

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

Before Commissioners:

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

Lafayette Station
Freehold, New Jersey

Docket No. A2011-19

ORDER AFFIRMING DETERMINATION

(Issued October 20, 2011)

I. INTRODUCTION

On June 23, 2011, Freehold Center Management Corporation (FCMC) filed a petition with the Commission seeking to appeal the Postal Service's determination to close the Lafayette Classified Station (Lafayette station).¹ Additional petitions were filed by the Township of Freehold, Monmouth County, New Jersey (Freehold Township) and

¹ Petition for Review, Application for Suspension of the Determination of the Postal Service to Close Lafayette Postal Trailer Pending Appeal and Petition for Review; Request for Oral Arguments received from A. Richard Gatto on behalf of Freehold Center Management Corporation, June 23, 2011 (FCMC Petition). FCMC's Petition includes five exhibits: Exhibit 1, notification to Post Office Box Customers; Exhibit 2, letter to the Postal Service; Exhibit 3, follow-up letter to the Postal Service; Exhibit 4, Public Law 105-241, 105th Congress; and Exhibit 5, Resolution Reaffirming Resolution 09-190 Opposing Proposed Closing of Freehold Borough Post Office.

Freehold Borough.² After reviewing the record in this proceeding, the Commission affirms the Final Determination to close the Lafayette station.

II. PROCEDURAL HISTORY

On June 28, 2011, the Commission established Docket No. A2011-19 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.³

The FCMC Petition included an application for suspension. FCMC Petition at 3. On July 5, 2011, the Postal Service filed a response in opposition to the application for suspension.⁴ In Order No. 762, the Commission denied the application for suspension.⁵

On July 7, 2011, the Postal Service filed a notice in support of its decision to close the Lafayette station.⁶ The Notice, in part, challenges the Commission's subject matter jurisdiction to hear this appeal.⁷

² Petition for Review received from the Township of Freehold, Monmouth County, New Jersey, June 24, 2011 (Freehold Township Petition); Petition for Review received from the Freehold Borough, June 28, 2011 (Freehold Borough Petition).

³ Notice and Order Accepting Appeal and Establishing Procedural Schedule, June 28, 2011 (Order No. 754).

⁴ Response of United States Postal Service to Petitioner's Application for Suspension of Discontinuance for the Freehold Trailer, Freehold, New Jersey 07728, July 5, 2011.

⁵ Order Denying Application for Suspension, July 19, 2011 (Order No. 762).

⁶ Notice of United States Postal Service, July 7, 2011 (Notice). The Notice includes four exhibits: Exhibit 1, Administrative Record; Exhibit 2, Post Office Locations, which identifies five additional Postal Service retail facilities near the 07728 ZIP Code; Exhibit 3, map of area surrounding Lafayette station; and Exhibit 4, Application of the United States Postal Service for Non-Public Treatment of Materials. Item No. 15 of the Administrative Record includes the Final Determination to Close the Lafayette, New Jersey Classified Station 07728-9998 (Final Determination).

⁷ The Commission has repeatedly rejected the Postal Service's jurisdictional arguments based on the Postal Service's internal categorization of its retail facilities. See, e.g., Docket No. A2010-3, Order No. 477, Order Dismissing Appeal (East Elko), June 22, 2010, at 5-6.

FCCM, Freehold Township, and Freehold Borough filed participant statements.⁸ On August 8, 2011, the Postal Service supplemented its arguments provided in its Notice.⁹ On August 31, 2011, the Public Representative filed a reply brief.¹⁰

The FCCM Petition also included a request for oral argument. FCCM Petition at 3. After careful consideration of the record in this proceeding, the Commission concludes that oral argument is not justified. The request for oral argument is denied.

III. BACKGROUND

Prior to establishing Lafayette station, postal services were provided to the community by the Lafayette Contract Postal Unit (CPU). Final Determination at 1. In 2002, service was suspended at the Lafayette CPU due to financial irregularities. Administrative Record, Item No. 11 at 1; Item No. 13 at 1. A trailer was set up in a municipal parking lot, pursuant to an offer of free space from the Freehold Borough, as a temporary measure to ensure that the 400 post office box customers formerly served by the CPU continued to receive service. Since 2002, the Postal Service has solicited bids to replace the CPU on five occasions. None produced qualified bidders. *Id.*

Lafayette station, located at 13 Lafayette Street in the incorporated borough of Freehold, New Jersey, was scheduled to close on July 29, 2011. It provided service 44 hours a week, from 8:30 a.m. to 4:30 p.m. Monday through Friday, and 9:00 a.m. to 1:00 p.m. on Saturday. Final Determination at 4. In addition to providing retail services,

⁸ Participant Statement received from Freehold Center Management Corporation, July 22, 2011 (FCCM Statement); Participant Statement received from Township of Freehold, New Jersey, July 25, 2011 (Freehold Township Statement); Participant Statement received from Borough of Freehold, New Jersey, July 27, 2011 (Freehold Borough Statement). The FCCM Statement includes a Supplement to Participant Statement (FCCM Supplement Statement).

⁹ Comments of United States Postal Service, August 16, 2011 (Postal Service Comments).

¹⁰ Reply Brief of the Public Representative, August 31, 2011 (PR Reply Brief).

e.g., sale of stamps, stamped paper, and money orders, it provided service to 354 post office box customers.¹¹

The Postal Service contends that the temporary trailer housing the Lafayette station was in substandard condition. Building deficiencies included no potable water, improper sewage disposal, and substandard wiring. The Postal Service adds that retail transactions have declined at the Lafayette station by 6.3 percent since fiscal year 2009 (although revenues have remained constant). *Id.* Thus, the Postal Service determined to close the Lafayette station.

The Postal Service indicates that delivery and retail service will be moved to the Freehold, New Jersey post office (Freehold post office), which is located 2.5 miles away. The Postal Service maintains that effective and regular service will continue to be provided. Window service hours at the Freehold post office are from 8:30 a.m. to 5:00 p.m. Monday through Friday, and 9:00 a.m. to 1:00 p.m. on Saturday. *Id.* Lafayette station Post Office Box service also will be moved to the Freehold post office.

On July 20, 2009, representatives from the Postal Service held a community meeting to discuss the possible closure of the Lafayette station. *Id.* On October 7, 2009, questionnaires were distributed to post office box delivery customers. Questionnaires also were available over the counter for retail customers at the Lafayette station. One hundred eighty-four questionnaires were returned. *Id.*

IV. PARTICIPANT PLEADINGS

Petitioners. FCMC requests reversal of the Postal Service's determination to close the Lafayette station. FCMC Petition at 2. In support of its appeal, FCMC argues that the Postal Service did not observe procedures required by law, including failing to provide FCMC with notice of the closure; providing inadequate notice to post office box

¹¹ *Id.*; see also Administrative Record, Item No. 1, which indicates that 375 post office box customers were serviced by the Lafayette station.

holders by not informing them of their appeal rights; and failing to issue a written final determination. *Id.*

Freehold Borough opposes the closing noting that Freehold Borough is the county seat of government for Monmouth County, New Jersey and the hub for commerce and government services. Freehold Borough Statement at 1; see *also* FCMC Petition at 2. Freehold Borough argues that the closing will have a negative impact on the several businesses and government offices that rely on the services offered at Lafayette station. Freehold Borough Statement at 1. Freehold Borough also argues that in making its decision, the Postal Service failed to consider the community demographics surrounding the Lafayette station. *Id.* at 2-3. Freehold Borough contends that its citizens, many of whom do not drive, will be negatively impacted by the closing. Finally, Freehold Borough questions the Postal Service's rationale of closing the Lafayette station for economic reasons when the Lafayette station is profitable. *Id.* at 3; see *also* Supplement Statement at 3-4.

All petitioners contend that patrons will be inconvenienced if the Lafayette station is discontinued. FCMC Petition at 2; see *also* Township Petition at 2; Freehold Borough Petition at 2. Petitioners note that the nearest retail facility is almost 2 miles away in Freehold Township. FCMC and Freehold Borough argue that the post office is located in a congested area making access difficult and that parking is inadequate. *Id.* at 3; see *also* FCMC Statement at 6-7; Freehold Borough Statement at 2-3.

Public Representative. The Public Representative concludes that the decision to close the Lafayette station is seriously flawed and should be remanded to the Postal Service to remedy the deficiencies. PR Reply Brief at 13.

The Public Representative urges the Commission to reject the Postal Service's jurisdictional arguments. *Id.* at 7. He distinguishes the circumstances surrounding the East Elko closing cited by the Postal Service from the Lafayette station closing and concludes that the Commission has jurisdiction to hear the appeal.

The Public Representative is critical of the Postal Service's failures to publicly post both the proposal to close the Lafayette station and the Final Determination. *Id.*

at 8. He notes that neither item was made available to customers until the Postal Service filed the Administrative Record in this proceeding.

The Public Representative contends that the Postal Service's justifications for closing the Lafayette station have shortcomings. He notes that the record does not reflect how extensive the Postal Service's efforts were to reestablish a CPU, or if a CPU remains a viable alternative at this time. *Id.* at 10. He contends that the Postal Service's economic justification is flawed by including employee salaries as savings. He notes that these costs are not being eliminated, but only shifted to another post office. *Id.* at 12. He further questions the rationale of closing a post office where revenues are significantly in excess of expenses. *Id.* Finally, he contends that the Postal Service has failed to address the concerns of the community, such as the adequacy of access to the Freehold post office and the adequacy of service available to seniors, immigrants, and low income residents. *Id.* at 13.

Postal Service. The Postal Service contends that this appeal should be denied. Postal Service Comments at 8. The Postal Service maintains that the requirements of section 404(d) do not apply in this instance because the Lafayette station is not a post office. *Id.* at 1. The Postal Service argues that even if the requirements of section 404(d) were applicable in the context of the discontinuance of the Lafayette station, it has satisfied the salient statutory provisions. Notice at 3. The Postal Service states that it distributed a letter on October 7, 2009 to customers notifying them of the possible discontinuance of the Lafayette station, and inviting comments on the potential change to the postal retail network. *Id.* The Postal Service notes that this notification was furnished to customers well over 60 days before the proposed closing date as required by law. After making a final decision to discontinue the Lafayette station, the Postal Service announced its decision publicly in a letter to customers dated May 25, 2011. *Id.*

Further, the Postal Service contends that it considered the pertinent criteria of section 404(d), including the effect on postal services, the community, and employees and economic savings gained from the closing. *Id.* at 4. The Postal Service concludes that while there will be a loss of a retail facility in the community, it will continue to

provide effective regular service to post office box customers at the Freehold post office.
Final Determination at 5.

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the office. 39 U.S.C. § 404(d)(5).

FCMC contests the adequacy of notice received by Lafayette station customers. FCMC notes the Postal Service reported that 375 questionnaires were distributed and 184 were returned. It questions whether all 375 questionnaires actually were distributed and whether the customers filling out the questionnaires understood the severity of the

situation. FCMC Supplement Statement at 2. FCMC is critical of the Postal Service's accounting of favorable versus unfavorable responses, and is critical of the questions specifically asked. *Id.* FCMC also observes that the Postal Service failed to provide patrons with a written final determination and failed to inform post office box customers of their right to appeal. FCMC Petition at 1.

The Postal Service reports that a community meeting was held on July 20, 2009 to discuss the possible closure of the Lafayette station. Final Determination at 1. On October 7, 2009, the Postal Service distributed questionnaires to Lafayette station post office box customers informing them of the possible closure. Postal Service Comments at 2; see *also* Final Determination at 1. The Postal Service provided responses to customers who returned questionnaires. Administrative Record, Item No. 10. On May 25, 2011, the Postal Service informed post office box customers of its decision to close the Lafayette station on July 29, 2011. See FCMC Petition, Exhibit 1. The Postal Service took no action to close the Lafayette station before the 60-day period concluded.

The Commission observes that the Postal Service has provided customers notice and an opportunity to voice opinions through the questionnaire process. Differences of opinion may exist on the most appropriate way to construct surveys or analyze survey answers. However, it is apparent that the Postal Service has categorized and considered the results of the survey.

The record in this proceeding indicates that customers of the Lafayette station were afforded notice that the Postal Service was reviewing the Lafayette station for possible closure. Further, customers were given an opportunity to provide input to the Postal Service at the community meeting and by returning questionnaires. Based on review of the record, the Postal Service appears to have satisfied the notice requirements of 39 U.S.C. § 404(d)(1).

The Final Determination should be made available to customers served by the relevant office. Customers received notice of the closing. In this instance, customers obtained access to the Final Determination as a result of the appeal. While this

minimizes the harm, the failure to make it available promptly does not serve the interests of any stakeholders. The Postal Service's newly implemented rules concerning post office discontinuances provide that the Final Determination will be made available to customers.

The Commission has repeatedly expressed the view that patrons should be informed of their right to appeal final determinations. In this instance, the Postal Service's failure to do so caused no injury as the Commission received three timely appeals in this docket.

B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A).

Effect on the community. As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. FCMC contends that the Postal Service failed to adequately consider the effect of the closing on the entire community. FCMC Supplement Statement at 4. Specifically, FCMC states that a large percentage of the population surrounding the Lafayette station is Hispanic and does not speak English or drive. FCMC argues that the Postal Service's supporting material does not address the effects of the closure on the community. *Id.*

The Postal Service obtained input from members of the community by distributing questionnaires and holding a community meeting. While the Postal Service could have cast a wider net in an effort to receive customer input, it followed then-established procedures. Its newly adopted rules are designed to elicit greater input. Moreover, the Postal Service responded via a form letter to concerns raised by customers. See Administrative Record, Item No. 11. It could have addressed certain

concerns more completely, e.g., traffic and safety concerns. Each facility reviewed for possible discontinuance presents unique facts, notwithstanding that there are some common themes among all such reviews. The Commission urges the Postal Service to respond more directly to the facts under review.

Effective and regular service. The Postal Service will provide delivery service and retail service at the Freehold post office upon closing the Lafayette station. Final Determination at 1. The Postal Service also plans to relocate the post office box sections to the Freehold post office. *Id.* Customers electing to continue Post Office Box service will retain their current address and ZIP Code.

Freehold Township, Freehold Borough, and customers raise various concerns regarding the transfer of operations to the Freehold post office, including traffic congestion, safety, and level of service provided. The Postal Service addressed each of these concerns. *Id.* at 3.

The consolidation of post office box operations with the Freehold post office will inconvenience, at least to some degree, the existing 354 post office box customers. Drive time to the Freehold post office from the Lafayette station is approximately 6 minutes. To the extent post office box customers wish to continue to receive delivery to a post office box, they will be able to retain their current mailing address. *Id.* at 4.

The Postal Service acknowledges that the distance may cause inconvenience for some customers. The Postal Service notes, however, that carrier service is an available option that may be beneficial. *Id.* at 1, 3.

Freehold Township contends that retail customers will also be inconvenienced if required to utilize the Freehold post office. Freehold Township Petition at 2. Freehold Township asserts that it could take up to 60 minutes to commute from the Lafayette station to the Freehold post office. *Id.* The Freehold post office is located 2.2 miles from the Lafayette station. In addition, three retail facilities are located within 4 miles of the Lafayette station. These include the Adelphia post office, located within 3.1 miles, the Tennent post office located within 3.4 miles, and the Marlboro post office located

within 3.5 miles. Administrative Record at 95-96 (electronic public version).¹² The Postal Service adds that customers may obtain some postal services from expanded access options, including the four stamp consignment sites located within one-third of a mile from the Lafayette station. Notice at 3.

The Commission concludes that regular and effective service will continue to be provided to customers served by the Lafayette station.

Economic savings and effect on employees. In its Final Determination, the Postal Service estimates annual savings of \$153,368 from the closure. Final Determination at 5.¹³ It derives this figure by summing the following costs: employee salaries and benefits \$108,290; inter-station transportation \$24,028; rent and utilities \$21,620, minus the cost of replacement service \$6,124. The Postal Service also indicates that closing the Lafayette station will cause it to incur a one-time expense of \$24,321 for building modifications. Final Determination at 5.

The Public Representative contends that the Postal Service's estimate is flawed because it includes employee compensation costs which the Postal Service has not demonstrated will be saved. PR Reply Brief at 11.¹⁴

The Public Representative raises a valid point concerning the computation of savings based on compensation costs that are not eliminated by the closure of the Lafayette station. The Commission has addressed this issue previously.¹⁵ Savings attributable to costs not shown to be avoided should not be included in the savings

¹² Based on MapQuest, drive time to these facilities from the Lafayette station is approximately 10 minutes, 6 minutes, and 9 minutes, respectively.

¹³ Summing the figures provided in the Final Determination yields net savings of \$147,814.

¹⁴ The Administrative Record includes an estimate that properly excludes unavowed employee compensation costs from the estimated savings. See Administrative Record, Item No. 11 at 8, which notes that "[i]f the position(s) are being eliminated include the minimum salary of grade level(s) and fringe benefits." See *also id.* Item No. 13 at 4.

¹⁵ See, e.g., Docket No. A2011-16, Order No. 843, Order Affirming Determination, September 8, 2011; Docket No. A2011-18, Order No. 865, Order Affirming Determination, September 20, 2011; Docket No. N2009-1, Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches, March 10, 2010.

estimates. Exclusive of employee compensation costs, net annual savings equal \$39,524 (\$147,814-\$108,290).

The additional one-time cost, \$24,321, should also be factored into the net annual savings estimate to present a more accurate picture of the financial implications of the decision to close the facility. Taking the one-time expenditure into account reduces the first year's net annual savings to \$15,203 (\$39,524-\$24,321). The Commission finds that the Postal Service has taken economic savings into account.

VI. CONCLUSION

The record supports the conclusion that regular and effective service will continue to be provided to customers served by the Lafayette station. The Postal Service's determination to close the Lafayette station is affirmed.

It is ordered:

The Postal Service's determination to close the Lafayette station is affirmed.

By the Commission.

Shoshana M. Grove
Secretary

Concurring Opinion of Chairman Goldway

While I agree with my colleagues that an adequate level of service will continue to be provided to the citizens of Freehold, I find I must write separately to express my serious reservations about the Postal Service's aggressive pursuit of closing retail facilities that has led it to include truly viable facilities. I believe that this policy is indiscriminate, counterproductive and not in the public interest.

In FY 2010, Lafayette station's revenues were \$661,000 with annual expenses of approximately \$154,000, yielding net revenues of more than \$500,000. A small investment in upgrading the Freehold trailer could provide a positive return on investment. To be sure, closing *any* facility may result in some net savings, and the Postal Service's financial condition is a pressing concern. But the consequences of pursuing this policy at a minimum reduce access and, among other things, may discourage demand for service notwithstanding the availability of alternatives.

A separate element of the record below raises other serious concerns. On five occasions from 2002 to 2009, the Postal Service solicited bids for a new contract postal unit (CPU). None was successful. More information regarding these efforts should have been included in the record. While the record does not indicate why there were no successful bids, the inability to arrange for a new CPU in the Freehold Borough may have long-term implications for the Postal Service's plans to replace Postal Service-operated retail facilities with CPUs and village post offices. While in theory the alternatives may have some appeal, in practice, they may prove unworkable.