

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

Gepp Post Office
Gepp, Arkansas

Docket No. A2011-60

ORDER REMANDING DETERMINATION

(Issued December 30, 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, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly,

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

the Postal 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 September 1, 2011, Kathy Adams (Petitioner Adams), on behalf of the Concerned Patrons of Gepp Post Office, filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the Gepp, Arkansas post office (Gepp post office).² Another petition for review was received from Mary Rivera (Petitioner Rivera), on behalf of the Committee to Save Gepp Post Office, on September 2, 2011.³ After reviewing the record in this proceeding, the Commission remands the Final Determination to close the Gepp post office.

II. PROCEDURAL HISTORY

On September 8, 2011, the Commission established Docket No. A2011-60 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.⁴

On September 14, 2011, the Postal Service filed the Administrative Record with the Commission.⁵ The Postal Service also filed comments requesting that the Commission affirm its Final Determination.⁶

² Appeal from Kathy Adams Regarding the Gepp, AR Post Office, September 1, 2011 (Adams Petition).

³ Petition for Review Received from Mary Rivera Regarding the Gepp, AR Post Office 72538, September 2, 2011 (Rivera Petition).

⁴ Order No. 841, Notice and Order Accepting Appeal and Establishing Procedural Schedule, September 8, 2011.

⁵ The Administrative Record is attached to the United States Postal Service Notice of Filing, September 14, 2011 (Administrative Record). The Administrative Record includes, as Item No. 49, the Final Determination to Close the Gepp, AR Post Office and Continue to Provide Service by Highway Contract Route Service (Final Determination).

Petitioners Adams and Rivera filed a joint participant statement supporting their Petitions.⁷ On October 12, 2011, the Public Representative filed reply comments.⁸ Petitioner Rivera and the Public Representative also filed documents informing the Commission that operations at the Gepp post office had been suspended as of September 8, 2011.⁹ The Postal Service responded to the Public Representative's notice.¹⁰

III. BACKGROUND

At the time the Postal Service issued its Final Determination, the Gepp post office provided retail postal services and service to 41 post office box customers and 189 delivery customers.¹¹ The Gepp post office, an EAS-11 level facility, had retail access hours of 8:00 a.m. to 4:15 p.m., Monday through Friday, and 9:00 a.m. to 10:00 a.m. on Saturday. Final Determination at 2; Administrative Record, Item No. 15. Lobby access hours were the same. *Id.* Retail transactions average 14 transactions daily (15 minutes of retail workload). Final Determination at 2. Post office receipts for the last three years were \$32,609 in FY 2008; \$21,431 in FY 2009; and \$19,216 in FY 2010. *Id.* There were no permit or postage meter customers. *Id.* By closing this post office, the Postal Service anticipates savings of \$45,479 annually. *Id.* at 4.

⁶ United States Postal Service Comments Regarding Appeal, October 21, 2011; United States Postal Service Notice of Filing Errata to Comments Regarding Appeal, October 21, 2011 (Postal Service Comments).

⁷ Participant Statement Received from Mary Rivera & Kathy Adams, October 4, 2011 (Participant Statement).

⁸ Public Representative's Reply Comments, October 12, 2011 (PR Reply Comments).

⁹ Letter Received from Mary Rivera, September 22, 2011 (Rivera Letter); Public Representative's Notice of Emergency Suspension and Request for Related Relief, September 13, 2011 (PR Notice). The PR Notice was accompanied by a motion for acceptance. That motion is granted.

¹⁰ United States Postal Service Response to Public Representative's Notice of Emergency Suspension and Request for Related Relief, September 15, 2011 (Postal Service Response).

¹¹ The record is inconsistent about the number of post office box customers at the Gepp post office. See Final Determination at 2; Administrative Record, Items 18, 42 (41 post office box customers); Administrative Record, Items 13, 15 (43 post office box customers).

The postmaster position became vacant on October 1, 2009, when the Gepp postmaster retired. *Id.* at 2. A non-career officer-in-charge (OIC) was installed to operate the post office. *Id.* at 2, 4. On September 8, 2011, while this appeal was pending, the Gepp post office was closed by emergency suspension. Postal Service Comments at 16. In a notice to customers, the Postal Service stated that the OIC had resigned and the Postal Service was unable to find a replacement. Supplement to the Administrative Record, Emergency Suspension Notice.

The Postal Service states that “[u]pon implementation of the Final Determination, delivery and retail services will be provided by [highway contract route] delivery administered by the Viola post office, an EAS-16 level post office located six miles away....”¹² The Viola post office has retail hours of 7:30 a.m. to 4:00 p.m., Monday through Friday, and 9:00 a.m. to 11:00 a.m. on Saturday. Final Determination at 2. Sixty-six post office boxes are available. *Id.* The Postal Service will continue to use the Gepp name and ZIP Code. *Id.* at 3, Concern No. 1.

IV. PARTICIPANT PLEADINGS

Petitioners. Petitioners oppose the closure of the Gepp post office. Petitioner Rivera asserts that the Postal Service has failed to follow proper closing procedures; that a postmaster vacancy is the responsibility of the Postal Service; that cost savings are incorrect; that the population of Gepp is not declining; that most residents do not travel to Viola on errands and will waste time, money, and gas retrieving their mail; that customers should not have to wait on the highway to conduct business with a carrier; that placing a lock on a mailbox is not a feasible security option; and that the Gepp post office is being closed solely for operating at a deficit. Rivera Petition at 1-2; Rivera Letter at 2.

¹² Postal Service Comments at 3; Final Determination at 2. MapQuest estimates the driving distance between the Gepp and Viola post offices to be approximately 7.7 miles (9 minutes driving time).

Petitioner Adams makes many of the same arguments and adds that issues relating to property foreclosure have been resolved. Adams Petition at 1. In their Participant Statement, Petitioners reiterate their previous allegations and contend that the Postal Service failed to give proper consideration to the effect of the closing on the Gepp community. Participant Statement at 1-2.

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the Gepp post office. Postal Service Comments at 2. The Postal Service believes the appeal raises three main issues: (1) the impact on postal services, (2) the impact on the Gepp community, and (3) the economic savings expected to result from discontinuing the Gepp post office. *Id.* 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 Gepp post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload and declining post office revenue;
- a variety of other delivery and retail options (including the convenience of highway contract route delivery and retail service);
- no projected growth in the area;
- 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 Gepp community when the Final Determination is implemented. *Id.*

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by Petitioners regarding the effect on postal services, effect on the Gepp community, economic savings, effect on postal employees, and emergency suspension issues. *Id.* at 5-17.

Public Representative. The Public Representative supports remanding the Final Determination to close the Gepp post office. PR Reply Comments at 7. She asserts

that the Postal Service failed to follow proper closing procedures, *id.* at 2; that the justification for the emergency suspension of the Gepp post office is suspect, *id.* at 3-4; that a foreclosure on land where the Gepp post office is located should not have affected the decision to close the post office, *id.* at 4-5; and that economic savings are overestimated, *id.* at 6.

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 has taken the following steps in providing notice of its intent to close. On February 23, 2011, the Postal Service distributed 292 questionnaires to delivery customers and made questionnaires available at the counter for retail customers. Final Determination at 2. Ninety-eight questionnaires were returned. On March 8, 2011, the Postal Service held a community meeting with 71 customers in attendance. *Id.*

The Postal Service posted the Proposal to Close the Gepp post office with an invitation for comments at the Gepp and Viola post offices for over 60 days, from March 14, 2011 through May 15, 2011. *Id.* The Final Determination was posted at the same two post offices for over 30 days, from August 4, 2011 to September 6, 2011.¹³

On September 8, 2011, the Gepp post office was closed by emergency suspension. Postal Service Comments at 16. Several days later, the Postal Service mailed a post card to patrons of the Gepp post office explaining that the OIC had resigned. Supplement to the Administrative Record, Emergency Suspension Notice.

Section 404(d)(4) states: "The Postal Service shall take no action to close or consolidate a post office until 60 days after its written determination is made available to persons served by such post office." At the time the Postal Service imposed its emergency suspension, 25 days of the 60-day period mandated by section 404(d)(4) remained.

The emergency suspension of the Gepp post office followed by one month the emergency suspension of the Monroe, Arkansas post office. The Monroe, Arkansas post office, similar to the Gepp post office, was closed by emergency suspension while an appeal was pending before the Commission.¹⁴ The Commission remanded the Final Determination to close the Monroe post office. *Id.* at 11. In its remand order, the

¹³ Administrative Record, Items 47 and 49. The record indicates that the Postal Service posted two slightly different versions on the Final Determination at the Gepp and Viola post offices. *Compare* Item 47 at 2-3 *with* Item 49 at 2-3. However, both versions of the Final Determination appear to contain exactly the same content.

¹⁴ Docket No. A2011-40, Order No. 982, Order Remanding Determination, November 18, 2011, at 3.

Commission accepted the Postal Service's explanation of the need for an emergency suspension—namely, that the OIC at the Monroe post office resigned unexpectedly. *Id.* at 6. However, the Commission found that the Postal Service had failed to explain why a replacement for the OIC could not have been found. *Id.* The Commission also expressed concern about the delay in the Postal Service's notice to the Commission of the suspension. *Id.* at 6-7.

Here, the Commission received prompt notification of the Gepp suspension, but the notice was provided by the Public Representative rather than the Postal Service. See PR Notice at 2. The Postal Service has also explained that it was unable to find a replacement for the OIC despite its efforts to do so. Postal Service Response at 2; Postal Service Comments at 16-17. However, the Postal Service's assertion that the OIC resigned unexpectedly has been challenged, and it has offered inconsistent explanations for why the Gepp post office was closed by emergency suspension.

When notifying Gepp customers about the suspension, the Postal Service stated that the OIC was a non-career employee who was hired for a term not to exceed 360 calendar days, followed by a five-day break in service. Supplement to the Administrative Record, Emergency Suspension Notice. It explained that the OIC was offered reappointment following her five-day break in service, but declined the opportunity. *Id.*

The clear implication of this statement is that while the Gepp OIC was on a five-day break in service, she was offered reappointment as an OIC *at Gepp* and declined to accept it. The Postal Service's statement, however, is contradicted by a letter from the former OIC asserting that she was offered a job at a neighboring post office rather than the Gepp post office. Participant Statement at 9. The Postal Service did not address this issue in its comments.

Also, the Postal Service has offered four different explanations for why the Gepp post office was closed by emergency suspension. First, a Postal Service spokesperson in Little Rock stated, "The officer in charge must take a mandatory five day break, and we cannot find a replacement for her." *Id.* at 12, column 1. When asked whether the

post office would reopen after the five-day break, the spokesperson responded, “No....The post office is on the closing list and, with no replacement for the officer in charge, we have closed it permanently.” *Id.*, column 2. Second, the Postal Service spokesperson later amended her initial explanation, asserting that “[s]ince we cannot find a replacement for the officer in charge and we cannot interrupt service, we have moved the post office boxes (to Viola), until a replacement is found or a determination of closure is made[.]” *Id.*

Third, in its notice mailed to Gepp customers shortly after the suspension, the Postal Service stated that the OIC had resigned, and the Postal Service has been unable to find a replacement. Supplement to the Administrative Record, Emergency Suspension Notice. Fourth, in its comments, the Postal Service asserts that it “was unable to find someone to cover a *continuous* five day period that included Saturday.” Postal Service Comments at 16 (emphasis in original).

Based on its review of the record and the many discrepancies cited, the Commission cannot conclude that the requirements of section 404(d)(4) were met.

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). The Postal Service must also comply with the provisions of 39 U.S.C. § 101(b), which prohibits closing any small post office solely for operating at a deficit.

Effect on the community. Gepp, Arkansas, is an unincorporated community located in Fulton County, Arkansas. Final Determination at 4; Administrative Record, Item No. 16. The community is administered politically by Fulton County. *Id.* Police protection is provided by the Fulton County Sheriff’s Office. *Id.* Fire protection is provided by the Gepp Fire Department. *Id.* The community is comprised of farmers and retirees. *Id.* The questionnaires completed by Gepp customers indicate that, in

general, residents travel elsewhere for other supplies and services. Postal Service Comments at 10-11, *citing* Administrative Record, Item No. 22.

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 Gepp community and solicited input from the community with questionnaires. In response to the Postal Service's Proposal to Close the Gepp 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 2-3.

Petitioners allege that the Postal Service did not give serious consideration to customer concerns about the effect on the community. They assert that questionnaire responses show that most Gepp post office patrons do not travel in the direction of Viola for work, shopping, or other errands. Participant Statement at 2. Rather, they contend that Gepp patrons travel in the opposite direction to the Mountain Home community, passing the Henderson post office along the way. *Id.*; Rivera Petition at 1. In response, the Postal Service states that while many questionnaire responses mention travelling towards Mountain Home, a number of them also mentioned travelling to Viola. Postal Service Comments at 7.

The Commission cannot determine whether the Postal Service adequately addressed concerns about the effect on the community. The record does not contain a Postal Service response letter to each customer addressing to concerns raised. Rather, there is a single generic "Dear Postal Service Customer" letter that was not actually sent to questionnaire respondents.¹⁵ In addition, the Postal Service's analysis of customer questionnaires identifies only five concerns expressed in the 98 questionnaires received. Administrative Record, Item 23. The Postal Service's responses in the analysis do not meaningfully respond to concerns about having to travel to the Viola post office.

¹⁵ Administrative Record, Item No. 22, at 1; see Postal Service Comments at 4 n.10.

Petitioners and the Public Representative also argue that property foreclosure is not a valid reason for closing the Gepp post office. One of the reasons originally given for closing the Gepp post office is that “postal rental property has been for[e]closed.” Final Determination at 2; Administrative Record, Item No. 1. Petitioners assert that foreclosure is not a legitimate reason to close the post office and that issues relating to the foreclosure have been resolved. Participant Statement at 1. The Public Representative asserts that the record is deficient with respect to the foreclosure issue. PR Reply Comments at 4. She states that the bank did not evict the Postal Service and that the presence of the post office would help with leasing other properties in Gepp. *Id.* at 4-5.

In response, the Postal Service states that the record does not support any of these contentions. Postal Service Comments at 12. On remand, the Postal Service should clarify the status of the foreclosure and describe its effect on the closure.

For the foregoing reasons, the Commission concludes that the Postal Service has not meaningfully considered the effect on the community of closing the Gepp post office as required by 39 U.S.C. § 404(d)(2)(A)(i).

Effect on employees. The Postal Service states that the Gepp postmaster retired on October 1, 2009 and that the OIC who operated the Gepp post office since then has resigned. Postal Service Comments at 15-16. It asserts that no other Postal Service employee will be adversely affected by the closing. *Id.* at 16. The Public Representative contends that the Postal Service “appears to have treated the OIC shabbily[,]” citing a published letter to the editor written by the OIC. PR Reply Comments at 3.

The Postal Service may have adequately considered the effect of the closing on employees of the Gepp post office as required by 39 U.S.C. § 404(d)(2)(A)(ii). However, because the record does not clearly indicate whether the OIC was offered a job at the Gepp post office rather than a neighboring one, the Postal Service may wish to clarify this issue on remand.

Effective and regular service. Petitioners argue that the alternative service proposed by the Postal Service fails to satisfy the requirement that the Postal Service provide a maximum degree of regular and effective postal services. They argue that it would be more convenient to use the Henderson post office rather than the Viola post office. Participant Statement at 2. In response, the Postal Service contends that the choice of administrative post office is consistent with existing operations and that the actual choice of post office is unlikely to affect the majority of Gepp customers significantly. Postal Service Comments at 7.

The record indicates that a large number of Gepp questionnaire respondents pass the Henderson post office when shopping or traveling to or from work. See *generally* Administrative Record, Item 22. Many respondents express concern that, given where they work and shop, obtaining services from the Viola post office will be inconvenient and difficult. As the Viola post office is proposed as the administrative post office for Gepp customers, any packages or accountable pickups of undelivered items will be required to be made at the Viola post office. The Commission cannot determine from the record or from the Postal Service's comments whether it considered making Henderson the administrative post office after it received the questionnaire responses.¹⁶ If the Postal Service did consider this possibility, it has not explained why it was rejected.

Petitioners also express concerns about mail theft and vandalism. Participant Statement at 2. The Postal Service responds by noting that delivery service will not change as a result of the closing and that concerns about mail theft are not new for the

¹⁶ In some cases, the Postal Service has changed the administrative post office in response to customer concerns. For example, when the customers of the Adona, Arkansas post office stated that they preferred travelling to the Perry post office for post office box service rather than to Casa as proposed, the Postal Service changed the administrative post office from Casa to Perry. See Docket No. A2012-16, Administrative Record, Item No. 21, at 1; *id.*, Item No. 22, at 1, 6a, 8, 13a, 28a, 39a, 41, 41a, 44a, 50, 50a, 54a, 55a, 64a, 71a, 73a; *id.*, Item No. 23, at 2, Concern No. 1; *id.*, Item No. 25, at 1, Concern No. 3; *id.* at 2; *id.*, Item No. 33 (Proposal), at 2; *id.*, Item No. 38, at 1 (“The new Admin office will be Perry instead of Casa as originally proposed.”).

majority of Gepp customers. Postal Service Comments at 9. It asserts that the record reflects no reports of vandalism or theft in the area. *Id.*

When addressing concerns about mail theft, the Postal Service stated that it might install cluster box units (CBUs). *Id.* In that case, it asserts that “customers would have the security of free-standing, individually locked compartments, as well as the convenience of parcel lockers for parcel delivery.” *Id.* at 10 (citations omitted). A similar issue about CBUs was raised in *Monroe*:

[T]he Postal Service never conclusively states that it will be installing CBUs or parcel lockers. Furthermore, the Postal Service does not include any costs for installing such units. This ambiguity, in combination with the distance to the next closest postal facility, leads the Commission to question whether the Postal Service gave serious consideration to the provision of effective and regular service.

Order No. 982 at 9.

On remand, the Postal Service should address customer concerns regarding the location of the administrative office and the effect of that choice on its ability to provide regular and effective service to the Gepp community. The Postal Service should also clarify whether CBUs or parcel lockers are being installed.

Economic savings. The Postal Service estimates total annual savings of \$45,479. Final Determination at 4. It derives this figure by summing the following costs: postmaster salary and benefits (\$44,279) and annual lease costs (\$1,200). *Id.*

Both the Petitioners and the Public Representative contend that the Postal Service's estimate of economic savings is inflated. They assert that the savings calculation should not include a postmaster's salary because there is no postmaster at Gepp. Participant Statement at 1; PR Reply Comments at 6. The Public Representative argues that the economic savings fails to account for continued payments on the lease, which expires on August 31, 2017 and has no 30-day cancellation clause. PR Reply Comments at 6. Petitioners assert that the Viola postmaster's salary will increase as a result of the closure and that the cost of relocating

post office boxes from Gepp to Viola is not included in the savings calculation. Rivera Petition at 1; Adams Petition at 2.

In response, the Postal Service argues that using the postmaster's salary in the savings calculation was appropriate because the position would have eventually been filled with a postmaster if the Gepp post office had not been discontinued. Postal Service Comments at 15. It states that it has reviewed the lease agreement and confirmed that it has a 90-day early termination clause. *Id.* at 13. It contends that even if it had to continue to pay rent through the end of the lease term, the amount of rent payments would be a small fraction of the estimated economic savings. *Id.* at 13-14. It asserts that the Viola's postmaster salary will not increase as a result of the closure and that relocating post office boxes is a one-time expense. *Id.* at 14.

On remand, the Postal Service should include in its economic savings estimate the additional expenses incurred from closing the Gepp post office, including lease payments or termination fees and the cost of relocating post office boxes from Gepp to Viola.

Section 101(b). Section 101(b) prohibits closing any small post office solely for operating at a deficit. Petitioners allege that the Postal Service is closing the Gepp post office solely for economic reasons. Participant Statement at 2.

The Commission is not prepared to conclude that the Postal Service's determination violates section 101(b). In addition to considering workload at the Gepp post office (revenues declining and averaging only 14 retail transactions per day), the record shows that the Postal Service took into account other factors such as the postmaster vacancy, the variety of delivery and retail options, little projected growth, and the impact on the community. Postal Service Comments at 5.

The Postal Service's determination to close the Gepp post office did not violate section 101(b)'s prohibition on closing a post office solely for operating at a deficit.

VI. CONCLUSION

Based on the concerns discussed above and a review of the record, the Commission concludes that the Postal Service has not considered all requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Gepp post office is remanded.

It is ordered:

The Postal Service's determination to close the Gepp, Arkansas post office is remanded.

By the Commission.

Ruth Ann Abrams
Acting Secretary