

ORDER NO. 1588

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

Before Commissioners:

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

Santa Monica Post Office
Santa Monica, California

Docket No. A2013-1

ORDER GRANTING MOTION TO DISMISS

(Issued December 19, 2012)

I. INTRODUCTION AND SUMMARY

On October 9, 2012, the Commission received a petition for review of the closure of the Santa Monica, California post office from Congressman Henry A. Waxman (Petitioner).¹ Petitioner also requested that the Commission suspend the closure pending resolution of the appeal. Petition at 3. In Order No. 1491, the Commission

¹ Petition for Review Received from Henry A. Waxman Regarding the Santa Monica, CA Post Office 90401, October 9, 2012 (Petition). The Petition was dated September 20, 2012. [The envelope was franked—no postmark.]

gave notice of the appeal, designated a Public Representative, and directed the Postal Service to file the administrative record or a responsive pleading.²

II. PROCEDURAL HISTORY

On October 19, 2012, the Postal Service filed a motion to dismiss this proceeding for lack of jurisdiction.³ On October 26, 2012, the Public Representative filed an answer supporting the Motion.⁴ On November 6, 2012, the City of Santa Monica (City) filed a pleading opposing the Motion and supporting Petitioner with respect to both the appeal of the closure and the request for suspension pending appeal.⁵ The Motion is granted.⁶

III. PARTICIPANT PLEADINGS

Petitioner. Petitioner contends that the Commission should set aside the Postal Service's decision regarding the Santa Monica post office. Petition at 1. Petitioner argues that the Postal Service has failed to observe procedures required by 39 CFR 241.3. Specifically, he asserts that the Postal Service failed to provide 60 days' notice of the proposed closure; failed to inform the public of the right to appeal a closure; failed to consider the effect of the closure on the community; failed to provide an estimate of economic savings; and failed to explain how it would comply with policy provisions of the National Historic Preservation Act. *Id.* at 1-2. Petitioner further argues that while the Postal Service may refer to its action as a "relocation," it actually constitutes a discontinuance. *Id.* at 1.

² Notice and Order Accepting Appeal and Establishing Procedural Schedule, October 10, 2012 (Order No. 1491).

³ Motion of United States Postal Service to Dismiss Proceedings, October 19, 2012 (Motion).

⁴ Public Representative Response in Support of United States Postal Service Motion to Dismiss Proceedings, October 26, 2012 (PR Response).

⁵ Request of the City of Santa Monica to Intervene and Participate in Appeal of Congressman Waxman, November 6, 2012 (City Request).

⁶ Given the disposition of the Motion, the request for suspension pending appeal is moot.

Postal Service Motion. The Postal Service contends that this appeal should be dismissed because it is not within the Commission's jurisdiction. Motion at 1-2. The Postal Service asserts that the appeal concerns the relocation of a post office, which is an event that falls outside the scope of 39 U.S.C. 404(d)(5).⁷ The Postal Service argues that the process for relocating retail operations within the community is governed by 39 CFR 241.4. *Id.* at 5, 9. It states that issues regarding the National Historic Preservation Act were addressed in its final decision concerning the relocation of retail services from the Santa Monica post office to the Santa Monica carrier annex. *Id.* at 3; see also *id.*, Exhibit 3 at 1-2.

The Postal Service states that it plans to relocate retail operations from the Santa Monica post office to the Santa Monica carrier annex, a nearby facility which currently does not offer retail operations. *Id.* at 2. The Postal Service further indicates that there are other alternate access options, including 11 stamp consignment sites located within 1 mile of the Santa Monica post office. *Id.* at 4. The Postal Service argues that in similar circumstances, other appeals have been dismissed by the Commission. *Id.* at 5-8.

Public Representative. The Public Representative agrees that the appeal should be dismissed. PR Response at 5. The Public Representative concludes that the Postal Service's actions constitute a relocation of facilities within the community and thus do not give rise to Commission jurisdiction under section 404(d). *Id.* at 3-5. He adds that members of the community participated in proceedings conducted by the Postal Service pursuant to 39 CFR 241.4. *Id.* at 5.

City of Santa Monica. The City contends that the Postal Service's decision to vacate and sell the Santa Monica post office constitutes a closing subject to 39 U.S.C. 404(d)(5). City Request at 2-3. In support of this contention, the City relies on dicta from several court cases, which held that the transfer of sorting operations from a post

⁷ The Postal Service also asserts that Petitioner is not a "person served" by the Santa Monica post office and is, therefore, not entitled to appeal. *Id.* at 2 n.3. Given the disposition of the Motion, it is not necessary to address this issue.

office did not constitute a closing. *Id.* at 3-4. The City also contends that the Postal Service failed to follow its own regulations for relocating retail operations, *id.* at 2 n.2, and failed to explain how it had complied with provisions of the National Historic Preservation Act. *Id.* at 6-7.

IV. COMMISSION ANALYSIS

Petitioner and the City contend that the Postal Service is closing the Santa Monica post office and in doing so has failed to follow the procedures prescribed by law, including those set forth in 39 CFR 241.3. Petition at 1; City Request at 2-3. Petitioner and the City also assert that the Postal Service has not explained how it complied with provisions of the National Historic Preservation Act. Petition at 2; City Request at 6-7. The Postal Service, on the other hand, argues that its decision to relocate postal operations from one retail facility to a nearby facility is not covered by section 404(d). Motion at 1-2. Both the Postal Service and Public Representative maintain that the Commission lacks jurisdiction over this matter and that this appeal should be dismissed. *Id.* at 5, 9; PR Response at 3-5.

The Postal Service is transferring retail operations from the Santa Monica post office to the Santa Monica carrier annex, a facility located in the same community less than 1 mile from the post office. The Commission has held on numerous occasions that the relocation of retail operations within a community does not constitute a closing or consolidation within the meaning of section 404(d).⁸

The facts of this case are essentially the same as those in Ukiah, Docket No. A2011-21. There, the Postal Service decided to close the *Ukiah*, California post office and transfer retail operations and services to the *Ukiah* carrier annex, located 1 mile from the Ukiah post office. The Commission found that after the transfer of retail

⁸ See Order No. 804, Docket No. A2011-21, Order Granting Motion to Dismiss, August 15, 2011 (*Ukiah*); Order No. 37, Docket No. A2007-1, Order Dismissing Appeal on Jurisdictional Grounds, October 9, 2007; Order No. 1387, Docket No. A2003-1, Order Dismissing Appeal on Jurisdictional Grounds, December 3, 2003; Order No. 696, Docket No. A86-13, Order Dismissing Docket No. A86-13, June 10, 1986; Order No. 436, Docket No. A82-10, Order Dismissing Docket No. A82-10, June 25, 1982 (*Oceana*).

operations “to the Ukiah Carrier Annex, customers will continue to have the same level of access to retail services in the community.” *Ukiah* at 4. Just as in Ukiah, the Postal Service will maintain a post office in Santa Monica. As the Commission stated when it first addressed this issue, “[t]he requirements of section 404(d) do not pertain to the *specific building* housing the post office; but rather are concerned with the provision of a facility within the community.” *Oceana* at 6 (emphasis added). The City has misconstrued the applicability of section 404(d) by applying it to the elimination of a specific building in Santa Monica as opposed to “the provision of a facility within the community.”⁹

For the foregoing reasons, the Motion is granted and the appeal is dismissed.

It is ordered:

The Motion of the United States Postal Service to Dismiss Proceedings, filed October 19, 2012, is granted.

Shoshana M. Grove
Secretary

Chairman Goldway not participating.

⁹ Petitioner and the City contend that the Postal Service has failed to demonstrate how it intends to comply with section 106 of the National Historic Preservation Act (NHPA). Petition at 2; City Request at 7. The Postal Service’s final decision to relocate retail services within the community specifically found that the “NHPA does not apply to this decision because the relocation of retail services is not an ‘undertaking’ within the meaning of section 106.” Motion, Exhibit 3 at 1. In any event, “[t]he Commission’s role in appeals under section 404(d)(5) does not include responsibility for enforcing the NHPA.” Order No. 1037, Docket No. A2011-49, Order Affirming Determination, December 12, 2011.