

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

Lake Creek Post Office
Lake Creek, Texas

Docket No. A2011-52

ORDER AFFIRMING DETERMINATION

(Issued November 17, 2011)

I. INTRODUCTION

On August 22, 2011, the Commission received four petitions for review of the closing of the Lake Creek, Texas, post office (Lake Creek post office). Petitions were filed by Paul M. Burt (Petitioner Burt), Lynne P. Long (Petitioner Long), Linda L. Baker (Petitioner Baker), and Daryl Blakley (Petitioner Blakley) (cited together, Petitioners).¹ After review of the record in this proceeding, the Commission affirms the Final Determination to close the Lake Creek post office.

¹ Petition for Review received from Paul M. Burt regarding Lake Creek Texas Post Office 75450; Petition for Review received from Lynne P. Long regarding Lake Creek Texas Post Office 75450; Petition for Review received from Linda L. Baker regarding Lake Creek Texas Post Office 75450; Petition for Review received from Daryl Blakley regarding Lake Creek Texas Post Office 75450; all filed August 22, 2011 (Petitions).

II. PROCEDURAL HISTORY

In Order No. 825, the Commission established Docket No. A2011-52 to consider the appeal, designated a Public Representative, and directed the Postal Service to file the Administrative Record or otherwise file a pleading responsive to the appeal.²

On August 30, 2011, the Postal Service filed the Administrative Record with the Commission.³ Petitioner Burt filed a participant statement.⁴ The Postal Service filed comments requesting that the determination to close the Lake Creek post office be affirmed.⁵ The Public Representative filed reply comments.⁶

III. BACKGROUND

The Lake Creek post office, classified as an EAS-11 level post office, provides retail service from 8:00 a.m. to 3:45 p.m., Monday through Friday, and 8:00 a.m. to 9:00 a.m. on Saturday. The lobby is open 24 hour a day, Monday through Saturday. In addition to providing retail services, *e.g.*, sale of stamps, stamped paper, and money orders, it serves 28 post office box customers. Final Determination at 2.

The Lake Creek post office averages 16 window transactions accounting for 17 minutes of workload daily. Its revenues have fluctuated from \$29,206 in FY 2008, to \$20,857 in FY 2009, to \$26,505 in FY 2010. *Id.*

² Notice and Order Accepting Appeal and Establishing Procedural Schedule, August 25, 2011 (Order No. 825).

³ The Administrative Record is attached to United States Postal Service Notice of Filing, August 30, 2011. The Postal Service also filed United States Postal Service Notice of Filing (Erratum), November 2, 2011, to supplement the Administrative Record. Both documents shall be referred to as the Administrative Record. The Administrative Record includes, as Item 45, the Final Determination to Close the Lake Creek Post Office and Establish Service by Rural Route Service (Final Determination).

⁴ Participant Statement received from Paul M. Burt, September 27, 2011 (Burt Statement).

⁵ United States Postal Service Comments Regarding Appeal, October 12, 2011 (Postal Service Comments).

⁶ Reply Comments of the Public Representative, November 1, 2011 (PR Reply Comments).

On January 2, 2009, the Lake Creek postmaster retired. A non-career employee from a neighboring post office was installed as the temporary officer-in-charge (OIC). Final Determination at 2; Administrative Record, Item 44.

The Postal Service has made a decision to close the Lake Creek post office and provide delivery and retail services by rural route delivery administered by the Cooper post office, an EAS-18 level facility, located 8 miles away. Post office box and retail services are available at the Cooper post office from 8:00 a.m. through 4:00 p.m. Monday through Friday. The Cooper post office is closed on Saturday. *Id.*; see also Postal Service Comments at 7.

IV. PARTICIPANT PLEADINGS

Petitioners. Petitioners contend that the Lake Creek post office should not be closed. Petitioner Baker states that closing the post office would create hardship and mean the end of universal service.

Petitioner Blakley also asserts that closing the Lake Creek post office would be a hardship noting that the next closest post office is 10 miles away.

Petitioner Long states that it would be inconvenient to travel 20 miles to the next closest post office, and that rural delivery is not feasible because she lives a half-mile off the road. She further notes that closing rural post offices produces a minuscule savings for the Postal Service.

Petitioner Burt expresses concern for elderly customers who do not have the means to get to a distant post office. He also expresses worry about theft and vandalism from a rural box and difficulty meeting the carrier. He proposes reducing the hours the post office is open and reducing the rent. Finally, he states that a post office is essential for a community to keep its identity.

Postal Service. The Postal Service argues that the Commission should affirm its determination to discontinue the Lake Creek post office. Postal Service Comments at 2. The Postal Service maintains that it has followed the closing procedures of 39 U.S.C.

§ 404(d), *id.* at 3, and carefully considered the required factors of section 404(d)(2) in making its determination. *Id.* at 11.

The Postal Service states that its decision to close the Lake Creek post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload generating low revenue;
- the variety of delivery and retail options available;
- minimal impact upon the community;
- no growth expected in the area; and
- expected financial savings.

Id. at 4.

Public Representative. The Public Representative contends that the decision of the Postal Service to close the Lake Creek post office should be remanded. PR Reply Comments at 16. The Public Representative asserts that the Postal Service has failed to provide adequate notice by not posting the Final Determination at the Cooper post office. *Id.* at 7-8. The Public Representative further asserts that the Postal Service has given only cursory consideration to the requirements of section 404(d)(2). He argues that the Postal Service has not adequately taken into account the effect on employees, the estimation of economic savings, and the effect on the community. *Id.* at 9. He summarizes that the Postal Service's conclusions are arbitrary, capricious, and unsupported by substantial evidence. *Id.* at 16-17.

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 Lake Creek post office and continue to provide rural route service was posted at the Lake Creek and Cooper post offices from March 30, 2011 through May 31, 2011. Administrative Record, Item 36. The Postal Service received 7 comments during the 60-day period. *Id.* Item 40. The Final Determination to close the Lake Creek post office was posted at the same two post offices from July 1, 2011 through August 2, 2011.

The Public Representative notes that the Administrative Record filed September 30, 2011 did not include the posting of the Final Determination at the Cooper post office, and cites to this failure as a basis for remand. However, the Postal Service corrected

this omission from the Administrative Record in the November 1, 2011 Erratum. See Administrative Record, Item No. 45.

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). Also, section 101(b) prohibits the Postal Service from closing any small post office solely for operating at a deficit.

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. On January 26, 2011, 144 questionnaires regarding a possible change in service were distributed to delivery customers of the Lake Creek post office. Questionnaires were also available over the counter for retail customers. Fifty-three questionnaires were returned. Administrative Record, Item 23. On February 23, 2011, the Postal Service held a community meeting in Lake Creek to address customer concerns. Nineteen customers signed the meeting roster. See *id.* Item 24.

The Postal Service responded to each customer individually. Their concerns and the Postal Service's responses are summarized in the Final Determination. *Id.* Item 22. For example, Petitioner Burt is concerned about loss of community identity. The Postal Service claims that it is helping to preserve the community's identity by continuing the use of the Lake Creek name and ZIP Code in addresses. Final Determination at 3. Several customers suggested reduced hours of operation or cluster boxes as alternatives to closing the post office. The Postal Service's responses to customer comments were silent on these issues. Administrative Record, Item 22.

The Public Representative asserts that the Postal Service's analysis of the effect of the closing on the community is inadequate and does not comply with section 404(d)(2)(A)(i). He states that the advantages of the closing for the community are minimal or nonexistent, and that the statute recognizes that the Postal Service often plays a substantial role in community affairs. He claims that there is nothing in the record to demonstrate that the Postal Service weighed the importance of its role against the minuscule advantages of closing the Lake Creek post office. PR Comments at 15.

The Final Determination lists advantages and disadvantages of closing the Lake Creek post office. It then states, the Postal Service took "all available information into consideration...." Final Determination at 5. Although others may reach differing conclusions, the Postal Service has considered the effects upon the community. 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).

Effective and regular service. Petitioners raise the issue of the effect on postal services of the Lake Creek post office's closing, noting the convenience of the Lake Creek post office. Petitioner Burt expresses particular concern about the effect of the closing on elderly customers of the Lake Creek post office who do not have means to travel to another post office; inconveniences in meeting a rural carrier to conduct business; and lack of security when money is left in a mailbox on a public road. Participant Statement at 1-2.

The Postal Service asserts that it addressed each of these concerns when it analyzed customer comments in questionnaire responses at the community meeting, and in response to the proposal to close the Lake Creek post office, citing the Administrative Record, Items 22, 23, 25, and 33. Postal Service Comments at 5-7.

For example, the Postal Service states that it considered the effect of the closing on the customers of the Lake Creek post office who cannot get to another post office. It notes that similar access to retail services is available from the carrier, and that customers will not have to travel to another post office for service. It claims that most

transactions do not require meeting the carrier at the mailbox. It notes that Stamps by Mail and Money Order application forms are available for customer convenience. *Id.* at 6; see also Administrative Record, Item 23, Item 25, Item 36, Item 38; Final Determination at 3, 5.

With respect to the security of the mail, the Postal Service stated that customers may place a lock on their mailboxes. The mailbox must have a slot large enough to accommodate the customer's normal daily mail volume. The Postal Service explained that if a customer desires extra security, the customer may leave a note in their mailbox instructing the carrier to sound his horn, and then meet the carrier to receive services. Administrative Record, Item 23, Item 33; Final Determination at 2, 4.

Upon review of the record in this proceeding, the Commission concludes that the Postal Service has considered its ability to provide a maximum degree of effective and regular service. 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. The Postal Service estimates total annual savings of \$42,134. It derives this figure by summing the following costs: postmaster salary and benefits \$40,707, and annual lease costs \$6,300, minus the cost of replacement service \$4,873. Final Determination at 9.

The Public Representative asserts that this estimate of savings is inflated. He states that the Postal Service will not save the compensation of a postmaster because the last postmaster retired in 2009, and a new postmaster has not been appointed. The post office has been run by a temporary officer-in-charge. PR Reply Brief at 10.

The Public Representative raises concerns regarding the effect that retaining versus terminating an OIC, and use of a postmaster versus an OIC salary has on cost savings estimates. The Commission finds that taking both concerns into account likely would reduce, but not eliminate entirely, potential cost savings. Future discontinuance determinations should indicate more clearly the status of the OIC, i.e., as a non-career employee or as a temporary assignment for a career employee.

The Public Representative further asserts that there are new costs associated with closing the Lake Creek post office. For example, nearby post offices may have

their workloads increased if customers visit them rather than conduct business with the rural carrier. *Id.* at 10-11. If post office box customers at Lake Creek are paying fees, that revenue will be lost. The Postal Service did not take into account of the one-time cost of removing postal-owned equipment from the Lake Creek post office. The Public Representative attempts to estimate reductions to cost savings. *Id.* at 12.

The magnitude of these reductions is small relative to the savings estimated by the Postal Service (approximately \$2,100 vs. \$30,500) and would not significantly affect the estimated savings.

The Commission finds that the Postal Service has considered economic savings.

Effect on employees. The Public Representative asserts that the Postal Service gave no serious consideration to the effect on employees of closing the Lake Creek post office. He cites inconsistent statements in the Administrative Record that have not been reconciled. Near the beginning of the Administrative Record, it is stated that the employee working at Lake Creek will move to another post office. However, the Final Determination states that the employee may be separated. The Public Representative interprets these two statements to mean that the Postal Service does not know what will happen to the employee. If the Postal Service cannot say what the effect on the employee will be, then it also cannot give consideration to that unknown effect. PR Comments at 9-10.

As a practical matter, the Postal Service appears not to know precisely what final accommodations will be made. However, the Commission finds that the Postal Service has considered the effect on employees.

Section 101(b). Section 101(b) prohibits closing any small post office solely for operating at a deficit. The Public Representative contends that the Postal Service's closing of the Lake Creek post office violates section 101(b) because none of the reasons given for the closing is supported by substantial evidence. The Public Representative thus concludes that the real reason for closing the Lake Creek post office is that it loses money. *Id.* at 16-17. This conclusion rests, in turn, on the

assertion that each of the Postal Service's conclusions concerning the statutory factors is unsupported by substantial evidence. *Id.* at 17.

Having examined the record, the Commission is not prepared to conclude that the Postal Service's determination violates section 101(b). In addition to considering workload at the Lake Creek post office (revenues declining and averaging only 16 retail transactions per day), the Postal Service took into account other factors. The postmaster position is vacant, and growth in the area appears to have been minimal in recent years. Regular and adequate postal services will be provided to customers by the Cooper post office.

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, the Postal Service's determination to close the Lake Creek, Texas, post office is affirmed.

It is ordered:

The Postal Service's determination to close the Lake Creek, Texas, post office is affirmed.

By the Commission.

Ruth Ann Abrams
Acting Secretary

CONCURRING OPINION BY CHAIRMAN GOLDWAY

While I concur with my colleagues that the Postal Service will continue to provide an acceptable level of service to the citizens of Lake Creek, Texas, I believe that the Postal Service may not have presented a fully balanced cost/benefit analysis for closing this location, similar to the concern noted by Commissioner Langley in another recent appeal (Docket No. A2011-32—Chillicothe, Iowa) and the Public Representative in this case. Specifically, the Postal Service should take into consideration that a non-career postmaster relief (PMR) has been in charge of this facility since early 2009, not an EAS-11 postmaster, and reflect the PMR's salary and benefits in its cost savings analysis.

In addition, the Administrative Record does not provide legible data on the termination date of the lease for the facility. See Administrative Record, Item 15. The lease termination date is necessary to the record because it will affect whether the projected annual savings of \$6,300 are capturable during that time period. As a government entity, the Postal Service should ensure that its cost/benefit analysis accurately identifies capturable cost savings.

Ruth Y. Goldway