

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Odin Post Office
Odin, Minnesota

Docket No. A2012-93

ORDER AFFIRMING DETERMINATION

(Issued March 13, 2012)

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

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'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 November 30, 2011, Paul Berg (Petitioner Berg) and Robert Harder (Petitioner Harder) each filed a petition with the Commission seeking review of the Postal Service's Final Determination to close the Odin, Minnesota post office (Odin post office).² The Final Determination to close the Odin post office is affirmed.³

II. PROCEDURAL HISTORY

On December 29, 2011, the Commission established Docket No. A2012-93 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.⁴

On December 15, 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 Petition for Review received from Paul S. Berg regarding the Odin, Minnesota post office 56160, November 30, 2011 (Berg Petition); Petition for Review received from Robert D. Harder regarding the Odin, Minnesota post office, 56160, November 30, 2011 (Harder Petition).

³ The Commission is divided equally, 2-2, on the outcome of this appeal. In the absence of a majority, the Final Determination stands.

⁴ Order No.1081, Notice and Order Accepting Appeal and Establishing Procedural Schedule, December 29, 2011.

⁵ The Administrative Record is attached to the United States Postal Service Notice of Filing, December 15, 2011 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Close the Odin, MN Post Office and Extend Service by Rural Route Service (Final Determination).

⁶ United States Postal Service Comments Regarding Appeal, January 24, 2012 (Postal Service Comments).

Petitioner Harder filed a participant statement supporting his Petition.⁷ On February 8, 2012, the Public Representative filed comments.⁸

III. BACKGROUND

The Odin post office provides retail postal services and service to 48 post office box or general delivery customers. Final Determination at 2. Sixty (60) delivery customers are served through this post office. The Odin post office, an EAS-11 level facility, provides retail service from 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m., Monday through Friday, and 7:30 a.m. to 8:30 a.m. on Saturday. Lobby access hours are 7:30 a.m. to 4:30 p.m., Monday through Friday, and 7:30 a.m. to 9:00 a.m. on Saturday. *Id.*

The postmaster position became vacant on September 29, 2009 when the Odin postmaster retired. A non-career officer-in-charge (OIC) was installed to operate the post office. *Id.* at 8. Retail transactions average ten transactions daily (10 minutes of retail workload). *Id.* at 2. Post office receipts for the last 3 years were \$22,114 in FY 2008; \$23,021 in FY 2009; and \$19,087 in FY 2010. There was one permit or postage meter customer. By closing this post office, the Postal Service anticipates savings of \$43,505 annually. *Id.* at 8.

After the closure, retail services will be provided by the Butterfield post office located approximately 9 miles away.⁹ *Id.* at 2. Delivery service will be provided by rural route service through the Butterfield post office. The Butterfield post office is an EAS-13 level post office, with retail hours of 8:30 a.m. to 11:00 a.m. and 12:30 p.m. to 4:00 p.m., Monday through Friday, and 8:30 a.m. to 9:00 a.m. on Saturday.

⁷ Participant Statement received from Robert D. Harder, January 31, 2012 (Participant Statement).

⁸ Public Representative Comments, February 8, 2012 (PR Comments).

⁹ MapQuest estimates the driving distance between the Odin and Butterfield post offices to be approximately 9.2 miles (17 minutes driving time).

One-hundred-forty (140) post office boxes are available. *Id.* The Postal Service will continue to use the Odin community name in addresses. *Id.*, Concern No. 2.

Retail services are also available at the Ormsby post office,¹⁰ an EAS-11 post office located 3 miles away.¹¹ Retail service hours at the Ormsby post office are from 7:45 a.m. to 12:15 p.m. and 1:30 p.m. to 4:15 p.m., Monday through Friday, and 9:45 a.m. to 11:00 a.m. on Saturday. There are 37 post office boxes available for rent. *Id.*

IV. PARTICIPANT PLEADINGS

Petitioners. Petitioners oppose the closure of the Odin post office. Petitioners are concerned that rural carrier service will not provide regular and effective postal service to their businesses. Harder Petition at 1; Berg Petition at 1. Petitioner Harder is concerned about mail security. Harder Petition at 1. Petitioner Harder requests more information about the Village Post Office (VPO) option. *Id.* Petitioner Berg suggests that the Postal Service install a mail drop box in Odin so that the star route driver could pick up mail from the drop box every evening. Berg Petition at 2.

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the Odin post office. Postal Service Comments at 1. The Postal Service believes the appeal raises three main issues: (1) the impact on the provision of postal services; (2) the impact on the Odin community; and (3) the calculation of economic savings expected to result from discontinuing the Odin post office. *Id.* The Postal Service asserts that it has given these and other statutory issues serious consideration and concludes that the determination to discontinue the Odin post office should be affirmed. *Id.* at 14.

¹⁰ The Ormsby post office is one of the candidate facilities under the Retail Access Optimization (RAO) Initiative. Postal Service Comments at 3 n.7.

¹¹ MapQuest estimates the driving distance between the Odin and Ormsby post offices to be approximately 4.5 miles (8 minutes driving time).

The Postal Service explains that its decision to close the Closing PO[^] post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload and low office revenue;
- a variety of other delivery and retail options (including the convenience of rural delivery and retail service);
- no projected population, residential, commercial, or business growth in the area;
- minimal impact on the community; and
- expected financial savings.

Id. at 4-5. The Postal Service contends that it will continue to provide regular and effective postal services to the Odin 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, the effect on the Odin community, economic savings, and the effect on postal employees. *Id.* at 13.

Public Representative. The Public Representative asserts that the Postal Service has adequately considered the Petitioners' concerns and concurs with the decision to close the Odin post office. PR Comments at 5. However, the Public Representative recommends that a blue collection box be installed in Odin with a late afternoon or evening pickup. Finally, the Public Representative suggests that the Postal Service use the same salary rates for the same level postmasters across different discontinuance proceedings to ensure a perception of fairness and equity. *Id.*

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 Administrative Record indicates the Postal Service took the following steps in providing notice of its intent to close. On June 13, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Odin post office. Final Determination at 2. A total of 108 questionnaires were distributed to delivery customers. Other questionnaires were made available at the retail counter. A total of 48 questionnaires were returned. On June 28, 2011, the Postal Service held a community meeting at Odin City Hall to address customer concerns. Forty-three (43) customers attended. *Id.*

The Postal Service posted the proposal to close the Odin post office with an invitation for comments at the Odin, Ormsby, and Butterfield post offices from July 12, 2011 through September 12, 2011. *Id.* The Final Determination was posted at the same three post offices from October 27, 2011 through November 28, 2011.

Administrative Record, Item No. 49.

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. Odin, Minnesota is an incorporated community located in Watonwan County, Minnesota. Administrative Record, Item No. 16. The community is administered politically by the Odin City Council. Police protection is provided by the Watonwan Sheriff's Department. Fire protection is provided by the Odin Fire Department. The community is comprised of retirees, the self-employed, those who commute to work at nearby communities, and those who may work in local businesses. *Id.* 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 Odin community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to close the Odin 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.

Petitioner Berg states that closing the Odin post office will have a negative effect on businesses in the community because it will result in increased costs for doing business. Berg Petition at 1. The Postal Service responds that the majority of residents responding to the questionnaires would still patronize local businesses when the Odin post office closed. Postal Service Comments at 11.

The Postal Service has adequately considered the effect of the post office closing on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

Effect on employees. The Postal Service states that the Odin postmaster retired on September 29, 2009, and that an OIC has operated the Odin post office since then. Final Determination at 8. It asserts that after the Final Determination is implemented, the temporary OIC may be separated from the Postal Service and that no other Postal Service employee will be adversely affected. *Id.*

The Postal Service has considered the possible effects of the post office closing on the OIC and has satisfied its obligation to consider the effect of the closing on employees at the Odin 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 Odin customers. Postal Service Comments at 5. It asserts that customers of the closed Odin post office may obtain retail services at the Butterfield post office located 9 miles away. Final Determination at 2. Delivery service will be provided by rural route service through the Butterfield post office. Odin post office box customers may obtain Post Office Box service at the Butterfield post office, which has 140 post office boxes available. Retail services will also be available at the Ormsby post office, located 3 miles away. The Ormsby post office has 37 post office boxes available for rent. *Id.*

Petitioners are concerned about obtaining retail services and services such as certified mail, registered mail, Express Mail, or signature confirmations from the rural carrier. Berg Petition at 1; Harder Petition at 1; Harder Participant Statement at 2. Petitioner Berg notes that the rural carrier is in the community for approximately

30 minutes per day and that missing the carrier would result in delayed mail or the need to drive to another post office. Berg Petition at 1.

For customers choosing not to travel to the Butterfield or Ormsby post offices, the Postal Service explains that retail services, including certified, registered, Express Mail, delivery confirmation, signature confirmation, and COD will be available from the carrier. Postal Service Comments at 6, 8. 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 7. For occasions when it is necessary for the customer to meet the carrier for services, the Postal Service has advised customers to provide written instructions to the rural carrier, asking him or her to sound their horn when the carrier approaches the customer's address. *Id.* at 7-8.

Petitioners are especially concerned about whether the rural carrier can meet the postal needs of their businesses. Petitioner Harder argues that rural carrier service may result in later or earlier delivery of mail than is currently provided by the Odin post office. Harder Petition at 1. He states that this will result in the Odin State Bank being unable to provide timely services to many of its customers. Harder Petition at 1; Harder Participant Statement at 2. These concerns are echoed by Petitioner Berg, who points out that as an insurance agent, he is required to submit documents to carriers under time constraints dictated by the State of Minnesota. Berg Petition at 1. The Postal Service responds that rural carriers strive to provide service at approximately the same time on a daily basis. Postal Service Comments at 7. The Postal Service also states that the Administrative Record reflects that postmasters monitor mail volume to determine and correct any delays in delivery. *Id.* at 5.

Petitioner Harder is concerned about mail security. Harder Petition at 1; Harder Participant Statement. The Postal Service responds that it sent a questionnaire to the Postal Inspection Service concerning theft and vandalism in the area. Their records indicate that there has not been any report of mail theft or vandalism in the area. Postal Service Comments at 9. The Postal Service advises that customers can place a lock on

their mailbox. However, customers should ensure that the mailbox have a slot large enough to accommodate customers' normal mail volume. *Id.*

Petitioner Berg requests that the Postal Service provide a collection box in the City of Odin wherefrom a highway contract route carrier could pick up the mail in the evening. Berg Petition at 2. The Public Representative concurs. PR Comments at 5. The Postal Service responds that it conducted a cost analysis and determined that the use of a rural carrier would provide efficient replacement service. The carrier can perform normal daily collection, so there is no need for duplicative installation and maintenance of a collection box. Postal Service Comments at 9.

The Postal Service has considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. The Postal Service estimates total annual savings of \$43,505. Final Determination at 8. It derives this figure by summing the following costs: postmaster salary and benefits (\$42,456)¹² and annual lease costs (\$7,140), minus the cost of replacement service (\$6,091). *Id.*

Petitioner Harder states that the Postal Service has not provided information about the VPO alternative. Harder Petition at 1. The Postal Service explained how a VPO operates and stated that it may be a suitable option for the Odin Community. The Postal Service added that it provided a telephone number for businesses interested in serving as a VPO operator. Postal Service Comments at 12. Furthermore, the Postal Service argues that the Final Determination still results in reasonable access to postal services, and substantial savings to the Postal Service, even though a VPO was not included in the replacement service options. *Id.*

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

¹² The Public Representative suggests that the same salary rates be used for each of the EAS level postmasters for all post office closings in order to promote the perception of fairness and equity. PR Comments at 5. For purposes of this case, the salary for the Odin postmaster is within the range of EAS-11 level postmaster salaries. See Handbook PO-101, Post Office Discontinuance Guide, August 2004, updated with *Postal Bulletin* revisions through August 2, 2007, Exhibit 222f at 4.

VI. CONCLUSION

The Postal Service has adequately considered the requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Odin post office is affirmed.¹³

It is ordered:

The Postal Service's determination to close the Odin, Minnesota, post office is affirmed.

By the Commission.

Ruth Ann Abrams
Acting Secretary

¹³ See footnote 3, *supra*.

DISSENTING OPINION OF CHAIRMAN GOLDWAY

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

The Postal Service argues that savings should be calculated based on a full-time postmaster's salary. Yet the Odin post office has been operated by a non-career officer-in-charge (OIC) since the former postmaster retired on September 29, 2009. On the one hand, the Postal Service argues that the effect on employees of this closing will be minimal because only a non-career OIC will be eliminated; yet on the other hand, it argues that the savings should be calculated using a full-time postmaster position.

The Postal Service already claims billions of dollars in savings from reducing labor costs. I believe the savings from substituting OICs in postmaster positions throughout the Nation have already been included in those billions. There are inherent and blatant contradictions in the Administrative Record that must be corrected on remand.

It is not the statutory responsibility of the Commission to correct the Administrative 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 were in the Administrative Record. Therefore, the decision to close should be remanded to the Postal Service to correct the Administrative Record and present a more considered evaluation of potential savings.

Lack of evidence. The process in this case does not exhibit the hallmarks of transparency. The Administrative Record contains a letter to the Postal Service from the Mayor and the City Council for the City Of Odin (City) asking for financial records relating to the revenue of the Odin post office in order to assess the accuracy of the data. See Administrative Record, Item No. 22 at 51. See also Administrative Record,

Item No. 38 at 17-18. The Postal Service responded to the City with a letter interpreting the inquiry as a Freedom of Information Act request and then withheld access to the requested financial records, citing 5 U.S.C. 552(b)(5) and 39 CFR 265.6(b)(3). See Administrative Record, Item No. 22 at 49-50.

The Postal Service's response does not provide assurances that it is acting in a transparent manner. As the Postal Service notes, the deliberative process privilege of exemption (b)(5) protects statements of opinion analysis, advice, and recommendations. The privilege does not ordinarily apply to factual materials of the type requested by the City unless the factual materials are "inextricably intertwined" with the opinion.¹ The overwhelming majority of the financial and expense records of the Odin post office are factual, not opinion. The provision in 39 CFR 265.6(b)(3) protects information of a confidential financial or commercial nature, and identifies a number of examples of such information which may or may not be applicable to the requested information. Even if the records the City sought to participate in the review process fell into that category, the Postal Service also is obligated to "exercise its discretion...in determining whether the public interest is served by the inspection or copying of (those) records..." 39 CFR 265.6(b). There was no evidence in the Administrative Record that the Postal Service took any actions in furtherance of this obligation.

The Final Determination of the Postal Service would more readily satisfy the provisions of 39 U.S.C. § 404(d)(5) where the Postal Service affords cooperation with the local unit of government in responding promptly to their reasonable requests for basic financial information prior to the issuance of the Final Determination.

¹ The deliberative process privilege does not apply to factual materials. See, e.g., *EPA v. Mink*, 410 U.S. 73, 91 (1973). This is because factual materials would typically be subject to discovery (*id.* at 87-88) and also because release of factual materials usually would not risk chilling agency deliberations. See, e.g., *Montrose Chemical Corp. v. Train*, 491 F.2d 63, 66 (D.C. Cir. 1974).

Effect on the community. The Administrative Record contains a letter from the Odin State Bank (Bank) regarding the importance of the ability to send time-sensitive mail late in the business day. Administrative Record, Item No. 22 at 38. The Bank also indicates its dependence upon the use of Certified Mail and Overnight Express Mail, and that impediments to use of these types of mail would present a hardship. *Id.* The Bank's letter also identifies that its postage expenditures are omitted from the revenue credited to the post office. *Id.*

The Administrative Record also contains a letter from the owner of an insurance agency. Administrative Record, Item No. 22. The small business owner describes harm to his business caused by the added travel required for him to send Certified Mail or urgent mail required for his customers. *Id.* The Administrative Record does not reflect a substantive reply to the business owner. The Postal Service should more diligently consider the effect of such closing or consolidation on the community served by a post office, and should undertake to mitigate the harms caused by such a closing.

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 5-month moratorium and the opportunity to have further consideration of alternatives by the Postal Service.

The citizens of Odin, Minnesota 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 VICE CHAIRMAN 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 September 2009, not an EAS-11 postmaster, and reflect the PMR's salary and benefits in its cost savings analysis.

In addition, the Administrative Record indicates that there is one postage meter customer. Final Determination at 2. According to the Postal Service, "commercial (metered) revenue for the Odin Post Office has always been included in the Total Operating revenue. Total operating revenue for Fiscal Year 201[0] was \$30,070, which included commercial revenue of \$10,982." Administrative Record, Item No. 38 at 5. However, the Final Determination reflects only retail window transactions, which does not include revenue from permit/postage meter customers.¹ It is important for the Postal Service to accurately reflect the total operating revenue, which includes all business activities, at each post office to determine the potential impact on the community it serves.

Furthermore, the Administrative Record indicates that retail services are also available from an alternate post office, the Ormsby post office, approximately 4 miles away from the Odin post office. Final Determination at 2. The Ormsby post office is being considered for discontinuance under the Retail Access Optimization Initiative (RAOI). The Postal Service should include within its discontinuance process a mechanism to ensure that due consideration is given to the impact on the community of the receiving administrative post office immediately being reviewed for discontinuance.

¹ *But see* Docket No. A2012-78, Postal Service Comments at 10-11 n.24.

I find that the Administrative Record evidence does not support the Postal Service's decision to discontinue operations at the Odin post office and should be remanded.

Nanci E. Langley