

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

Enloe Post Office
Enloe, Texas

Docket No. A2011-54

ORDER REMANDING DETERMINATION

(Issued December 13, 2011)

I. INTRODUCTION

On August 24, 2011, Deloris Gillean (Petitioner Gillean) and Jerry and Susan Carrington (Petitioner Carrington) filed petitions with the Commission seeking review of the Postal Service's Final Determination to close the Enloe, Texas post office (Enloe post office).¹ A third appeal was filed on August 25, 2011 by Jack and Myra Webb (Petitioner Webb).² After reviewing the record in this proceeding, the Commission remands the Final Determination to close the Enloe post office.

¹ Petition for Review received from Deloris Gillean regarding the Enloe, TX Post Office, August 24, 2011 (Gillean Petition); Petition for Review received from Jerry and Susan Carrington regarding the Enloe, TX Post Office, August 24, 2011 (Carrington Petition).

² Petition for Review received from Jack and Myra Webb regarding the Enloe, TX Post Office, August 25, 2011 (Webb Petition).

II. PROCEDURAL HISTORY

On August 25, 2011, the Commission established Docket No. A2011-54 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 8, 2011, the Postal Service filed the Administrative Record with the Commission.⁴ On December 2, 2011, the Postal Service filed a notice of errata to the Administrative Record.⁵

On October 5, 2011, Petitioner Gillean filed a Participant Statement opposing closure of the Enloe post office.⁶ The Postal Service filed comments on October 18, 2011.⁷ Petitioner Gillean filed a reply brief on November 9, 2011.⁸ On December 7, 2011, the Public Representative filed comments.⁹

III. BACKGROUND

The Enloe post office provides retail postal services and service to 72 post office box customers. Final Determination at 2. No delivery customers are served through

³ Order No. 827, 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 8, 2011 (Administrative Record). The Administrative Record includes, as Item No. 41, the Final Determination to Close the Enloe, TX Post Office and Extend Service by Rural Route Service (Final Determination).

⁵ United States Postal Service Notice of Filing Corrected Administrative Record-Errata, December 2, 2011. References in this order to the Administrative Record refer to the Administrative Record as corrected.

⁶ Participant Statement received from Deloris Gillean, October 5, 2011 (Gillean Statement).

⁷ United States Postal Service Comments Regarding Appeal, October 18, 2011 (Postal Service Comments).

⁸ Reply Brief in Response to Answering Brief, November 9, 2011 (Gillean Reply Brief).

⁹ Comments of the Public Representative, December 7, 2011. Under the procedural schedule adopted by Order No. 827, reply comments were due November 2, 2011. Order No. 827 at 5. The Public Representative's comments are 5 weeks out-of-time and are not accompanied by a motion for late acceptance. In the absence of any explanation for this delay and without any showing to support acceptance at this late date, the Public Representative's comments are hereby rejected.

this office. *Id.* There is one postage meter customer. *Id.* Administrative Record, Item No. 18. The Enloe post office, an EAS-11 level facility, has retail access hours of 8:30 a.m. to 4:00 p.m., Monday through Friday, and 8:30 a.m. to 10:00 a.m. on Saturday. *Id.* at 2. Lobby access hours are 24 hours, Monday through Saturday. *Id.*

The postmaster position became vacant on January 3, 2009, when the Enloe postmaster retired. *Id.* A non-career officer-in-charge (OIC) was installed to operate the office. *Id.* Retail transactions averaged 24 transactions daily (24 minutes of retail workload). *Id.* Office receipts for the last 3 years were \$21,458 in FY 2008; \$14,843 in FY 2009; and \$13,001 in FY 2010. *Id.* By closing this office, the Postal Service anticipates savings of \$40,841 annually. *Id.* at 9.

After the closure, retail services will be provided by the Cooper post office located approximately 4 miles away.¹⁰ *Id.* at 2. Delivery service will be provided by rural carrier through the Cooper post office. *Id.* The Cooper post office is an EAS-18 level office, with retail hours of 8:00 a.m. to 4:00 p.m., Monday through Friday. *Id.* Sixty-two post office boxes are available. *Id.* The Postal Service will continue to use the Enloe name and ZIP Code. *Id.* at 7-8, Concern No. 1.

III. PARTICIPANT PLEADINGS

Petitioners. Petitioners Gillean and Webb raise similar issues in their appeals: closing the Enloe Post Office potentially will be devastating to the community by making it difficult to attract new businesses; it will be a hardship to drive 10 miles round trip to the Cooper post office; and the economic savings study does not mention the lost revenue from 72 post office boxes or lost window service revenue. Gillean Petition at 1; Webb Petition at 1. Petitioner Gillean suggests that earlier notification of the potential closing would have permitted the generation of community support to rent more post office boxes and increase patronage. Petitioner Webb suggests reducing costs with

¹⁰ *Id.* at 2. MapQuest estimates the driving distance between the Enloe and Cooper post offices to be approximately 5.0 miles (7 minutes driving time).

shorter retail hours by closing on Saturday or opening only 4 days per week. Petitioner Carrington is concerned about subjecting medicines left in mailboxes to heat and theft and the loss to the community if the Enloe post office is closed.

Petitioner Gillean's Statement asserts that because the outstanding lease has no termination clause money will be needed to settle early termination of the lease. This cost was not accounted for in the Postal Service's economic savings study.

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the Enlow post office. Postal Service Comments at 4-5. The Postal Service believes the appeals raises three main issues: (1) the effect on postal services, (2) the impact on the Enloe community, and (3) the economic savings expected to result from discontinuing the Enloe post office. *Id.* at 2. The Postal Service asserts that it has given these and other statutory issues serious consideration and concludes that the determination to discontinue the Enloe post office should be affirmed. *Id.* at 6-11.

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

- the postmaster vacancy;
- a minimal workload and declining office revenue;
- a variety of other delivery and retail options (including the convenience of rural delivery and retail service);
- minimal impact on the community; and
- expected financial savings.

Id. at 5. The Postal Service contends that it will continue to provide regular and effective postal services to the Enloe community when the Final Determination is implemented. *Id.*

The Postal Service also asserts that it has followed all statutorily required procedures and addresses the concerns raised by Petitioner regarding the effect on postal services, effect on the Enloe community, economic savings, and effect on postal employees. *Id.* at 12.

I. 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).

The record indicates the Postal Service took the following steps in reaching its Final Determination. On February 14, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Enloe post office. Final Determination at 2. A total of 72 questionnaires were distributed and 64

were returned. *Id.* On February 23, 2011, the Postal Service held a community meeting to address customer concerns. *Id.* Twenty-seven customers attended. *Id.*

The Postal Service posted the proposal to close the Enloe post office with an invitation for comments at the Enloe, and Cooper post offices for approximately 60 days, from March 30, 2011 through May 31, 2011. *Id.* 2. The Final Determination was posted at the Enloe post office for approximately 30 days, from July 25, 2011 through August 27, 2011. *Id.* at 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. Enloe, Texas is an unincorporated community located in Delta County, Texas. Final Determination at 7. The community is administered politically by the Delta County Commissioners & Judge. *Id.* Police protection is provided by the Delta County Sheriff. *Id.* Fire protection is provided by the Enloe Volunteer Fire Department. *Id.* The community is comprised of retirees, commuters, self employed, farmers and ranchers. *Id.* Residents may travel to nearby communities for other supplies and services. *Id.* 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 community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to close the post office, customers raised concerns regarding the effect of the closure on the community.

Their concerns and the Postal Service's responses are summarized in the Final Determination. Final Determination at 7-8.

The effect on the community and the substantial role in community affairs played by the local post office were considered. The community identity is preserved by maintaining the Enloe name and ZIP Code. Final Determination at 8. The Postal Service recognizes that the loss of a retail outlet and a postmaster position in the community is a disadvantage of the closing, but that many retail services can be provided by the replacement carrier. Final Determination at 2, 7.

The Commission concludes the Postal Service has considered the effect upon the community of closing the Enloe post office and has complied with the requirement in 39 U.S.C. § 404(d)(A).

Effective and regular service. The Postal Service contends that it has considered the effect the closing will have on postal services provided to Enloe customers. Postal Service Comments at 3. Customers of the closed Enloe post office may obtain retail services at the Cooper post office located 4 miles away. Final Determination at 2. Delivery service will be provided by rural carrier through the Cooper post office. *Id.* The Enloe post office box customers may obtain Post Office Box Service at the Cooper post office, which has 62 boxes available. *Id.*

For customers choosing not to travel to the Cooper post office, the Postal Service explains that retail services will be available from the carrier. *Id.* at 5-6. 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 2.

The Postal Service also responds to objections that elderly and disabled do not have handicap accessibility at the Cooper post office. The Postal Service says the Cooper postmaster will take action to remedy the situation. Administrative Record, Item No. 25, Postal Concern #1, Postal Service Comments at 7. Customers will not need to travel to another post office for most retail services. Rural route carriers are able to handle most transactions, including the purchase of money orders and most special services such as certified, registered, Express Mail, delivery confirmation, signature

confirmation, and COD. The Stamps by Mail program is also available from the carrier. Final Determination at 6. In hardship cases, customers may arrange for special home delivery. *Id.* at 4. See also Postal Operations Manual (POM), § 631.42.¹¹

There is, however, one issue that the Postal Service has not adequately addressed, namely, whether the Cooper post office has enough post office boxes to satisfy the potential needs of the Enloe customers. There are 72 post office box customers at the Enloe post office. *Id.* at 2. The Cooper post office has 62 post office boxes available. *Id.* The Cooper post office was also the replacement post office for the Lake Creek, Texas post office, the closure of which has previously been affirmed by the Commission.¹² The Lake Creek post office had 28 post office box customers. *Id.* at 2. Together, the Lake Creek and Enloe post offices have 100 post office box customers, whereas the Cooper post office has only 62 available post office boxes. The only point at which the Postal Service addresses the adequacy of the number of post office boxes for Enloe customers is in its response to Concern No. 32 in the Final Determination. Concern No. 32 was whether the Cooper post office had enough post office boxes at the “Paris Post Office” for Enloe customers. Final Determination at 6. The Postal Service affirmed that it did. *Id.* However, the post office in Paris, Texas is a considerable distance from Enloe, Texas.¹³ Without a more complete explanation of how the closing of the Enloe post office will affect post office box customers, the Commission cannot conclude that the Postal Service has satisfied its obligation to consider whether the replacement service it proposes is effective and regular service, as required by 39 U.S.C. § 404(D)(2)(a)(iii).

¹¹ POM § 631.42 provides for consideration of changes in the mode of delivery where existing methods impose an extreme physical hardship on an individual customer. Approval is to be based on humanitarian and not economic criteria evaluated on the basis of the customer’s need and not denied because of increased operational costs or because a family member or other party may be available to receive mail for the customer. POM, Issue 9, July 2002.

¹² Docket No. A2011-52, Order No. 977, Order Affirming Determination, November 17, 2011.

¹³ MapQuest estimates the driving distance between the Enloe and Paris post offices to be approximately 20 miles (25 minutes driving time).

Economic savings. The Postal Service estimates closing the Enloe post office will yield an annual savings of \$40,841. *Id.* at 9. This savings is calculated as the sum of the postmaster salary of \$30,492, benefits of \$10,215, and rent of \$8,224, for a total annual cost of \$48,931. This total cost savings is offset by the estimated cost of replacement delivery service of \$8,090.

Petitioner Gillean asserts that the estimated savings are inaccurate. She notes that the amounts saved are based on the salary and benefits of a postmaster, not a future savings and not a verifiable cost. Gillean Reply Brief at 1; Participant Statement at 1.

Petitioner Gillean's Reply Brief also notes the lease has three years remaining and does not include a cancellation clause. Gillean Reply Brief at 1. This would reduce the estimated savings in rental expenses. The Petitioner points out the Postal Service's claim that an assignment clause in the lease could eliminate the cost of rent after closing is not a verifiable cost savings. *Id.* The Postal Service responds by arguing that the lease permits assignments, but that even if the lease is not assigned, continued payment would only reduce, but would not eliminate, economic savings.¹⁴ *Id.*

Petitioners Gillean and Webb also note that the Postal Service does not estimate the loss of post office box revenue from the current 72 post office box customers who will have rural route delivery service available. Gillean Petition at 1; Webb Petition at 1.

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.¹⁵ The Enloe postmaster retired on January 3, 2009. Final Determination at 9. The non-career OIC may be separated from the Postal

¹⁴ The Postal Service alludes to the fact that the issue regarding absence of a cancellation clause from the lease was not raised in the Administrative Record. Postal Service Comments at 10. This issue was, however, properly raised by Petitioner Gillean because the lease information was included in the Administrative Record and does not appear to have been made available to Petitioner until the Administrative Record was filed.

¹⁵ See, e.g., Docket No. A2011-16, Order No. 843, Order Affirming Determination, September 8, 2011.

Service. *Id.* 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.

Similarly, the inability to terminate the lease immediately is subject to mitigation if the lease is assigned. Even if it is not assigned, payment of rent during the remainder of the term would not eliminate savings. Likewise, the loss of post office box revenues will not eliminate all potential economic savings.

Upon review of the record in this proceeding, the Commission concludes that the Postal Service has satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(ii).

Effect on employees. The Postal Service asserts that the OIC may be separated from the Postal Service. No other employee will be adversely affected. Final Determination at 9. The Commission concludes that this satisfies the Postal Service's obligation to consider the effect of the closing on employees at the Enloe post office, as required by 39 U.S.C. § 404(d)(2)(A)(ii).

II. IV. CONCLUSION

Based on its review of the record before it, the Commission concludes that the Postal Service has failed to adequately consider all requirements of 39 U.S.C. § 404(d). Accordingly, its determination to close the Enloe post office is remanded.

It is ordered:

The Postal Service's determination to close the Enloe, Texas post office is remanded.

By the Commission.

Ruth Ann Abrams
Acting Secretary