

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

Before Commissioners:

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

Alplaus Post Office  
Alplaus, New York

Docket No. A2012-88

ORDER DISMISSING APPEAL

(Issued March 21, 2012)

I. INTRODUCTION

On November 29, 2011, Andy Gilpin, (Petitioner) filed a petition with the Commission seeking review of the Postal Service's decision to close the Alplaus, New York post office (Alplaus post office).<sup>1</sup> The Petition is dismissed for lack of jurisdiction.

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<sup>1</sup> Petition for Review Received from Andy Gilpin, President, Alplaus Residents Association Regarding the Alplaus, NY Post Office 12008, November 29, 2011 (Petition). The Petition was signed by 84 customers of the Alplaus post office. Attached to the Petition was a copy of a letter from the Postal Service terminating the contract to operate the Alplaus post office.

## II. PROCEDURAL HISTORY

On December 14, 2011, the Commission established Docket No. A2012-88 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.<sup>2</sup>

On December 14, 2011, the Postal Service filed a motion to dismiss the appeal.<sup>3</sup> Petitioner and the Public Representative filed answers in opposition to the motion<sup>4</sup> and the Postal Service filed a reply.<sup>5</sup>

## III. BACKGROUND

Alplaus is an unincorporated area of the Town of Glenville in Schenectady County, New York. Alplaus is part of the East Glenville Census Designated Place and is included in the Albany Urbanized Area.<sup>6</sup> The Alplaus post office became a community post office (CPO) in 1973.<sup>7</sup> A CPO is

[a] contract postal unit that provides service in a community where an independent Post Office has been discontinued. A CPO bears its community's name and ZIP Code as part of a recognized mailing address.<sup>8</sup>

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<sup>2</sup> Order No.1045, Notice and Order Accepting Appeal and Establishing Procedural Schedule, December 14, 2011.

<sup>3</sup> United States Postal Service Motion to Dismiss Proceedings, December 14, 2011 (Motion).

<sup>4</sup> Motion in Opposition of the USPS Motion to Dismiss, December 21, 2011 (Petitioner Opposition); Public Representative Answer in Opposition to United States Postal Service Motion to Dismiss Proceedings, December 21, 2011 (PR Answer).

<sup>5</sup> United States Postal Service Reply to Briefs of Petitioner and Public Representative Regarding United States Postal Service Motion to Dismiss, December 28, 2011 (Postal Service Reply).

<sup>6</sup> This geographic information can be obtained from <http://tigerweb.geo.census.gov/tigerweb/default.htm>, an interactive mapping tool.

<sup>7</sup> See <http://www.alplaus.org> (follow "Alplaus Post Office" hyperlink).

<sup>8</sup> Publication 32, *Glossary of Postal Terms*, April, 2011, at 45 (available at <http://about.usps.com/publications/pub32.pdf>).

On October 28, 2011, the Postal Service informed the operator of the Alplaus CPO that it was terminating its contract with the operator effective January 6, 2012. Petition, Attachment. A provision of the contract between the American Postal Workers Union and the Postal Service required the termination.<sup>9</sup> On November 15, 2011, the Alplaus Residents Association hosted a meeting to discuss the possibility of keeping the Alplaus CPO open. At the meeting, Petitioner provided a statement from a Postal Service spokeswoman that read, in part:

This is not negotiable at the local level nor is it a decision that can be overturned . . . . For that reason, attending a public meeting could raise a false hope. We have been mandated to move forward and we will.<sup>10</sup>

Operations at the Alplaus CPO were suspended (not discontinued) at close of business on January 6, 2012.<sup>11</sup>

#### IV. PARTICIPANT PLEADINGS

*Postal Service.* The Postal Service argues that “[t]he Alplaus CPO is not a Post Office, or even a Postal Service-operated retail facility, so Commission jurisdiction under 39 U.S.C. § 404(d) does not attach.” Motion at 3. The Postal Service cites to its regulations governing the discontinuance of post offices, which explicitly state that they do not apply to CPOs. *Id.* at 5.<sup>12</sup> It also cites to comments it filed with the Commission in Docket No. RM2011-13. In those comments, the Postal Service reiterates its

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<sup>9</sup> Memorandum of Understanding Between the United States Postal Service and the American Postal Workers Union, AFL-CIO Re: Contract Postal Units, Tentative Collective Bargaining Agreement at 371 available at <http://www.apwu.org/dept/ind-rel> (follow “Collective Bargaining Agreements” hyperlink); then follow “2010-2015 National Agreement [pdf 2.17 MB]” hyperlink).

<sup>10</sup> Marcy Velte, “Alplaus Post Office to close,” November 16, 2011 <http://www.spotlightnews.com/news/2011/nov/16> (follow “Alplaus Post Office to close” hyperlink).

<sup>11</sup> See Public Representative Notice of Filing Postal Service Letter Temporarily Suspending the Alplaus, NY Community Post Office, February 10, 2012.

<sup>12</sup> The cited regulations appear at 39 CFR 241.3(a)(1)(i), (2)(i).

long-held view that the term “post office,” as used in 39 U.S.C. § 404, refers only to an *independent* post office, and not to stations, branches, or CPOs.<sup>13</sup>

The Postal Service also argues that “applying the section 404(d) procedures to CPO contract decisions would provide contractors with a bargaining advantage over the Post Office, and force the Postal Service to continue operating a contract even where sound business judgment supports termination.” Motion at 5. The Postal Service argues that Commission jurisdiction is “not compatible with the requirements of contract management, negotiation, and implementation.” *Id.* The Postal Service asserts that a contractor could extort concessions from it by refusing to conduct studies required before closing a post office. *Id.* at 5-6.

In reply comments, the Postal Service presents two additional arguments. First, it states that a member of the Commission’s staff, testifying before a Congressional subcommittee, implicitly agreed with the Postal Service’s position that section 404(d) does not apply to CPOs. The staff member testified on July 30, 2009, that “[t]he Commission has long accepted the common usage of any retail location staffed by Postal Service personnel as the operative definition of a post office . . . .” Postal Service Reply at 2. Second, the Postal Service argues that it is the appropriate agency to interpret the meaning of “post office” as used in section 404(d). It points to section 404(a)(3), which grants the Postal Service power “to determine the need for post offices,” and to subsections 404(d)(1)-(3), which specify procedures it must follow before closing a post office. It contrasts this power and responsibility “with the Commission’s limited power over 39 U.S.C. § 404(d) issues . . . .” *Id.* at 3-4.

*Petitioner.* Petitioner asserts that Commission precedent supports jurisdiction to hear his appeal. Petitioner relies on the Commission’s opinion in Docket No. A83-30.<sup>14</sup> In that case, the Commission remanded the decision of the Postal Service to close a

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<sup>13</sup> Docket No. RM2011-13, Initial Comments of the United States Postal Service, October 3, 2011, at 7.

<sup>14</sup> Docket No. A83-30, *In re Knob Fork, West Virginia 26579*, Commission Opinion Remanding Determination for Further Consideration, January 18, 1984 (*Knob Fork*).

CPO in Knob Fork, West Virginia. Petitioner asserts that Alplaus “is a community in every sense of the word . . . .” Petitioner Opposition at 1. Petitioner states that the Commission, in *Knob Fork*, considered and rejected the jurisdictional arguments that the Postal Service presents here. *Id.* at 2. Petitioner asks the Commission to set aside the decision to close the Alplaus CPO because (1) there is no evidence to support the decision; and (2) the Postal Service failed to follow procedures required by law. *Id.* at 2-3.

*Public Representative.* The Public Representative also cites *Knob Fork* and disputes the Postal Service’s claims of management interference:

[T]he Postal Service asserts that “the Commission[ ] would essentially become a party to contract negotiations, injecting more complexity into the contract negotiation process.” The Postal Service’s assertion is fanciful. To the extent the Commission concludes (again) that section 404(d) is applicable to CPOs, the Postal Service will simply have to ensure that its contracts specify performance by the contractor concerning the provision of information necessary for the Postal Service to fulfill its obligations under the statute.

PR Answer at 4 (citation omitted).

## V. COMMISSION ANALYSIS

As the Commission stated in its 1994 opinion in Docket No. A94-4:

The closure of a Community Post Office and residents' interests and rights when a Community Post Office is closed have been an area of concern at the Rate Commission since the Knob Fork, WV, appeal in 1983.

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It is the view of the Commission that Congress expected the section 404(b) procedures to apply not only to independent post offices, as defined by the Postal Service, but also

Community Post Offices when they are the sole source of postal services to a community.<sup>15</sup>

The “sole source” condition referred to in *Green Mountain* was relied upon by the Commission in reaching its decision in *Knob Fork*. In the instant proceeding, neither Petitioner nor the Public Representative addresses the “sole source” condition expressed in *Green Mountain*.

By contrast, the Postal Service in its Motion states that “[f]ormer customers of the Alplaus CPO may obtain postal services at the Rexford Post Office, located approximately a mile from the Alplaus CPO, and through *www.usps.com* and over 20 other alternate access options located within 5 miles of the Alplaus CPO.” Motion at 2. The Rexford and Glenville post offices are located within five minutes’ driving time of the Alplaus CPO (according to Google Maps).

On the facts presented here, the Alplaus CPO cannot be considered the sole source of postal services for Alplaus residents. Accordingly, the Commission’s rationale for accepting the appeal of the closing of the Knob Fork CPO does not apply in the case of the Alplaus CPO.

Neither Petitioner nor the Public Representative asserts a basis for Commission jurisdiction other than *Knob Fork*. There is thus no need to revisit the Postal Service’s more general arguments concerning the definition of “post office” or the scope of the Commission’s responsibilities under section 404(d). This appeal is dismissed.

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<sup>15</sup> Docket No. A94-9, *In re Green Mountain, Iowa 50637*, Commission Opinion Affirming Decision under 39 U.S.C. § 404(b), August 16, 1994, at 4-5 (*Green Mountain*).

*It is ordered:*

The United States Postal Service Motion to Dismiss Proceedings, dated December 14, 2011, is granted.

By the Commission.

Ruth Ann Abrams  
Acting Secretary

## CONCURRING OPINION OF COMMISSIONER TAUB

Although I concur fully in the result reached in this case, I write separately to express my misgivings concerning the continued viability of the *Knob Fork* decision in the post-Postal Accountability and Enhancement Act (PAEA) environment.

The *Knob Fork* decision was issued nearly three decades ago at a time when access to retail postal services was much more limited in terms of both the number and types of options. Since then, new forms of access have emerged and consumers today have available a much broader array of retail access opportunities. In addition to traditional post offices, contract postal units, and rural and highway carriers, consumers can now access retail services through village post offices, automated postal centers, approved shippers, the internet, and nonpostal retail establishments that sell stamps on consignment. In the future, even more options can be expected. In that connection, PAEA section 302 mandates a Postal Service Plan which, among other things, includes plans to expand alternate retail options to postal services including nonpost office access channels. See Section 302(d)(8).

In light of changes in retail access since the PAEA, as well as how it is viewed and defined, I believe that the viability of the *Knob Fork* decision needs to be reexamined. Given the pace and breadth of changes underway, I anticipate the Commission will have further opportunities for such a reexamination of *Knob Fork* to address more thoroughly the bases for, and viability of, that decision.

Robert G. Taub