

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

Before Commissioners:

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

Evansdale Post Office
Evansdale, Iowa

Docket No. A2013-2

ORDER AFFIRMING DETERMINATION

(Issued March 7, 2013)

I. INTRODUCTION

On November 13, 2012, Chad Deutsch, Mayor of Evansdale, Iowa (Petitioner) filed a petition with the Commission seeking review of the Postal Service's Revised Final Determination to close the Evansdale branch, Iowa post office (Evansdale branch).¹ The Revised Final Determination to close the Evansdale branch is affirmed.

¹ Petition for Review received from Mayor Chad Deutsch, November 13, 2012 (Petition).

II. PREVIOUS PETITION FOR REVIEW AND REMAND

The closing of the Evansdale branch was previously appealed by Petitioner in Docket No. A2011-103.²

On January 18, 2012, the Commission remanded the determination to close the Evansdale branch to the Postal Service.³ The basis for the remand was that “[t]he Postal Service has not satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).” Order No. 1141 at 11.

The two areas of contention were the consideration of employee costs and the consideration of lease costs that might continue for an additional 4 years after closure. The Commission stated:

The Commission has previously observed that the Postal Service should include in its estimate of savings only those costs likely to be eliminated by the closing. In this case, since the employee is simply being transferred to another facility and the lease continues until January 2016, there is no rational basis to conclude that the Postal Service will realize any savings until after the lease expires (or if it were able to sublet the property sooner). Thus, the Commission concludes that the Postal Service has not satisfied the requirements of section 404(d)(2)[(A)](iv).

Under section 404(d)(2)[(A)](iv), the Postal Service may, if it wishes, close a facility even if there are no (or even negative) savings. It has not done that here. Rather, it claims savings that it will not realize for at least 4 years. That result is not consistent with section 404(d)(2)[(A)](iv).

Id. (footnote omitted).

² Petition for Review received from Chad Deutsch, Mayor of Evansdale, Iowa regarding the Evansdale, Iowa post office 50707, September 30, 2011. An additional Petition for Review was received from Craig Chilton regarding the Evansdale, Iowa post office 50707, October 11, 2011.

³ Docket No. A2011-103, Order Remanding Determination, January 18, 2012 (Order No. 1141).

III. DOCKET NO. A2013-2 PROCEDURAL HISTORY

On November 15, 2012, the Commission established Docket No. A2013-2 to consider the instant appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.⁴

On November 23, 2012, the Postal Service filed the Administrative Record with the Commission.⁵ The Postal Service also filed comments requesting that the Commission affirm its Revised Final Determination.⁶

Petitioner filed initial and reply briefs supporting his Petition.⁷ On December 21, 2012, the Public Representative filed comments.⁸

IV. BACKGROUND

Operations at the Evansdale branch are currently suspended. Prior to suspension, it provided retail postal services and service to 133 post office box customers. Revised Final Determination at 2. No delivery customers are served through this office. The Evansdale branch provided retail service from 8:30 a.m. to 11:00 a.m. and noon to 4:00 p.m., Monday through Friday, and was closed on Saturday. Lobby access hours were 7:45 a.m. to 6:00 p.m. Monday through Friday, and none on Saturday. *Id.*

⁴ Order No. 1540, Notice and Order Accepting Appeal and Establishing Procedural Schedule, November 15, 2012.

⁵ The Administrative Record is attached to the United States Postal Service Notice of Filing Administrative Record and Application for Non-Public Treatment, November 23, 2012 (Administrative Record). The Administrative Record includes, as Item No. 57, the Revised Final Determination to Close the Suspended Evansdale, IA Branch and Continue to Provide Service by Nearby Post Office, Alternate Access and City Delivery Carrier (Revised Final Determination).

⁶ United States Postal Service Comments Regarding Appeal, January 4, 2013 (Postal Service Comments).

⁷ Initial Brief of Petitioner Chad Deutsch, December 21, 2012 (Petitioner Brief); Reply Brief of Petitioner Chad Deutsch, January 15, 2013 (Petitioner Reply Brief).

⁸ Public Representative Reply Comments in Lieu of Initial Brief, December 21, 2012 (PR Comments).

Retail transactions averaged 185 transactions daily (82 minutes of retail workload). Receipts for 3 prior years were \$270,763 in FY 2008; \$244,212 in FY 2009; and \$253,050 in FY 2010. There are no permit or postage meter customers. *Id.* By closing this post office, the Postal Service anticipates savings of \$604,406 over a 10-year period. *Id.* at 7.

Since suspension of the Evansdale branch, retail services have been provided by the Waterloo post office located approximately 3 miles away.⁹ *Id.* at 2. Retail service is also available at the Raymond post office, located 4 miles away, and at four contract units in Hy-Vee stores, one of which is 2.5 miles from the Evansdale branch. *Id.* Delivery service is, and will be, provided by the Waterloo post office. The Waterloo post office is an EAS-24 level office, with retail hours of 8:30 a.m. to 5:00 p.m., Monday through Friday, with none on Saturday. There are more than 250 post office boxes available. *Id.* at 3. The Postal Service will continue to use the Evansdale name. *Id.* at 6. Evansdale's 50707 ZIP Code is also being retained. Administrative Record, Item No. 54 at 2.

Evansdale is an incorporated community located in Black Hawk County, Iowa. Revised Final Determination at 6. The community is administered politically by a mayor and a council. Police protection is provided by the Evansdale Police Department. Fire protection is provided by the Evansdale Fire Department. The community is comprised of retirees, the self-employed, and those who work in local businesses or commute to work in nearby communities. *Id.*

V. PARTICIPANT PLEADINGS

Petitioner. Petitioner opposes the closure of the Evansdale branch. Petitioner asserts that on remand the Postal Service should have reevaluated each of the factors identified in 39 U.S.C. § 404(d)(2)(A), not just the issues that caused the Commission to

⁹ MapQuest estimates the driving distance between the Evansdale and Waterloo post offices to be approximately 3.1-3.5 miles (7-8 minutes driving time, respectively).

remand the previous determination to close the Evansdale branch. Petition at 3. Petitioner contends that the Postal Service has again failed to properly consider economic savings because it did not analyze revenue. Petitioner Brief at 10. Petitioner argues that the Postal Service did not seek comments from Evansdale customers in the course of drafting its Revised Final Determination. *Id.* at 2. Petitioner claims that the Evansdale branch was closed before it was suspended and that such a procedure is not legitimate. *Id.* at 11-12. Finally, Petitioner asserts that given the adoption of POSTPlan, the Postal Service should not be closing post offices.¹⁰ Petitioner Brief at 12-13.

Public Representative. The Public Representative agrees with Petitioner that the Postal Service should have reevaluated all statutory factors in the course of producing the revised Final Determination and that the Postal Service's consideration of economic savings remains inadequate. PR Comments at 4-6. The Public Representative questions the adequacy of notice provided to Evansdale patrons concerning the issuance of the Revised Final Determination. *Id.* at 2. The Public Representative also suggests that the Commission "consider initiating a dialogue with the Postal Service on ways to improve openness and transparency of the appeals process through special rules" (such as allowing for information requests) and "consider whether there is a need for amendments to its existing rules to address . . . what should unfold in the wake of a remand." *Id.* at 5-6.

Postal Service. The Postal Service contends that the Commission lacks jurisdiction to hear Petitioner's appeal because the Evansdale facility is a branch, not a post office. Postal Service Comments at 2. It also contends that the Revised Final Determination only needed to address deficiencies identified in the Commission's remand order. *Id.* at 3. It asserts that its reevaluation of economic savings follows a methodology used in prior discontinuance studies. *Id.* at 6. The Postal Service insists

¹⁰ POSTPlan is a program under which the Postal Service reduces the hours of operation at small post offices as an alternative to closing them. See Docket No. N2012-2, Advisory Opinion on Post Office Structure Plan, August 23, 2012 (Advisory Opinion). There does not appear to be a legal requirement for the Postal Service to consider the Evansdale branch under POSTPlan.

that it provided adequate notice of the Revised Final Determination. *Id.* at 8. It argues that POSTPlan does not affect the Evansdale branch because POSTPlan only applies to operational post offices, and Evansdale is neither operational (it is suspended) nor a post office (it is a branch). *Id.* at 9. Finally, the Postal Service opposes the Public Representative's suggestion that the Commission utilize information requests during appeal proceedings as burdensome and *ultra vires*. *Id.* at 9-10. The Postal Service requests that the Revised Final Determination to close the Evansdale branch be affirmed. *Id.* at 11.

VI. 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.

The Commission set aside the Postal Service's initial determination to close the Evansdale branch, and in accordance with the law returned the entire matter to the Postal Service for further consideration. Petitioner and the Public Representative assert that the Revised Final Determination should have reevaluated all the factors listed in 39 U.S.C. § 404(d)(2)(A). Petition at 3; PR Comments at 5. The Postal Service responds that the Commission's remand order found that the Postal Service had properly addressed the other factors. Postal Service Comments at 3 & n.7. The Postal

Service also states that “the remand order gave no indication that reconsideration was necessary for these [other] factors.” *Id.* (footnote omitted).

The remand was based on the Postal Service’s failure to satisfy 39 U.S.C. § 404(d)(2)(A)(iv). The record in this proceeding, including the Revised Final Determination, provides additional details concerning savings estimates. The remand order did not require the Postal Service to recommence the entire section 404(d) closing procedures. It only requires the Postal Service to address where its previous determination was deficient.

Significantly, Petitioner and the Public Representative do not claim that changed circumstances or the passage of time have invalidated or made stale the record on which the remand order was based. It would be an inefficient use of Postal Service resources to require a completely new discontinuance study when there has been no showing that the prior record is stale or otherwise problematic. Further consideration did not require the Postal Service to repeat significant portions of the discontinuance process as suggested by the Petitioner and the Public Representative.

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 Postal Service posted the initial Final Determination on August 23, 2011 and discontinued operations on October 21, 2011. Administrative Record, Item No. 50. Thus, the Postal Service took no action to close a post office for 60 days as required by

the statute. The Commission remanded the final determination for further consideration on January 18, 2012.

The record indicates the Postal Service notified Evansdale patrons of the availability of the Revised Final Determination by letter dated October 31, 2012. *Id.*, Item No. 58. The Postal Service posted the Revised Final Determination at the Waterloo post office on November 1, 2012. *Id.*, Item No. 57, cover sheet. Petitioner received actual notice of the Revised Final Determination and perfected an appeal. See Petition at 1 (referencing the October 31 letter). In this case, notice of the Revised Final Determination was adequate.

Petitioner states that the Postal Service closed the Evansdale branch only to recharacterize it as suspended. Petition at 2. The Postal Service states that the closure of the Evansdale branch was permissible under regulations in effect at the time and that changing the status to suspended “ensured that the Postal Service’s consideration of the Remand Order could include the option of continuing operations at the Evansdale branch.” Postal Service Comments at 8. The procedure for suspension in this particular case is not fully clear. The absence in the record of any basis for the suspension leaves the impression that, notwithstanding the pending appeal, the Evansdale branch was for all intents and purposes closed.¹¹

The Postal Service has had a longstanding practice of keeping a post office open and operating during the pendency of a community’s appeal. This is one way that the Postal Service can provide increased community confidence in its national procedures for reviewing discontinuance of post offices. The failure to fully document the procedure for suspension in this particular case may not foster goodwill within the community or ensure confidence in the discontinuance process. However, the facility’s suspended status does not prevent the Commission from considering the issues on appeal.

¹¹ As the Postal Service observes, no party to Docket No. A2011-103 sought to suspend the effectiveness of the initial determination to close the facility. *Id.* Given that operations at the Evansdale branch have been suspended, Petitioner’s request that the revised determination be suspended pending this appeal is effectively moot.

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). As discussed above, the Commission addressed these factors in Order No. 1141 and found that, apart from economic savings (section 404(d)(2)(A)(iv)), the Postal Service satisfied the factors of section 404(d). Petitioner and the Public Representative fail to provide any compelling justification for revisiting those issues in this proceeding.

Economic savings. The Postal Service estimates 10-year savings of \$604,406. Revised Final Determination at 6. It represents the net present value of savings of the following expenses assuming the Evansdale branch remained open for 10 years: Maintenance (\$46,340), Utilities (\$9,463), Labor (\$687,615), Rent (\$44,707), and Relocation (\$1,021).¹² *Id.* Petitioner objects to this calculation as speculative, incomplete, unsupported by the record, and not responsive to the Commission's remand order. Petitioner Brief at 8-10; Petitioner Reply Brief at 3-6. The Public Representative also asserts that the Postal Service has not adequately addressed the issues remanded by the Commission. PR Comments at 6.

In its remand order, the Commission questioned the Postal Service's estimate of savings from reduced or eliminated rent and labor costs. Order No. 1141 at 10-11. The Postal Service's lease for the Evansdale branch had 4 years to run. There would be no savings on rent until the lease expired. The Postal Service had not taken this into account. The Postal Service had also not explained how it would achieve savings in labor expenses when the employee staffing the Evansdale branch would continue to work for the Postal Service. *Id.* at 11.

¹² Relocation is identified as a one-time cost. *Id.*

On remand, the Postal Service states that the Evansdale employee moved to a vacant position in Waterloo and that had a vacant position not been available, the employee would have been terminated. The Postal Service explains that 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.” Postal Service Comments at 7 (citing Revised Final Determination at 7). As a general matter, this conclusion is reasonable. However, it assumes that the former Evansdale employee’s compensation is equal to the compensation that may have been paid to any other person who might have filled the vacant position in Waterloo. The issue here is the possibility that the former Evansdale employee filled a lower rated position in Waterloo but retained the higher pay and benefits of the Evansdale position. If this were true, estimated savings would be somewhat reduced. They would not, however, be eliminated. In the interest of transparency, the Postal Service would benefit from addressing this issue in future determinations.

With respect to rent expense, the Postal Service states that the only savings from rent expense included in its economic savings analysis are expenses expected to accrue after the expiration of the current lease. Postal Service Comments at 6 (citing Revised Final Determination at 7 n.2). Petitioner asserts that he cannot verify this statement using information in the administrative record. He states, “The cost savings should be shown on an annual basis, not as a ten-year NPV total.” Petitioner Brief at 10.

The cost savings presented in the Revised Final Determination are not the only information available. The Administrative Record also contains the original final determination, which relied only on a single year of labor and rent savings. Administrative Record, Item No. 47 at 6. The Postal Service has acknowledged that there will be no rent savings from closing the Evansdale branch until its lease expires in 2016. Postal Service Comments at 6. The Postal Service has also explained how it will achieve labor savings even though the Evansdale employee continues working for the Postal Service. *Supra* at 10.

Petitioner argues that a proper economic analysis of closing the Evansdale branch would include changes in revenue as well as cost.¹³ Petitioner Brief at 10; Petitioner Reply Brief at 5. This issue has arisen in other contexts before the Commission. For example, in its evaluation of POSStPlan, the Commission stated that:

the Postal Service indicates that it has conducted a statistical analysis of the effect on revenue of different levels of retail hours. Although it found a correlation between hours and revenue, the coefficient that measures the effect did not prove a statistically significant relationship. Statistically speaking, that means that changes in hours may have no effect on revenue.

Advisory Opinion at 18-19.

The Commission is not prepared to require for purposes of section 404(d) an analysis of revenue loss when there is no practical method to estimate such loss.

The Postal Service has undertaken further consideration of the economic issues identified by the Commission on remand by providing further explanation of labor cost savings and modifying estimations of potential lease savings. It has provided the required further consideration and has presented additional information responsive to the remand order. While the presentation could have been more robust, it is sufficient for the Commission to conclude that the Postal Service has satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

Incomplete administrative record. The Public Representative suggests “the use of special rules of practice permitting petitioners to direct information requests to the Postal Service, through the auspices of the Commission or a special master.” PR Comments at 5. The Postal Service opposes this suggestion stating that the statute requires a review limited to the record before the Postal Service. Postal Service Comments at 9-10 (footnotes omitted).

The Commission is required by statute to base its review on the record before the Postal Service. The Commission has the ability, if necessary, to take steps to

¹³ The Postal Service has evaluated the revenue generated by the Evansdale branch, but has not used the revenue estimates to offset potential cost savings.

insure that the administrative record provided to the Commission is, in fact, the “record [that was] before the Postal Service.” 39 U.S.C. § 404(d)(5). It is expected that the Postal Service will ensure the administrative records and final determinations to close post offices are complete and contain all the information necessary for appellate review of the Postal Service’s decision. In this particular case, the record appears to be complete.

It is ordered:

The Postal Service’s revised determination to close the Evansdale branch, Iowa post office is affirmed.

By the Commission.

Shoshana M. Grove
Secretary