

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

West Elkton Post Office
West Elkton, Ohio

Docket No. A2011-53

ORDER AFFIRMING DETERMINATION
(Issued December 12, 2011)

I. INTRODUCTION

On August 23, 2011, Jessica Compston, Richard Bair, and John and Sandra Prater (Petitioners) filed petitions with the Commission seeking review of the Postal Service's Final Determination to close the West Elkton, Ohio post office (West Elkton post office).¹ Between September 1 and September 15, 2011, the Commission

¹ Petition for Review received from Jessica Compston regarding the West Elkton, OH Post Office 45070, August 23, 2011 (Compston Petition); Petition for Review received from Richard Bair regarding the West Elkton, OH Post Office 45070, August 23, 2011 (Bair Petition); Petition for Review received from John and Sandra Prater regarding the West Elkton, OH Post Office 45070, August 23, 2011 (Prater Petition).

received six additional petitions for review.² After reviewing the record in this proceeding, the Commission affirms the Final Determination to close the West Elkton post office.

II. PROCEDURAL HISTORY

On August 25, 2011, the Commission established Docket No. A2011-53 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.³

On September 2, 2011, the Postal Service filed the Administrative Record with the Commission.⁴ Six petitioners filed participant statements supporting their petitions.⁵ On October 17, 2011, the Postal Service filed comments requesting that the Commission affirm the Final Determination to close the West Elkton post office.⁶

² Appeal on Closing received from Jeanne Pierson regarding the West Elkton, OH Post Office 45070, September 1, 2011; Petition for Review received from Robert Eckhardt regarding the West Elkton, OH Post Office 45070 (Eckhardt Petition); Petition for Review received from Richard and Julia Steele regarding the West Elkton, OH Post Office 45070 (Steele Petition); Petition for Review received from Joseph L. Pierson regarding the West Elkton, OH Post Office 45070 (Joseph Pierson Petition), all filed September 2, 2011; Petition for Review received from William E. Bates, Mayor of West Elkton, OH, (Bates Petition); Petition for Review received from Fred Specht regarding the West Elkton, OH Post Office 45070 (Specht Petition), both filed September 15, 2011.

³ Order No. 826, Notice and Order Accepting Appeal and Establishing Procedural Schedule, August 25, 2011.

⁴ The Administrative Record is attached to the United States Postal Service Notice of Filing, September 2, 2011 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Close the West Elkton, OH Post Office and Extend Service by Rural Route Service (Final Determination).

⁵ Participant Statement received from Richard Bair, September 20, 2011 (Bair Statement); Participant Statement received from Joseph Pierson, September 21, 2011 (Joseph Pierson Statement); Participant Statement received from Robert Eckhardt, September 21, 2011 (Eckhardt Statement); Participant Statement received from Jeanne Pierson, September 23, 2011 (Jeanne Pierson Statement); Participant Statement received from Jessica Compston, September 27, 2011 (Compston Statement); Participant Statement received from William E. Bates, Mayor of West Elkton, September 27, 2011 (Bates Statement).

⁶ United States Postal Service Comments Regarding Appeal, October 17, 2011 (Postal Service Comments).

On December 1, 2011, the Public Representative filed comments.⁷ On December 8, 2011, the Postal Service filed a Memo to the Record to clarify and correct statements in the record regarding postings of the proposal and the Final Determination.

III. BACKGROUND

The West Elkton post office provides retail postal services to the community and post office box service to 136 customers. Administrative Record, Item No. 15. No delivery customers were served through this post office. Final Determination at 2. The West Elkton post office, an EAS-11 level facility, has retail access hours of 8:00 a.m. to noon and 1:00 p.m. to 4:30 p.m., Monday through Friday, and 8:00 a.m. to noon on Saturday. The lobby is accessible 24 hours a day, Monday through Saturday. *Id.*

The postmaster position became vacant when the West Elkton postmaster retired on July 5, 2008.⁸ A non-career officer-in-charge (OIC) was installed to operate the office. *Id.* at 8. Retail transactions averaged 21 transactions daily (21 minutes of retail workload). Office receipts for the last 3 years were \$46,897 in FY 2008; \$40,453 in FY 2009; and \$34,891 in FY 2010. There were no permit or postage meter customers. *Id.* at 2. By closing this post office, the Postal Service anticipates savings of \$42,008 annually. *Id.* at 8.

After the closure, retail services will be provided by the Middletown post office located approximately 10 miles away.⁹ Retail service will also be available at the Somerville post office located approximately 8 miles away.¹⁰ Delivery service will be provided by rural carrier through the Middletown post office. The Middletown post office

⁷ Public Representative Comments, December 1, 2011 (PR Comments).

⁸ *Id.* Petitioners Eckhardt and Joseph Pierson assert that the postmaster did not retire but transferred. Eckhardt Statement at 2; Joseph Pierson Statement at 2.

⁹ Final Determination at 2. Petitioner Specht asserts that the distance is actually 12.4 miles. Specht Petition at 2. MapQuest estimates the driving distance between the West Elkton and Middletown post offices to be approximately 12 miles (18 minutes driving time).

¹⁰ Final Determination at 3, Concern No. 11. Petitioner Specht asserts that the distance is actually 5.9 miles. Specht Petition at 2. MapQuest estimates the driving distance between the West Elkton and Somerville post offices to be approximately 8 miles (11 minutes driving time).

is an EAS-22 level office, with retail hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, and 8:00 a.m. to 11:30 a.m. on Saturday. One-hundred-fifty-six post office boxes are available. *Id.* at 2. The Postal Service will continue to use the West Elkton name and ZIP Code. *Id.* at 4, Concern No. 3.

IV. PARTICIPANT PLEADINGS

Petitioners. Petitioners oppose the closure of the West Elkton post office. They argue that the estimated cost savings from the closing are inaccurate because they are based on the salary and benefits of a postmaster rather than the OIC who operates the post office and fail to account for the full expenses of rural delivery. Petitioners discuss the inconvenience that they (especially senior citizens) will experience from having to travel to the Middletown post office or wait outdoors for the carrier to obtain postal services, the vandalism of rural mailboxes, the potential theft and security issues involved with purchasing services through a rural carrier, the delays in receiving mail from a rural carrier rather than at the post office, the rudeness and unhelpfulness of window clerks at larger post offices, residents' lack of access to the internet for ordering stamps, the fate of the OIC, and the failure of the current rural carrier to collect outgoing mail or to supply stamps in exchange for cash left in a rural mailbox. They assert that the West Elkton post office is being closed solely for operating at a deficit. They state that some reasons given for closing West Elkton (e.g., lack of parking, postmaster vacancy) would apply to other nearby post offices that are not being closed. They suggest reducing the hours that the post office is open.

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the West Elkton post office. Postal Service Comments at 14. The Postal Service states the appeals raise four main issues: (1) the effect on postal services, (2) the impact on the community, (3) the effect on employees, and (4) the economic savings expected to result from discontinuing the West Elkton post office. *Id.* at 2. The Postal Service asserts that it has given these and other statutory issues serious consideration. *Id.*

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

- the postmaster vacancy;
- a minimal workload and declining office revenue;
- minimal impact on the community; and
- expected financial savings.

Id. at 12. The Postal Service contends that it will continue to provide regular and effective postal services to the West Elkton community when the Final Determination is implemented. *Id.*

Public Representative. The Public Representative states that the Postal Service sought input from the public. PR Comments at 3. She asserts that the Postal Service did not adequately respond to customer concerns about vandalism and security of rural mailboxes. *Id.* She asserts that the Postal Service should, in the interest of transparency, address more thoroughly concerns raised by Petitioners regarding a nearby post office that is remaining open despite similarities to the West Elkton office. *Id.* at 4. She also questions the amount of the estimated cost savings. *Id.* 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 post 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 post office. 39 U.S.C. § 404(d)(5).

The record indicates the Postal Service took the following steps in reaching its Final Determination. On March 30, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the West Elkton post office. A total of 168 questionnaires were distributed and 44 were returned. On April 11, 2011, the Postal Service held a community meeting at the West Elkton Fire Department to address customer concerns. Twenty-six customers attended. Final Determination at 2.

The Postal Service posted the proposal to close the West Elkton post office with an invitation for comments at the West Elkton and Middletown post offices for approximately 60 days, from May 7, 2011 through July 8, 2011. Administrative Record, Item No. 36 at 3. The proposal was also posted at the Middleton post office for approximately 60 days from May 6, 2011 to July 7, 2011.¹¹ The Final Determination was posted at the West Elkton and Middletown post offices on August 12, 2011. It will be removed when proceedings in this docket have concluded.¹²

¹¹ *Id.* at 5; see also December 8, 2011 Memo to the Record; ¶ 3.

¹² Administrative Record, Item No. 37 at 1; see also December 8, 2011 Memo to the Record; ¶ 1.

Based on a 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. West Elkton, Ohio is an incorporated village located in Preble County, Ohio. The community is administered politically by a Mayor and Village Council.¹³ Police protection is provided by the West Elkton Police Department.¹⁴ Fire protection is provided by the West Elkton Fire Department. Administrative Record, Item No. 16. The community is comprised of relatively young people (median age 34.5 years) and those who work in local businesses or commute to work in nearby communities.¹⁵ Residents may travel to nearby communities for other supplies and services. See generally Administrative Record, Item No. 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal Service met with members of the West Elkton community and solicited input from the

¹³ The record indicates that West Elkton is unincorporated. Administrative Record, Item No. 30; Final Determination at 7. However, West Elkton is a "statutory village," incorporated in 1856. See Excel file City_VillageWEB.csv downloadable from the website of the Ohio Secretary of State, <http://www.sos.state.oh.us/SOS/publications.aspx>, at link *Cities and Villages*.

¹⁴ Final Determination at 7. According to a local newspaper report, the West Elkton Police Department was eliminated as of July 1, 2011, and police protection is now provided by the Preble County Sheriff. *West Elkton abolishes police department*, Eaton Register-Herald, June 29, 2011. The West Elkton Police phone number (937-787-4282) has been disconnected.

¹⁵ Final Determination at 7. A questionnaire response from Petitioner Specht, a Village Councilman, asserts that the community is comprised mainly of retired or low income persons. Administrative Record, Item No. 22 at 42C.

community with questionnaires. In questionnaire responses and at the community meeting, customers raised concerns regarding the effects of the closure. Their concerns and the Postal Service's responses are summarized in the Administrative Record. Administrative Record, Item Nos. 23, 25.

Petitioners do not explicitly raise the issue of the effect of the closing on the West Elkton community although the issue was raised in questionnaire responses and at the community meeting. The Postal Service states that it considered this issue and explains that the community identity will be preserved by continuing the use of the West Elkton name and ZIP Code. Postal Service Comments at 10.

The Commission finds that the Postal Service has taken the effect on the community into account.

Effect on employees. The Postal Service states that the West Elkton postmaster retired on July 5, 2008, and that an OIC has operated the West Elkton post office since then. Postal Service Comments at 13; Final Determination at 2. Several Petitioners express concern that the OIC will lose her job. Joseph Pierson Statement at 2; Eckhardt Statement at 2; Eckhardt Petition at 1; Compston Petition at 1; Steele Petition at 1. The Postal Service states that after the Final Determination is implemented, the temporary OIC will either be reassigned or separated and that no other Postal Service employee will be adversely affected. Postal Service Comments at 13.

The Commission finds that the Postal Service considered the possible effects of the closing on the OIC when it stated that the OIC may be reassigned or separated. The Commission concludes that this satisfies the Postal Service's obligation to consider the effect of the closing on employees at the West Elkton post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

Effective and regular service. The Postal Service contends that it has considered the effect the closing will have on postal services provided to West Elkton customers. Postal Service Comments at 5-8. The Postal Service asserts that customers of the closed West Elkton post office may obtain retail services at the Middletown post office located 10 miles away (Final Determination at 2; *but see* n.9) or at the Somerville post

office located 8 miles away. Delivery service will be provided by rural carrier through the Middletown post office. The 136 post office box customers may obtain Post Office Box service at the Middletown post office, which has 156 boxes available. Postal Service Comments at 8.

For customers choosing not to travel to the Middletown or Somerville post offices, the Postal Service explains that retail services will be available from the carrier. The Postal Service adds that it is not necessary to meet the carrier for service since most transactions do not require meeting the carrier at the mailbox. *Id.* at 6.

Petitioners argue that rural delivery service will not provide the West Elkton community with a maximum degree of effective and regular services. In particular, they express concerns about ongoing vandalism of mailboxes,¹⁶ the inconvenience that they (especially senior citizens) will experience from having to travel to a distant post office or to wait outdoors for the carrier in order to obtain postal services,¹⁷ the delays in receiving mail from a rural carrier rather than at the post office,¹⁸ the potential theft and security issues involved with purchasing services through a rural carrier,¹⁹ the rudeness and unhelpfulness of window clerks at larger post offices,²⁰ residents' lack of access to the internet for ordering stamps,²¹ and the failure of the current rural carrier to collect outgoing mail or supply stamps in exchange for cash left in a rural mailbox.²² Customers propose reducing hours on weekdays and closing on Saturday.²³

¹⁶ Joseph Pierson Statement at 1; Eckhardt Statement at 1; Bates Statement at 2; Eckhardt Petition at 1.

¹⁷ Eckhardt Statement at 2; Bates Petition at 1; Bair Petition at 1; Joseph Pierson Petition at 1; Prater Petition at 1; Compston Petition at 1; Steele Petition at 1.

¹⁸ Joseph Pierson Statement at 1; Compston Statement at 2; Compston Petition at 1.

¹⁹ Joseph Pierson Statement at 1; Eckhardt Statement at 1; Eckhardt Petition at 1.

²⁰ Eckhardt Statement at 2; Compston Petition at 1.

²¹ Joseph Pierson Statement at 1; Eckhardt Statement at 2; Bair Statement at 3; Eckhardt Petition at 1.

²² Compston Statement at 2; Compston Petition at 1.

²³ Specht Petition at 1.

The Postal Service responds that it considered Petitioners' concerns about mail security by stating that customers may place a lock on their mailboxes as a security measure. Postal Service Comments at 7. It also states that additional mail security concerns can be addressed by installing cluster box units. *Id.* Final Determination at 2, Concern No. 1. Customers can order stamps and arrange package pickup by phone through an 800 telephone number,²⁴ which addresses customers' lack of computer access. The Postal Service advised customers concerned about damage to install a mailbox "on a long, swinging, horizontal pipe...." *Id.* at 5, Concern No. 21. The Postal Service asserts that rural "[c]arrier service is beneficial to many senior citizens and to those who may face special challenges because they do not have to travel" to a distant post office. Postal Service Comments at 6. With respect to later delivery of mail, the Postal Service explained that it tries to "deliver the greatest amount of mail at the earliest possible hour." Final Determination at 4, Concern No. 15. Even with reduced hours of operation, the Postal Service claims that "[c]arrier service is more cost-effective than maintaining a postal facility and postmaster position." *Id.* at 3, Concern Nos. 9-10.

The Public Representative asserts that the Postal Service did not properly address customer concerns regarding vandalism of rural mailboxes. PR Comments at 3. The Postal Service, as part of the standard procedure for investigating a possible closure, inquired of the Inspection Service whether it had received reports of mailbox theft or vandalism around West Elkton. One incident was reported. Administrative Record, Item No. 14. However, the Post Office Survey Sheet indicates that none had been reported to the postmaster/OIC. *Id.* Item No. 15. There is no indication that the Postal Service inquired of local law enforcement, which is a procedure required by section 221f of Postal Service Handbook PO-101.²⁵ Customers brought incidents of vandalism to the attention of the Postal Service after the Inspection Service and the OIC made their reports. The Public Representative argues that the Postal Service's

²⁴ Postal Service Comments at 7.

²⁵ See Docket No. N2009-1, Library Reference USPS-LR-N2009-1/3, July 27, 2009.

standard response to concerns of vandalism is insufficient. At a minimum, she states, the Postal Service should inform customers how to report vandalism to the Postal Service. The standard response to a customer concern about vandalism is that the Postal Service has received no reports of theft or vandalism. See Administrative Record, Item No. 25 at 2-3, Concern No. 20. To address issues related to vandalism, the Postal Service indicates that it will be proposing to have cluster box units installed at a central location for mail security and easy customer access. Final Determination at 2.

The Public Representative joins Petitioners in questioning the Postal Service's selection of the West Elkton post office from among plausible candidates for closing. PR Comments at 4. Petitioners point out that two nearby offices lack parking and that one of them has a postmaster vacancy and is more dilapidated than West Elkton. *E.g.*, Jeanne Pierson Statement at 1-2; Bates Statement at 2; Bair Statement at 1. The Public Representative urges the Postal Service to be more transparent in responding to customer questions about how other post offices that seem comparable avoid closure.

The Postal Service indicated that the West Elkton post office suffers from several deficiencies, including no handicap ramp or counter, high utility bills, an unstable dispatch floor, and lack of parking. *Id.* at 2; see also Administrative Record, Item No. 6 at pages A and B.

Based on a review of the record, the Commission concludes that the Postal Service has attempted to consider and respond to the issues raised by customers concerning effective and regular service.

Economic savings. The Postal Service estimates total annual savings of \$42,008. It derives this figure by summing the following costs: postmaster salary and benefits (\$44,279) and annual lease costs (\$4,392) then subtracting the cost of replacement service (\$6,663). Final Determination at 8.

Petitioners assert that the estimated savings are inaccurate. Jeanne Pierson Statement at 2; Compston Statement at 1; Specht Petition at 2. They note that the amounts saved are based on the salary and benefits of a postmaster rather than the OIC, who receives a lower salary and no benefits. *Id.* The Postal Service responds that

discontinuing the West Elkton post office would eliminate a permanent career position, thereby allowing the Postal Service to avoid the cost of filling that position in the future. Postal Service Comments at 11.

The Public Representative contends that the Postal Service may not realize the full amount of the estimated cost savings because the Postal Service does not include possible expenses associated with lease termination. The lease runs through 2015. PR Comments at 5.

The Commission has previously stated that the Postal Service should not compute savings based on compensation costs that are not eliminated by the discontinuance of a post office.²⁶ The West Elkton postmaster retired in July 2008. Final Determination at 2; *but see* n.8. The office had since been run by an OIC who, upon discontinuance of the post office, may be separated from the Postal Service. *Id.* at 8. On paper, the postmaster position and the corresponding salary will be eliminated. However, even if the presumably lower salary of the OIC were substituted, it appears that closing would still provide a net, if lower, financial benefit to the Postal Service.

Upon review of the record, the Commission concludes that the Postal Service has adequately considered the economic impact of its decision.

Section 101(b). Section 101(b) prohibits closing any small post office solely for operating at a deficit. Two Petitioners allege that the Postal Service is closing the West Elkton post office solely for economic reasons. Jeanne Pierson Statement at 1; Compston Statement at 1. The Postal Service responds that it took factors other than financial savings into account when deciding to close the office. Postal Service Comments at 12. To be sure, economics plays a role in the Postal Service's decision. However, the Commission is not prepared to conclude that the Postal Service's determination violates section 101(b). In addition to considering workload at the West

²⁶ 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. A2011-19, Order No. 912, Order Affirming Determination, October 20, 2011; Docket No. N2009-1, Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches, March 10, 2010.

Elkton post office (revenues declining and averaging only 21 retail transactions per day), the Postal Service took into account the postmaster vacancy, the minimal impact on the community, and expected financial savings. In addition, it considered the alternate delivery and retail options available to customers. *Id.*

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 West Elkton post office is affirmed.

It is ordered:

The Postal Service's determination to close the West Elkton post office is affirmed.

By the Commission.

Ruth Ann Abrams
Acting Secretary

CONCURRING OPINION BY COMMISSIONER LANGLEY

Although the Postal Service adequately considered all requirements of 39 U.S.C. § 404(d), I do not believe the Postal Service presented a fully balanced cost/benefit analysis for the closing of this location. The Postal Service should have taken into consideration that a non-career postmaster relief (PMR) has been in charge of this facility since July 2008, not an EAS-22 postmaster, and reflect the PMR's salary and benefits in its cost savings analysis.

In addition, because the current lease does not terminate until June 30, 2015, the Postal Service should note that any savings from the lease will not be realized for 3-1/2 years. As a government entity, the Postal Service should ensure that its cost/benefit analysis accurately identifies capturable cost savings and does not overstate savings.

Nanci E. Langley

DISSENTING OPINION BY CHAIRMAN GOLDWAY

I call for a remand because there are too many factual errors in the Administrative Record and because the receiving facility is too far from West Elkton.

The Administrative Record contains statements with incorrect distance mileage to the receiving post office. The Administrative Record also incorrectly identifies the village's incorporation status. There are questionable or erroneous statements about the record of vandalism to rural route boxes in the area. The procedures outlined in the Postal Service discontinuance handbook were not followed in regard to contacting local law enforcement agencies.

The Administrative Record also claims savings from the post office closing labor costs that are not justified. The Service has taken credit for reducing labor costs during the past six years and some of these cost savings result from not filling postmaster vacancies while installing less costly postmaster replacements or officers-in-charge in place of postmasters. Further, the cost for the building lease (\$4,392 per year) is not taken into consideration in the economic calculation, though the Administrative Record reflects that the lease term runs until June 2015 and does not contain a 30-day termination clause. While the Commission staff may have concluded that there may be some small savings as a result of closing West Elkton, it is not the Commission's role to correct the record in those proceedings. The onus falls on the Postal Service to be accurate.

As a result of these discrepancies in the Administrative Record, the Postal Service has neither adequately considered the effect on the community, nor adequately considered economic savings, nor shown it will be providing adequate or reasonable comparable service to the community at the designated receiving facility. The Postal Service closing decision is therefore arbitrary and capricious.

Ruth Y. Goldway