

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

Before Commissioners:

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

Climax Post Office
Climax, Georgia

Docket No. A2013-3

ORDER DISMISSING APPEAL WITHOUT PREJUDICE AND
REQUIRING PERIODIC STATUS REPORTS

(Issued October 22, 2013)

I. INTRODUCTION AND SUMMARY

On July 23, 2013, Morgan Wolaver (Petitioner) filed a Participant Statement, accompanied by a Memorandum in Support of Request for Review (Memorandum), appealing the closure of the Climax, Georgia Post Office (Climax post office).¹ Petitioner claims that the Postal Service's actions demonstrate that the Climax post office was permanently closed on November 1, 2012. Participant Statement at 1.

¹ Participant Statement from Morgan Wolaver, July 23, 2013 (Participant Statement). In the absence of evidence of a Final Determination regarding the Climax post office, Petitioner's filing was filed in the instant docket, which was established to consider previous appeals regarding the Climax post office. See Order No. 1576, Notice and Order Accepting Appeal and Establishing Procedural Schedule, December 12, 2012. Two exhibits are attached to the Memorandum.

Petitioner requests that “Final Determination . . . be reversed and returned to the Postal Service.” *Id.*²

On July 30, 2013, the Postal Service responded to the Participant Statement, arguing, *inter alia*, that the submission should be dismissed as premature.³ The Postal Service primarily argues that if the filing is construed as an appeal, the matter is not ripe for review because the discontinuance study is not concluded and no Final Determination has issued. *Id.* at 1.⁴

Petitioner filed a reply on August 7, 2013, contending, among other things, that an appeal may be brought in the absence of a formal “written determination” by the Postal Service.⁵

The central question raised by the Petitioner is whether, for purposes of 39 U.S.C. § 404(d)(5), the Climax post office is closed. That office has not operated since November 1, 2012. On this record, the Commission is not prepared to conclude that the Postal Service’s actions have caused the suspension to become permanent. Accordingly, Petitioner’s request for review is dismissed without prejudice.

However, the status of the Postal Service’s discontinuance study remains unknown. This has created uncertainty in the community and has led to the filing of repetitive pleadings with the Commission. To avoid this, in communities where operations at the local post office have been suspended, the Postal Service should endeavor to inform patrons of the status of the office routinely. In this docket, the Commission directs the Postal Service to provide a report on the status of the

² The Memorandum further requests the Commission to review the *de facto* closing and retain jurisdiction at least until a further Administrative Record is available.” Memorandum at 1.

³ United States Postal Service Response to Participant Statement, July 30, 2013, at 6 (Postal Service Response).

⁴ The Postal Service interprets the Petitioner’s submission as a motion pursuant to Commission rules, and, to the extent the Commission does not recognize Petitioner’s filing as a motion, the Postal Service requests leave to file its Response and that its Response be treated as a dispositive motion. Postal Service Response at 1 n.3.

⁵ Participant Morgan Wolaver’s Reply to the United States Postal Service, August 7, 2013, at 2-3 (Reply).

discontinuance study within 10 days of this Order and periodic reports every 45 days thereafter.⁶

II. BACKGROUND

The Climax post office is an EAS-16 facility that provided retail postal services to 999 customers and 162 post office box customers.⁷ It was a candidate for the Post Office Structure Plan (POStPlan) to adjust hours to match workload.⁸ On September 17, 2012, the Postal Service announced a plan for a community meeting on POStPlan to be held on November 8, 2012. On September 28, 2012, the reduced hours for the post office were posted.

During the summer of 2012, negotiations commenced regarding the renewal of the lease for the Climax post office building which was scheduled to terminate on October 31, 2012. Order No. 1693, at 2-3. The lease negotiations reached an impasse. *Id.* at 3. Less than one month after posting reduced post office hours, the Postal Service announced on October 19, 2012 that service would be suspended on October 31, 2012. On October 25, 2012, a notice on the post office door stated a VPO (Village Post Office) would soon be opened in the community. *Id.* at 3-4. Operations at the Climax post office were suspended on October 31, 2012. The day after, the Postal Service initiated a discontinuance study. *Id.* at 4. At the previously scheduled

⁶ Similar reports have been ordered by the Commission in previous proceedings. See Docket No. A2010-1, Cranberry Post Office, Cranberry, PA 16319 (The Committee for Citizens and Customers of Cranberry, PA, Petitioners); Order on Appeal of Cranberry, Pennsylvania Post Office Closing, February 1, 2010 (Order No. 402). See also Docket No. A2012-127, Order Granting Motion to Dismiss and Requiring Status Report, December 17, 2012 (Order No 1581).

⁷ Postal Service Response, Attachment 1; see also Order No. 1693, Order Granting Motion to Dismiss, April 8, 2013, at 2. In Docket No. N2012-2, the Postal Service indicated that the Climax post office served 832 rural carrier addresses and 157 P.O. Box Customers. See Docket No. N2012-2, USPS-LR-N2012-2/11, July 19, 2012. See also Suspensions spreadsheet, ACR2012, USPS-FY12-46 in response to CHIR No. 5, questions 34, 35.

⁸ See Docket No. N2012-2, Advisory Opinion on Post Office Structure Plan, August 23, 2012, at 1 (Advisory Opinion).

November 8, 2012 meeting, customers were informed the suspension of operations was due to “failed lease negotiations.”

III. PROCEDURAL HISTORY

This docket was established on December 11, 2012, when Karen Toole filed an appeal of the closing of the Climax post office.⁹ Petitioner filed a Participant Statement on January 11, 2013.¹⁰ The Postal Service moved to dismiss the appeal because the post office was under an emergency suspension and no Final Determination had been issued.¹¹ Upon finding that no decision to close the post office had been reached, the Commission dismissed the appeal without prejudice on April 8, 2013.¹²

Several factors were cited in dismissing the appeal in Order No. 1693. It did not appear a Final Determination to close the Climax post office had been reached by the Postal Service or that suspension of service was a pretext for closing the Climax post office.

Subsequently, on June 19, 2013, Petitioner Toole requested the Commission to reconsider its decision to dismiss the appeal.¹³ By letter from the Secretary of the Commission on July 10, 2013, the Commission declined to consider her request.

On July 19, 2013 Petitioner Wolaver filed a new Participant Statement docketed in this proceeding, requesting the Commission “to review the Postal Service’s *de facto* closing, and retain jurisdiction until a further Administrative Record is available.”

Memorandum at 1.

⁹ See Petition for Review Received from Karen Toole, December 11, 2012.

¹⁰ See Participant Statement from Morgan L. Wolaver, January 11, 2013.

¹¹ Motion of United States Postal Service to Dismiss Proceedings, December 21, 2012, at 3.

¹² Order Granting Motion to Dismiss, April 8, 2013 (Order No. 1693).

¹³ See Memorandum, Exhibit B.

IV. CONTROLLING STATUTORY PROVISIONS

The Postal Service is required to “provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining.” 39 U.S.C. § 101(b). Congress specified that no post office may be closed solely for operating at a deficit, *id.*, and established a statutory procedure that the Postal Service must follow prior to closing or consolidating a post office.

Under the terms of 39 U.S.C. § 404(d)(1), prior to any decision as to the necessity for closing or consolidating any post office, the Postal Service must provide adequate notice so that persons served by the post office will have an opportunity to present their views. The law further requires the Postal Service to consider five enumerated factors in making a decision on whether to close a post office, the first of which is “the effect of such closing or consolidation on the community served by such post office.” 39 U.S.C. § 404(d)(2)(A). Any determination to close or consolidate shall be in writing and made available to persons served by such post office. 39 U.S.C. § 404(d)(3).

These statutory provisions establish 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 and will provide its reasoning, in writing, to persons served by that post office.

V. PARTICIPANT PLEADINGS

Petitioner’s Memorandum in support of the Participant Statement presents arguments in many respects similar to those he offered in his previous Participant Statement. He claims the Postal Service’s inactivity on the discontinuance study is

designed to avoid review, and that there is ample evidence of the Postal Service's intention to close the Climax post office.¹⁴

The Postal Service's Response contends there is no jurisdictional basis to review its actions in connection with the Climax post office. It cites section 404(d)(5) requiring that the Commission "shall make a determination based upon review no later than 120 days after receiving any appeal..." The Postal Service argues (1) the Petitioner's July 23, 2013 submission was filed three months after the April 9, 2013 expiration of the 120 days for a Commission decision on the appeal, and (2) even if the appeal had been received within the 120-day period, the Commission has already determined an appeal is not ripe for determination because the discontinuance study has not yet concluded and no Final Determination has been issued. The Postal Service also argues that even if the filing is construed as a new appeal, having been filed before both the conclusion of a discontinuance study or a written Final Determination, the Commission lacks jurisdiction. Postal Service Response at 5-6.

Petitioner Wolaver disagrees with the Postal Service's contention that its regulations determine the Commission's jurisdiction rather than the Congress and

¹⁴ Exhibits supporting the memorandum are Exhibit A, Affidavit in Support of Participant Statement by Wolaver; and Exhibit B, and the June 19, 2012 request for reconsideration filed by previous Petitioner Toole. The memorandum itemizes the following general contentions: (1) the closing has already occurred and the Postal Service appears to be manipulating rules and regulations to avoid Commission review of the closing; (2) customers have been badly misinformed leading to confusing and contradictory information; (3) POStPlan was not followed; (4) the VPO is neither an adequate nor a suitable replacement for the Climax post office; (5) transfer to the Whigham post office was inexplicable and without rationale; (6) negotiations with Petitioner were in bad faith and a pretext for emergency suspension and closing; (7) the estimated Fair Market Value is contrived and unrealistic; (8) what happened in Climax was contrary to Postal Service representations; (9) the Postal Service created a predetermined manufactured emergency; and (10) a determination to close a post office is shown by the Postal Service's conduct.

federal statutory law.¹⁵ Congress, he says, intended review to be tied to the reality of a post office closing and its impact on a community. Reply at 1.

Petitioner argues that section 404(d)(5) provides a right of appeal that does not necessarily require a Final Determination made pursuant to Postal Service regulations and Handbook PS-101. In support, Petitioner quotes section 404(d)(5): “[a] determination of the Postal Service to close or consolidate any post office may be appealed...within 30 days after such determination is made available to such person.” Reply at 3.

Petitioner notes that only section 404(d)(4) references written determinations: “The Postal Service shall take no action to close or consolidate a post office until 60 days after its written determination is made available to persons served by such post office.” He contends that section is a limitation on the Postal Service’s ability to shut the doors of a post office, not on the Commission’s review authority. He argues that the section implicitly sanctions Commission action on an appeal if doors are closed before a written determination is made public, and that it does not hamper the Commission’s ability to review a closure in the absence of a written determination pursuant to section 404(d)(5). The determination to close, he says, is based on the facts of the case, not on the formality of paperwork; otherwise, simply failing to issue a written determination could avoid Commission review. He says that a reasonable time must be placed on suspensions and public input should not be avoided by indefinite suspensions. *Id.* at 3-4.

Petitioner contends that by any reasonable definition, the Postal Service has determined to close the Climax post office; that all its actions leading to the suspension such as terminating lease negotiations, creating a replacement VPO, and transferring

¹⁵ Petitioner also replies to the other arguments offered by the Postal Service. Countering the Postal Service’s first argument, Petitioner states that this is a new appeal and not a late filing in the previous appeal filed by the Climax city clerk, Petitioner Toole. In response to the Postal Service’s second argument, he says that this new appeal is not a request for reconsideration. *Id.* at 1.

regular postal functions to a smaller and inadequate Whigham post office illustrate “an act of decision.” *Id.* at 4-5.

VI. COMMISSION ANALYSIS

An additional five months has passed since the Commission issued Order No. 1693 in April, 2013, and no further action on the discontinuance study is apparent. There is neither a Final Determination nor an administrative record to review. The Postal Service’s only comment on the progress of the study states “the Climax Post Office is no longer a candidate facility for the POSTPlan initiative, and it is now undergoing a discontinuance feasibility study. The study is still ongoing.” Response at 4. It notes the Postal Service will comply with Handbook PO-101 and section 404(d) policies and procedures, and plans to schedule another community meeting to answer questions and discuss possible closing of the Climax post office. The Postal Service says nothing of gathering public input and offers no further detail on the status of the discontinuance study initiated over 9 months ago.

The Postal Service has implemented regulations for suspensions applicable to feasibility studies initiated after July 14, 2011. 39 C.F.R. § 241.3(a)(1)(iii). Upon emergency suspension, a District manager or Headquarters VP or designee *may* initiate a feasibility study of a facility’s potential discontinuance to assist in determining whether to proceed with a written proposal to discontinue the facility. 39 C.F.R. § 241.3(a)(5). Such a study was initiated for Climax on November 1, 2012.¹⁶

Where public input cannot be gathered sufficiently in advance of the end date of the lease, a feasibility study should obtain public input to determine whether to proceed with a discontinuance proposal. Customers formerly served should receive notice,

¹⁶ By initiating the study, the Postal Service complied with its policy that, where circumstances prompting an emergency suspension are not known in advance, a decision to initiate a study must be made within 90 days of suspension. The alternatives to initiating a feasibility study are securing alternate quarters or taking necessary corrective action.

including by mail, as if the facility were not suspended. 39 C.F.R. § 241.3(a)(5)(iv). There is no record that such input was sought or obtained.

If the District Manager believes discontinuance may be warranted, he or she “[m]ust use the standards and procedures in §241.3(c) and (d).” 39 C.F.R. § 241.3(c)(1)(i). Those regulations implement statutory standards requiring adequate notice to persons served by the post office, including the opportunity to present their views or comments. The regulations require preparing a written proposal addressing statutory requirements, and procedures for providing notice of the Final Determination and for soliciting public comment and compiling a record. 39 C.F.R. § 241.3(c)(1)(i). After suspension of the Climax post office, the Postal Service met once with customers at an informational meeting on November 8, 2012, but the Postal Service does not assert that it gathered public input at the meeting. Apart from that meeting, the Postal Service may not have obtained any public input about the suspension.¹⁷

The District Manager also “[m]ust investigate the situation.” 39 C.F.R. § 241.3(c)(1)(ii). After fulfilling his/her responsibilities, the District Manager may propose the facility be discontinued. 39 C.F.R. § 241.3(c)(1)(iii). There is no information in the record about progress toward a discontinuance proposal, or confirmation that the standards and procedures set forth in the Postal Service’s regulations are being followed.

The continuing lack of public input or notice to the community about progress toward resolving the issue of closing this office concerns the Commission. The Postal Service should be providing timely and understandable notification to customers of the status of the ongoing process.

Information provided by the Postal Service with its 2012 Annual Compliance Report demonstrates that in FY 2012, discontinuance studies of suspensions generally

¹⁷ The Postal Service asserted it mailed customers a December 4, 2012 letter detailing the suspension and explaining where postal services could be attained and that a meeting would be held in the “coming weeks” to explain plans and solicit comments on possible alternate means of providing postal and other services. The letter did not mention a public survey. Response at 4, Attachment 4. Apparently that letter was not sent. Reply at 2. No community meeting has been held. Memorandum at 2.

were being completed pursuant to Postal Service regulations. Data gathered from publicly available information on the Postal Service's website indicates that, nationwide, there are approximately 3,000 post office lease expirations annually.¹⁸ Data for FY 2012 indicate there were 125 suspensions nationwide and 63 post offices were suspended due to lease terminations. Within 5 months after the end of FY 2012 (*i.e.*, by about February 1, 2013), 47 post offices suspended for lease terminations had a posted Proposed Determination and 8 of those had reached a Final Determination.¹⁹ On average, completed discontinuance studies on emergency suspensions initiated in FY 2012 were completed in 7 months while 25 discontinuance studies for all types of suspensions were completed in an average of 7.3 months.²⁰

The Commission encourages the Postal Service to expedite the delayed Climax post office discontinuance study process in conformance with the procedural protections set forth in 39 C.F.R. § 241.3. The Commission will therefore order a status report within 10 days from the date of this Order, and periodic reports every 45 days thereafter, providing details of the progress of the discontinuance study until the completion of that study and reopening of the Climax post office or until the Postal Service issues a final written determination to close the Climax post office.²¹

Absent inordinate delay in the study, the Commission will await a written determination before considering the substance of any further appeals of a Climax post office closure.

¹⁸ <http://about.usps.com/who-we-are/foia/leased-facilities/report.htm>. The total number is a calculated composite of several files at the website.

¹⁹ Docket No. ACR2012, Responses of the United States Postal Service to Questions 1-15, 17, 19-21, 23-26, 28-30, and 32-36 of Chairman's Information Request No. 5, February 6, 2013, questions 34, 35; USPS-FY12-46, CHIR5.Q34.35.xls.

²⁰ *Id.*

²¹ This course was followed previously by the Commission. In the absence of a written decision, the Commission determined that a suspended post office had been "effectively closed." Because the Postal Service had not completed the determination study analysis, the Commission directed the Postal Service to provide reports every 45 days providing details of the discontinuance study until the completion of that study and reopening of the post office or until the Postal Service issued a final written determination to close the post office. See Order No. 402 (Cranberry post office).

VII. ORDERING PARAGRAPHS

It is ordered:

1. The record on appeal will be incorporated into any subsequent appeal of a final Postal Service decision to close or consolidate the Climax, Georgia Post Office.
2. The Postal Service is to file reports with the Commission as described in the body of this Order.
3. The Participant Statement appealing closure of the Climax, Georgia post office is dismissed without prejudice as described in the body of this Order.

By the Commission.

Ruth Ann Abrams
Acting Secretary

CONCURRING OPINION OF CHAIRMAN GOLDWAY
AND COMMISSIONER LANGLEY

We remain concerned generally about protracted discontinuance studies associated with emergency suspensions of post offices, particularly those stemming from unsuccessful lease negotiations. While affected communities wait for the Postal Service to complete its study, in many cases, those communities lack adequate access to postal service.

The case of Climax, Georgia is not an isolated instance. Many communities are uncertain as to the status of their post office and their postal service because of incomplete discontinuance studies and lengthy emergency suspensions. Communities are forced to travel long distances to other postal facilities and experience declines in the quality of mail service during such suspensions.

We believe the Postal Service can do better to serve rural citizens. To prevent such situations in the future, we hope this Commission Order which requires regular reporting will spur the Postal Service to move promptly and provide regular notice to the communities of the status of these offices.