



U.S. POSTAL REGULATORY COMMISSION
Washington, DC 20268-0001

Office of the Secretary

December 20, 2012

Alan L. Burkholder
17880 Main Street
Tyner, IN 46572

Re: Docket No. A2012-127—Tyner Post Office, Tyner, IN

Dear Mr. Burkholder:

Enclosed please find a copy of Order No. 1581 issued by the Commission granting the Postal Service's motion to dismiss the proceeding. Additionally, the order requires the Postal Service to file a status report by no later than January 4, 2013.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ruth Ann Abrams".

Ruth Ann Abrams
Acting Secretary

Enclosure

ORDER NO. 1581

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

Tyner Post Office
Tyner, Indiana

Docket No. A2012-127

ORDER GRANTING MOTION TO DISMISS AND
REQUIRING STATUS REPORT

(Issued December 17, 2012)

I. INTRODUCTION

On September 20, 2012, Alan Burkholder (Petitioner) petitioned for review of the Postal Service's actions concerning the Tyner post office in Tyner, Indiana.¹ He contends that the Tyner post office is closed and that the Postal Service did not follow required procedures.

On October 1, 2012, the Postal Service filed a motion to dismiss this proceeding for lack of jurisdiction.² Because no final determination has been issued, the Motion is

¹ Petition for Review received from Alan Burkholder regarding the Tyner, IN Post Office 46572, September 20, 2012 (Petition).

² Motion of United States Postal Service to Dismiss Proceedings, October 1, 2012, at 3 (Motion).

granted. Based on the pleadings, however, it appears that the Tyner post office may have been constructively closed. To clarify the status of this post office, by no later than January 4, 2013, the Postal Service is directed to file a status report describing all steps that have been taken since December 13, 2011 to discontinue the Tyner post office, plans to conduct a new discontinuance study, and plans to resume service in Tyner through a post office, village post office, or other means.

II. PROCEDURAL HISTORY

On September 21, 2012, the Commission established Docket No. A2012-127 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.³ The Motion was filed in response to this directive.

On October 10, 2012, the Public Representative filed an answer to the Motion, and two organizations filed Participant Statements.⁴ On October 15, 2012, Petitioner filed a Participant Statement in opposition to the Motion.⁵

III. BACKGROUND

The Tyner post office, an EAS-55 level facility, provided retail postal services and service to 73 post office box customers. See Motion, Attachment 1. Operations at the Tyner post office were suspended on June 18, 2011, due, in part, to the resignation of the Tyner postmaster on June 17, 2011. Motion at 2. On August 1, 2011, the manager of post office operations sent a letter to Tyner post office customers stating that retail

³ Order No. 1473, Notice and Order Accepting Appeal and Establishing Procedural Schedule, September 21, 2012.

⁴ Public Representative's Answer to Motion to Dismiss, October 10, 2012 (PR Answer); Participant Statement Received from Tyner I.O.O.F. Lodge, October 10, 2012 (I.O.O.F. Statement); Participant Statement Received from Tyner United Methodist Church, October 10, 2012 (TUMC Statement).

⁵ Participant Statement Received from Alan Burkholder, October 15, 2012 (Burkholder Statement).

services would no longer be available at Tyner, but that Post Office Box service would continue at Tyner under the supervision of the Walkerton post office. *Id.* Attachment 2.

On August 19, 2011, the district manager authorized a discontinuance study of the Tyner post office. *Id.* Attachment 1. On October 11, 2011, a proposal to close the Tyner post office was posted at the Plymouth, Indiana post office. On December 13, 2011, the proposal was removed. *Id.* Attachment 3.

On August 16, 2012, the Plymouth postmaster sent a letter to Tyner customers stating that Post Office Box service would terminate on September 27, 2012. Delivery would then commence to an outdoor centralized delivery point. Petition, Attachment 2. Delivery to the centralized boxes actually commenced on September 8, 2012, and Post Office Box service actually terminated on September 12, 2012. *Id.* Attachment 3.

IV. PARTICIPANT PLEADINGS

Petitioner. Petitioner appears to argue that the discontinuance of Post Office Box service is equivalent to closing the post office and that the Postal Service failed to follow proper procedures.⁶ Petitioner argues that Tyner citizens are entitled to the same efficient postal service provided to their counterparts in urban areas. Petition at 1. Petitioner contends that the Tyner post office has been closed without the posting of a final determination. *Id.* He states that the Postal Service has removed all furniture and fixtures from the post office and has installed a central delivery point outside the community building in Tyner. Burkholder Statement at 1. He suggests that replacement service (cluster box units (CBUs)) is inadequate because a long-time boxholder at Tyner has been denied a box in the CBU. *Id.* at 2. He also asserts that the Postal Service failed to follow up on an offer to move the post office into a local store. *Id.*

⁶ Attached to the Petition are three documents: (1) an undated Notice of Taking Proposal and Comments under Internal Consideration; (2) a Postal Customer Letter dated August 16, 2012, stating that Post Office Box service would be replaced with a centralized delivery point, effective September 27, 2012; and (3) an undated notice or flyer stating that Post Office Box service would end on September 12, 2012.

Postal Service. The Postal Service moves to dismiss the appeal on the ground that the Tyner post office is suspended, not discontinued. The Postal Service states that a discontinuance study was proceeding in 2011, but was temporarily halted because of a moratorium on post office closings that was in effect from December 15, 2011 through May 15, 2012. Motion at 2-3. "Now that the moratorium has ended, the Postal Service is in the process of re-evaluating the status of respective facilities that were being studied for closure." *Id.* at 2. The Postal Service argues that Petitioner's appeal is premature because a final determination to close the Tyner post office has not yet been made. *Id.* at 3-4.

Public Representative. The Public Representative supports dismissal of the appeal. She states that "it does not appear that there has been a constructive closing which could trigger an appeal..." PR Answer at 3. She also suggests that if the Commission dismisses the appeal, it should inform Petitioner that he may appeal again when the Postal Service finally determines to close the Tyner post office. *Id.* The Public Representative points to discrepancies in posting and removal dates of the Postal Service's proposal to close the Tyner post office and suggests that the Commission urge the Postal Service to resolve inconsistencies before they become issues in an appeal. *Id.* at 4.

Other participants. The Tyner I.O.O.F. Lodge (Odd Fellows Lodge) asserts that it has been denied a box in the new CBU, even though it has kept a box at the Tyner post office for over a hundred years. I.O.O.F. Statement at 1. The Odd Fellows Lodge states that it has erected a rural mailbox, which it considers to be insecure, and that someone must travel 7 miles to Walkerton to deal with oversized items. *Id.* at 2. It also objects to the expense of changing stationery. *Id.*

The Tyner United Methodist Church (TUMC) similarly objects to the expense of changing stationery. TUMC Statement at 1. TUMC also objects to the expense and

inconvenience of renting two boxes (one for the parsonage and one for the church), when previously it rented a single box at the Tyner post office. *Id.*⁷

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; and (b) without observance of procedure required by law; or (c) unsupported by substantial evidence on 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 determination by substituting its judgment for that of the Postal Service.

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. *Id.* § 404(d)(5).

The Postal Service has not yet issued a final determination to close the Tyner post office. Motion at 2. Based on the record before it, the Commission finds the

⁷ The concerns expressed by the Odd Fellows Lodge and TUMC relate to local service issues. These concerns have been forwarded to the Consumer Advocate at Postal Service headquarters.

Petition is premature. The Motion is granted; the Petition is dismissed without prejudice.

Section 404(d) establishes a national policy that citizens should have the opportunity to convey their concerns to the Postal Service before their local post office is closed and, most important, that the Postal Service will fairly consider those concerns prior to making a decision to close that facility.

Operations at the Tyner post office were suspended on June 18, 2011, due, in part, to the resignation of the Tyner postmaster on June 17, 2011. *Id.* However, Post Office Box service continued at Tyner under the supervision of the Walkerton post office. *Id.* Attachment 2. On August 19, 2011, the district manager authorized a discontinuance study of the Tyner post office. *Id.* Attachment 1. A proposal to close the Tyner post office was posted at the Plymouth, Indiana post office beginning on October 11, 2011. The proposal was removed on December 13, 2011. *Id.* Attachment 3. The Postal Service instituted a moratorium on closing post offices on December 15, 2011. That moratorium ended on May 15, 2012. The Postal Service states that it is now “in the process of re-evaluating the status of respective facilities that were being studied for closure [prior to the moratorium]. After these offices are re-evaluated the Postal Service will proceed in accordance with Handbook PO-101 and 39 U.S.C. § 404(d) polices and regulations.” Motion at 2.

On August 16, 2012, the Plymouth postmaster announced that Post Office Box service at Tyner would terminate on September 27, 2012. Delivery would then commence to an outdoor centralized delivery point. Petition, Attachment 2. Delivery to the centralized boxes actually commenced on September 8, 2012, and Post Office Box service at Tyner actually terminated on September 12, 2012. *Id.* Attachment 3. All postal equipment has been removed from the Tyner post office. Burkholder Statement at 1. The Postal Service states that retail services are available at the Donaldson post office (8.1 miles away), the Walkerton post office (7.6 miles), and the Plymouth post office (8.5 miles). Petition, Attachment 2.

Petitioner states that the Tyner post office “looks closed.” Burkholder Statement at 1. He states, “[e]verything (the screenline, post office boxes, sorting table, desk and safe) have been removed from the building...” *Id.* He provides photographs of the interior and exterior of the Tyner post office to substantiate his statement. *Id.* Attachment 1.

The Postal Service states that “while it may appear that the Postal Service suspended operations and then failed to follow through with discontinuance or reopening of a facility, discontinuance of the Tyner Post Office instead became entangled with” the moratorium on closings. Motion at 2-3. However, the moratorium ended 6 months ago, and the proposal to close Tyner was posted over a year ago. The Postal Service does not indicate whether comments on its proposal have been analyzed; nor does it indicate when a final determination will be drafted and forwarded to headquarters. As noted by the Public Representative, headquarters may find itself making a decision on the basis of a stale record. See PR Comments at 4 n.3.⁸

Notwithstanding the June 2011 emergency suspension, Post Office Box service continued to be provided until September 12, 2012. The termination of all service at the Tyner post office, coupled with the removal of all postal equipment from the building, creates the appearance of a constructive closing. The Commission has previously addressed the problem of constructive closings resulting from “emergency” suspensions.⁹

Operations at the Tyner post office were suspended June 18, 2011; the moratorium ended May 15, 2012. While the Commission recognizes the nationwide

⁸ The Commission has remanded final determinations in cases where the time between collecting information about a community and posting the final determination was excessive. See Docket No. A2010-5, Order Remanding Determination, December 21, 2010 (12 years) (Order No. 618); Docket No. A95-3, Commission Opinion Remanding Decision, March 17, 1995 (4 years); Docket No. A80-7, Commission Opinion Remanding Decision, June 18, 1980 (5 years).

⁹ See Order No. 618; Order No. 402, Docket No. A2010-1, Order on Appeal of Cranberry, Pennsylvania Post Office Closing, February 1, 2010; Order No. 335, Docket No. PI2010-1, Notice and Order Providing an Opportunity to Comment, November 9, 2009; Order No. 319, Order No. 319, Order on Appeal of Hacker Valley, West Virginia Post Office Closing, October 19, 2009.

impact of the moratorium and POSTPlan, the passage of time is strong evidence that the Postal Service “has failed to follow through with discontinuance or reopening of [this] facility...” Motion at 2-3. Rather than resuming the discontinuance process or reopening the facility, the only action taken regarding the Tyner post office was to terminate Post Office Box service and shutter the facility.

The statute permits the Postal Service to discontinue operations at post offices. Suspensions may, on occasion, be inevitable. The Postal Service has adopted procedures to address this very situation, and it is obligated to follow them to discontinue operations or reopen the facility.

Handbook PO-101 provides that:

a decision should be made within 90 days of an emergency suspension to secure alternate quarters, take necessary corrective action, or initiate a feasibility study. (Section 617).

If the district manager determines not to initiate a discontinuance study, the district manager must determine a plan of action to restore service, secure suitable alternate quarters, or take other necessary corrective action. That plan of action must be provided to the vice president, Delivery and Post Office Operations, no later than the 90 days after suspension takes effect. (Section 618).¹⁰

It is incumbent on the Postal Service to move forward as quickly as practicable to resolve the status of suspended offices, such as Tyner. Residents in affected communities are entitled to be kept informed.

To clarify the status of the Tyner post office, by no later than January 4, 2013, the Postal Service is directed to file a detailed status report describing all steps that have been taken since December 13, 2011 to discontinue the Tyner post office, plans to conduct a new discontinuance study, and plans to resume service in Tyner through a post office, village post office, or other means.

¹⁰ See Docket No. N2012-1, USPS-LR-N2012-2/5 - United States Postal Service Handbook PO-101 (January 2012).

It is ordered:

1. The Motion of the United States Postal Service to Dismiss Proceedings, filed October 1, 2012, is granted.
2. The Petition for Review, filed September 20, 2012, is dismissed without prejudice.
3. The Postal Service shall file by no later than January 4, 2013, a detailed status report concerning the Tyner post office as set forth in the body of this Order.

By the Commission.

Shoshana M. Grove
Secretary