Douglas F. Carlson motion for leave to amend complaint, August 14, 2001 (Carlson motion to amend complaint).

Structure of the complaint and initial Commission action. Upon filing, Mr. Carlson's complaint was designated as docket no. C2001–3 for administrative purposes, pending a decision on whether to proceed on the merits. Pursuant to Commission rules, the secretary of the Commission transmitted the complaint the Postal Service.

In conformance with Commission rules, Carlson's complaint provides formal identification of the complainant and his mailing address (in paragraph 1); addresses Commission jurisdiction (paragraphs 2–8); and summarizes the complaint (paragraphs 9–21). It also describes why First-Class Mail service is inadequate under the recent changes (paragraphs 22–32); reviews criteria for two-day service standards (paragraphs 22–40); addresses undue and unreasonable discrimination (paragraphs 41–43); and notes the purported lack of public input (paragraphs 33–48). The complaint discusses the scope of changes in service standards (paragraphs 49–61, noting appendix 1's printouts of maps from the service commitment program and service standards program.) It also describes the class of persons affected (paragraphs 62–64) and identifies the relief that is sought (paragraph 65). Paragraph 66 (to be filed) supplements the postal policies identified in the original compliant by adding 39 U.S.C. 101(e) and (f).

Requested Relief

The relief Carlson seeks (in paragraph 65) includes a specific request that the Commission issue a public report documenting the following four matters: the inadequate First-Class Mail service that many customers are now receiving; the undue and unreasonable discrimination some mailers located in California and other western states are suffering; the change in, departure from, or abandonment of criteria the Service announced in docket no. N89–1 and the 2001 ZIP Code directory for two-day service standards for First-Class Mail; and the Service's failure to seek an advisory opinion before the effective date of those changes.

Other Pleadings

The Service has filed a paragraph-by-paragraph answer to the complaint (along with a general denial), a motion to dismiss, and a declaration prepared by Postal Service employee Charles Gannon.[3] See order no. 1318, issued July 13, 2001. Mr. Carlson and the Commission's office of the consumer advocate (OCA) have each filed answers opposing the Service's motion to dismiss.[4] In addition, the Service has filed a reply to both of these answers, and Mr. Carlson has filed a response to this reply.[5]

The instant complaint and related filings draw extensively on docket no. N89–1, change in service 1989, First-Class delivery standards realignment. In that docket, the Service proposed a phased realignment of First-Class Mail delivery, or service standards. The Gannon declaration provides a useful review of key aspects of that proposal, and of developments since issuance of the Commission's advisory opinion.[6]

II. Status of Key Allegations

A review of the pleadings at this stage of the case indicates that several allegations related to the timing, scope, and effect of the underlying changes are undisputed. Specifically, the complainant and the Postal Service appear to be in agreement that the complained-of changes were implemented by the Postal Service in 2000 and 2001; affect more than 76,440 three-digit ZIP Code origin-destination pairs; and have the volume impact cited by the complainant. Postal Service answer at 2–3, and 11–15.

However, the pleadings have not resolved other important allegations and legal questions. For example, as framed by the Postal Service, a threshold question is the context in which the changes occurred. Carlson's view is that the 2000–2001 changes were necessarily so different and so attentuated in time from the docket no. N89–1 delivery realignment plan that they required a new advisory opinion prior to implementation. In contrast, the Service contends that the changes were simply the long-delayed, but nevertheless related, implementation of ''phase II'' of the earlier proposal, and cites the Gannon declaration for support. Postal Service motion to dismiss at 4–5. In effect, the Service argues that the changes are part of a continuum that required no new advisory opinion.

Other legal questions center on whether the impact is nationwide within the meaning of the Postal Reorganization Act; whether the criteria and/or resulting service are unduly discriminatory and inadequate or implicate other statutory policies; whether the Commission should

[2] Section 101(e) provides that the Service shall give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail. Section 101(f) provides that in selecting modes of transportation, the Service shall give highest consideration to the prompt and economical delivery of all mail and shall make a fair and equitable distribution of mail business to carriers providing similar modes of transportation services.

[3] Answer of the United States Postal Service [to Carlson's docket no. C2001–3 complaint on First-Class Mail service standards], July 13, 2001 (Postal Service answer); Motion of the United States Postal Service to dismiss complaint, July 30, 2001 (motion to dismiss) and declaration of Charles M. Gannon, July 30, 2001 (Gannon declaration).

[4] Douglas F. Carlson answer in opposition to Postal Service motion to dismiss, August 11, 2001 (Carlson answer to motion to dismiss); answer of the office of the consumer advocate to United States Postal Service motion to dismiss complaint, August 14, 2001 (OCA answer to motion to dismiss).

[5] Motion of the United States Postal Service for leave to reply to answers in opposition to Postal Service motion to dismiss (August 21, 2001) and reply of the United States Postal Service to the answers of the office of the consumer advocate and the complainant in opposition to the motion to dismiss (August 21, 2001). Douglas F. Carlson response to reply of the United States Postal Service to the answers of the office of the consumer advocate and the complainant in opposition to the motion to dismiss (August 29, 2001); see also Douglas F. Carlson response to reply of the United States Postal Service to the answers of the consumer office of the advocate and the complainant in opposition to the motion to dismiss—erratum (August 25, 2001). The erratum notes two errors, neither of which affect the substance of the reply. A previous Commission order (no. 1318, issued July 13, 2001) granted the Postal Service's unopposed motion for an extension of time (from July 19, 2001) to file this motion and the referenced declaration.

[6] The Commission's docket no. N89–1 opinion advised against implementation of the service standard changes proposed at that time. PRC Op. N89–1 at 2.

exercise its jurisdiction to hear a complaint that entails alleged failure to comply with 39 U.S.C. 3661; and whether the Commission has the authority to grant relief on all of the requested terms.

III. Positions on the Service's Motion To Dismiss

Carlson's Answer

Mr. Carlson's answer to the Service's motion to dismiss cites four grounds justifying exercise of the Commission's jurisdiction. These include reiteration of the argument that the Service should have sought an advisory opinion prior to implementing the changes, given the nationwide scope of the 2000–2001 changes and the assertion that new standards depart from the original criteria. They also include claims that resulting First-Class Mail service is not adequate within the meaning of 39 U.S.C. 3661(a) for some customers, and that the standards unduly and unreasonably discriminate among users of the mail, contrary to 39 U.S.C. 403(c). Carlson answer at 2–3.

The OCA's answer. The OCA contends that the pleadings raise sufficient issues of law and fact to warrant the Commission's denial of the motion to dismiss. It proposes that the Commission establish ''further procedures to allow participants to undertake a more detailed inquiry into the facts alleged in order to create a full record for the Commission to reach a reasoned decision as to the appropriate disposition of the complaint.'' OCA Answer at 2. In particular, the OCA suggests that the Commission should order the Postal Service to provide the results of ''relevant and appropriate investigations of the cost consequences of changes in delivery standards'' undertaken by the Postal Service in relation to the service standard changes in issue. It notes that the Commission previously recommended that the Service undertake such studies before implementing nationwide service standards. Id. at 2–3.

IV. Action on Proposed Amendment to Compliant

Carlson proposes an amendment to his complaint, based on his review of the Gannon declaration. He alleges that this ''reveals that the Postal Service has changed the definition of two-day First-Class mail to exclude the use of air transportation for most or all mail for which a two-day delivery standard applies.'' Carlson motion to amend compliant at 1, citing paragraph 18 of the Gannon declaration. Carlson says he thus has formed a reasonable belief that the new definition of the two-day First-Class Mail delivery area is consistent with 39 U.S.C. 101(e) and (f). Id. at 1–2.

The Commission finds that the proposed amendment of the complaint is consistent with the general framework of the original compliant; reflects information that is apparently newly-available to Mr. Carlson; and may foster efficiency in the review and administration of the complainant's concerns. Accordingly, the motion to amend is granted. The Commission directs Mr. Carlson to file a revised page 16 showing an additional paragraph (No. 66) containing this allegation, pursuant to the complainant's offer. The remaining discussion assumes this amendment.

V. Discussion

Further action on the instant complaint requires several preliminary decisions. One is a determination of whether Mr. Carlson has made a prima facie showing that his complaint has statutory merit. In terms of what has emerged as the threshold question—the context of the charges—the Commission must conclude that the decade-plus ''gap'' in implementation of the recent standards raises the possibility that the changes in issue may have legally fallen within the scope of 39 U.S.C. 3661(b). The Gannon declaration stands as an informative and impressive narration of decisions and events that have transpired since docket no. N89–1, but is not persuasive on the main point the Service presses here, which is that the changes can reasonably be considered, for purposes of the statute, as a continuum of the original plan. Instead, despite characterization of changes as ''phase II,'' the Gannon declaration chronicles near-abandonment of the realignment at various times over the ensuing years. Thus, while front-line postal managers may have made a good-faith attempt to stay focused on the original plan, it is reasonable that Carlson (and others) may regard the ''gap'' as a break.

There is, as the Service notes, no explicit time limit in the statute for completion of changes subject to 39 U.S.C. 3661; however, reading out a ''rule of reasonableness'' effectively would nullify the provision, as one broad service change request could then arguably be deemed to operate essentially in perpetuity. It is unlikely the authors of this provision would have intended this result. A common-sense interpretation requires acknowledgement that passage of time, in some instances, may require the Service to request a new advisory opinion. Where, as here, time has not simply passed, but has passed with several changes of postmasters general, several changes in Governors, several reorganizations, and numerous changes in operations, technology—and possibly public need—the case is even stronger. Accordingly, the Commission finds that Mr. Carlson has made a prima facie showing on this threshold question.

On certain other critical policy issues, such as whether the resulting postal service is adequate, whether there is undue or unreasonable discrimination, and whether the highest consideration has been given to certain considerations pertaining to delivery of First-Class Mail, no final answer can be discerned at this time. Indeed, these are points on which Mr. Carlson may need to provide more specific evidence, such as mail users' need for certain service standards. However, it again appears that the complainant has made a prima facie showing that the alleged policy violations have occurred as a result of the recent changes.

Related Jurisdictional Issues

The provisions in question here—39 U.S.C. 361 and 3662—are not mutually exclusive, so there is no automatic bar to Mr. Carlson's interest in pursuing certain service concerns under the service complaint proceedings. At the same time, the latter are not automatically available to remedy any perceived failure to seek an advisory opinion. Instead, exercise of complaint jurisdiction is discretionary, and the Commission must consider whether it is appropriate to proceed.

In addition to the conclusion above regarding the prima facie showing Mr. Carlson has made, the Commission has considered that public input is a hallmark of 39 U.S.C. 3661. Although the Gannon declaration indicates postal administrators apparently have been well-intentioned in implementing the changes, there is little, if any, indication of whether there was any direct public input. Instead, these changes, as Mr. Gannon notes, entailed many internal logistical decisions, including adoption of a maximum 12-hour drive time range to determine 2-day service destinations in place of the previous standard of a 600-mile radius. Gannon declaration at 9–10. As Mr. Gannon notes, the process of determining the changes to make in the ''phase 2 finalization'' also differed from that contemplated in docket no. N89–1: the organization management structure had changed significantly; a service standard mapping program had been developed (thereby allowing more centralization in deciding what changes to consider in implementing the new

''drive time'' standard); and a preference for surface transportation had emerged in the face of less dependable air transportation for 2-day mail. Id. at 10–13.

Mr. Gannon acknowledges that as a result, ''more western and Pacific area origin-destination First Class Mail shifted from 2-day to 3-day service, than occurred throughout the remainder of the country'' and that within certain states (California, Nevada, Texas, Wyoming and Alaska) there are home state pairs that have a 3-day standard. Id. at 13. Moreover, in response to Mr. Carlson's comments about a certain non-reciprocal origin-destination pair, Mr. Gannon suggests: ''If we had included overnight standards as part of our recent adjustments, the originating service standards would, very likely, have ended up as being 3-days in both directions between Ashland, Oregon and Yreka, California, based on our processing network design.'' Id. at 15. Overall, the net effect of the Service's actions involve 48 states; affect service standards for more than 76,440 origin-destination three-digit ZIP Code pairs in all postal areas; and shift more than 3.4 billion pieces of mail annually to a three-day service standard from a two-day standard. Postal Service answer at 15–16.

Relief

The statute provides for a public hearing and if the complaint is found justified, for the Commission to issue a recommended decision or public report, as appropriate. Carlson seeks these remedies, as well as a change in service standards. In addition, the OCA suggests that cost data and information should be provided. It is reasonable to assume that if warranted, at least some of the relief Mr. Carlson has requested can be provided. This clearly constitutes a major, national service change. The issue of whether First-Class service continues to meet the policies established in the Act is important, and the Commission will hold hearings on this complaint.

Further Action

Information procedures do not appear likely to resolve these issues. The Commission hereby denies the Postal Service motion to dismiss and institutes a formal docket. The Commission therefore directs Mr. Carlson to provide, no later than September 24, 2001, an estimate of the amount of time he anticipates needing for discovery, the earliest date by which he could present evidence, and identification of any other procedural requests. Responses to Mr. Carlson's filing will be due on October 1, 2001. Ted P. Gerarden, the director of the Commission's office of the consumer advocate, is directed to represent the interests of the public in any further proceedings in this case. Others who believe they may be affected by this proceeding are invited to intervene. Notices of intervention shall be filed with the Commission no later than October 1, 2001. It is ordered:

1. The Douglas F. Carlson motion for leave to amend complaint, August 11, 2001, is granted.
2. The motion of the United States Postal Service for leave to reply to answers in opposition to Postal Service motion to dismiss, August 21, 2001, is granted.
3. The motion of the United States Postal Service to dismiss complaint, July 30, 2001, is denied.
4. The Commission institutes a formal service complaint proceeding to address the allegations raised in the captioned proceeding.
5. Complainant is directed to inform the Commission, no later than September 24, 2001, of the amount of time he believes is necessary to prepare his case.
6. Responses to Mr. Carlson's filing are due October 1, 2001.
7. Ted P. Gerarden, director of the Commission's office of the consumer advocate, is appointed to represent the interests of the general public.
8. Interested persons shall intervene no later than October 1, 2001.
9. The Secretary is directed to arrange for publication of this order in the **Federal Register.**

By the Commission.

Dated: September 12, 2001.

Steven W. Williams.

Acting Secretary.

[FR Doc. 02–1413 Filed 1–25–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45320: File No. SR–AMEX–2001 79]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Technical Corrections to American Stock Exchange LLC Rules

January 18, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 14, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change was filed by the Exchange as a ''non-controversial'' rule change under Rule 19b–4(f)(6)[3] under the Act, which renders the proposal effective upon receipt of the filing by the Commission.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to correct Amex Rules 3(c) (Commentary .04), 7 (Commentary .01), 21(b), 22 (Commentary .03), 25(a), 60(h), 103(b), 111 (Commentary .12), 114 (Commentary .14), 154 (Commentary .15), 177(c), 235, 323, 950(f), 958(g) (Commentary .10), and 1202(d). The Exchange also proposes to correct Sections 101 (Commentary .01), 901(d), and 1203(a) of the Amex Listing Guidelines, and to relocate the section of the Exchange's rule titled ''Admission of Members and Member Organizations; Regular and Options Principal Memberships'' to Section 4 of the Exchange's ''Office Rules.'' The text of the proposed rule change is available from the Amex and from the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The proposed rule change was originally filed on September 28, 2001 pursuant to Section 19(b)(2) of the Act. *See* 15 U.S.C. 78s(b)(2). The Amex filed an amendment on December 14, 2001, requesting that the proposed rule change be considered as filed pursuant to Section 19(b)(3)(A) of the Act. *See* 15 U.S.C. 78s(b)(3)(A). The Amex requested that the Commission waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii).