

ORDER NO. 1892

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

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Robert G. Taub, Vice Chairman; and  
Mark Acton

Complaint of American Postal Workers Union,  
AFL-CIO

Docket No. C2013-10

ORDER GRANTING, IN PART, MOTION TO DISMISS AND  
HOLDING COMPLAINT IN ABEYANCE PENDING FURTHER ACTION

(Issued November 27, 2013)

I. INTRODUCTION

On September 5, 2013, the American Postal Workers Union (APWU) filed a complaint alleging violations by the Postal Service of 39 U.S.C. §§ 3661, 3691, and 403(c).<sup>1</sup> The APWU alleges that the Postal Service is failing to comply with its market dominant service standard regulations in violation of title 39. *Id.* at 9. The Postal

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<sup>1</sup> Complaint of American Postal Workers Union, AFL-CIO Regarding Violations of 39 U.S.C. 3661 and 3691, September 5, 2013 (Complaint).

Service moved to dismiss the Complaint,<sup>2</sup> and the APWU filed a response on October 2, 2013.<sup>3</sup>

For the reasons set forth below, the Motion to Dismiss is granted in part. The Commission defers ruling on one aspect of the Motion to Dismiss, namely as relates to the sufficiency of the claimed violation of 39 U.S.C. § 3691(d). Because the Commission is unable to evaluate whether, on this issue, the Complaint raises material issues of fact or law, it will, pursuant to 39 C.F.R. § 3030.20, permit the APWU the opportunity to file additional information as discussed below. The Postal Service will be afforded an opportunity to respond to the supplemental filing.

## II. BACKGROUND

On September 21, 2011, the Postal Service published an advance notice of proposed rulemaking inviting comments on a proposal to revise service standards for First-Class Mail, Periodicals, and Standard Mail.<sup>4</sup> The proposal involved altering the market dominant service standards to facilitate the consolidation of its mail processing operations and reducing the number of facilities committed to these operations. *Id.* at 58434. Under the proposal, the expectation of overnight service for First-Class Mail and Periodicals would be eliminated. *Id.* at 58433. The proposed service standards would narrow the two-day delivery range and enlarge the three-day delivery range. *Id.*

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<sup>2</sup> United States Postal Service Motion to Dismiss the Complaint of the American Postal Workers Union, AFL-CIO, September 25, 2013. The following day, the Postal Service filed a revised version of the motion to dismiss that incorporated minor changes but made no substantive changes. See Notice of United States Postal Service of Filing Errata to Motion to Dismiss the Complaint of the American Postal Workers Union, AFL-CIO, September 26, 2013; United States Postal Service Motion to Dismiss the Complaint of the American Postal Workers Union, AFL-CIO [Errata], September 26, 2013. Unless otherwise noted, references in this Order will be to the revised motion to dismiss of September 26, 2013, which will be cited simply as the Motion to Dismiss.

<sup>3</sup> Response of American Postal Workers Union, AFL-CIO to USPS Motion to Dismiss, October 2, 2013 (Response). Due to a lapse in appropriations, the Commission was required to close from October 1, 2013 through October 16, 2013. No substantive work was allowed to be undertaken during the closure. Thus, the Response was not accepted by the Commission until October 17, 2013.

<sup>4</sup> Proposal to Revise Service Standards for First-Class Mail, Periodicals, and Standard Mail, 76 FR 58433 (Sept. 21, 2011).

The Postal Service stated that if it decided to move forward with its proposal, it would solicit public comment in a proposed rule and request an advisory opinion from the Commission. *Id.* at 58435-36. On December 5, 2011, the Postal Service filed its request for an advisory opinion from the Commission in accordance with 39 U.S.C. § 3661.<sup>5</sup> The Postal Service informed the Commission that it was conducting a parallel notice and comment rulemaking to revise the service standards. *Id.* at 7. The Commission established Docket No. N2012-1 to consider the request on December 7, 2011.<sup>6</sup>

On December 15, 2011, the Postal Service published in the *Federal Register* proposed revisions to its market dominant service standards and sought public comments.<sup>7</sup> On May 17, 2012, the Postal Service issued a press release announcing its intention to implement new service standards for market dominant products and consolidate its network of mail processing locations in two phases.<sup>8</sup> During Phase One, up to 140 plants would be consolidated through February 2013 while maintaining overnight service for First-Class Mail designated as Intra-Sectional Center Facility (Intra-SCF). *Id.* During Phase Two, up to 89 plants would be consolidated beginning in February 2014 “[u]nless the circumstances of the Postal Service change in the interim[.]” *Id.*

On May 25, 2012, the Postal Service published a final rule revising service standards for market dominant mail products.<sup>9</sup> On June 12, 2012, the APWU filed a

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<sup>5</sup> Docket No. N2012-1, Request of the United States Postal Service for an Advisory Opinion on Changes in the Nature of Postal Services, December 5, 2011.

<sup>6</sup> Docket No. N2012-1, Order No. 1027, Notice and Order Concerning Request for an Advisory Opinion Regarding the Revision of Service Standards for First-Class Mail, Periodicals, Package Services, and Standard Mail, December 7, 2011.

<sup>7</sup> Service Standards for Market-Dominant Mail Products, 76 FR 77942 (December 15, 2011).

<sup>8</sup> *Postal Service Moves Ahead with Modified Network Consolidation Plan*, May 17, 2012, reprinted in Docket No. N2012-1, Tr. 9/2713. The announcement represented a modification of the Postal Service’s initial proposal.

<sup>9</sup> Revised Service Standards for Market-Dominant Mail Products, 77 FR 31190 (May 25, 2012).

complaint alleging violations by the Postal Service of 39 U.S.C. §§ 3661 and 3691.<sup>10</sup>

The alleged violations related to the Postal Service's announced plan to implement plant consolidations in two phases. The APWU concurrently filed a motion for an emergency order requesting that the Postal Service be enjoined from implementing its proposed service standards until the Commission ruled on the complaint.<sup>11</sup> The Commission denied the Motion for Emergency Order on June 29, 2012,<sup>12</sup> and in Order No. 1463 dismissed the complaint on September 10, 2012.<sup>13</sup>

From July 2012 through September 2012, the Postal Service closed or consolidated 46 mail processing plants as part of Phase One. Motion to Dismiss at 6. On September 28, 2012, the Commission issued its advisory opinion concerning the Postal Service's proposal, which was called the Mail Processing Network Rationalization (MPNR) initiative.<sup>14</sup>

During Phase One, the Postal Service determined that certain mail processing plant closures or consolidations originally scheduled for Phase Two could be implemented during Phase One while preserving the service standards that took effect in July 2012. Motion to Dismiss at 6. On January 14, 2013, the Postal Service issued a statement announcing that the "Board of Governors has directed management to

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<sup>10</sup> Docket No. C2012-2, Complaint of American Postal Workers Union, AFL-CIO Regarding Violations Of 39 U.S.C. 3661 and 3691, June 12, 2013; see American Postal Workers Union, AFL-CIO Notice of Filing Revised Complaint [Errata], June 13, 2012; Complaint of American Postal Workers Union, AFL-CIO Regarding Violations of 39 U.S.C. 3661 and 3691, June 13, 2012.

<sup>11</sup> Docket No. C2012-2, American Postal Workers Union, AFL-CIO, Motion for an Emergency Order, June 13, 2012 (Motion for Emergency Order).

<sup>12</sup> Docket No. C2012-2, Order No. 1387, Order Denying American Postal Workers Union, AFL-CIO, Motion for an Emergency Order, June 29, 2012.

<sup>13</sup> Docket No. C2012-2, Order Dismissing Complaint, September 10, 2012 (Order No. 1463).

<sup>14</sup> Docket No. N2012-1, Advisory Opinion on Mail Processing Network Rationalization Service Changes, September 28, 2012.

accelerate the restructure of Postal Service operations to further reduce costs in order to strengthen Postal Service finances.”<sup>15</sup> On March 26, 2013, the Postal Service notified leaders of various postal unions, including APWU National President Cliff Guffey, that the Postal Service decided to advance to Phase One the closing and consolidation of 55 mail processing plants originally scheduled for Phase Two. Motion to Dismiss at 6-7. The Postal Service explained that the accelerated implementation schedule for the 55 mail processing plants would still permit the Postal Service to maintain the Phase One Intra-SCF service standard. *Id.* at 7.

In April 2013, seven APWU local chapters filed nearly identical complaints with the Commission alleging violations by the Postal Service of 39 U.S.C. §§ 101(d), 3691, and section 302 of the Postal Accountability and Enhancement Act (PAEA) of 2006.<sup>16</sup> The alleged violations relate to the Postal Service’s accelerated closure and consolidation of the 55 mail processing plants originally scheduled for Phase Two. In Order No. 1762, the Commission dismissed the seven complaints with prejudice.<sup>17</sup>

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<sup>15</sup> Statement from the United States Postal Service: Board of Governors Directs Postal Service Management to Accelerate Steps to Restructure Postal Operations and Reduce Costs (January 14, 2013), available at [http://about.usps.com/news/speeches/2013/pr13\\_pmg0114.htm](http://about.usps.com/news/speeches/2013/pr13_pmg0114.htm).

<sup>16</sup> Docket No. C2013-3, Complaint of Mid-Hudson Area Local & Consumers Regarding Failure to Revise and Update Information to the Union & Consumers on the AMP Study for Mid-Hudson P. & D. Center, April 8, 2013; Docket No. C2013-4, Complaint of Bakersfield Area Local & Consumers Regarding Failure to Revise and Update Information to the Union & Consumers on the AMP Study for Bakersfield P.&D Center, April 8, 2013; Docket No. C2013-5, Complaint of Red Bank Area Local and Consumers Regarding Failure to Revise and Update Information to the Union & Consumers on the AMP Study for Monmouth Processing and Distribution Center, April 9, 2013; Docket No. C2013-6, Complaint of Greater East TX Area Local & Consumers Regarding Failure to Revise and Update Information to the Union & Consumers on the AMP Study for East TX P&DC, April 10, 2013; Docket No. C2013-7, Complaint of Tyler TX Local #1477 & Consumers Regarding Failure to Revise and Update Information to the Union & Consumers on the AMP Study for East Texas P.& D. Center, April 10, 2013; Docket No. C2013-8, Complaint of APWU Helena MT Local & Consumers Regarding Failure to Revise and Update Information to the Union & Consumers on the AMP Study for Helena CSPDC, April 11, 2013; and Docket No. C2013-9, Complaint of Brooklyn NY Local and Consumers Regarding Consolidation AMP for June 2013, April 19, 2013.

<sup>17</sup> Docket Nos. C2013-3 through C2013-9, Order Dismissing Complaints, June 26, 2013 (Order No. 1762).

### III. SUMMARY OF PLEADINGS

#### A. APWU's Complaint

The APWU alleges violations of 39 U.S.C. §§ 403(c), 3661, and 3691(b) and (d). The Complaint is based on four main arguments. First, the APWU complains that the Postal Service is regularly failing to comply with the service standards set by its regulations in violation of section 3691(b)(1)(B), which requires the Postal Service to “preserve regular and effective access to postal services in all communities, including those in rural areas or where post offices are not self sustaining.” Complaint ¶ 21.

Second, the APWU argues that by failing to comply with its service standards, the Postal Service is depriving individuals and business mailers, including the APWU and its locals, of the service to which they are entitled by law under service standard regulations in violation of 39 U.S.C. § 3691(d). *Id.* ¶ 22.

Third, the APWU asserts that the Postal Service unreasonably discriminates against individuals, small businesses, and organizational mailers in providing postal services by failing to comply with its regulations providing for the delivery of First-Class Mail and other mail. *Id.* ¶ 23. The APWU contends that the effects of service standard violations are more frequently found in rural areas. *Id.* It claims that these discriminatory actions by the Postal Service violate 39 U.S.C. § 403(c). *Id.*

Fourth, the APWU argues that the Postal Service has violated 39 U.S.C. § 3661 “by changing to a generally less adequate and effective nationwide system without seeking an advisory opinion from the Postal Regulatory Commission.” *Id.* at 18.

The Complaint also identifies a number of different geographic areas in which the Postal Service is allegedly violating service standards on a nationwide or substantially nationwide basis. Complaint ¶¶ 30-61. These involve areas in Texas, New York, Colorado, New Jersey, Michigan, Pennsylvania, Oregon, Wisconsin, Illinois, and Missouri. *Id.*

As a remedy for these violations, the APWU requests that:

- The Postal Service be instructed to take necessary steps to come promptly into compliance with its service standard regulations;
- The Postal Service be ordered to cease and desist from making changes in its mail processing network that will cause it to violate service standards; and
- The APWU and its locals be provided an appropriate remedy for any adverse impact on them due to the delay of their mail.

*Id.* ¶ 26.

#### B. Postal Service's Motion to Dismiss

As an initial matter, the Postal Service argues that the APWU lacks standing to pursue its claims because it has not suffered any injury arising from the Postal Service's actions. Motion to Dismiss at 8-9. It asserts that the APWU has failed to allege any facts to support its claim of undue or unreasonable discrimination in violation of 39 U.S.C. § 403(c). *Id.* at 11-13. It contends that the APWU presents no facts to support its allegation that the Postal Service failed to file a request for an advisory opinion with the Commission as required by 39 U.S.C. § 3661. *Id.* at 13-16.

The Postal Service further claims that the APWU fails to state a claim alleging a violation of 39 U.S.C. § 3691(b) because the Complaint does not identify the applicable regulatory requirements or allege a violation in an area for which service standard compliance is measured. *Id.* at 16-20. It argues that the APWU's allegations regarding 39 U.S.C. § 3691(d) are not ripe. *Id.* at 20-21. It asserts that the APWU is precluded from presenting claims pursuant to 39 U.S.C. §§ 3661 and 3691(d). *Id.* at 27-31.

#### C. Response to Motion to Dismiss

In response, the APWU argues that it has standing because it is an interested person, and the alleged facts show sufficient injury. Response at 3-5. It asserts that it has specified the applicable regulatory requirements it alleges the Postal Service is

violating. *Id.* at 5-6. It claims that the Complaint is ripe because it alleges current service standard violations. *Id.* at 6-8. *Id.* It contends that claim preclusion does not apply because the Complaint is based on new facts. *Id.* at 8-9.

#### IV. COMMISSION ANALYSIS

The APWU filed the Complaint under 39 U.S.C. § 3662(a), which authorizes the filing of complaints by “any interested person.”

(a) In general.—Any interested person (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of the provisions of sections 101(d), 401(2), 403(c), 404a, or 601, or this chapter (or regulations promulgated under any of those provisions) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

The Commission rules that govern the filing of complaints provide that within 90 days after a complaint is filed, the Commission will issue an order that either (1) finds the complaint raises one or more material issues of fact or law and begin proceedings on the complaint, or (2) dismisses the complaint. See 39 U.S.C. § 3662(b) and 39 C.F.R. § 3030.30. Before filing an answer to a complaint, the Postal Service may file a motion to dismiss. 39 C.F.R. § 3030.12(b). The complainant then has 7 days to respond to the motion to dismiss. *Id.* § 3001.21.

The APWU alleges violations by the Postal Service of 39 U.S.C. §§ 403(c), 3661, and 3691(b) and (d). The Postal Service raises additional issues of standing and claim preclusion. Each issue is addressed below.

##### A. Standing

*Motion to Dismiss.* The Postal Service argues that the APWU lacks standing to pursue any claim because it has not suffered any injury arising from the Postal Service’s actions. *Motion to Dismiss* at 9. It recommends that the Commission interpret “interested person” in section 3662(a) to require some threshold showing of



particularized injury. *Id.* at 8. It asserts that “interested person” means something more specific than “users of the mail” or “persons.” *Id.*

*APWU Response.* The APWU responds that it has standing as an interested person and that it has alleged facts showing sufficient injury. Response at 3. It cites to paragraph 27 of the Complaint, which states that the APWU sends First-Class Mail and other classes of mail into, and receives mail from, rural and urban districts in every state and territory. *Id.* It contends that it has identified a number of areas where mail is not being delivered according to service standards. *Id.*

*Finding.* The Commission finds that the APWU is an “interested person” for purposes of filing the Complaint. As a mailer who sends and receives mail to and from postal districts in every state and territory, the APWU has a direct stake in and may be aggrieved if the allegations in the Complaint are true. It has also identified a number of different geographic areas in which mail is allegedly not being delivered in accordance with service standards.<sup>18</sup> Thus, the APWU has standing to pursue its claims.

## B. Claim Preclusion

*Motion to Dismiss.* The Postal Service argues that the APWU is barred from filing the Complaint due to claim preclusion. Motion to Dismiss at 27. It asserts that the APWU claims were resolved in Docket Nos. N2012-1, C2012-2, and C2013-3 through C2013-9. *Id.* at 28. It contends that the APWU is precluded from raising claims related to 39 U.S.C. § 403(c) because those issues were addressed in Docket No. N2012-1 and should have been raised in Docket Nos. C2013-3 through C2013-9. *Id.* at 29. It states that the Commission refuted contentions regarding sections 3661 and 3691 in

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<sup>18</sup> In its Response, the APWU states that “the Postal Service’s service standards are being violated regularly in places where the APWU mails and where APWU locals mail on APWU business.” Response at 4. The Complaint, however, contains more general representations, *i.e.*, that the APWU mails millions of pieces of mail per year. See Complaint ¶ 21. If the APWU elects to file additional information pursuant to this Order as set forth below, it must, in this proceeding, also elaborate on the harm to it allegedly caused by violations of current service standards.

Order Nos. 1463 and 1762, which dismissed the complaints in Docket Nos. C2012-2 and C2013-3 through C2013-9. *Id.* at 29-30.

*APWU Response.* The APWU argues that claim preclusion does not apply because the Complaint is based on new facts. Response at 8. It contends that Dockets C2012-2 and C2013-3 through C2013-9 did not involve allegations that the Postal Service was then in violation of its service standards. *Id.* at 9. It asserts that the complaints in Docket Nos. C2013-3 through C2013-9 were filed by APWU local chapters, without the input of the APWU. *Id.* It claims that the Complaint is focused on the current effects of the MPNR initiative and the Postal Service's departure from it, which is a distinct legal issue based on distinct, recent facts. *Id.*

*Finding.* Given the disposition of the Complaint, the only issue that needs to be addressed is the sole contingently surviving claim of the APWU—that current service standards are not being observed. That issue was not raised in the prior proceedings. In Docket No. N2012-1, the APWU expressed its views on the MPNR initiative as part of the Commission's advisory opinion process under 39 U.S.C. § 3661. Response at 8-9. In Docket No. C2012-2, the APWU claimed that the Postal Service violated sections 3661 and 3691 by (1) implementing service standard changes before receiving the Commission's advisory opinion, (2) failing to request an advisory opinion from the Commission before implementing proposed changes to service standards, and (3) failing to consider the factors or meet the objectives specified in section 3691. Order No. 1463 at 4. In this proceeding, the APWU is making new claims—namely, that the Postal Service is violating current service standard regulations.

The complaints filed in Docket Nos. C2013-3 through C2013-9 were premised on alleged violations of section 302 of the PAEA and thus are easily distinguishable from the instant Complaint. Nothing in those complaints related to alleged violations of current service standards. See Order No. 1762 at 10. Therefore, the APWU is not precluded from raising the issue under section 3691(d).

C. 39 U.S.C. § 403(c) Violations

*Motion to Dismiss.* The Postal Service argues that the APWU has alleged no specific facts to support its claim that the Postal Service is discriminating against rural mailers. Motion to Dismiss at 11. It notes that the APWU asserts one claim of potential adverse effect to rural mailers, but does not contrast it with any preferential treatment to other, similarly-situated communities. *Id.* at 12. The Postal Service states that 9 of the 10 mail processing plants listed in the Complaint are in urbanized areas. *Id.* It contends that the APWU has not shown that any discrimination exists or that what might exist is not reasonable. *Id.* at 13.

*APWU Response.* The APWU does not respond to the Postal Service's arguments.

*Finding.* The APWU asserts that

The Postal Service unreasonably discriminates against [] individuals, small businesses, and organizational mailers in the provision of postal services by failing to comply with its regulations providing for delivery of First-Class Mail and other mail, particularly those in rural areas, because the effects of service standard violations are more frequently found there.

Complaint ¶ 23.

A complaint must indicate facts that, if proven, will support the allegations of violations by the Postal Service. The APWU has not alleged facts that, if true, would demonstrate that the Postal Service's failure to meet service standards causes the unreasonable discrimination (or preference) prohibited by section 403(c) that the APWU broadly describes. In essence, it appears to suggest that the Postal Service is violating current service standards in a manner that unreasonably discriminates against "individuals, small businesses, and organizational mailers..." *Id.* The corollary of this claim therefore must be that other mailers are receiving unduly preferential treatment. Nothing in the Complaint supports the claim that the Postal Service's alleged violation of

service standards is unduly discriminatory (or preferential) with respect to any customers or areas of the country.<sup>19</sup> The APWU's failure to respond to the Postal Service's argument on this issue supports this conclusion.

The APWU has failed to demonstrate any nexus between section 403(c) and its alleged claims that gives rise to any cognizable jurisdictional claim before the Commission. Therefore, the Motion to Dismiss the APWU's claims brought pursuant to section 403(c) is granted.

D. 39 U.S.C. § 3661 Violations

*Motion to Dismiss.* The Postal Service argues that the APWU presents no facts to support its allegation that the Postal Service failed to request an advisory opinion from the Commission as required by 39 U.S.C. § 3661. Motion to Dismiss at 13. It asserts that the Commission previously held that a request for an advisory opinion is not required because the amendments to the MPNR initiative do not constitute a fundamental change in the overall purpose and direction of the Docket No. N2012-1 request for an advisory opinion. *Id.* at 14. It argues that a request for another advisory opinion is unnecessary because the accelerated consolidations and closures were expected to have no effect on service standards. *Id.* at 15. It contends that any service standard issues can be addressed through the Post-Implementation Review (PIR) process that evaluates the network changes and makes any adjustments necessary to satisfy service standards. *Id.*

*APWU Response.* The APWU responds that the accelerated closure and consolidations do have a negative effect on service standards. Response at 4. As examples, it cites to widespread reports of delayed mail detailed in the Complaint as

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<sup>19</sup> The APWU also alleges that the effects of service standard violations are more frequently found in rural areas. *Id.* However, the only support provided in the Complaint is an allegation that residents in rural Missouri are receiving newspapers and water shut-off notices late. *Id.* ¶ 57. These isolated incidents are insufficient to establish a claim of discrimination under section 403(c), which requires a showing of "undue or unreasonable discrimination among users of the mails...[or] any undue or unreasonable preferences to any such user." 39 U.S.C. § 403(c).

well as testimony by U.S. Senator Jon Tester regarding postal delays. *Id.* It argues that the PIR process makes no mention of making adjustments in order to satisfy service standards and should not be viewed by the Commission as a limitation on its jurisdiction over the Postal Service's changes in service standards. *Id.* at 5.

*Finding.* The APWU alleges a violation of 39 U.S.C. § 3661, requesting that the Commission “[h]old that the Postal Service has violated Section 3661(a) and (b) of title 39 [PAEA] by changing to a generally less adequate and effective nationwide system without seeking an advisory opinion from the Postal Regulatory Commission.” Complaint at 18.

The essence of the Complaint is that the Postal Service is not adhering to its current service standards. The APWU has not claimed that the Postal Service has already, or plans to implement, new service standards. Similarly, it fails to allege that the Postal Service is knowingly and/or intentionally denigrating service. Thus, the Complaint fails to demonstrate any cognizable violation of section 3661. The Motion to Dismiss the APWU's claims brought pursuant to section 3661 is granted.

E. 39 U.S.C. § 3691 Violations

1. 39 U.S.C. § 3691(b)(1)(B)

*Motion to Dismiss.* The Postal Service argues that any allegations regarding 39 U.S.C. § 3691(b)(1)(B) should be dismissed. Motion to Dismiss at 17. It argues that a complainant cannot allege that the Postal Service is violating this section, which lists only one of several objectives that the Postal Service's service standards are designed to achieve. *Id.* It contends that complaints regarding section 3691 must go to either the insufficiency of the regulations promulgated pursuant to section 3691 or a violation of those regulations. *Id.*

*APWU Response.* The APWU does not directly respond to the Postal Service in its Response.

*Finding.* The Commission concludes that in the circumstances presented here, the APWU's claims relating to section 3691(b)(1)(B) deficiencies are not properly the subject of a complaint proceeding. Section 3691(b)(1)(B) requires service standards to achieve the objective of "preserv[ing] regular and effective access to postal services in all communities, including those in rural areas or where post offices are not self-sustaining." This section relates to the objectives of how service standards are to be designed, not how they should be enforced. The APWU is not complaining that the service standards themselves do not meet section 3691(b)(1)(B). Rather, it claims that "the Postal Service is regularly failing to comply with the Service Standards set by its regulations...." Complaint ¶ 21. Therefore, the Motion to Dismiss the APWU's claims brought pursuant to section 3691(b)(1)(B) is granted.

2. 39 U.S.C. § 3691(d)

*Motion to Dismiss.* The Postal Service argues that the APWU's allegations regarding 39 U.S.C. § 3691(d) should be dismissed because the APWU fails to identify the specific service standards at issue. Motion to Dismiss at 17. It contends that the allegations involve discrete service performance problems within a narrow timeframe, not a pattern or trend of problems. *Id.* at 18. It notes that the allegations involve service performance within several SCFs, but the regulations governing service performance do not require evaluation of service performance at the SCF level. *Id.*

The Postal Service also argues that the APWU's allegations regarding a violation of 39 U.S.C. § 3691(d) are not ripe. *Id.* at 20-21. It states that the operational changes at issue are not complete, and the necessary factual record does not yet exist. *Id.* at 21-25. It contends that allegations regarding a violation of section 3691 should be dismissed as unripe on grounds of administrative economy. *Id.* at 25-27. It notes that the appropriate forum for analyzing the Postal Service's service performance is through the Annual Compliance Determination (ACD) process. *Id.* at 25-26.

*APWU Response.* The APWU responds that the Complaint indicates which service standards are being violated and where. Response at 6. It states that the

Complaint cites to the Postal Service's final rule amending 39 C.F.R. § 121.1. *Id.* at 5. The APWU argues that the Complaint is ripe because it alleges current service standard violations. *Id.* at 6. It acknowledges that service issues can be addressed through the ACD process, but asserts that the ACD is not the exclusive means for the Commission to monitor the Postal Service's service performance. *Id.* at 7.

*Finding.* The APWU makes general claims and provides anecdotal reports that the current service standards established by Postal Service regulations are being violated. The Postal Service argues that the Commission's complaint rules require more. Based on the pleadings, the Commission cannot conclude that the APWU has or has not raised material issues of fact or law. In lieu of deciding that question on a less than adequate record, the Commission will, as contemplated by its rules, afford the APWU an opportunity to supplement Complaint with additional information. See 39 C.F.R. § 3030.20. In turn, the Postal Service will have an opportunity to respond.

Section 3691(d) specifically authorizes complaints based on violations of existing service standards. To that extent, the Complaint satisfies, in part, 39 C.F.R. § 3030.10(a)(2), which requires a complainant to "[c]learly identify and explain how the Postal Service action or inaction violates applicable statutory standards or regulatory requirements including citations to the relied upon section or sections of title 39, order, regulation, or other regulatory requirements[.]" However, given the nature of the Complaint, it fails to reference with sufficient specificity the regulations, and attendant service standards, being violated. At this stage of the proceeding, the Commission is not prepared to grant the Motion to Dismiss because that technical shortcoming could potentially be rectified on filing a new complaint in a new docket. Because a new complaint would raise similar issues, the APWU will be afforded an opportunity to file additional information in this proceeding to address that and the following issues.

In addition to identifying specific regulations, the APWU must provide some support, other than simple assertions,<sup>20</sup> for its contention that the current service

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<sup>20</sup> See, e.g., Complaint ¶¶ 31, 35, 40, and 43.

standards are being violated. See 39 C.F.R. § 3030.10(a)(5), which requires that complainant “[s]tate the nature of the evidentiary support that the complainant has or expects to obtain during discovery to support the facts alleged in the complaint[.]” In that regard, the APWU must do more than state that “the Postal Service has information that it has not made public that will show the violations described [in its Complaint.]” Complaint ¶ 25. Rule 3030.10(a)(5) requires the APWU to describe with greater specificity the evidence it seeks from the Postal Service.

In sum, the APWU must identify the specific standards it believes are being violated, the harm alleged to be caused to it by those violations, and allege facts it intends to elicit that, if proven, would constitute violations of those regulations.

If the APWU elects to file supplemental information, its filing is due no later than December 13, 2013.<sup>21</sup> The Postal Service’s response, if any, is due, December 20, 2013.

*It is ordered:*

1. The United States Postal Service Motion to Dismiss the Complaint of the American Postal Workers Union, AFL-CIO, filed September 26, 2013, is granted as to the APWU’s claims under 39 U.S.C. §§ 403(c), 3661, and 3691(b)(1)(B). The Commission defers ruling on the APWU’s claim regarding 39 U.S.C. § 3691(d).
2. The APWU may file additional information related to its claim under 39 U.S.C. § 3691(d) as discussed in the body of this Order by no later than December 13, 2013.
3. The Postal Service’s response, if any, is due December 20, 2013.

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<sup>21</sup> If the APWU elects not to file the additional information on or before December 13, 2013, the Commission will, *sua sponte*, issue an order dismissing this element of the Complaint.



4. Pending the filing of additional information by the APWU as set forth in the body of this Order, Docket No. C2013-10 will be held in abeyance.

By the Commission.

Ruth Ann Abrams  
Acting Secretary