

of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110 percent of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients and, thus, will satisfy the underlying purpose of 10 CFR 50.60 for fracture toughness requirements. Further, by relieving the operational restrictions, the potential for undesirable lifting of the PORV would be reduced, thereby improving plant safety.

IV

For the foregoing reasons, the NRC staff has concluded that the licensee's proposed use of the alternate methodology in determining the acceptable setpoint for LTOP events will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2), in that application of 10 CFR 50.60 is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 50.60 such that in determining the setpoint for LTOP events, the Appendix G curves for P/T limits are not exceeded by more than 10 percent. This exemption permits using the safety margins recommended in the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code) Case N-514, "Low Temperature Overpressure Protection" in lieu of the safety margins required by 10 CFR Part 50, Appendix G. This exemption is applicable only to LTOP conditions during normal operation.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (61 FR 25921).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of July 1996.

For the Nuclear Regulatory Commission.
William T. Russell,
Director, Office of Nuclear Reactor Regulation.
[FR Doc. 96-19849 Filed 8-2-96; 8:45 am]
BILLING CODE 7590-01-P

Testco, Inc.; Establishment of Atomic Safety and Licensing Board

[Docket No. 150-00032-EA, ASLBP No. 96-719-04-EA]

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 F.R. 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

Testco, Inc., Greensboro, North Carolina (Order Imposing Civil Monetary Penalty) (General License) EA 95-101.

This Board is established pursuant to the request of James L. Shelton, President of Testco, Inc., for a hearing regarding an order issued by the Director, Office of Enforcement, dated March 14, 1996, and published in the Federal Register at 61 FR 14583. The order imposes a monetary penalty on Testco, Inc., an agreement state licensee of North Carolina, for certain radiographic activities.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Frank F. Hooper, 26993 McLaughlin Boulevard, Bonita Springs, FL 33923

Issued at Rockville, Maryland, this 30th day of July 1996.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 96-19848 Filed 8-2-96; 8:45 am]

BILLING CODE 7590-01-P

POSTAL RATE COMMISSION

[Order No. 1128; Docket No. C96-1]

Complaint of Coalition Against Unfair USPS Competition; Order Denying Motion of United States Postal Service To Dismiss Proceeding and Notice of Formal Proceedings

July 30, 1996.

The Commission has before it a Complaint against the United States Postal Service pursuant to 39 U.S.C. § 3662 which concerns a "Pack & Send" service, hitherto unknown to and never reviewed by the Commission, and the rates or fees which the Service is charging for providing that service. Complainant, a coalition consisting of organizations and individuals doing business in the Commercial Mail Receiving Agency ("CMRA") industry, alleges that the Postal Service is charging rates which do not conform to the policies of the Postal Reorganization Act, inasmuch as it is rendering a postal service without first having requested a recommended decision on the service and its rates from the Commission. The Postal Service concedes that it is offering the service on a trial basis at a limited number of facilities, but denies that its "Pack & Send" service is within the Commission's jurisdiction under § 3662 because it is not "postal" in character. On that ground, it moves to dismiss the complaint.

The factual assertions of Complainant and the Postal Service conflict on some, but not all, points. Furthermore, the information offered to support the conflicting factual claims is incomplete, and does not justify a conclusion at this time either that Pack & Send is, or is not, postal in character. However, some of the information already presented would tend to support an inference that Pack & Send is a postal service, and the Commission believes that further inquiry into this matter would be appropriate. Because the Commission reaches the preliminary conclusion that the Complaint may be justified, depending on the ultimate state of the facts concerning the Pack & Send service offering, the Postal Service's motion to dismiss shall be denied. Formal proceedings to develop an evidentiary record will be conducted in this docket.

Substance of the Complaint. In its Complaint filed May 23, 1996, the Coalition Against Unfair USPS Competition identifies its membership as organizations engaged in the franchising of stores in the CMRA industry, together with individual franchisees who independently own

and operate CMRA stores nationwide. According to the Complaint, "[e]ach of the individual stores offer pack and send services as part of the overall retail value-added services provided in these stores." Complaint at 2. Consequently, the Complaint alleges, by offering the Pack & Send service the Postal Service "is in effect going into direct competition with the CMRA industry * * * Ibid.

The Complaint is accompanied by several attachments intended to document particulars of the Pack & Send service, its competitive purpose, and the terms under which it is being offered. Complaint, Attachments 2-3, 5. Also included is an affidavit reporting the experience of an individual customer who purchased Pack & Send service in a Postal Service retail store in Anchorage, Alaska. Id., Attachment 4.

Complainant alleges that the Postal Service is providing the Pack & Send service as a postal service, but without having submitted a request to the Commission as required by the Reorganization Act. According to Complainant, the status of Pack & Send as a postal service is established by the fact it is being "bundled" with acceptance for mailing by postal clerks; by a description in the 1995 Annual Report of the Postmaster General that casts the service as part of a mailing transaction; and by the Service's failure to include the Pack & Send service with other non-postal services specified in connection with its request in Docket No. MC96-2. Id. at 4-5. The Coalition identifies 11 areas where the Postal Service is offering the Pack & Send service, and assert on the basis of anecdotal evidence "that the implementation of this service is burgeoning." Id. at 5. Citing a Postal Service publication which discloses an average packing charge of \$3.24, the Complaint also claims that, "the Postal Service is not pricing this service based on any attribution of costs * * * pricing is based on 'what our competitors charge.'" Id. at 3, *quoting* Attachment 2.

The Coalition observes that the Domestic Mail Classification Schedule contains no classification provision for Pack & Send, and that no reference can be found for an approved rate for the service. Complainant also states it has no knowledge that the service has ever been submitted for a rate or classification decision by the Commission. The only rationale that would support these omissions as lawful under the Reorganization Act, Complainant states, would be a conclusion that Pack & Send is not a postal service. Citing court decisions which dealt with distinguishing

"postal" from "non-postal" services, the Coalition argues that this conclusion would not be justified for the Pack & Send service because the terms under which it is offered prove "that Pack & Send is a service so closely related to the delivery of mail that it clearly is a postal service." Id. at 8.

In response to its Complaint, the Coalition requests that the Commission provide relief in the following forms: (1) issuance of an opinion that the Postal Service is offering Pack & Send in violation of the Reorganization Act; (2) initiation of a proceeding pursuant to sections 3622 and 3623 leading to a recommended decision on the Pack & Send service to the Governors; (3) transmission of the opinion in item 1 to the Governors, together with a request that the Postal Service be directed to suspend its offering of Pack & Send until it has submitted the service to the Commission for a recommended decision; and (4) any other appropriate relief consistent with the requests in the first three items.

Postal Service Answer. The Postal Service responded to the Complaint in an Answer filed on June 24, 1996. The Service denies that it is offering Pack & Send service on a nationwide basis, but states that it "has begun to offer packaging on an experimental basis at a few selected retail outlets." Answer at 2. The Service also denies that Pack & Send is a "bundled" service that necessarily entails mailing. It asserts that "Pack & Send" refers only to the packaging of items by the Service, and that: "Customers of the packaging service need not send their packaged items through the Postal Service in order to have them packaged." Id. at 9.

The Postal Service denies that, by offering a packaging service, it has "launched itself into competition with the CMRA industry[.]" Instead, the Service claims, "any existing competition between the Postal Service and the CMRA industry was created by the CMRA industry." Id. at 3. The Service also denies that there is any foundation for Complainant's characterization of Pack & Send as not being priced on the basis of attributed costs. Id. at 9. The Postal Service does admit that the packaging service has not been the subject of a rate or classification proceeding pursuant to 39 U.S.C. §§ 3622 or 3623 respectively, and that the Domestic Mail Classification Schedule does not include a separate classification for packaging. Id. at 2, 5 and 7.

In response to sections 84 (b) and (c) of the rules of practice, the Postal Service takes the position that the Complaint is not properly before the

Commission. The Service claims that the subject of the Complaint is no more than a "limited parcel packaging trial," (id. at 8), and asserts that it "is not a postal service, within previous interpretations of the term." Id. at 9. Because, in the Service's view, the Commission lacks jurisdiction to review the Complaint, the Postal Service also claims that a hearing is unnecessary and the relief requested is inappropriate. Therefore, the Service asserts, the Commission should dismiss the Complaint.

Postal Service Motion to Dismiss and Memorandum. Three days after filing its Answer, the Postal Service submitted a motion to dismiss the proceeding with prejudice "on the grounds that the subject matter of this proceeding does not fall within the scope of 39 U.S.C. § 3662." Motion of the United States Postal Service to Dismiss Proceeding, June 27, 1996, at 1. The Service also filed a memorandum in support of its motion, accompanied by an annotated copy of the Complaint and a Declaration of a Postal Service manager. Memorandum in Support of Motion of the United States Postal Service to Dismiss Proceeding, June 27, 1996.

The Postal Service's memorandum consists of factual statements which describe the parcel packaging service and legal arguments which rely on those statements. The statements of fact are based on the attached Declaration of Hugh McGonigle, who states he is the Manager of Alternate Retail Services. On the basis of the McGonigle Declaration, the Postal Service states that parcel packaging service is currently available on a limited, trial basis at approximately 230 post offices in various areas throughout the United States; that it was initiated to provide a convenience to customers; and that the purpose of the limited testing has been measurement of customer interest and assessment of the service in operation. Memorandum at 1-2.

The Postal Service Memorandum also draws from the McGonigle Declaration to describe the transaction whereby an interested customer can procure packaging service from a window clerk at a facility which offers Pack & Send. According to the Service's description, at one point in the transaction the customer is free to "choose whether he or she wants to send the package through the Postal Service, to pay for and accept only the packaging, or to retrieve the item and terminate the transaction entirely." Id. at 2. The Service represents that the experience reported in the affidavit appended to the Complaint (Attachment 4)—in which Ms. Chou reports being told by a

window clerk that she could not purchase Postal Service packaging unless the item to be wrapped was also mailed through the Service—"is contrary to the Postal Service's intent in offering packaging[.]" and that there is "no reason to consider this occurrence anything other than an isolated incident." *Id.* at 3. However, the Service also notes that, "system-wide operational instructions have not been finalized and distributed [for Pack & Send]." *Ibid.* In light of the assertions in the Coalition's Complaint, and in order to ensure consistency in conducting the Pack & Send trial, the Service states that it has issued a directive to remind postal personnel that customers may purchase only packaging, if desired. *Ibid.* That directive is attached to the McGonigle Declaration.

Based on its representations of fact, the Postal Service presents several arguments against Complainant's assertion that Pack & Send is a "postal" service. First, the Service cites the decision in Docket No. R76-1, in which the Commission found the Postal Service's offering of "postal related products" such as padded shipping bags, postal scales and packing material, to be "too attenuated" in their relation to the carriage of mail to place them within the Commission's jurisdiction. *Id.* at 4, quoting PRC Op. R76-1, Vol. 2, App. F at 20-21. The Service argues that packing service properly belongs in the same non-postal category as these shipping products, and that its relationship to collection, transmission and delivery of mail is insufficiently close to deem it a postal service. Memorandum at 5.

The Postal Service also argues that Complainant's assertions fail to justify any departure from this conclusion. The Service cites the McGonigle Declaration to rebut Complainant's claim that packaging service is necessarily bundled with mailing. *Ibid.* It also denies that Attachment 2 to the Complaint, which Complainant terms an advertising circular but the Service characterizes as a "motivational tool directed to postal personnel," (*id.* at 6), amounts to a statement of Postal Service policy, or supports any inference that the Service recognizes Pack & Send as a postal service. *Id.* at 6-7. The Service also denies that its Compliance Statement filed with its Request in Docket No. MC96-2 supports such an inference, as parcel packaging "was not widely available on a permanent basis[]" when that filing was made. *Id.* at 7. Finally, the Postal Service disputes that Attachment 5 and anecdotal evidence cited in the Complaint establish that

Pack & Send is available on a nationwide basis. *Id.* at 8-9.

The Postal Service's Memorandum concludes with arguments that the judicial authorities cited by Complainant do not support the conclusion that Pack & Send is a postal service. The Service asserts that parcel packaging clearly does not fall within the ATCMU court's standard of "very closely related to the delivery of mail"¹ or the NAGCP court's standard of "clearly involv[ing] an aspect in the posting, handling and delivery of mail matter."² To the contrary, the Service argues that packaging is more similar to the sale of packing and wrapping materials, which the Commission found not to constitute postal service in the decision in Docket No. R76-1. The Service notes that packaging service is not limited exclusively to the mailing function; that close (if not identical) substitutes are available from other sources such as Complainant's membership; and that Pack & Send is not tied to postal services in any manner that would change its non-postal character. *Id.* at 9-11.

Response of Complainant. The Coalition responded to the Postal Service's Motion to Dismiss in an Opposition filed on July 8, 1996. It challenges the Service's arguments that the Pack & Send service is non-postal, particularly the analogy to the sale of packing materials. Complainant argues that the more persuasive and relevant analogy is to the sale of postal money orders, which was found to be a regulated postal service by the court in the ATCMU case on the ground that the vast majority of money orders sold at post offices are actually sent by mail. Even if a postal customer is allowed to procure Pack & Send service without mailing the package, Complainant asserts, "it is extremely unlikely that a postal customer will use another shipping service when that service is not available at the postal facility." Opposition at 4.

Complainant also challenges the Postal Service's interpretations of the information attached to the Complaint, and argues that the totality of Postal Service material available on the Pack & Send service indicates a goal of providing a service that is integrated

with mailing. As support for this position, the Coalition cites the "box it, pack it, and send it" characterization in the Annual Report of the Postmaster General; the similar description in the advertising circular at Attachment 5 to the Complaint; the \$2-off coupon which reads "Let Us Box, Pack and Ship Your Gifts"; and the reference to "truly one-stop shopping for [customers'] mailing needs" in the June 1995 issue of USPS Update also included in the Attachment. Opposition at 5-6. Additionally, Complainant suggests that the Postal Service's declared policy in favor of selling Pack & Send service separately, stated in the McGonigle Declaration and attached Memorandum of June 24, may have been crafted to avoid the Commission's jurisdiction, and in any event "is subject to change on a moment's notice. * * *" *Id.* at 4-5.

Complainant also argues against the Postal Service's denial that it is offering Pack & Send service nationwide, and claims the Service is relying on an erroneous legal premise. The Coalition notes that the Complaint does not allege that the service is available nationwide, and that declarant McGonigle admits that Pack & Send is available in various areas throughout the United States. In any event, Complainant argues, whether or not the service is nationwide is essentially irrelevant because applicable law requires a rate request to the Commission even for temporary, limited or experimental postal services. *Id.* at 6-7.

Finally, Complainant suggests that additional factual questions about Pack & Send are raised by the Postal Service's specific denial that packaging service is performed by postal clerks. The Coalition states that its allegation that postal clerks perform the Pack & Send service was intended as no more than a routine factual recitation, and that the Service's denial without further elaboration leaves questions about who will perform the service unresolved. Complainant argues that these outstanding factual issues provide another reason for denying the Postal Service's motion.

Disposition of the Motion to Dismiss. As both the Coalition and the Postal Service have recognized, the pivotal issue posed by the Complaint at this juncture is whether the Pack & Send service is "postal" or "non-postal" in character. If the service is deemed "postal" in nature, Complainant's challenge of the rates or fees charged is appropriate for consideration under the terms of 39 U.S.C. § 3662. On the other hand, if the service is found to be "non-postal," then the rates or fees charged

¹ Associated Third Class Mail Users v. United States Postal Service, 405 F. Supp. 1109, 1115 (D.D.C. 1975), *aff'd*, National Association of Greeting Card Publishers v. U.S. Postal Service, 569 F.2d 570 (D.C. Cir. 1976), *vacated on other grounds*, United States Postal Service v. Associated Third Class Mail Users, 434 U.S. 884 (1977).

² National Association of Greeting Card Publishers v. U.S. Postal Service, 569 F.2d 570, 596 (D.C. Cir. 1976).

are outside the purview of § 3662, and the appropriate disposition of the complaint is dismissal.³

Determining whether the Pack & Send service is "postal" or "non-postal" in character requires the application of legal standards to the available facts. While it has been stated in a variety of ways, the primary standard⁴ that has been applied in analyzing different services is:

* * * the relationship of the service to the carriage of mail. Those which can fairly be said to be ancillary to the collection, transmission, or delivery of mail are postal services within the meaning of § 3622.

PRC Op. R76-1, Vol. 2, Appendix F at 3. Application of this standard looks not only at the intrinsic features and terms of the service, but also considers the extent to which use of the service culminates in use of the mails.⁵

The facts presented thus far regarding the Pack & Send service are fragmentary and to some extent controverted. However, even when viewed in a light favorable to the Postal Service, the available facts do not warrant a summary determination at this time that the service is non-postal in character.

First, regardless of whatever relation Pack & Send may have to other activities that are recognized as postal, the packaging service itself is a form of mail preparation activity that is familiar in

the postal marketplace. It is a type of work that can be performed by the shipper, the carrier, or a third party intermediary such as one of the Coalition's members. Thus, the Postal Service's provision of the Pack & Send service could be viewed as a form of worksharing in reverse—compensation of the Postal Service for a mail preparation activity that would otherwise be performed by the sender of the parcel or a third party.

Second, it appears that the Postal Service has structured the transaction in which the Pack & Send service is provided in a manner which closely associates payment for the service with payment for packing materials and payment of postage. Postal Service Memorandum at 2; Declaration of Hugh McGonigle at 1-2. The use of an Integrated Retail Terminal (IRT) to calculate and sum the respective charges for packing materials, the Pack & Send packaging service, and applicable postage is neither unreasonable nor sinister. However, this arrangement does raise the question of the extent to which purchase of the Pack & Send service, and payment of the applicable rate or fee, is disaggregated from payment of postage. Even after reading Mr. McGonigle's description of the transaction, it is far from clear how a customer is separately charged for packing materials and the Pack & Send service.⁶

Finally, even if one assumes that the policy directive (attached to the McGonigle Declaration) to provide Pack & Send service without also requiring mailing is observed scrupulously throughout the Postal Service, that fact alone would not necessarily establish the non-postal status of the service. It is possible, as Complainant argues, that the vast majority of customers who purchase the Pack & Send service go on

to pay postage and deposit the parcel in the mail. The extent to which this is the case may bear importantly on the postal or non-postal character of the service, as the courts found in the ATCMU and NAGCP decisions.

In light of the incomplete state of the facts available concerning the Pack & Send service, the Commission is not prepared to declare at this time that it is, or is not, postal in character. For this reason, the Postal Service's motion to dismiss the proceeding shall be denied. Furthermore, because some of the information already presented would tend to support an inference that Pack & Send is a postal service, there is reason to believe that the Coalition's Complaint may be justified. Inasmuch as the Pack & Send service and its rates or fees have not been the subject of a Postal Service request and scrutiny in a public proceeding before the Commission, the rates or fees charged may prove not to conform to the policies of the Reorganization Act if the Pack & Send service is shown to be postal in nature.

Proceedings to Consider Complaint. Given the nature of this controversy, there appears to be little likelihood that the matter could be settled or resolved under informal procedures. Because, in the Commission's view, resolution of this Complaint would be assisted by the production of additional facts concerning the Pack & Send service and development of a public record, the Commission has determined under § 86 of the rules of practice that a formal proceeding pursuant to 39 U.S.C. § 3624, with an opportunity for hearing, should be held in this docket. This will enable Complainant and other interested parties to develop information through discovery and to make evidentiary presentations, as well as allow the Postal Service to present its response.

In order to develop a procedural schedule for this docket, Complainant is directed to provide a statement, due 10 days from issuance of this order, estimating the amount of time it will require to develop and file a case-in-chief. The Commission will thereafter issue a procedural schedule and special rules of practice, if any. It is ordered:

(1) The Motion of the United States Postal Service to Dismiss Proceeding, filed June 27, 1996, is denied.

(2) Proceedings in conformity with 39 U.S.C. § 3624 shall be held in this matter.

(4) The Commission will sit *en banc* in this proceeding.

(5) Notices of intervention shall be filed no later than August 26, 1996.

³ The Coalition correctly notes that the geographic extent of the locations in which Pack & Send service has been offered is essentially irrelevant to this determination. The provision of Pack & Send service on a "nationwide or substantially nationwide basis" [39 U.S.C. § 3661(b)] could be a ground of jurisdictional dispute in a proceeding to consider a proposed change in the nature of postal services pursuant to § 3661, but the Commission has no such Postal Service proposal before it.

⁴ One alternative basis for finding a service to be "non-postal" applies where the service relates exclusively to performance of an activity, independent of the carriage of mail, which the Postal Service is required or authorized to perform. Such activities include the sale of migratory bird hunting stamps and philatelic transactions. See PRC Op. R76-1, Vol. 2, App. F at 1-2; Docket No. C95-1 (Complaint of David B. Popkin), Order Dismissing Complaint (Order No. 1075), September 11, 1995, at 3-5. The Postal Service has not claimed that the Pack & Send service is "non-postal" by virtue of its relationship to any such activity.

⁵ This latter consideration was the basis on which the sale of money orders was found to be a postal service in the ATCMU case, *supra*. The Postal Service notes that the Commission "has questioned" the validity of this jurisdictional analysis with respect to money orders in the R76-1 decision. Postal Service Memorandum at 10, n. 6. The Commission did express doubt regarding the jurisdictionality of money orders in the R76-1 decision, and opined that a standard more strict than that applied by the District Court in ATCMU would be appropriate. PRC Op. R76-1, Vol. 2, App. F at 12. Nevertheless, the Court of Appeals subsequently relied on the same rationale employed by the District Court in finding the provision of money orders to be postal in nature. NAGCP, *supra*, 569 F.2d 596.

⁶ In his description of how the parcel packaging service works, Mr. McGonigle states that a customer submits an item to a window clerk, who weighs the item on an IRT. The clerk determines the appropriate box size, the fragility of the item to be packaged, and "the price and weight of the selected box." Declaration at 1. At this point, apparently, the charge for packing materials has been established. The clerk then adds the weight of the packaging to the weight of the item, enters that total on the IRT, and enters the class of service selected by the customer and the destination ZIP Code to calculate the total postage that would apply to the piece. Then, according to Mr. McGonigle, "[t]he clerk enters the box price into the IRT, which generates the total price for packaging and mailing the piece." Id. at 2. (Emphasis added.) On the basis of this description, it is impossible to identify a separate charge for the packaging service. Additionally, the photocopies of Postal Service receipts appended to Ms. Chou's affidavit (Complaint, Attachment 4) shed no light on this question; no separate charges for packing materials or the Pack & Send service appear on the receipts.

(6) W. Gail Willette, Director of the Commission's Office of the Consumer Advocate, is designated to represent the general public in this proceeding.

(7) Complainant shall provide a statement, due August 12, 1996, estimating the amount of time it will require to develop and file a direct case in this proceeding.

(8) The Secretary shall cause this Notice and Order to be published in the Federal Register.

By the Commission.

Cyril J. Pittack,
Acting Secretary.

[FR Doc. 96-19754 Filed 8-02-96; 8:45 am]

BILLING CODE 7710-FW-P

[Docket No. A96-21; Order No. 1127]

Moriah, New York 12960 (Katherine E. Baker, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued July 30, 1996.

Docket Number: A96-21.

Name of Affected Post Office: Moriah, New York 12960.

Name(s) of Petitioner(s): Katherine E. Baker.

Type of Determination: Closing.

Date of Filing of Appeal Papers: July 29, 1996.

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404(B)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission

also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by August 13, 1996.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Cyril J. Pittack,
Acting Secretary.

Appendix

July 29, 1996: Filing of Appeal letter

July 30, 1996: Commission Notice and Order of Filing of Appeal

August 23, 1996: Last day of filing of petitions to intervene [see 39 C.F.R. § 3001.111(b)]

September 3, 1996: Petitioner's Participant Statement or Initial Brief m[see 39 C.F.R. § 3001.115(a) and (b)]

September 23, 1996: Postal Service's Answering Brief [see 39 C.F.R. § 3001.115(c)]

October 8, 1996: Petitioner's Reply Brief should Petitioner choose to file one [see 39 C.F.R. § 3001.115(d)]

October 15, 1996: Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 C.F.R. § 3001.116]

November 26, 1996: Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. § 404(b)(5)]

[FR Doc. 96-19755 Filed 8-2-96; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 17a-22, SEC File No. 270-202 OMB Control No. 3235-0196

Rule 17Ab2-1 and Form CA-1, SEC File No. 270-203 OMB Control No. 3235-0195

Rule 17Ac3-1 and Form TA-W, SEC File No. 270-96 OMB Control No. 3235-0151

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for approval of extension on the following rules and forms:

Rule 17a-22, which was adopted pursuant to Section 17A of the Securities Exchange Act of 1934 ("Act"), requires all registered clearing agencies to file with the Commission three copies of all materials they issue or make generally available to their participants or other entities with whom they have a significant relationship. The filings with the Commission must be made within ten days after the materials are issued, and when the Commission is not the appropriate regulatory agency, the clearing agency must file one copy of the material with its appropriate regulatory agency. The Commission is responsible for overseeing clearing agencies and uses the information filed pursuant to Rule 17a-22 to determine whether a clearing agency is implementing procedural or policy changes. The information filed aids the Commission in determining whether such changes are consistent with the purposes of Section 17A of the Act. Also, the Commission uses the information to determine whether a clearing agency has changed its rules without reporting the actual or prospective change to the Commission as required under Section 19(b) of the Act.

The respondents to Rule 17a-22 generally are registered clearing agencies.¹ The frequency of filings made by clearing agencies pursuant to Rule 17a-22 varies, but on an average there are approximately 200 filings per year per clearing agency. Because the filings consist of materials that have been prepared for widespread distribution, the additional cost to the clearing agencies associated with submitting copies to the Commission is relatively small. The Commission staff estimates that the cost of compliance with Rule 17a-22 to all registered clearing agencies is approximately \$3500. This represents one dollar per filing in postage, or a total of \$2800. The remaining \$700 (or 20% of the total cost of compliance) is the estimated cost of additional printing, envelopes, and other administrative expenses.

Rule 17Ab2-1 and Form CA-1 require clearing agencies to register with the Commission and to meet certain requirements with regard to, among other things, a clearing agency's organization, capacities, and rules. The information is collected from the clearing agency upon the initial application for registration on Form CA-1. Thereafter, information is

¹ Respondents include temporarily registered clearing agencies. Respondents also may include clearing agencies granted exemptions from the registration requirements of Section 17A, conditioned upon compliance with Rule 17a-22.