

ORDER NO. 966

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

Bigelow Post Office  
Bigelow, Arkansas

Docket No. A2011-29

ORDER AFFIRMING DETERMINATION

(Issued November 15, 2011)

I. INTRODUCTION

On July 26, 2011, the Commission received a petition (Petition) for review of the closing of the Bigelow, Arkansas post office (Bigelow post office). The Petition was filed by Brad Akridge, Mayor (Petitioner).<sup>1</sup> Based on its review of the record in this proceeding, the Commission affirms the Final Determination to close the Bigelow post office.

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<sup>1</sup> Petition for Review received from Brad Akridge, Mayor, Bigelow, Arkansas Post Office 72016, July 26, 2011, (Petition).

## II. PROCEDURAL HISTORY

In Order No. 772, the Commission established Docket No. A2011-29 to consider the appeal, designated a Public Representative, and directed the Postal Service to file the Administrative Record and any pleadings responding to the appeal.<sup>2</sup>

On August 10, 2011, the Postal Service filed the Administrative Record with the Commission.<sup>3</sup> On August 12, 2011, two letters were received from patrons opposing the decision to close the office.<sup>4</sup> On August 30, 2011, the Petitioner filed a participant statement in support of his Petition.<sup>5</sup> On September 2, 2011, the Public Representative filed comments.<sup>6</sup> On September 29, 2011, the Postal Service filed comments requesting that the determination to close the Bigelow post office be affirmed.<sup>7</sup>

## III. BACKGROUND

The Bigelow post office, classified as level EAS-16, provides service from 7:30 a.m. to 4:00 p.m., Monday through Friday, and 7:30 a.m. to 10:00 p.m. on Saturday. Final Determination at 2. The lobby is open 24 hours per day, Monday through Saturday. *Id.* In addition to providing retail services, e.g., sale of stamps, stamped paper, and money orders, it serves 256 post office box customers and provides delivery service to 1,058 customers. Administrative Record, Item No.1 at 1.

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<sup>2</sup> Notice and Order Accepting Appeal and Establishing Procedural Schedule, July 27, 2011 (Order No. 772).

<sup>3</sup> The Administrative Record is attached to United States Postal Service Notice of Filing, August 10, 2011 (Administrative Record). The Administrative Record includes the Final Determination to Close the Bigelow, AR Post Office and Continue to Provide Service by Rural Route Service (Final Determination).

<sup>4</sup> Letter from Eloise Morse, August 12, 2011; letter from Debra Morse, August 12, 2011 (Patron Letters).

<sup>5</sup> Participant Statement received from Brad Akridge, August 30, 2011 (Participant Statement).

<sup>6</sup> Public Representative Comments, September 2, 2011 (PR Comments).

<sup>7</sup> United States Postal Service Comments Regarding Appeal, September 29, 2011 (Postal Service Comments).

The Postal Service has made a decision to close the post office and provide delivery and retail services by rural route delivery administered by the Conway post office located 13 miles away. Final Determination at 2. Post office box and retail services are available at the Conway post office, an EAS-22 level office, from 9:00 a.m. to 4:30 p.m., Monday through Friday, and 10:00 a.m. to 12:00 p.m. on Saturday. *Id.* There are 289 post office boxes available. *Id.* Retail service is also available at the Houston post office, an EAS-15 level post office, located 2 miles away from 9:00 a.m. through 4:30 p.m., Monday through Friday, and 10:00 a.m. to 12:00 p.m. on Saturday. *Id.* The Houston post office also has 289 post office boxes available for rent. *Id.*

The Postal Service states that daily retail window transactions at the Bigelow post office averaged 40 transactions accounting for 46 minutes of retail workload. *Id.* The Postal Service indicates that with a minimal workload, effective and regular service can be provided instead by rural route service. *Id.*

On March 4, 2011, 1,528 questionnaires regarding a possible change in service were distributed to delivery customers of the Bigelow post office. *Id.* Questionnaires were also available over the counter for retail customers. *Id.* On March 17, 2011, the Postal Service held a community meeting at the Anne Watson School to address customer concerns. Seventy-four customers attended. *Id.*; see also Administrative Record, Item No. 24.

#### IV. PARTICIPANT PLEADINGS

*Petitioner and Commenters.* Petitioner opposes the Postal Service's decision to close the Bigelow post office on the following grounds:

- The Postal Service cites the vacancy of the postmaster position as one of the reasons for closing the post office, but made no effort to fill the position.
- The closing will impose a hardship on elderly and disabled customers.
- Without its post office, the Bigelow community will lose its identity.
- Without its post office, undue burdens will be placed on local businesses and the East End School System.

- The post office is being closed in retaliation for the landlord's attempt to raise the rent.
- Significant growth in the area will only increase the need for the Bigelow post office.
- Projected savings are overstated.

Petition at 1-3; Participant Statement, Attachment.

The letters submitted by customers of the Bigelow post office assert that it would make more sense to consolidate the smaller Conway post office into the Bigelow post office. Patron Letters at 1.

*Postal Service.* The Postal Service argues that the Commission should affirm its determination to discontinue the Bigelow post office. Postal Service Comments at 1. The Postal Service maintains that it has followed the proper closing procedures of 39 U.S.C. § 404(d) and carefully considered the required factors of section 404(d)(2) in making its determination. *Id.*

The Postal Service explains that its decision to close the Bigelow post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload generating low and declining revenue;
- the variety of delivery and retail options (including the convenience of rural delivery and retail service);
- minimal impact upon the community;
- minimal recent growth in the area; and
- expected financial savings.

*Id.* at 4.

The Postal Service also addresses concerns regarding the effect the closing will have on postal services. *Id.* at 5-6. The Postal Service also states that it has considered the

effect that the closing of the Bigelow post office will have on the community. *Id.* at 7-8. Economic savings and the effect of the closing on employees were also considered. *Id.* at 8-10.

*Public Representative.* The Public Representative contends that the decision of the Postal Service to close the Bigelow post office should be remanded. PR Comments at 3. The Public Representative argues that there are several inconsistencies and omissions in the Administrative Record which need to be reconciled. *Id.* at 2-3. The Public Representative argues that the Postal Service should be instructed to reconcile the conflicting statements and fill the gaps in the record. *Id.*

## 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).

Notice of the Postal Service's proposal to close the Bigelow post office and continue to provide rural route service was posted at the Bigelow post office from March 31, 2011 through June 1, 2011. Administrative Record, Item No. 36. The Postal Service received no comments during the 60-day period. *Id.* Item No. 40. The Final Determination to close the Bigelow post office was posted at the Bigelow post office on June 30, 2011 and removed on August 1, 2011. Final Determination at 1. Based on review of the record, the Commission finds that the Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

#### 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.* The Postal Service states that the effect of the closing on the Bigelow community was extensively considered. Postal Service Comments at 1. As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. On March 4, 2011, the Postal Service distributed questionnaires to Bigelow post office delivery customers. Final Determination at 2. Of the 317 questionnaires that were returned, 169 were interpreted by the Postal Service to be unfavorable, 44 were interpreted as favorable, and 104 were interpreted as expressing no opinion regarding the proposed alternate service. Administrative Record, Item No. 23 at 1.

On March 17, 2011, the Postal Service also held a community meeting attended by 74 customers. Final Determination at 2; see *also* Administrative Record, Item No. 24.

Customers expressed concern regarding the loss of the community identity. In its Final Determination, the Postal Service indicates that it is continuing the use of the suspended post office name and ZIP Code. Final Determination at 2. However, as the Public Representative correctly points out, the record also contains suggestions that a change in ZIP Code may be contemplated. PR Comments at 2. The Final Determination itself states both that the ZIP Code will not be changed and that a change will be necessary. *Cf.* Final Determination at 2, Response to Concern No. 1 (“The Postal Service is helping to preserve community identity by continuing the use of the suspended Post Office name and ZIP Code in addresses...”) *with* Final Determination at 2, Response to Concern No. 3 (“The proposed change of the ZIP Code is necessary due to 911 addressing requirements.”). The Public Representative asserts that a remand is necessary to reconcile this inconsistency. PR Comments at 2.

The Postal Service also concluded that the community would continue to receive nonpostal services from either the Conway post office or by contacting the appropriate local government agency. Final Determination at 5.

Regarding concerns expressing the need for a post office to handle projected growth in the area, Petition at 3, the Postal Service states that carrier service will be able to accommodate such future growth. Final Determination at 5.

Upon review of the record in this proceeding, the Commission concludes that the Postal Service has satisfied the requirement that it consider the effect of closing on the community. 39 U.S.C. § 404(d)(2)(i). With respect to the inconsistent statements regarding the Bigelow ZIP Code, numerous cases before the Commission have established that the Postal Service’s policy is to preserve ZIP Codes in situations in which a post office is closed as a means of preserving community identity. There is no indication in this case that the established policy has changed. Nevertheless, the Postal Service should take more care to make its Final Determinations free from ambiguities.

*Effective and regular service.* Petitioner expresses concerns regarding the burden that may be placed on the elderly and disabled customers by having to drive to the Conway post office for service. Petition at 2. Customers raised similar concerns in their questionnaires. The Postal Service states that carrier service is beneficial to many senior citizens and those who face special challenges because the carrier can provide delivery and retail services. Customers do not have to make a special trip to the post office for service. The Postal Service adds that special provisions are made for hardship cases or special customer needs. Final Determination at 5.

Petitioner also argues that the closing of the Bigelow post office will impose undue burdens on the business community and the local school system. Petition at 2. Commenters assert that the Postal Service should have consolidated the Conway post office with the Bigelow post office. Patron Letters at 1. The Postal Service responds by stating that it has considered those concerns and that businesses, and presumably the school system, will continue to receive regular and effective postal services. Postal Service Comments at 5. The Postal Service claims that it gave extensive consideration to the shipping of packages and that “service will be provided to cluster box units (CBUs) installed on the carrier’s line of travel”, adding that “[p]arcel lockers provide convenient parcel delivery....” *Id.* at 5-6. In addition, the Postal Service cites various options, such as Stamps by Mail, internet services like Click-N-Ship, and carrier pickup that will give customers access to effective postal services. *Id.* at 6.

Finally, Petitioner objects to the Postal Service’s failure to fill the vacant postmaster position. Petition at 1. However, that failure is not one of the considerations required by 39 U.S.C. § 404(d).

Based on a review of the record, the Commission concludes that Bigelow customers will continue to receive effective and regular service. 39 U.S.C. § 404(d)(2)(A)(iii).

*Economic savings.* The Postal Service estimates total annual savings of \$109,808. Final Determination at 6. It derives this figure by summing the following



costs: postmaster salary and benefits \$98,466; and annual lease costs \$29,493, minus the cost of replacement service \$18,151. *Id.*

Petitioner challenges the savings projected by the Postal Service on several grounds. Petition at 1; Participant Statement, Attachment at 1-2. Specifically, Petitioner asserts that the Postal Service's projections do not provide full disclosure of all expenses and savings; include the highest possible value for the postmaster's salary; present a cost of replacement service that is not high enough to pay for additional salary and mileage to current carriers, as well as an additional carrier that was mentioned by the Postal Service at the March 17, 2011 community meeting. Petition at 1.

Petitioner suggests further that the statement at the community meeting by one of the Postal Service representatives that the Postal Service could not afford a rent increase is inconsistent with a written offer of the landlord to leave the rent unchanged and that the decision to close the Bigelow post office was, in fact, triggered by the fact that rent negotiations had at some point become heated. *Id.* at 2.

The Public Representative asserts that the Administrative Record contains conflicting estimates of the added cost for rural delivery. According to the Public Representative:

The Post Office Survey Sheet shows zero boxes and 24 miles added to the rural routes for a cost of \$18,151. AR, item 15a. However, the Rural Route Cost Analysis Form shows no added cost for the expanded rural routes. AR, item 17B. There are also handwritten calculations showing an added cost for rural delivery of 11,786.41 AR, item 17B. The Proposal Checklist uses the \$18,151 as the added cost for rural delivery, but there are no calculations deriving that number.

PR Comments at 3.

The Postal Service suggests that closure of the Bigelow post office will require the installation of CBUs although the projected cost savings show no adjustment for the offsetting costs of such CBUs. Final Determination at 6.

The Postal Service supports its economic savings projection by arguing that the postmaster cost savings are appropriate given the cost of a career employee who would fill the postmaster position if the post office were not closed; the lease cost savings are properly calculated; and that the alleged difficulty of the negotiations over a possible rent increase are not supported by the record. Postal Service Comments at 9.

With respect to the issue of replacement costs, the record information relied upon by the Public Representative suggests that the replacement costs projected by the Postal Service are overstated. However, if that is correct, a reduction of the replacement costs would increase the projected savings thereby giving further support to the Postal Service's assertion that closing the Bigelow post office will produce savings. Petitioner takes the opposite position and argues that the Postal Service estimate of replacement costs is understated. If that were correct and replacement costs were adjusted upward, the projected savings would decrease. There are, however, at least two problems with this position. First, Petitioner cites no evidence that would provide a reasonable estimate of how large an upward adjustment should be made. Second, to eliminate any projected savings, the upward adjustment of replacement costs would have to be at least equal to the net savings projected by the Postal Service, or \$109,808. Without record evidence to support such an adjustment, the Commission finds an upward adjustment of this magnitude to be implausible.

Finally, the Postal Service has failed to include any estimate of the cost of installing CBUs. Such an estimate should have been included. Nevertheless, given the magnitude of the projected savings, the cost of CBUs cannot be expected to make a significant difference in the level of savings that has been projected. This does not, of course, mean that such an estimate could not make a material difference in future cases, and the Postal Service is therefore expected to incorporate such estimates into future estimates of cost savings.

Based on its review of the record, the Commission concludes that the Postal Service has considered economic savings as required by 39 U.S.C. § 404(d)(iv).

## VI. CONCLUSION

Based on the review of the record, the Commission concludes that the Postal Service has adequately considered all requirements of 39 U.S.C. § 404(d). Accordingly, its determination to close the Bigelow post office and continue to provide rural route delivery is affirmed.

*It is ordered:*

The Postal Service's determination to close the Bigelow, Arkansas post office is affirmed.

By the Commission.

Shoshana M. Grove  
Secretary

## CONCURRING OPINION BY COMMISSIONER LANGLEY

I concur with my colleagues that it appears that the Postal Service adequately considered all requirements of 39 U.S.C. § 404(d). However, in appeals that have come before the Commission, the Postal Service has indicated, as it does in this docket, that “[a]ll issues raised by the customers...were considered and properly addressed by the Postal Service.” Postal Service Comments at 3.

The Postal Service is reviewing and will continue to review candidate postal-operated retail facilities for discontinuance, which in turn is resulting in a significant increase in the number of appeals being filed with the Commission over previous years. I have been carefully reviewing the administrative records and have noticed that the Postal Service’s responses to substantive community concerns are not always addressed. It was my hope that the Postal Service would rectify this matter, but I continue to see incomplete responses to issues raised by communities and individuals that might result in a meaningful alternative to closing a particular facility. By failing to respond to substantive questions, such as the community suggesting that operating hours be reduced at an affected post office instead of closing it, or negotiating with the landlord to lower rental fees in order to reduce costs, the Postal Service appears to disregard these substantive suggestions.

In this current case, the Postal Service’s Administrative Record does not include specific responses to the customer questionnaires, even though the Administrative Record indicates that of the 1,528 questionnaires distributed, 317 questionnaires were returned. The Postal Service Customer Questionnaire Analysis section of the Administrative Record states that only six customer concerns were expressed. Administrative Record, Item 23 at 1.

39 USC 404(d)(2)(A)(i) requires the Postal Service to consider “the effect of such closing on the community served by such post office.” Affected postal customers would assume this would ensure that their public input would be taken into consideration during a discontinuance procedure and that their concerns would be reflected in the Postal Service’s Administrative Record.

Nanci E. Langley

## DISSENTING OPINION OF CHAIRMAN GOLDWAY

I dissent from the majority opinion in this case because I feel that the Administrative Record in its current form fails to address a number of important factual issues relevant to the decision to close the post office.

A key question is whether the community in Bigelow will continue to receive adequate service.

But we also look to the wording of the law, which says:

The Postal Service, in making a determination whether or not to close or consolidate a post office shall consider:

The effect of such closing or consolidation on the community serviced by such post office;

The effect of such closing or consolidation on employees of the Postal Service employed at such office;

Whether such closing or consolidation is consistent with the policy of the Government, as stated in section 101(b) of this title, that the Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;

The economic savings to the Postal Service resulting from such closing or consolidation; and

Such other factors as the Postal Service determines are necessary[.]

39 U.S.C. § 404(d)(2)(A).

Under the law, “[t]he Commission shall set aside any determination, findings, and conclusions found 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 on the record.”

39 U.S.C. § 404(d)(5).

In this docket, I see several areas where the present Administrative Record did not appear to contain sufficient information to adequately support the Final Determination. Among the areas are:

1. The Administrative Record was unclear as to whether distances to alternative postal facilities are “crows fly” or driving distances. Significant differences may exist between the two.
2. The Administrative Record did not clearly delineate whether the number of post office boxes at the receiving facility were the total number of boxes at the facility or just those vacant and available.
3. The Administrative Record should assess the capacity of the receiving offices to handle additional customer visits resulting from a closing.
4. Proper notice to the community is essential. The Administrative Record did not indicate whether notices were placed in the receiving office or offices.
5. The Administrative Record was unclear as to whether the Postal Service projects the need for an additional letter carrier due to growth in the community, and did not identify the costs resulting from an additional letter carrier (or cluster boxes). Such extra costs may impact the anticipated cost savings.
6. The Administrative Record did not provide clear information on whether the community’s ZIP Code will be retained or will be changed, an issue highlighted by customers.

Ruth Y. Goldway