

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

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

**Before Commissioners:** Edward J. Gleiman, Chairman;  
George A. Omas, Vice Chairman;  
Dana B. Covington; Ruth Y. Goldway;  
And W. H. "Trey" LeBlanc, III

**In the Matter of:**

Roanoke, WV 26423 : Docket No. A2000-1  
(Robert J. Conley, Petitioner) :

**RESPONSE OF INTERVENOR OLIVER R. POSEY  
TO MOTION TO DISMISS**

Petitioner Robert J. Conley commenced the appeal of the final determination of the Postal Service closing the Roanoke Post Office by filing an appeal letter with the Postal Rate Commission on April 21, 2000. The Postal Rate Commission, by order dated May 10, 2000, accepted the appeal and established a procedural schedule in which the Postal Service was ordered to file the record in this claim by May 25, 2000. The Postal Rate Commission set June 5, 2000 as the deadline for petitions to intervene. Intervenor Oliver R. Posey filed his Notice of Intervention prior to the deadline. On May 16, 2000, prior to the filing of Posey's Notice of Intervention, the Postal Service filed a Motion to Dismiss Proceedings with the Postal Rate Commission. A very limited record was attached to the motion. In the motion, the Postal Service frames the issue as whether or not an appeal filed just under two years past the filing deadline can be considered. In framing the issue this way, the Postal Service ignores that the actual issue is whether or not proper notice was given regarding the proposed closure and

final determination which would, in turn, trigger the running of the appeal period. The Postal Service failed to meet the notice requirements of the regulations. Therefore, the Motion of the United States Postal Service to Dismiss should be denied.

## BACKGROUND

The Roanoke Post Office was temporarily suspended in the early 1980s during the construction of the Stonewall Jackson Dam project. Alternative service was provided by what is now the Walkersville/Crawford Post Office, located in a very small community that is in the opposite direction of the local commerce centers from Roanoke.<sup>1</sup> In 1984, the Postal Service attempted to close the Roanoke Post Office. An appeal was filed with the Postal Rate Commission. The Postal Rate Commission set aside the final determination of the Postal Service, finding that the determination was not supported by substantial evidence.<sup>2</sup> In its finding, the Postal Rate Commission noted that it had received over 140 letters regarding the closure.<sup>3</sup> Since the Roanoke Post office was suspended, the Roanoke Community has experienced residential and commercial growth, spurred in part by extensive and ongoing development of the Stonewall Jackson Lake State Park.<sup>4</sup> Despite the growth in the area, the Postal Service contends that it issued a revised proposal to close the post office in 1997 and issued a final determination in 1998. The Postal Service further states that no comments were received on the revised proposal and no timely appeal was filed on the final determination.

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<sup>1</sup> See Oliver R. Posey Affidavit, attached as Exhibit I-1.

<sup>2</sup> Commission Opinion, Docket No. A85-11, Roanoke, West Virginia 26423 (April 10, 1985).

<sup>3</sup> Id.

<sup>4</sup> Exhibit I-1.

## ARGUMENT

The legal issue in this case is whether or not the Postal Service provided proper notice of its proposal and final determination to close the Roanoke Post Office. In this case, proper notice was not given. Therefore, there is no basis for dismissing this appeal as being filed untimely and the final determination of the Postal Service should be set aside.

The Postal Service must give adequate notice of its intention to close a post office.<sup>5</sup> The Postal Service contends that it gave proper notice. As support for its motion, it attached, as Exhibit 3, a document alleged to be the cover sheet of the revised proposal to close the Roanoke Post Office. The Postal Service also attached, as Exhibit 2, a document alleged to be the final determination to close the Roanoke Post Office. The Postal Service alleges that both notices were posted at the Walkersville/Crawford Post Office, the post office providing alternative service for the Roanoke Post Office, and that this constitutes proper notice under 39 C.F.R. § 241.3(d)(4)(v). The Postal Service appears to be correct in regards to the Walkersville/Crawford Post Office being the post office providing alternative service for the Roanoke Post Office and this regulation making mention of the post office providing alternative service; however, this subsection refers to where the record is to be maintained not to what constitutes proper notice.

The regulations provide that “[A] copy of the written proposal and a signed invitation for comments must be posted prominently in each **affected** post office.”<sup>6</sup>

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<sup>5</sup> 39 U.S.C § 404(b)(1).

<sup>6</sup> 39 C.F.R. § 241.3(d)(1).

(emphasis added). The regulations also provide that “[I]f a final determination is made to close or consolidate this post office, after public comments on this proposal are received and taken into account, a notice of that final determination must be posted in this post office.”<sup>7</sup> Because the Roanoke Post Office was suspended which made it impossible to comply with the normal procedure for providing notice, the Postal Service has a mandatory duty to take any other steps required to ensure that the people affected by the closure understand the proposed action.<sup>8</sup> Based on its erroneous reading of 39 C.F.R. § 241.3(d)(4)(v), the Postal Service apparently believed that posting notice at the post office providing alternative service to the Roanoke Post Office would constitute sufficient notice. However, the Postal Service has conspicuously failed to submit any supporting affidavits that establish the manner and location in which the notices were posted at the Walkersville/Crawford Post Office or which establish the presence of any other action taken to ensure that the affected patrons understood the nature of the Postal Service’s action.

The Postal Service’s own contentions that no comments were received on the proposal to close the post office and that no appeal was timely filed on the final determination belie the fact that proper notice was given to the people served by the Roanoke Post Office. This is particularly obvious when the widespread opposition to the closure in 1984 is considered. The combination of the tremendous opposition to the prior closure attempt, the lack of any opposition to the current closure, the suspension of the affected post office, and remote locale of the post office providing alternative service, should have made the Postal Service aware that its limited efforts

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<sup>7</sup> 39 C.F.R. § 241.3(c)(4)(vii)(A).

<sup>8</sup> 39 C.F.R. § 241.3(d)(3).

did not provide the affected public with notice of its actions. Because the Postal Service has failed to show that proper notice was given regarding its proposed action and its final determination, no appeal period has lapsed and the Motion of the United States Postal Service to Dismiss Proceedings is improper.

### CONCLUSION

Rather than complying with the order of the Postal Rate Commission, the Postal Service has chosen to file its Motion to Dismiss, without offering any statutory or factual support for its position, in an apparent effort to avoid addressing the substantive issues presented in this proceeding.

Wherefore, the intervenor requests that the Motion of the United States Postal Service to Dismiss Proceedings be denied and that the final determination of the Postal Service be set aside immediately due to the failure of the Postal Service to provide the administrative record as ordered by the Postal Rate Commission. In the alternative, the intervenor requests that the Motion to Dismiss be denied, that the Postal Service be limited to the use of that part of the record that it has attached to its Motion to Dismiss, and that the appeal proceed along with the briefing schedule previously set by the Postal Rate Commission.

Respectfully submitted,

OLIVER R. POSEY  
Intervenor  
By counsel

  
\_\_\_\_\_  
Clinton G. Bush

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with Section 12 of the Rules of Practice, specifically by mailing true copies to the U.S. Postal Service and to Robert J. Conley, Petitioner, by depositing same in the U. S. Mail, postage paid, on the 31<sup>st</sup> day of May, 2000.



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In the Matter of:

Roanoke, WV 26423 : Docket No. A2000-1  
(Robert J. Conley, Petitioner) :

AFFIDAVIT

STATE OF WEST VIRGINIA,  
COUNTY OF LEWIS, TO WIT:

Oliver R. Posey, the affiant, having first been duly sworn avers and says:

- 1) That my name is Oliver R. Posey; that my address is Route 2 Box 95 Roanoke, West Virginia; that my telephone number is (304) 452-8255.
- 2) That I am served by the Roanoke, West Virginia Post Office;
- 3) That I am an intervenor in the above-referenced proceeding;
- 4) That I oppose the closure of the Roanoke Post Office;
- 5) That I was the petitioner in the Postal Service's prior attempt to close the Roanoke Post Office in Docket No. A85-11;
- 6) That I became aware of the fact that the Postal Service was attempting to close the Roanoke Post Office in 1984 because I was finishing up my duties as Officer In Charge at the Crawford Post Office (now the Walkersville/Crawford Post Office -- the post office providing alternative service for the Roanoke Post Office) at the time;

7) That, in 1984, I also received a questionnaire the Postal Service providing me with the opportunity to express my opinion regarding the closure and I am aware that many other people who were served by the Roanoke Post Office received similar questionnaires in 1984;

8) That I was not aware of the notice of closure purportedly posted at the Walkersville/Crawford Post Office in the Postal Service's most recent attempt to close the Roanoke Post Office as the Walkersville Post Office is located in the town of Walkersville, West Virginia, a very small town that is not near any interstate highway or center of commerce and I seldom have occasion to use that post office, usually opting to use the post office in Weston, West Virginia which is the county seat of Lewis County;

9) That the center of the Roanoke community is nearly in the center between the Weston Post Office and Walkersville/Crawford Post Office;

10) That the Weston Post Office is more convenient for me to use because it is located in the commerce center of the area rather than away from it like the Walkersville/Crawford Post Office;

11) That I know of no resident of the area served by the Roanoke Post Office that became aware of the Postal Service's closure of that post office because of any public notice posted at the post office providing alternative service;

12) That since the Roanoke Post Office was suspended for the Stonewall Jackson Dam project, many people have moved into the Roanoke area and some businesses have established themselves in the area;

13) That, based upon information and belief, the current large-scale development of the Stonewall Jackson State Park will spur further residential and commercial growth in the area;

14) That both before the suspension of the Roanoke Post Office for the Stonewall Jackson Dam project and after Postal Rate Commission set aside the Postal Service's earlier closure determination, the Postal Service represented to me and other members of the Roanoke community that a post office would again be established in Roanoke;

15) That I am of the opinion that the closure of the Roanoke Post Office will adversely affect the quality of postal service received by the Roanoke community as well as impact on the identity of the community itself;



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Oliver R. Posey Affidavit  
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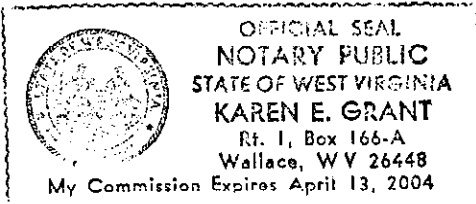
16) That further the Affiant sayeth naught.

  
Oliver R. Posey

STATE OF WEST VIRGINIA  
COUNTY OF LEWIS, TO WIT:

Taken, subscribed and sworn to before me this the 30<sup>th</sup> day of May, 2000, by Oliver R. Posey.

My Commission expires: April 13, 2004



  
NOTARY PUBLIC