

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

Before Commissioners:

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

Grand Island Post Office
Grand Island, Nebraska

Docket No. A2017-1

ORDER GRANTING MOTION TO DISMISS

(Issued June 15, 2017)

On May 9, 2017, the Commission docketed a petition for review of the Postal Service's decision to relocate retail postal services currently offered at the Grand Island, Nebraska, main post office (Grand Island MPO) to a local mail processing facility.¹ Pamela E. Lancaster, Chair of the Hall County Board of Supervisors (Petitioner) filed the petition on behalf of the board. In Order No. 3896, the Commission gave notice of the appeal, designated a Public Representative, directed the Postal Service to file the administrative record or a responsive pleading, and provided an opportunity for interested persons to submit comments.² On May 22, 2017, the Postal Service filed a

¹ See Petition for Review from Hall County Board of Supervisors Regarding the Grand Island, NE Post Office 68801, May 9, 2017 (Petition).

² Notice and Order Accepting Appeal and Establishing Procedural Schedule, May 11, 2017 (Order No. 3896).

motion to dismiss the proceedings.³ On May 31, 2017, the Public Representative filed a response in support of the Postal Service's motion to dismiss.⁴ Petitioner did not respond to the Postal Service's motion.⁵ The Commission did not receive comments from any other interested persons.

The Commission finds that the Postal Service's actions regarding the Grand Island MPO constitute a relocation of postal services, over which the Commission has no appellate jurisdiction. The Postal Service's Motion to Dismiss is therefore granted, and Petitioner's appeal is dismissed.

Background. The Postal Service has announced its intention to move retail services currently being offered at the Grand Island MPO, located at 204 West South Front Street, Grand Island, Nebraska, to the Postal Service's Grand Island Processing and Distribution Facility (Grand Island P&DF), located at 3835 West Old Potash Highway, also in Grand Island. See Petition at 1. The distance between the two locations is just over 3 miles.⁶

On January 30, 2017, representatives of the Postal Service discussed the Postal Service's proposal with the mayor of Grand Island. Motion to Dismiss, Exhibit 1. On February 28, 2017, the Postal Service held a public meeting with members of the Grand Island community. *Id.* The Postal Service received comments both at the public meeting and afterwards. *Id.* On April 14, 2017, the Postal Service issued a final decision to relocate retail postal services from the Grand Island MPO to the Grand

³ Motion of the United States Postal Service to Dismiss Proceedings, May 22, 2017 (Motion to Dismiss).

⁴ Public Representative Response in Support of United States Postal Service Motion to Dismiss Proceedings, May 31, 2017 (PR Response).

⁵ Order No. 3896 provided that responses to any motions filed by the Postal Service were due within 10 days after any such motion was filed. Order No. 3896 at 3. Because the Postal Service filed its Motion to Dismiss on May 22, 2017, responses were due by June 1, 2017. Petitioner did not file any response by this date. However, on June 12, 2017, Petitioner filed a participant statement reiterating the arguments set out in the initial Petition and asserting that the Postal Service's proposal will create a substantial hardship for many Grand Island residents in accessing postal services. Participant Statement, June 12, 2017 (Participant Statement).

⁶ The Postal Service asserts that the distance is 3.1 miles. Motion to Dismiss at 2. Petitioner asserts that the distance is 6 miles. Participant Statement, Attachment at 1. According to Google Maps, the driving distance between the two locations is, depending on the route one takes, between 3.1 – 3.5 miles. See Motion to Dismiss, Exhibit 2 (Google Maps printout).

Island P&DF. *Id.* The Postal Service explained that moving retail services from leased property to a Postal-owned facility would enable it to avoid significant expense. *Id.* The Postal Service assured customers that it would continue to provide the same level of service for customers within the Grand Island community. *Id.* The Postal Service also assured customers that it would continue operating out of the Grand Island MPO until the new retail facility at the Grand Island P&DF was open and operating. *Id.*

Petitioner characterizes the Postal Service's action as a post office consolidation, and alleges that the Postal Service failed to follow the requisite statutory procedures. Petition at 1. Specifically, Petitioner alleges that the Postal Service failed to conduct a feasibility study before making its determination; offered only 30 days for public comment; and did not inform the public of its right to appeal the Postal Service's determination to the Commission. *Id.*

Postal Service Motion to Dismiss. The Postal Service contends that moving retail services from the Grand Island MPO to the Grand Island P&DF constitutes a relocation of retail postal services within the Grand Island community, and that the Commission lacks jurisdiction to consider an appeal of a post office relocation under 39 U.S.C. § 404(d). Motion to Dismiss at 3. It states that the Commission has consistently held that 39 U.S.C. § 404(d) does not apply to a relocation of retail operations to another facility within the same community. *Id.* at 3-8. Moreover, the Postal Service contends that it has complied with all applicable relocation regulations. *Id.* at 9-10.

Public Representative's Response. The Public Representative agrees with the Postal Service that its actions with regard to the Grand Island MPO constitute a relocation of services. PR Response at 3. As a result, he supports the Postal Service's motion to dismiss. *Id.* He bases his conclusion on the definitions of consolidation and relocation contained in the Postal Service's regulations. *Id.* Consolidation is narrowly defined as "an action that converts a Postal Service-operated facility into a contractor-operated facility,"⁷ whereas relocation is defined as a "decision to relocate all retail

⁷ See 39 C.F.R. § 241.3(a)(2)(iv).

services from a retail service facility to a separate existing physical building, or to add a new retail service facility for a community.”⁸ *Id.* He concludes that the latter scenario more accurately describes the Postal Service’s actions with regard to the Grand Island MPO. *Id.*

Commission Analysis. The Postal Service’s actions with regard to the Grand Island MPO constitute a relocation of postal services pursuant to 39 C.F.R. § 241.4, because the Postal Service is moving retail services from one Postal Service facility to another Postal Service facility within the same community. 39 C.F.R. § 241.4(a)(1); Motion to Dismiss at 9. There is no indication that the Postal Service has taken any steps to remove access to retail services from the Grand Island community or has started a discontinuance study pursuant to 39 C.F.R. § 241.3. Rather, the Postal Service states affirmatively that it will provide retail services at the Grand Island P&DF in order to “maintain the . . . same level of access to retail services” in the Grand Island community. *Id.* at 9.

Section 404(d) of title 39 of the United States Code provides for a right of appeal to the Commission of any Postal Service “determination . . . to close or consolidate any post office” 39 U.S.C. § 404(d)(1)(5). However, as the Commission has long recognized, this provision only grants the Commission jurisdiction to hear appeals

⁸ See 39 C.F.R. § 241.4(a)(1).

concerning “closures” or “consolidations”—not “relocations.”⁹

Petitioner argues that the Postal Service has failed to follow its own regulations. Petition at 1. However, once the Commission has determined that a Postal Service action does indeed constitute a relocation, further review of whether the Postal Service followed applicable regulations is not within the Commission’s purview. Congress, through 39 U.S.C. § 404(d), conferred appellate jurisdiction on the Commission only in circumstances where the Postal Service acts to close or consolidate post offices. These circumstances do not extend to post office relocations. See cases cited *supra* n.9. Therefore, the Commission lacks jurisdiction to consider Petitioner’s appeal and it must be dismissed.

⁹ See Docket A82-10, Order No. 436, Order Dismissing Docket, June 25, 1982 (*Oceana Station*) (transferring retail operations from one facility to a newly constructed postal facility 4 miles away in the same area constituted a relocation and 39 U.S.C. § 404(d) did not apply); Docket A86-13, Order No. 696, Order Dismissing Docket, June 10, 1986 (*Wellfleet, MA*) (moving post office to neighboring village, located 2-3 miles away and forming part of the same community, constituted a relocation and 39 U.S.C. § 404(d) did not apply); Docket A2011-21, Order No. 804, Order Granting Motion to Dismiss, August 15, 2011 (*Ukiah, CA*) (transferring retail operations from downtown post office to carrier annex located 1 mile away constituted a relocation and 39 U.S.C. § 404(d) did not apply); Docket A2012-17, Order No. 1166, Order Granting Motion to Dismiss, January 24, 2012 (*Venice, CA*) (transferring retail operations from historic post office to carrier annex located 400 feet away constituted a relocation and 39 U.S.C. § 404(d) did not apply); Docket 2013-1, Order No. 1588, Order Granting Motion to Dismiss, December 19, 2012 (*Santa Monica, CA*) (transferring retail operations from historic post office to carrier annex located less than 1 mile away constituted a relocation and 39 U.S.C. § 404(d) did not apply); Docket A2013-6, Order No. 1802, Order Granting Motion to Dismiss, August 8, 2013 (*Bronx, NY*) (Postal Service plan to transfer retail services from historic post office to another location in the same community would constitute a relocation and 39 U.S.C. § 404(d) would not apply); Docket A2013-9, Order No. 1817, Order Granting Motion to Dismiss, August 27, 2013 (*Berkeley, CA*) (Postal Service plan to transfer retail services from historic post office to another location in the same community would constitute a relocation and 39 U.S.C. § 404(d) would not apply); Docket A2015-3, Order No. 2546, Order Granting Motion to Dismiss, June 18, 2015 (*North Platte, NE*) (transferring retail services from downtown post office to carrier annex located 1.5 miles away constituted a relocation and 39 U.S.C. § 404(d) did not apply).

It is ordered:

1. The Motion of United States Postal Service to Dismiss Proceedings, filed on May 22, 2017, is granted.
2. Petitioner's appeal is dismissed.

By the Commission.

Ruth Ann Abrams
Acting Secretary