

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

In the Matter of:

Evansdale Branch
Evansdale, Iowa 50707
(Chad Deutsch, Petitioner)

Docket No. A2013-2

UNITED STATES POSTAL SERVICE COMMENTS REGARDING APPEAL
(January 4, 2013)

On November 13, 2012, the Postal Regulatory Commission (Commission) received an appeal from the Mayor of Evansdale, Chad Deutsch (Petitioner), objecting to the discontinuance of the Evansdale Branch in Evansdale, Iowa.¹ On November 15, 2012, the Commission issued Order No. 1540, its Notice and Order Accepting Appeal and Establishing Procedural Schedule under 39 U.S.C. § 404(d). In accordance with Order No. 1540, the administrative record was filed with the Commission on November 23, 2012. On December 7, 2012, the Petitioner filed a motion for extension of time to file an initial brief. On December 10, 2012, the Commission issued Order No. 1572, granting the Petitioner's motion and revised the procedural order for the appeal. On December 21, 2012, the Public Representative filed comments in lieu of an initial brief and the Petitioner filed an initial brief. This pleading serves as the Postal Service's answering brief in support of its decision to discontinue the Evansdale Branch.

¹ The Evansdale Branch was previously appealed under PRC Docket No. A2011-103. On January 18, 2012, the Commission issued Order No. 1141, Order Remanding Determination. Thereafter, the Postal Service posted the Revised Final Determination which forms the basis of this appeal.

I. The Commission Lacks Jurisdiction over the Controversy.

As an initial matter, the Postal Service renews the arguments that the Commission lacks jurisdiction to hear the Petitioner's appeal.² This appeal concerns a branch, and not a Post Office for purposes of 39 U.S.C. § 404(d). Section 404(d) does not apply to retail locations such as branches which are subordinate to a Post Office. In the Postal Service's view, Congress knowingly used "Post Office" in its technical sense, excluding stations and branches from the scope of 39 U.S.C. § 404(d). As reflected in the Revised Final Determination, the Postal Service reconsidered (1) the effect on postal services, (2) the impact upon the Evansdale community, (3) the impact upon postal employees and (4) the calculation of economic savings expected to result from discontinuing the Evansdale Branch. Accordingly, the Revised Final Determination to discontinue the Evansdale Branch should be affirmed. In light of the Commission's past pronouncements in connection with the controversy in this docket and other dockets involving station and branch closings³, although the Postal Service does not concede the Commission's jurisdiction to entertain the appeal, it nevertheless offers these comments as if section 404(d) procedures applied to the Evansdale Branch.⁴ By so

² See Initial Comments of the United States Postal Service, section 1 (pp. 2-7), PRC Docket No. RM2011-13, October 3, 2011.

³ PRC Docket A2012-108, Order No. 1317, South Valley Station, April 18, 2012, at 10; PRC Docket No. A2011-90, Order No. 1159, Pimmit Branch, Falls Church, Virginia, January 20, 2012, at 9-10; PRC Docket No. A2011-49, Order No. 1037, Pinehurst Village Station, Pinehurst, North Carolina, December 12, 2011, at 10.

⁴ The rules in effect at the time the discontinuance study for the Evansdale Branch was initiated, and not the current rules, are applicable to this appeal. Federal Register Vol. 76, No. 135 (July 14, 2011) ("...this final rule is not retroactive ... Therefore, any change in policy or regulations does not affect the procedures applicable to discontinuance processes initiated before the effective date of this final rule, when previous regulations may have been in effect."); Postal Service-Operated Retail Facilities Discontinuance Guide, Handbook PO-101, Transmittal Letter (October 2012) ("The changes to this handbook are not retroactive and are not mandatory for

doing, it does not intend to waive its right to contest the Commission's jurisdiction in this or other dockets.

II. The Revised Final Determination is an Appropriate Response to the Commission's Remand Order, and it Addresses the Issues Identified by the Commission for Reconsideration.

The Petitioner alleges that "the Postal Service did not follow any established procedures to consider the Commission's Order" and the Public Representative asserts "that the new administrative Record should be subject to across-the-board review."⁵ With respect to the original final determination concerning the Evansdale Branch, however, the Commission's remand order identified only a limited number of issues that required reconsideration, and focused on the economic savings calculation.⁶ Moreover, the Commission in its remand order found that the Postal Service's analysis complied with 404(d) for a majority of the factors that it is statutorily required to consider when closing or consolidating a Post Office, and the remand order gave no indication that reconsideration was necessary for these factors.⁷

discontinuance actions commenced when previous procedures and regulations were in effect and for which the initial feasibility study was begun before the transmittal of this handbook.").

⁵ Initial Brief of Petitioner Chad Deutsch (Petitioner Brief), PRC Docket No. A2013-2 (December 21, 2012) at 11; Public Representative's Comments in lieu of Initial Brief (PR Comments), PRC Docket No. A2013-2 (December 21, 2012) at 5.

⁶ The Public Representative also highlights that "the Commission remanded the case to the Postal Service for reconsideration of a deficiency in the economic analysis." See PR Initial Brief at 1.

⁷ PRC Order No. 1141 Remanding Determination (PRC Remand Order) at 9 ("The Postal Service has adequately considered the effect of the [Branch] closing on the community as required by 39 U.S.C. 404(d)(2)(A)(i)."); *Id.* ("The Postal Service has satisfied its obligation to consider the effect of the closing on employees at the Evansdale [Branch] as required by 39 U.S.C. 404(d)(2)(A)(ii)."); *Id.* at 10 ("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).").

In addition, despite the Petitioner's contentions, section 404(d) does not require consideration of revenue and costs with respect to profit. In fact, the Postal Service is prohibited from closing certain facilities solely because they operate at a loss.⁸

The Petitioner also contends that the Postal Service did not explain why the Evansdale Branch should be closed.⁹ On page 2 of the Revised Final Determination, the Postal Service states the Evansdale Branch is being considered for possible closing or consolidation due to the following reasons: ...declining workload, volume, and the ability of the Postal Service to provide service by alternative means. The Postal Service included this same reasoning on page 2 of the Proposal.¹⁰ Furthermore, the Postal Service mailed letters to customers notifying them that the workload at the Evansdale Branch was declining and that maintenance of the Evansdale Branch may no longer be warranted.¹¹

The Postal Service reconsidered each issue identified in the Commission's remand order, and the conclusions resulting from its reconsideration appear in the Revised Final Determination.

III. The Postal Service Provided Public Notice of the Revised Final Determination and Each Revision Made to the Original Final Determination.

The Petitioner alleges that the "record provides no information as to what actions the Postal Service took to address the Commission's Order" and that "there is no record to support or explain the changes made from the original Final Determination to the

⁸ 39 CFR 241.3(a)(5)(ii)(D).

⁹ Petitioner Brief at 12-13.

¹⁰ Item No. 33, Proposal Exhibit.

¹¹ Item No. 21, Dear Customer Letter.

Revised Determination.”¹² However, upon posting of the Revised Final Determination, the Postal Service mailed a letter to customers notifying them of the posting. This letter listed each change that was made to the final determination and its corresponding page.¹³ These changes were made as a result of the issues that the Commission found with the administrative record in Order No.1141, as well as internal decisions the Postal Service made to provide customers with a more concise final determination. For changes that needed to be further explained or clarified, the Postal Service utilized a footnote or asterisk. Thus, the Postal Service not only provided customers with a detailed list of the changes, but also included an explanation where necessary.

IV. The Revised Final Determination Provides Support for the Economic Savings Calculation and Addresses the Concerns Raised in the Commission’s Remand Order.

The Petitioner contends that the ten-year economic savings calculation used by the Postal Service is “too speculative.”¹⁴ However, the Petitioner provides no support for the conclusory statements that “[t]he cost savings should be shown on an annual basis and presumably for a time period of five years or less.”¹⁵ As demonstrated in the Revised Final Determination, the Postal Service developed a revised calculation of economic savings based on a 10-year assessment. The Commission is familiar with the Postal Service’s 10-year assessment from previous Post Office dockets, and in no case has it concluded that a 10-year projection was “speculative.”¹⁶ The Petitioner’s contention that “the cost savings should be shown on an annual basis and presumably

¹² Petitioner Brief at 11.

¹³ See Item No.58, Customer Notification of Final Determination Posting.

¹⁴ Petitioner Brief at 8.

¹⁵ See id.

¹⁶ See PRC Docket No. A2012-100, Jonesville, TX and PRC Docket No. A2012-120, Santa Fe, MO.

for a time period of five years or less” seems to be a preference of the Petitioner rather than a factual argument.¹⁷ In addition, the Petitioner provides no support for his claim that use of the net present value calculation is improper.

The Petitioner also alleges that the “Revised Final Determination omits any substantive discussion about the long term-lease” and that “the Postal Service used a ten-year period for its cost savings estimate to avoid the fact that there would be no cost savings from the lease until 2016.”¹⁸ The Postal Service does not contest that lease savings will not be realized until after expiration of the lease. In footnote 2 of the Revised Final Determination, the Postal Service stated that the rent savings included in the economic savings calculation reflect “an estimate of rental savings that is expected to accrue *after* the expiration of the lease.”¹⁹ Further, the Postal Service recognized the Commission’s issue regarding the inclusion of rental savings in its savings calculation in the original final determination, and explained that these savings are not included in its economic savings calculation in the Revised Final Determination.²⁰ While the 10-year assessment used by the Postal Service in its economic savings calculation for the Evansdale Branch is a fairly new procedure implemented by the Postal Service, it has been used in previous discontinuance studies and was not developed especially for use in the Evansdale Branch feasibility study.

As stated by the Commission and recognized by the Petitioner, section 404(d) does not preclude discontinuance of a retail facility even if the closing will result in zero

¹⁷ See Petitioner Brief at 8.

¹⁸ See *id.* at 8-9.

¹⁹ *Id.*

²⁰ *Id.*

or negative savings; rather, the statute requires consideration of the economic savings, balanced against other factors.²¹

The fundamental disagreement between the Petitioner and the Public Representative, and the Postal Service, with respect to the Postal Service's economic savings calculation is apparent in the challenge to the Postal Service's calculation of the labor savings likely to arise from the discontinuance of the Evansdale Branch. The Petitioner and the Public Representative contend that no labor savings will result from the discontinuance of the Evansdale Branch and the elimination of all employee positions within the facility.²² But as explained in the Revised Final Determination, the Evansdale Branch employee transferred to a vacant position, and if the vacancy did not exist, the employee would have been separated. The resulting savings could be understood by viewing the situation as if the employee was separated, then submitted an application for the vacant position, and was selected to fill the vacant position.

V. The Evansdale Branch Is Suspended and It Is Appropriate for the Postal Service to Apply the Procedures Applicable to a Suspended Retail Facility.

The Public Representative argues that the Evansdale Branch was officially closed prior to the issuance of the Commission's Order of Remand in PRC Docket No. A2011-103.²³ However, the Postal Bulletin²⁴, which is the governing authority regarding suspensions and closings, reflects that the Evansdale Branch is currently under

²¹ See PRC Remand Order at 11.

²² See Petitioner Brief at 9; PR Comments at 6.

²³ PR Comments at 1-2.

²⁴ Postal Bulletin No. 22324 (November 17, 2011) reflects that the Evansdale Branch was discontinued; however, Postal Bulletin No. 22344 (August 23, 2012) reflects that the Evansdale Branch is currently suspended and was suspended at the time the Postal Service considered the Remand Order. See Item No. 54, Announcement in *Postal Bulletin*.

emergency suspension.²⁵ The assertion that the Evansdale Branch was identified as closed does not demonstrate that the Postal Service acted improperly. The petitioners in PRC Docket No. A2011-103 did not file an application for suspension, and thus, even assuming that section 404(d) applied to the discontinuance study of the Evansdale Branch, which it does not, the Postal Service policies in effect at the time permitted the closing of the Evansdale Branch before completion of the appeal process.²⁶ More importantly, as evidenced by the Postal Bulletin article cited above, the Evansdale Branch was categorized as suspended during the Postal Service's consideration of the Commission's Remand Order. This ensured that the Postal Service's consideration of the Remand Order could include the option of continuing operations at the Evansdale Branch.

Finally, the Postal Service followed the appropriate posting procedures with respect to notice of the Revised Final Determination. The Public Representative characterizes the Postal Service's posting of the Revised Final Determination at the Waterloo Post Office as "improvised,"²⁷ but it is common practice to post a notice of a final determination at affected retail facilities, including the Administrative Post Office, when the postal retail facility subject to the final determination is suspended.²⁸ A suspended retail facility does not operate, and thus there is no reason for customers or other members of the community to visit it. And as described above, the new rules concerning appeals of station and branch discontinuance actions do not apply in this

²⁵ Postal Bulletin No. 22344 (August 23, 2012) at 24.

²⁶ See 39 C.F.R. 241.3(g)(3)(i) (authorizing implementation of final determination before disposition of appeal for Post Office discontinuance actions).

²⁷ PR Comments at 2.

²⁸ 39 C.F.R. 241.3(g)(3)(ii)(A).

case.²⁹ Before implementation of the new rules, the Postal Service did not extend the notice and appeal procedures of 39 U.S.C. § 404(d) to stations and branches.³⁰

VI. Post Plan has no effect on the Status of the Evansdale Branch.

The Petitioner further argues that the Postal Service should not close the Evansdale Branch since it has now implemented Post Plan and “rural” Post Offices are no longer being closed.³¹ It is well established that Post Plan affects only EAS Level 16 and below Post Offices that were operational as of the close of Fiscal Year 2011.³² As a suspended, nonoperational retail facility that is not even categorized as a Post Office, the Evansdale Branch falls outside the scope of Post Plan. Post Plan affects specific postal facilities, but has no effect on others, including the Evansdale Branch and some postal facilities that could be considered to be located in “rural areas.”³³

VII. The Use of Information Requests in the Context of the Post Office Discontinuance Appeal Process Would Conflict with Applicable Statutes and Regulations and Interfere with the Purpose and Operation of the Post Office Discontinuance Process.

The statutes and regulations governing the Post Office discontinuance appeal process provide explicit instructions to the Commission regarding its authority to consider Post Office discontinuance appeals. Specifically, the Commission is directed to “review [the Postal Service’s final] determination on the basis of the record before the

²⁹ *Supra* note 4.

³⁰ See Comments of United States Postal Service Regarding Jurisdiction Under (Current) Section 404(d), PRC Docket No. A2010-3 (April 19, 2010) (explaining the scope of the section 404(d) notice and appeal procedures in effect before the new rules that became effective on July 14, 2011).

³¹ Petitioner Brief at 12-13.

³² See PRC Docket No. N2012-2, Request for an Advisory Opinion at 1 and Testimony of Jeff Day, at FN 1.

³³ Day Testimony at FN 1.

Postal Service in the making of such determination.”³⁴ Any attempt to expand the record considered by the Commission, through the use of information requests or other procedures, would conflict with the explicit standard of review set out in the statute.³⁵

In addition to the conflict with the Commission’s authority, permitting the use of information requests in “A” series dockets is inappropriate, would create an excessive, unnecessary burden, and would further stress the limited resources of the Commission and the Postal Service.³⁶ For example, last year the Commission accepted 126 appeals of a final determination. If information requests were permitted in such dockets, the discontinuance process would become more complicated and require even more Commission and Postal Service resources. And it is unclear if or how the Commission would be able to limit the information request process to only a subset of discontinuance studies or appeals.

Conclusion

As reflected throughout the administrative record, the Postal Service has followed the proper procedures and carefully considered the effect of closing the Evansdale Branch on the provision of postal services and on the Evansdale community, as well as the economic savings that would result from the proposed closing, the effect on postal employees, and other factors, consistent with the mandate of 39 U.S.C. § 404(d)(2)(A).

³⁴ 39 U.S.C. § 404(d)(5).

³⁵ See Initial Comments of the United States Postal Service, PRC Docket No. RM2011-13 (October 3, 2011) at Section IV, pgs. 13-19.

³⁶ See *generally* United States Postal Service Initial Comments, PRC Docket No. RM2012-4 (June 18, 2012) at 12-20 (explaining burden associated with information requests and other forms of discovery in the context of “N” series cases).

After taking all factors into consideration, the Postal Service determined that the advantages of discontinuance outweigh the disadvantages. In addition, the Postal Service concluded that after the discontinuance, the Postal Service will continue to provide effective and regular service to Evansdale customers through nearby Post Office, alternative access, and city carrier delivery.³⁷ The Postal Service respectfully submits that this conclusion is consistent with and supported by the administrative record and is in accord with the policies stated in 39 U.S.C. § 404(d)(2)(A). The Postal Service's decision to close the Evansdale Branch should, accordingly, be affirmed.

The Postal Service respectfully requests that the determination to close the Evansdale Branch be affirmed.

Respectfully submitted,

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³⁷ Revised Final Determination at 7.