

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

Berkeley Main Post Office
Berkeley, California

Docket No. A2013-9

ORDER GRANTING MOTION TO DISMISS

(Issued August 27, 2013)

On August 9, 2013, the Postal Service filed a motion to dismiss the proceeding concerning the Berkeley main post office (Berkeley MPO).¹ The Public Representative filed an answer in support of the Motion.² Petitioner Bates filed an answer in opposition to the Motion.³ The appeal of the Postal Service decision concerning the Berkeley MPO is premature. The motion to dismiss is granted, and the appeal is dismissed without prejudice.

¹ Motion of United States Postal Service to Dismiss Proceedings, August 9, 2013 (Motion).

² Public Representative's Answer to the Postal Service's Motion to Dismiss Proceedings, August 16, 2013 (PR Answer).

³ Petitioner's Reply to the United States Postal Service Motion to Dismiss, August 15, 2013 (Petitioner Answer).

Background. On July 18, 2013, the Postal Service issued a final decision letter stating its intent to relocate the Berkeley MPO. Motion at 2. The Postal Service has not indicated when the relocation will occur or identified the new location. *Id.* The Postal Service mentions that it may consider a sale of the building and a lease-back of the required space so as to allow existing retail service to remain in place. *Id.* at 2. It states that postal operations require approximately 4,000 square feet of the approximately 57,000 square feet of space in the existing building. Motion, Exhibit 1 at 3.

The Postal Service has assured customers that the Berkeley MPO will continue to provide service “until the replacement facility is ready for use as a Post Office.” Motion at 3. It also stated that it will only consider a replacement facility convenient and suitable to customers within the same ZIP Code, and that the new location will provide the same services and have the same hours of operation as the Berkeley MPO. *Id.*

Postal Service Motion. The Postal Service contends the Commission lacks jurisdiction to consider an appeal of a post office relocation under 39 U.S.C. § 404(d). *Id.* at 3. It asserts that an appeal under 39 U.S.C. § 404(d) must concern a discontinuance action. *Id.* It further asserts that the Commission has consistently held 39 U.S.C. § 404(d) does not apply to a relocation of retail operations to another facility within the same community. *Id.* at 3-4. Therefore, the Postal Service concludes that the Commission lacks jurisdiction to hear an appeal concerning the relocation of the Berkeley MPO.

Public Representative Answer. The Public Representative contends it is premature to characterize the planned sale of the Berkeley MPO as a relocation because an alternative location has not been identified, and a sale/lease-back of the building remains an option. PR Answer at 4.

The Public Representative draws parallels to the recent Bronx general post office (Bronx GPO) decision granting a motion to dismiss where the Commission found the Postal Service’s actions were “insufficient to trigger the right to appeal at this time.”⁴ He

⁴ See Order No. 1802, Docket No. A2013-6, Order Granting Motion to Dismiss, August 8, 2013, at 2.

notes that the Bronx GPO also involved an historic building where the Postal Service indicated an intent to relocate to a yet-to-be-determined location. PR Answer at 5. The Postal Service also stated that the new location would provide similar services with similar hours of operation, and that the existing facility would remain in operation until the new location is ready. *Id.* The Public Representative concludes that for the same reasons, the Commission should dismiss the instant appeal without prejudice. *Id.* at 6.

Petitioner Answer. Petitioner states that the Postal Service has made public its decision to sell the Berkeley MPO. Thus, he contends the Commission has jurisdiction to review the decision pursuant to 39 U.S.C. § 404(d)(5). Petitioner Answer at 2. He argues that this situation is unique because the Postal Service has not identified a new location or guaranteed that a relocation will occur. *Id.* Petitioner also contends the Postal Service did not consider the impact on the community concerning the intended closure of the Berkeley MPO. *Id.* at 3-4.

Commission analysis. The Postal Service actions concerning the Berkeley MPO are insufficient to trigger the right to appeal at this time. The Postal Service has announced its plans to relocate the Berkeley MPO. It also has affirmatively stated that it will continue providing retail service at the Berkeley MPO “until a suitable location within the same community is found and is ready for occupancy and use as a Post Office.” Motion at 7. It has not set a date to discontinue service at this location. It has not identified a site for relocation. There is no indication that the Postal Service has undertaken a discontinuance study pursuant to 39 C.F.R. § 241.3. It has proceeded under its 39 C.F.R. § 241.4 relocation regulations.

Future events could make cessation of retail operations at the Berkeley MPO ripe for Commission review. Without information on when the Berkeley MPO will close, and where and when the replacement facility will begin operations as a post office, any appeal is premature. Such information would be relevant in determining whether the Postal Service's actions represent a relocation or closing.

It is ordered:

1. The Motion of United States Postal Service to Dismiss Proceedings, filed on August 9, 2013, is granted.
2. Petitioner's appeal is dismissed without prejudice.

By the Commission.

Shoshana M. Grove
Secretary

CONCURRING OPINION OF CHAIRMAN GOLDWAY

In many instances recently, the Postal Service has announced plans to relocate retail services from an existing, often historic post office, before identifying the location of the new post office. Many communities have responded with great concern, particularly since the announced relocation entails selling the centrally located, often iconic building housing the existing post office.

The Postal Service is authorized to establish post offices, including determining where they should be located. In doing so, it must ensure that customers have ready access to essential postal services. As relates to issues in this docket, the Postal Service must ensure that community input is taken into account when adjusting its retail locations.

Decisions to relocate a post office can be wrenching on a community. The Postal Service should undertake a thorough and balanced review, particularly when the building is historic and part of the civic fabric of the community. A decision to sell a building prior to identifying a relocation site bifurcates the community input and significantly reduces the ability of the Service and the community to evaluate the impact of relocation.

The process the Postal Service is currently employing appears to cause needless confusion in the affected communities, as evidenced by the appeals filed with the Commission, and damages its relations with the customers it is trying so hard to retain. The process would be improved if the Postal Service identifies the new post office location contemporaneously with announcing its decision to relocate the existing post office.