

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

Fishers Landing Post Office
Fishers Landing, New York

Docket No. A2011-55

ORDER AFFIRMING DETERMINATION

(Issued December 16, 2011)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012”¹. The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2011 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* Lastly, the Postal

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011 (Notice).

Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On August 26, 2011, Michael Brayen (Petitioner) filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the Fishers Landing, New York post office (Fishers Landing post office).² The Final Determination to close the Fishers Landing post office is affirmed.

II. PROCEDURAL HISTORY

On August 30, 2011, the Commission established Docket No. A2011-55 to consider the appeal, designated a Public Representative, and directed the Postal Service to file the Administrative Record and any responsive pleadings.³

On September 12, 2011, the Postal Service filed the Administrative Record with the Commission.⁴ The Postal Service also filed comments requesting that the Commission affirm its Final Determination.⁵

Petitioner filed a letter docketed September 15, 2011 which included the signatures of 114 concerned citizens opposed to closing the Fishers Landing post office.⁶ Petitioner thereafter filed a Participant Statement.⁷

² Petition for Review received from Michael Brayen regarding the Fishers Landing, New York Post Office 13641, August 26, 2011 (Petition).

³ Order No. 830, Notice and Order Accepting Appeal and Establishing Procedural Schedule, August 30, 2011.

⁴ The Administrative Record is attached to the United States Postal Service Notice of Filing, September 12, 2011 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Close the Fishers Landing Post Office and Extend Service by Rural Route Service (Final Determination).

⁵ United States Postal Service Comments Regarding Appeal, October 26, 2011 (Postal Service Comments). The Postal Service Comments were accompanied by a Motion of the United States Postal Service for Late Acceptance of Comments Regarding Appeal, October 26, 2011. The motion of the Postal Service is granted.

III. BACKGROUND

The Fishers Landing post office provides retail post service and service to 69 post office box customers. Final Determination at 2. No delivery customers are serviced through this office. *Id.* The Fishers Landing post office, an EAS-11 level facility, has retail access hours from 8:00 a.m. to 5:00 p.m., Monday through Friday, and 8:00 a.m. to 10:00 p.m. on Saturday. *Id.* at 2.

The postmaster position became vacant on May 2, 2008 when the postmaster retired. *Id.* An officer-in-charge (OIC) was installed to operate the post office. *Id.* Retail transactions averaged 13 transactions daily (15 minutes of workload per day). *Id.* Office receipts for the last 3 years were \$24,274 in FY 2008; \$26,990 in FY 2009; and \$23,120 in FY 2010. *Id.* There are no permit mailers or postage meter customers. *Id.* By closing this post office, the Postal Service anticipates savings of \$35,948 annually. *Id.* at 13.

After the closure, retail services will be provided by the Clayton post office located approximately 5 miles away.⁸ Delivery service will be provided by rural carrier through the Clayton post office. *Id.* The Clayton post office is an EAS-18 level post office, with retail hours of 9:00 a.m. to 12:00 p.m., Monday through Friday, and 1:00 a.m. to 4:30 p.m. on Saturday. *Id.* Ninety-seven post office boxes are available. *Id.* The Postal Service will continue to use the Fishers Landing name and ZIP Code. *Id.* at 9.

On April 15, 2011, the Postal Service distributed questionnaires regarding the possible change in service at the Fishers Landing post office to post office box customers. Final Determination at 2. Questionnaires were also available over the counter for retail customers. A total of 84 questionnaires were distributed and 47 were

⁶ Letter from Petitioner Brayen regarding the Fishers Landing, NY Post Office 13641, September 15, 2011.

⁷ Participant Statement from Michael Brayen, et al., September 30, 2011 (Brayen Statement).

⁸ *Id.* at 13. MapQuest estimates the driving distance between the Fishers Landing and Clayton post offices to be approximately 6.07 miles (10 minutes driving time).

returned. On April 29, 2011, the Postal Service held a community meeting at the Fishers Landing post office lobby to address customer concerns. Forty-three customers attended. *Id.*; Administrative Record, Item No. 24.

IV. PARTICIPANT PLEADINGS

Petitioner. Petitioner contends that the Fishers Landing post office should not be closed. Petitioner asserts that closing the Fishers Landing post office will constitute an inconvenience and loss of a community meeting place. Petition at 2. Petitioner goes on to state that the Postal Service improperly considered the economic savings resulting from the Fishers Landing post office closure. *Id.* at 3-4.

Postal Service. The Postal Service argues that the Commission should affirm its determination to discontinue the Fishers Landing post office. Postal Service Comments at 2, 11-12. The Postal Service states the Commission's notice listed issues raised by Petitioner as (1) the effect of closing on the community, and (2) the economic savings expected to result from discontinuing the Fishers Landing post office. The Postal Service also asserts it considered these issues as well as the effect on the provision of mailing services and the effect on employees. *Id.* at 2.

The Postal Service explains that its decision to close the Fishers Landing 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 available (including the convenience of rural delivery and retail service);
- low office revenue;
- minimal impact on the community; and
- expected financial savings.

See *Id.* at 5. The Postal Service contends that it will continue to provide regular and effective postal services to the Fishers Landing community when the Final

Determination is implemented. *Id. at* 11-12. 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, the Fishers Landing community, economic savings, and postal employees. *Id.*

V. 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 procedures 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 April 15, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Fishers Landing post office. Final Determination at 2. A total of 84 questionnaires were distributed and 47 were returned. *Id.* On April 29, 2011, the Postal Service held a community meeting at Fishers Landing to address customer concerns. *Id.* Forty-three customers attended. *Id.* Administrative Record, Item No. 24.

The Postal Service posted the revised proposal to close the Fishers Landing post office with an invitation for comments at the Fishers Landing and Clayton post offices for approximately 60 days, from May 13, 2011 through July 14, 2011. Administrative Record, Item Nos. 21, 32, 40. The Final Determination was posted at the same two post offices for approximately 30 days, from August 9, 2011 through September 10, 2011. *Id.* Item No. 48.

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 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. Fishers Landing is an unincorporated community located in Jefferson County, New York. Administrative Record, Item No. 18a. The community is administered politically by the Town of Orleans. Final Determination at 11. Police protection is provided by the New York State Police and fire protection is provided by the Fishers Landing Volunteer Fire Department. The community is comprised of retirees, self-employed, seasonal workers, and those who work in nearby local businesses and farm related business. *Id.* Residents may travel to nearby communities for other supplies and services. *See generally*, Administrative Record,

Item Nos. 22, 38 (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 Fishers Landing community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to close the Fishers Landing post office, customers raised concerns regarding the effect of the closure on the community. Their concerns and the Postal Service's responses to customers' concerns are summarized in the Final Determination. Final Determination at 2-12.

Petitioner raises a concern about the convenience of postal services after closure of the Fishers Landing post office. Petition at 1-2. The Postal Service has addressed Petitioner's concern and provided for Fishers Landing customers to continue to receive regular and effective service, stating that delivery and retail services will emanate from Clayton, but may also be provided without the need to travel to a post office. *Id.* at 9, 11. In addition to the delivery of accountable items and large packages, customers will be able to obtain retail services such as the purchasing of stamps, money orders, and other special services through the rural carrier. Final Determination at 9, 14; Postal Service Comments at 6.

Petitioner also contends that the Fishers Landing post office is an important social meeting place for the community. Petition at 2. The Postal Service has considered this claim and determined that the closure of Fishers Landing will not leave the community without alternative meeting locations, stating, "[r]esidents may continue to meet informally, socialize, and share information at the other businesses, churches and residences in the community-at-large." Postal Service Comments at 9; *see also* Administrative Record, Item No. 40 at 5. The Postal Service also considered the closure's effect on the Fishers Landing community identity. Customers will continue to use the city name and ZIP Code in their mailing address. Final Determination at 9.

The Postal Service has adequately considered the effect of the post office closing on the community.

Effect on employees. The Postal Service states that the Fishers Landing postmaster retired on May 2, 2008 and that an OIC has operated the Fishers Landing post office since then. *Id.* at 2. It asserts that after the Final Determination is implemented, the non-career postmaster relief may be separated from the Postal Service and that no other Postal Service employee will be adversely affected. *Id.* at 13. The Postal Service has satisfied its obligation to consider the effect of the closing on employees at the Fishers Landing post office as required by section 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 Fishers Landing customers. Postal Service Comments at 5-7. The Postal Service asserts that customers of the closed Fishers Landing post office may obtain retail services at the Clayton post office located 5 miles away. Final Determination at 2, 14. Delivery service will be provided by rural carrier through the Clayton post office. *Id.* Nonpostal services will also be provided by the Clayton post office. *Id.* at 11. The Fishers Landing post office box customers may obtain Post Office Box service at the Clayton post office, which has 97 boxes available. *Id.* at 14.

For customers choosing not to travel to the Clayton post office, the Postal Service explains that retail services will be available from the carrier. *Id.* at 2, 14. 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.*

The Postal Service has attempted to consider and respond to the issues raised by customers concerning effective and regular service to the citizens of Fishers Landing. 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. The Postal Service estimates total annual savings of \$35,948. Final Determination at 13. It derives this figure by summing the following costs: postmaster salary and benefits \$44,279 and annual lease costs \$4,200, minus the cost of replacement service \$12,531. *Id.* Petitioner asserts the Postal Service

improperly considered the economic savings. Petitioner admits the decline in Fishers Landing revenue, but he believes economic strategies will alleviate the Postal Service's annual economic losses. Petition at 3-4; Brayen Statement at 1, ¶ 2. The Postal Service considered alternatives to closure such as cutting back Fishers Landing's hours of operation, but determined that closure of the facility and implementation of the rural carrier service is more cost effective than maintaining the Fishers Landing post office and the postmaster position. Final Determination at 11, 14; Postal Service Comments at 10.

In addition, 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.⁹ The Fishers Landing postmaster retired on May 2, 2008. Final Determination at 13. The non-career OIC may be separated from the Postal 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.

The Postal Service has satisfied the requirement to consider the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(ii) and (iv).

VI. CONCLUSION

The Postal Service has adequately considered all requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Fishers Landing post office is affirmed.

⁹ See, e.g., Docket No. A2011-16, Order No. 843, Order Affirming Determination, September 8, 2011.

It is ordered:

The Postal Service's determination to close the Fishers Landing, New York post office is affirmed.

By the Commission.

Ruth Ann Abrams
Acting Secretary

DISSENTING OPINION OF CHAIRMAN GOLDWAY

I dissent in this case.

The Administrative Record is inaccurate with regard to economic savings. As such, it reveals that the Postal Service has not adequately considered economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

It is not the statutory responsibility of the Postal Regulatory Commission to correct the record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data was in the record. Therefore, the decision to close should be remanded to the Postal Service to correct the record and present a more considered evaluation of potential savings.

Moreover, the Postal Service recently announced a moratorium on post office closings.

It is confusing and perhaps unfair to require some citizens whose post offices have received a discontinuance notice as of December 12, 2011 to gather evidence and pursue an appeal to the Commission, while others whose post offices were in the review process but had not yet received a discontinuance notice by December 12, 2011 have the respite of a five month moratorium.

The citizens of Fishers Landing, New York and their concerns regarding the loss of a neighborhood post office should be afforded the same opportunity to be heard and considered as the citizens of the approximately 3,700 post offices fully covered by the moratorium.

Ruth Y. Goldway

DISSENTING OPINION OF COMMISSIONER LANGLEY

The Postal Service did not adequately consider the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The Postal Service should take into consideration that a non-career postmaster relief (PMR) has been in charge of this facility since May 2008, not an EAS-11 postmaster, and reflect the PMR's salary and benefits in its cost savings analysis.

In addition, the current lease does not terminate until April 14, 2018, and does not have a 30-day termination clause. The Postal Service should note that any savings from the lease will not be realized for over six 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.

I find that the Postal Service's decision to discontinue operations at the Fishers Landing post office is unsupported by evidence on the record and thus, should be remanded.

Nanci E. Langley