

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

Freeport Post Office  
Freeport, Kansas

Docket No. A2012-87

ORDER AFFIRMING DETERMINATION

(Issued March 15, 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.”<sup>1</sup> 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,

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<sup>1</sup> 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 November 29, 2011, Carol A. Peterson (Petitioner) filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the Freeport, Kansas post office (Freeport post office).<sup>2</sup> The Final Determination to close the Freeport post office is affirmed.<sup>3</sup>

## II. PROCEDURAL HISTORY

On December 14, 2011, the Commission established Docket No. A2012-87 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.<sup>4</sup>

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

On February 7, 2012, the Public Representative filed comments.<sup>7</sup>

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<sup>2</sup> Petition for Review received from Carol A. Peterson regarding the Freeport, Kansas post office 67049, November 29, 2011 (Petition).

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

<sup>4</sup> Order No. 1044, Notice and Order Accepting Appeal and Establishing Procedural Schedule, December 14, 2011.

<sup>5</sup> The Administrative Record is attached to the United States Postal Service Notice of Filing of Administrative Record, December 14, 2011 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Close the Freeport, KS Post Office and Establish Service by Rural Route Service (Final Determination).

<sup>6</sup> United States Postal Service Comments Regarding Appeal, January 23, 2012 (Postal Service Comments).

<sup>7</sup> Public Representative Comments Supporting Remand, February 7, 2012 (PR Comments). The accompanying Motion of Public Representative for Late Acceptance of Comments is granted.

### III. BACKGROUND

The Freeport post office provides retail postal services and service to 8 post office box customers. Final Determination at 2. In addition, 23 delivery customers are served through this post office. The Freeport post office, an EAS-53 level facility, provides retail service from 8:30 a.m. to 10:30 a.m., Monday through Saturday. Lobby access hours are 8:30 a.m. to 4:30 p.m., Monday through Saturday. *Id.*

The postmaster position became vacant on October 1, 1992 when the Freeport postmaster retired.<sup>8</sup> An officer-in-charge (OIC) was installed to operate the post office.<sup>9</sup> Retail transactions average six transactions daily (seven minutes of retail workload). Post office receipts for the last 3 years were \$7,872 in FY 2008; \$7,093 in FY 2009; and \$6,281 in FY 2010. There are no permit or postage meter customers. *Id.* By closing this post office, the Postal Service anticipates savings of \$20,749 annually. *Id.* at 6.

The Final Determination states that after the closure, retail services will be provided by the Argonia post office located approximately 10 miles away.<sup>10</sup> *Id.* at 2. Delivery service will be provided by rural carrier route service through the Argonia post office. The Argonia post office is an EAS-13 level post office, with retail hours of 8:00 a.m. to 12:30 p.m. and 1:30 p.m. to 4:00 p.m., Monday through Friday, and 8:30 a.m. to 10:30 a.m. on Saturday. There are 251 post office boxes available. *Id.* The Postal Service will continue to use the Freeport name and ZIP Code. *Id.* at 5, Concern No. 2.<sup>11</sup>

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<sup>8</sup> The Final Determination states the postmaster position became vacant when the postmaster resigned on February 1, 2006. *Id.* However, Petitioner challenges that statement in her Petition alleging the last postmaster retired in 1992. Petition at 1. The Postal Service confirms that upon further research, the last postmaster actually retired on October 1, 1992. Postal Service Comments at 2.

<sup>9</sup> As discussed below, it is unclear whether the OIC is a career or non-career employee.

<sup>10</sup> MapQuest estimates the driving distance between the Freeport and Argonia post offices to be approximately 10.07 miles (18 minutes driving time).

<sup>11</sup> The Final Determination is not entirely clear on retention of the ZIP Code, however, since the Administrative Record also states changes in the Freeport ZIP Codes are necessary due to 911 addressing requirements. *Id.* at 3, Concern No. 9.

After issuing the Final Determination, the Postal Service changed the provision of rural carrier service from the Argonia post office to the Anthony post office due to an operational change that occurred in August 2011 after a rural carrier retired and the vacant route, which encompassed Freeport customers, was split. It explains that the Freeport portion of the vacant route was assigned to a carrier from the Anthony post office. Administrative Record, Item No. 47A; Postal Service Comments at 6-7.

#### IV. PARTICIPANT PLEADINGS

*Petitioner.* Petitioner opposes the closure of the Freeport post office. She states that retail services cannot be duplicated by requiring Freeport customers to drive between 13 and 16 miles one way to nearby post offices. In addition, Petitioner notes two factual errors in the Final Determination. She states the last postmaster retired in 1992, and she notes that delivery services are being provided by the Anthony post office rather than the Argonia post office. She asserts that the change in the administrative post office was a positive one, but asks that the Postal Service update the Final Determination to reflect this change. Petition at 1-2.

*Postal Service.* The Postal Service argues that the Commission should affirm its determination to close the Freeport post office. Postal Service Comments at 1. The Postal Service believes the appeal raises one main issue: the effect on postal services after closure of the Freeport post office. The Postal Service asserts that it has given this and other statutory issues serious consideration and concludes that the determination to discontinue the Freeport post office should be affirmed. *Id.*

The Postal Service explains that its decision to close the Freeport 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 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 Freeport community when the Final Determination is implemented. *Id.* at 5.

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by Petitioner regarding the effect on postal services, the effect on the Freeport community, economic savings, and the effect on postal employees. *Id.* at 5-10.

*Public Representative.* The Public Representative concludes the Postal Service has not followed applicable procedures and that the decision to close the Freeport post office is arbitrary, capricious, and unsupported by substantial evidence. PR Comments at 1. The Public Representative challenges the procedures used by the Postal Service because the Postal Service did not post notices, the Proposal to Close, or the Final Determination at the Anthony post office, which is now the post office from which rural route service will emanate. Although Petitioner and other Freeport customers state that this change is beneficial, the Public Representative contends that there is no way to know whether other customers would have preferred the Anthony or Argonia post office had the Postal Service informed them that the Anthony post office would serve as the administrative post office. *Id.* at 1-2.

In addition, the Public Representative notes other errors in the Administrative Record. He points out that the Administrative Record contains inconsistent statements about whether the Postal Service will continue to use the Freeport name and ZIP Code, and whether the Freeport community is an incorporated community. He states that contrary to the Postal Service's assertion that the OIC is a non-career employee, Petitioner has informed the Public Representative that the current OIC is a career employee from the Anthony post office. *Id.* at 2-3.

## 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 April 7, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Freeport post office. Final Determination at 2. A total of 48 questionnaires were distributed to delivery customers. Other questionnaires were made available at the retail counter. A total of 14 questionnaires were returned. On April 14, 2011, the Postal Service held a

community meeting at the Freeport City Hall to address customer concerns.

Fourteen (14) customers attended. *Id.*

The Postal Service posted the proposal to close the Freeport post office with an invitation for comments at the Freeport and Argonia post offices from July 26, 2011 through September 26, 2011. *Id.* The Final Determination was posted at the same two post offices beginning on October 27, 2011. Administrative Record, Item No. 49. It was initially removed on November 28, 2011, but has been reposted upon filing of this appeal. Postal Service Comments at 4.

The Public Representative challenges the notice provided by the Postal Service because it identified the Argonia post office as the administrative post office for retail and delivery services rather than the Anthony post office. PR Comments at 1. The Postal Service asserts that this change has minimal effect on customers, who will continue to receive mail from the same method of delivery. It states that Freeport customers will still be able to obtain all other postal services at the Argonia post office. The only change, according to the Postal Service, is that customers must retrieve undeliverable mail from the Anthony post office, located 12.8 miles away.<sup>12</sup> Postal Service Comments at 7. It notes that customers may schedule redelivery at a different time or different location along the rural carrier's route, or they may appoint a designee to accept redelivery at the Anthony post office. *Id.* at 7 n.27.

As the Public Representative notes, Petitioner asserts that the change in the administrative office to the Anthony post office was beneficial for the Freeport community. Petition at 1. The Administrative Record also indicates that other Freeport customers prefer that the Anthony post office serve as the administrative post office. Administrative Record, Item Nos. 22, 38.

The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

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<sup>12</sup> MapQuest estimates the driving distance between the Freeport and Anthony post offices to be approximately 11.99 miles (22 minutes driving time).

## 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.* Freeport, Kansas is an incorporated community located in Harper County, Kansas.<sup>13</sup> Administrative Record, Item No.16. The community is administered politically by the Mayor and City Council of Freeport. Police protection is provided by the Harper County Sheriff. Fire protection is provided by the Anthony Kansas Fire Department. The community is comprised of farmers and those who work in agricultural 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 Freeport community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to close the Freeport 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 5-6.

The Postal Service notes that some community members expressed a concern about the loss of the community's identity. The Postal Service responds that a community's identity derives from the interest and vitality of its residents and their use of its name. It asserts that it is helping to preserve the community's identity by retaining

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<sup>13</sup> The Postal Service states in its comments that Freeport, Kansas is an unincorporated community. Postal Service Comments at 8. However, the Administrative Record indicates that Freeport, Kansas is an incorporated community. *See, e.g.,* Administrative Record, Item No. 16; Final Determination at 5.

the Freeport, Kansas name and ZIP Code. Postal Service Comments at 9. The Public Representative notes, however, that the Postal Service has also stated that a ZIP Code change may be required by the 911 addressing requirements. PR Comments at 2.

While a change in ZIP Code may be required by the local 911 coordinator, the retention of the Freeport community name addresses customer concerns about the effect of the closing on the community. While the ambiguity about the ZIP Code change is a concern, it does not warrant a remand in this instance.<sup>14</sup>

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 Freeport postmaster retired on October 1, 1992 and that an OIC has operated the Freeport post office since then. Postal Service Comments at 10. It asserts that after the Final Determination is implemented, the non-career OIC may be reassigned or may be separated and that no other Postal Service employee will be adversely affected. *Id.*

As noted above, the status of the OIC is unclear on the Administrative Record. If the OIC is a non-career employee, the OIC may be separated from the Postal Service. If the OIC is a career employee, the OIC will return to duties at a nearby post office. No other employees would be affected by the closing.<sup>15</sup>

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 Freeport 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 Freeport customers. Postal Service Comments at 5-7. It asserts that customers of the closed Freeport post office may obtain retail services at the Argonia post office located 10 miles away. Final

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<sup>14</sup> See Docket No. A2012-54, Order No. 1240, Order Affirming Determination, February 17, 2012, at 9.

<sup>15</sup> See Docket No. A2011-100, Order No. 1133, Order Affirming Determination, January 13, 2012, at 7 n.10.

Determination at 2. Delivery service will be provided by rural carrier route service through the Anthony post office located 12.8 miles away. Postal Service Comments at 6-7. Freeport post office box customers may obtain Post Office Box service at the Argonia post office, which has 251 boxes available. Final Determination at 2.

Petitioner expresses concerns about having to travel further to obtain postal services. The Postal Service explains, however, that customers choosing not to travel to either the Argonia or Anthony post offices may obtain retail services from the carrier. Postal Service Comments at 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. The Postal Service also states that carrier service is especially beneficial to many senior citizens and those who face special challenges because the carrier can provide delivery and retail services to roadside mailboxes. *Id.*

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 \$20,749. Final Determination at 6. It derives this figure by summing the following costs: postmaster salary and benefits (\$20,492) and annual lease costs (\$1,500), minus the cost of replacement service (\$1,243). *Id.*

The Freeport post office postmaster retired on October 1, 1992. Postal Service Comments at 10. The post office has since been staffed by an OIC who, upon discontinuance of the post office, may be reassigned or may be separated from the Postal Service. The postmaster position and the corresponding salary will be eliminated. See, e.g., Docket No. A2011-67, United States Postal Service Comments Regarding Appeal, October 24, 2011, at 13; Docket No. A2011-68, United States Postal Service Comments Regarding Appeal, November 2, 2011, at 10. Furthermore, notwithstanding that the Freeport post office has been staffed by an OIC for approximately 19 and a half years, even assuming the use of the presumably lower OIC salary, the Postal Service would have satisfied the requirements of section 404(d)(2)(A)(iv).

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

## VI. CONCLUSION

The Postal Service has adequately considered all requirements of 39 U.S.C. § 404(d)(1). Accordingly, the Postal Service's determination to close the Freeport post office is affirmed.<sup>16</sup>

*It is ordered:*

The Postal Service's determination to close the Freeport, Kansas post office is affirmed.

By the Commission.

Shoshana M. Grove  
Secretary

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<sup>16</sup> See note 3, *supra*.

## DISSENTING OPINION OF CHAIRMAN GOLDWAY

Due to the numerous defects in the Administrative Record, I would remand this matter back to the Postal Service for further consideration.

First, the Administrative Record provides conflicting information about whether the Freeport mail customers will retain their ZIP Code and Freeport mailing address. The Postal Service typically indicates that the identity of a town losing its post office is preserved because the town can retain its ZIP Code and the town name in residents' mailing addresses. However, in this instance, the Postal Service suggests that 911 obligations will preclude those steps.

Second, the Administrative Record provided incomplete and erroneous information about when the last postmaster actually served in Freeport.

Third, the Administrative Record provided incomplete and erroneous information about whether or not Freeport was an incorporated community.

Fourth, the Administrative Record identified that delivery service for Freeport would originate in Argonia, but following the posting of the Final Determination, the post office in Anthony was then identified as the originating post office.

Misidentification of important factual matters such as these suggests that the Final Determination decision would benefit from re-examination and reconsideration.

Also, 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 Freeport post office has been operated by an officer-in-charge (OIC) since the former postmaster retired on October 1, 1992. On the one hand,

the Postal Service argues that the effect on employees of this closing will be minimal because only an OIC will be eliminated; yet on the other hand, it argues that the savings should be calculated using a full-time postmaster position.

A non-career OIC has been in place for more than 19 years. Given this extended period of time, and the Postal Service's current financial difficulties, it is clear that the Postal Service has no obligation to maintain a full-time postmaster in small facilities such as Freeport. Upon closure of the facility, the Postal Service may, at most, avoid continuing to pay the OIC level salary.

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.

I am also concerned about the distances between the Freeport post office and those that are offered as substitutes. Several members of Congress have publicly expressed concern that post offices that are 10 miles apart should be maintained in rural areas. The Postmaster General has expressed interest in finding other ways to serve such distant post offices rather than close them altogether. This closing should be reconsidered within the context of the policies now being developed regarding distant rural post offices.

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 Freeport, Kansas 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

There are several discrepancies in the Administrative Record.

The Administrative Record is unclear if the postmaster position has been vacant for either 6 or 20 years. See Final Determination at 2; Postal Service Comments at 2. It is also unclear if during this interim period the Freeport post office has been staffed by a career or non-career employee. See Administrative Record, Item No. 15 at 1; Postal Service Comments at 10. If a non-career employee has been in charge of the Freeport post office during this interim, the Postal Service should use that position, not an EAS-53 postmaster, in its cost savings analysis.

In addition, the Administrative Record is inconclusive as to whether or not the Freeport community will retain its ZIP Code. The Postal Service indicates that the Freeport, Kansas name and ZIP Code will be retained. Postal Service Comments at 9. However, the Proposal and Final Determination to close the Freeport post office has contradictory statements regarding the retention of the ZIP Code.<sup>1</sup>

Lastly, while the Petitioner indicates that the change in the designated administrative post office from the Argonia post office to the Anthony post office is a positive move for her area, the Postal Service should have provided notice to the Freeport community that this change had occurred during the posting of the Proposal to close the Freeport post office.<sup>2</sup> The Postal Service also should have afforded the Freeport community with an opportunity to comment on this change, especially since the Proposal was removed on September 26, 2011, and the Final Determination was not posted until October 27, 2011, approximately 2 months after the change in rural route delivery. There was ample time for the Postal Service to inform the Freeport

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<sup>1</sup> See Proposal, Concern No. 8, at 3; Proposal, Concern No. 2, at 5; Final Determination, Concern No. 9, at 10; Final Determination, Concern No. 2, at 12.

<sup>2</sup> See Petition at 1; Postal Service Comments at 10; Administrative Record, Item No. 33.

community of the change and consider the community's input before the Final Determination had been made.

As a government entity, the Postal Service should ensure that the effects on the community are adequately considered and that its cost/benefit analysis accurately identifies capturable cost savings and does not overstate savings. Public perception is an important aspect of all discontinuance studies. The Postal Service and the customers they serve benefit by addressing all issues fully during such studies.

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

Nanci E. Langley