

PUBLIC (REDACTED) VERSION

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

Investigation of Suspended Post Offices)

Docket No. A2009-1

**MOTION FOR ORDER DIRECTING THE POSTAL SERVICE TO SHOW
CAUSE WHY EXHIBIT F AND EXHIBIT H TO THE INITIAL COMMENTS
OF THE PUBLIC REPRESENTATIVES SHOULD NOT BE MADE PUBLIC**

(March 17, 2010)

Pursuant to rule 21 of the Commission's rules of practice, the Public Representatives hereby request the Commission to issue an order directing the Postal Service to show cause why Exhibit F (Non-Public) and Exhibit H (Non-Public) to the Public Representatives' Initial Comments should not be made public.

BACKGROUND

The public inquiry being conducted in this docket is an outgrowth of an earlier proceeding involving the emergency suspension of postal operations at the Hacker Valley, West Virginia Post Office.¹ In Order No. 335, the Commission directed the Public Representative "to work with the Postal Service to develop an accurate representation of how written procedures related to the emergency suspension of post offices are being adhered to in actual practice."²

At the request of the Public Representatives, the Postal Service provided an update of the information presented by the Postal Service in the *Hacker Valley* proceeding regarding the identity and status of post offices whose operations have been

¹ Hacker Valley Post Office, Hacker Valley, WV 26222 (Retha Casto, Petitioner), Docket No. A2009-1 (*Hacker Valley*)

² PRC Order No. 335, Notice and Order Providing an Opportunity to Comment, November 9, 2009 (Order No. 335).

suspended for lease termination.³ That updated information was provided to the Public Representatives by the Postal Service on a confidential basis and was submitted as Exhibit F (Non-Public) to the initial comments of the Public Representatives filed on March 2, 2010.⁴ In agreeing to the Postal Service's request that the information be treated as confidential, the Public Representatives reserved the right subsequently to propose that the information be made public.

Information contained in Exhibit F (Non-Public) was used by the Public Representatives to prepare Exhibit H (Non-Public), a table that organizes and analyzes Exhibit F (Non-Public) data. Exhibit H (Non-Public) was filed as part of the non-public annex to the Public Representatives' March 2, 2010 initial comments.⁵

ARGUMENT

I. NONE OF THE INFORMATION PROVIDED BY THE POSTAL SERVICE TO THE PUBLIC REPRESENTATIVES APPEARS TO BE ENTITLED TO NON-PUBLIC TREATMENT.

A. The Appropriate Legal Standard and Procedure

Section 504(g) of title 39 of the United States Code sets forth the basic standard governing the protection of information designated by the Postal Service to be confidential or non-public:

In determining the appropriate degree of confidentiality to be accorded information ... the Commission shall balance the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets.

³ The information on suspended post offices provided by the Postal Service in *Hacker Valley* was filed as part of a public response to Commission Information Request No. 1. See Response of the United States Postal Service to Commission's Information Request No. 1, Docket No. A2009-1, Question Nos. 6-9 (August 14, 2009). The responses to Question Nos. 6-9 are attached to both the redacted and the unredacted copies of this motion as Attachment 1.

⁴ See Notice of the Public Representatives of Filing PR-PI2010-1-NP1, March 2, 2010. A copy of Exhibit F (Non-Public) is attached as Attachment 2 to the unredacted copy of this motion being filed under seal.

⁵ See note 4, *supra*. A copy of Exhibit H (Non-Public) is attached as Attachment 3 to the unredacted copy of this motion being filed under seal.

39 USC 504(g)(3)(B).

In Order No. 225, the Commission adopted final rules applicable to the treatment of non-public material filed with the Commission.⁶ Rule 3007.21 of those rules provides that “[w]henver the Postal Service files non-public materials with the Commission, it shall at the same time file an application for non-public treatment under rule 3007.21. 39 CFR 3007.20(a).

The circumstances presented by the instant case are somewhat different from those anticipated by rule 3007.21. In this case, the information deemed confidential by the Postal Service was filed with the Commission by the Public Representatives as non-public annexes to their initial comments.⁷ Because the information was filed by the Public Representatives, and not the Postal Service, the procedures set forth in rule 3007.21 that would otherwise have required the Postal Service to file an application for non-public treatment did not apply. Moreover, since the Public Representatives did not believe the subject information qualified as non-public information that could properly be exempted from public disclosure, they did not file an application for non-public treatment. Instead, the Public Representatives filed the information as a non-public annex to their initial comments solely to honor their agreement with the Postal Service to treat the information as non-public unless and until otherwise determined by the Commission.⁸

B. The Information at Issue

The information that the Public Representatives requested the Postal Service to update was the information provided by the Postal Service in response to Question Nos. 6, 7, 8, and 9 of Commission Information Request No. 1 in the *Hacker Valley Case*.

- Question No. 6 requested the Postal Service to identify the post offices that had been suspended within the past five years due to the expiration of a lease.

⁶ PRC Order No. 225, Final Rule Establishing Appropriate Confidentiality Procedures, June 19, 2009 (Order No. 225). Unless stated otherwise, as used in this motion, the term “rule” shall refer to a rule contained in Part 3007 of the Commission’s Rules of Practice and Procedure, 39 CFR part 3007.

⁷ As noted above, the Public Representatives obtained the allegedly confidential information from the Postal Service as part of the consultative process ordered by the Commission in Order No. 335.

⁸ Initial Comments of the Public Representatives, March 2, 2010 at 9, note 24.

- Question No. 7 requested information regarding suspended post offices that were subsequently closed.
- Question No. 8 requested information regarding suspended post offices that were subsequently reopened.
- Question No. 9 requested information regarding suspended post offices that were pending closure.

In response, the Postal Service provided the following information regarding each suspended post office:

- The post office's name;
- The post office's state;
- The post office's zip code;
- The post office's date of suspension;
- The post office's date of closure, if applicable;
- The post office's date of reopening, if applicable; and
- The post office's proposed closure date, if applicable.

All of the information was provided in public filings, without any claim for non-public treatment.

In this proceeding, the Postal Service **[BEGIN REDACTED MATERIAL]**

[THIS PAGE REDACTED]

[THIS PAGE REDACTED]

[REDACTED]

[END OF REDACTED MATERIAL]

C. A Show Cause Order Is the Most Appropriate Mechanism For Resolving Claims Of Non-Public Status Of the Information At Issue.

Under the procedures that would normally apply to Postal Service claims for non-public treatment, the Postal Service would file an application for such non-public treatment under rule 20. Opponents of such a claim could address the specific grounds offered by the Postal Service to support non-public treatment.

Because of the unique procedural background to this proceeding the Postal Service has not yet been required formally to present its claims of confidentiality. By granting this motion, the Commission will ensure that the issue of confidentiality is properly addressed.

WHEREFORE, the Public Representatives respectfully request the Commission to issue an order directing the Postal Service to show cause why the information identified herein should not be made publicly available. The Public Representatives and other interested persons should then be given an opportunity to reply.

Respectfully submitted,

/s/ Richard A. Oliver

Richard A. Oliver
Public Representative

/s/ John P. Klingenberg

John P. Klingenberg
Public Representative

Postal Regulatory Commission
901 New York Avenue, N.W.
Suite 200
Washington, DC 20268-0001
Phone: (202) 789-6878
Fax: (202) 789-6891
E-mail: richard.oliver@prc.gov
E-mail: john.klingenberg@prc.gov

ATTACHMENT 1

**RESPONSE OF UNITED STATES POSTAL SERVICE
TO COMMISSION INFORMATION REQUEST NO. 1**

6. Over the last five years, how many post offices have been suspended due to the expiration of a lease? Please identify each such office and its suspension date.

RESPONSE:

Ninety-seven offices have been suspended due to lease expiration in the past five years. Each such office is identified below. As information, in most or all of these cases, lease expiration results from any one of the following factors (i) the lessor does not want to renegotiate or renew the lease; (ii) the lessor demands a rental price that exceeds fair market value; or (iii) the lessor refuses to make improvements to the structure in accordance with postal standards.

SUSPENDED OFFICES (LEASE EXPIRATION)			
(Last Five Years - As of 8/14/09)			
OFFICE	STATE	ZIP	SUSPEND DATE
Adveht	WV	25231	06/30/2006
Aroda	VA	22709	08/11/2007
Banks	ID	83602	03/18/2005
Bevington	IA	50033	03/31/2008
Bingham	NE	69335	10/03/2008
Boring Maryland	MD	21020	09/26/2008
Braden	TN	38010	04/22/2005
Brixey	MO	65618	10/21/2006
Brooke	VA	22430	02/17/2006
Brucetown	VA	22622	08/24/2004
Busy	KY	41723	10/04/2006
Cardin	OK	74335	02/28/2009
Chauncey	WV	25612	05/27/2005
Claremont	SD	57432	12/30/2008
Coalgood	KY	40818	08/31/2004
Cochection Center	NY	12727	11/03/2008

RESPONSE OF UNITED STATES POSTAL SERVICE
TO COMMISSION INFORMATION REQUEST NO. 1

Columbus City	IA	52737	12/07/2007
Creston	WV	26141	10/03/2007
Curtin	OR	97428	11/26/2005
Cynthiana	OH	45624	10/01/2005
Dalton	MO	65246	12/27/2006
Dividing Creek	NJ	08315	04/10/2006
Duke	MO	65461	06/07/2006
Dutchtown Post Office	MO	63745	03/28/2008
Etoile	KY	42131	06/08/2007
Exchange	WV	26619	02/03/2006
Export	PA	15632	06/26/2008
Fort Ransom	ND	58033	08/30/2006
Fruitvale	TN	38336	05/20/2009
Gapville	KY	41433	01/03/2006
Gibbs	MO	63540	06/29/2007
Glady	WV	26268	01/10/2007
Goldsboro	TX	79519	03/01/2009
Grassy Meadows	WV	24943	10/11/2005
Hacker Valley	WV	26222	06/30/2009
Hallsville	OH	45633	01/12/2007
Hendersonville	PA	15339	05/19/2008
Hope	ME	04334	05/31/2006
Hope	KY	40334	05/31/2006
Howell	UT	84316	10/07/2005
Hunlock Creek	PA	18621	09/12/2005
Hustle	VA	22476	08/04/2009
Jacobson	MN	55752	11/15/2005
Josephine	PA	15750	11/14/2005
Kinsey	MT	59338	02/01/2007
Kurthwood	LA	71443	02/28/2005
Laings	OH	43752	10/01/2005
Lane	IL	61750	04/30/2006
Laneburg	AR	71844	12/01/2006
Lickingville	PA	16332	12/07/2007

**RESPONSE OF UNITED STATES POSTAL SERVICE
TO COMMISSION INFORMATION REQUEST NO. 1**

Linefork	KY	41833	05/30/2008
Macon	TN	38048	12/31/2008
Maple Mount	KY	42356	06/24/2005
Marengo	WI	54855	11/26/2005
Marston	NC	28363	02/17/2009
Marydell	KY	40751	01/30/2004
Mazie	KY	41160	05/28/2004
Middle Brook	MO	63655	01/09/2007
Midland	OH	45148	06/30/2009
Milton Center	OH	43541	09/25/2005
Mitchellsburg	KY	40452	10/31/2006
Mohawk	WV	24862	05/17/2004
Myra	WV	25544	05/23/2005
Nekoma	KS	67559	05/16/2008
New London	PA	19360	09/30/2005
North Robinson	OH	44856	05/05/2009
Noxen	PA	18636	01/17/2009
Oakdale	IA	52319	09/30/2008
Pfeifer	KS	67660	12/30/2008
Plessis	NY	13675	12/31/2007
Point Washington	FL	32454	08/25/2006
Pool	WV	26684	01/29/2005
Powderhorn	CO	81243	12/31/2004
Rector	PA	15677	08/29/2005
Ricetown	KY	41364	12/31/2004
Ringgold	PA	15770	10/18/2004
Riverside	OR	97917	10/15/2005
Shawnee	WY	82229	04/30/2006
Smithboro	NY	13840	11/30/2007
South Sterling	PA	18460	07/24/2008
Spring Run	PA	17262	05/30/2007
St. Croix	IN	47576	04/01/2006
Stambaugh	KY	41257	12/03/2004
Strawberry Valley	CA	95981	03/31/2009

RESPONSE OF UNITED STATES POSTAL SERVICE
TO COMMISSION INFORMATION REQUEST NO. 1

Sunderland	MD	20689	10/27/2007
Swan	IA	50252	05/13/2005
Telegraph	TX	76883	02/27/2009
Valdez	NM	87580	12/02/2005
Wakefield	OH	45687	09/02/2005
Walcott	WY	82335	12/01/2005
Walker	KY	40997	08/11/2006
Waterville	IA	52170	09/03/2008
West Point Post Office	OH	44492	09/30/2008
Westerville	NE	68881	04/30/2004
Widnoon	PA	16261	02/03/2005
Williamson	PA	17270	04/30/2007
Zionsville	PA	18092	01/23/2009

**RESPONSE OF UNITED STATES POSTAL SERVICE
TO COMMISSION INFORMATION REQUEST NO. 1**

7. How many of the post offices suspended due to the expiration of a lease were subsequently closed? Please provide the date of suspension and the subsequent date of closure for each such post office.

RESPONSE:

Of the offices identified in the response to question 6, twenty-five offices were subsequently closed. Each such office is identified below.

SUSPENDED OFFICES (LEASE) & CLOSED				
Last Five Years - As of 8/14/09				
OFFICE	STATE	ZIP	SUSPEND DATE	CLOSE DATE
Etoile	KY	42131	06/08/2007	08/02/2008
Hallsville	OH	45633	01/12/2007	07/25/2009
Dalton	MO	65246	12/27/2006	08/01/2009
Laneburg	AR	71844	12/01/2006	05/10/2008
Mitchellsburg	KY	40452	10/31/2006	04/12/2008
Busy Point	KY	41723	10/04/2006	08/02/2008
Washington	FL	32454	08/25/2006	02/16/2008
Walker	KY	40997	08/11/2006	02/23/2008
Hope	KY	40334	05/31/2006	01/19/2008
Shawnee	WY	82229	04/30/2006	04/07/2007
Gapville	KY	41433	01/03/2006	08/11/2007
Walcott	WY	82335	12/01/2005	04/07/2007
Curtin	OR	97428	11/26/2005	03/22/2008
Marengo	WI	54855	11/26/2005	06/27/2009
Jacobson	MN	55752	11/15/2005	04/14/2007
Howell	UT	84316	10/07/2005	04/12/2008
Cynthiana	OH	45624	10/01/2005	07/25/2009
Chauncey	WV	25612	05/27/2005	06/27/2009
Ricetown	KY	41364	12/31/2004	12/03/2005
Stambaugh	KY	41257	12/03/2004	12/03/2005
Coalgood	KY	40818	08/31/2004	08/06/2005
Brucetown	VA	22622	08/24/2004	07/08/2006

RESPONSE OF UNITED STATES POSTAL SERVICE
TO COMMISSION INFORMATION REQUEST NO. 1

Mazie	KY	41160	05/28/2004	08/06/2005
Mohawk	WV	24862	05/17/2004	06/27/2009
Marydell	KY	40751	01/30/2004	03/26/2005

RESPONSE OF UNITED STATES POSTAL SERVICE
TO COMMISSION INFORMATION REQUEST NO. 1

8. How many of the post offices suspended due to the expiration of a lease were subsequently reopened? Please provide the date of suspension and the subsequent date that such post office was reopened.

RESPONSE:

Two post offices that were suspended due to lease expiration were reopened, as indicated below.

SUSPENDED OFFICES (LEASE) & SERVICE RESTORED				
Last Five Years - As of 8/14/09)				
OFFICE	STATE	ZIP	SUSPEND DATE	SERVICE RESTORED DATE
Powderhorn	CO	81243	12/31/2004	04/12/2005
Dividing Creek	NJ	08315	04/10/2006	08/14/2008

RESPONSE OF UNITED STATES POSTAL SERVICE
TO COMMISSION INFORMATION REQUEST NO. 1

9. How many of the post offices suspended due to the expiration of a lease are currently pending closure? Please provide the date of suspension and proposed closure date for each such post office.

RESPONSE:

Five post offices suspended due to lease expiration are currently pending closure. Each such office is indicated below.

SUSPENDED OFFICES (LEASE) & PENDING CLOSURE				
Last Five Years - As of 8/14/09				
OFFICE	STATE	ZIP	SUSPEND DATE	PROPOSED CLOSE DATE
Nekoma	KS	67559	05/16/2008	09/12/2009
Duke	MO	65461	06/07/2006	09/05/2009
Riverside	OR	97917	10/15/2005	08/23/2008
Maple Mount	KY	42356	06/24/2005	09/09/2006
Westerville	NE	68881	04/30/2004	08/19/2006

ATTACHMENT 2
(NON-PUBLIC)

**ATTACHMENT 3
(NON-PUBLIC)**