

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

Rentiesville Post Office
Rentiesville, Oklahoma

Docket No. A2010-5

PUBLIC REPRESENTATIVE'S REPLY
TO POSTAL SERVICE COMMENTS

(November 3, 2010)

This reply of the Public Representative is submitted consistent with Order No. 526. PRC Order No. 526 (the Order). It provides an analysis of the issues of fact and law that appear relevant to resolving the dispute regarding the closure of the Rentiesville, Oklahoma Post Office. It submits that further disclosures, standards, or safeguards should be required to address many of the salient community concerns of the customers affected by the closing.

I. PROCEDURAL HISTORY

On August 25, 2010, the Commission received an appeal of the closing of the Rentiesville Post Office, Rentiesville, Oklahoma.¹ In a letter to the petitioner dated the next day, the Commission's secretary acknowledged receipt of the appeal, provided the appellant with a copy of PRC Form 61, and advised her of the right to file an initial brief in lieu of Form 61. The petitioner was also advised that the deadline for submitting the participant statement or initial brief was September 29, 2010.

On August 27, 2010, the Commission issued the Order accepting the Appeal pursuant to 39 U.S.C, 404(d), and established Docket No. A2010-5 to consider the

¹ Notice of Filing Transmitting the Appeal of Closing of Rentiesville, Oklahoma Post Office, August 26, 2010 (Notice).

petitioner's Appeal. The Commission stated that the category of issues that appears to be raised in the appeal include the effect on the community (39 U.S.C. 404(d)(2)(A)(i)). *Id.* at 2.

The Order also required the Postal Service to file the administrative record with the Commission by September 9, 2010. The Postal Service duly filed the administrative record related to the discontinuance of the Rentiesville Post Office on September 9, 2010, and supplemented the record with an electronic filing of that record on September 24, 2010.²

On October 5, 2010, Mildred Burkhalter filed a participant statement on behalf of the town of Rentiesville.³ The Postal Service filed its comments on October 19, 2010.⁴ In accordance with 39 U.S.C. 401(b), any decision to close or consolidate a post office must be based on criteria which includes: (1) the effect on the community served, (2) the effect on the employees of the post office, (3) compliance with government policy circumscribed in law that the Postal Service must provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self sustaining, and (4) economic savings to the Postal Service and any other factors the Postal Service determines necessary.

The statutory framework underscores that cost-benefit analysis supportive of closure may be outweighed by these other factors in certain instances, and that it is the Commission's responsibility to establish a reasonable standard for establishing and applying the proper balancing test in the public interest.

A. The Participant Statement

The Petitioners believe that the Postal Service's Final Determination should be reversed and returned to the Postal Service for further consideration because of the points quoted below:

² See *also*, PRC Order No. 539.

³ Participant Statement Received from Mildred Burkhalter, October 5, 2010.

⁴ United States Postal Service Comments Regarding Appeal, October 19, 2010 (Postal Service Comments).

- 1.) The Postal Service has not considered the 100% effects of the closing of this post office.
- 2.) Original agreement in 1998 was to keep our town's name, our zip code and addresses, this agreement has been reversed – due to what reason.
- 3.) Another building was offered to house post office to a Mrs. Diana Massey, OKC, OK Post office headquarters. The new Bldg would have covered all necessary health and safety factors.
- 4.) As a Town, we lose our identity, our zip code, street addresses and our rich history will be lost.
- 5.) Certain facts about costs – were inflated not established.
- 6.) The Postal Service did not follow procedures in notifying residents of Rentiesville about the final closure. Effects on elders, effects on our revenues as a town.
- 7.) Final closure information was not publicly displayed, neither was the Final Determination notice, it was lying on a glass case, in the far corner of the Checotah post office, that was not viewable by the public eye.
- 8.) All effects on community and identified effects have not been properly addressed.
- 9.) In memo, 4/1/98 – inappropriate comments made by postal worker –in reference to this being a highly political issues and to keep fingers crossed that they will win this in closure of post office (unprofessional comments), when they were the ones who were helping us. They wanted us to lose.
- 10.) This situation can be reversed with a 100% participation from our community and surrounding area.
- 11.) Consider growth of community, new homes built, History Resource Center being built.

Participant Statement Received from Mildred Burkhalter, October 5, 2010, at 1-2.

B. The Postal Service's Comments

The Postal Service has offered a credible response to most of these points, which range from strong to merely plausible. It responds to four main issues: (1) the notice of discontinuance provided by the Postal Service, (2) the impact upon the Rentiesville community, (3) the calculation of economic savings expected to result from discontinuing the Rentiesville Post Office, and (4) the impact upon postal employees. Postal Service Comments at 1. It asserts that, “[a]s reflected in the administrative record of this proceeding, the Postal Service gave these issues serious consideration. Accordingly, the determination to discontinue the Rentiesville Post Office should be affirmed.” *Id.* at 2.

Because it has allegedly rebutted these identified contentions in general terms, the Postal Service concludes that there is no basis in fact or law that augers soundly against the closure addressed in its Final Determination.

II. REPLY OF THE PUBLIC REPRESENTATIVE

a. Historical Antecedents

In practice, the criteria that the Postal Service applies for closure does not ensure proper weight is accorded to the social value of the post office to a community, or, if it does, it is not sufficiently transparent. The loss of any asset or service in a community likely imposes certain disadvantages or opportunity costs upon its residents.

The law under Section 404(b) was adopted by the Congress in 1976. Before 1976, it was clear that Congress intended that the Postal Service had full power to provide postal services to the people of this country as efficiently and as economically as possible. However, litigation arose over the power of the Service to close post offices and courts upheld the Postal Service's efforts to be efficient and economical, even if that meant closing a post office. *City of Rossford v. Klassen*, 359 F.Supp 1036 (N.D. Ohio 1973). As a result, however, Senator Randolph of West Virginia proposed, and Congress adopted, Section 404(b) to specifically limit the Postal Service's power given under Section 404(a)(3) to close or consolidate post offices by requiring the consideration of specific matters, the making of specific findings, and that no action be taken for a limited time after notice of the determination to close or consolidate is given.

Its meaning today, however, is more expansive since the requisite findings must be viewed through the lens of the Postal Accountability and Enhancement Act (PAEA), and the analysis may be reconciled with the updated goals of that prevailing legislation, in view of recent studies and information.⁵

b. Setting Standards for Weighing the Opportunity Costs to a Community Due to a Closure

As time has shown, a petitioner may raise a wide array of considerations to appeal and oppose closure. Several factors commonly recur in this kind of proceeding, including contentions that concern adverse community impacts and related harm resulting from the lack of any substitute postal facilities in close proximity to the one

⁵ The Senator specifically objected to the "indiscriminate closing of our rural and small town post offices" as well as the decision by the Postal Service to "create branches out of many post offices close to large cities" and thus "transfer a community oriented post office into one administered through the instructions and directives of large city postmasters with little or no community involvement." See *Knapp v. United States Postal Service*, 449 F.Supp. 158 (D. Mich. 1978), *citing* Hearings on S. 2844 Before the Senate Comm. on Post Office and Civil Service, Part 4, 94th Cong., 2d Sess. 142 (1976)

closed. The key point, both generally and in the present case, is that there is often a tendency for the Postal Service to give disproportionate weight to purely economic pressure based on the volume of revenues of the branch subject to closure and its costs, while dispensing with full considerations of the impending harm to the effected community.⁶

An assessment of the adequacy of the Postal Service's response to identified points, while important, likely begs a more fundamental issue. One of the most perplexing points raised by the petitioner, "[a]ll effects on community and identified effects have not been properly addressed." See, e.g., Petitioner's Statement, at para. 8. The Postal Service largely dismisses it as if it were a "catch all" that presented a metaphysical conundrum, and was therefore beyond its duty to answer. Yet, this point cannot be so easily swept aside. The Postal Service is required to "have as its basic function the obligation to provide postal services to bind the Nation together," and it shall "provide prompt, reliable, and efficient services to patrons in *all areas* and shall render postal services to *all communities*." 39 U.S.C. 101(a) (emphasis added).

To assess the broader factors consistently, the Public Representative recommends the development of a standard on community interest for establishing and applying the proper investigation and balancing test in the public interest that would serve at least two vital but overlooked goals. First, a clear and well-articulated standard would better allow transparent evaluation of the adequacy of the basis for a closing vis-a-vis the extent of any adverse community impact. Second, it would better serve to provide heightened assurances that the Postal Service was conducting its closing practices and decisions in a reasonably impartial and non-discriminatory manner.

Regardless of profits, the Postal Service must "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), 403(a). Thus, "[n]o small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities." 39 U.S.C. 101(b). See also H.R. Rep. No. 1104, 91st Cong., 2d

⁶ See also, 39 U.S.C. 101(b), discussed below.

Sess. 9 (1970) ("The Postal Service is required to ... serve as nearly as practicable the entire population of the United States. In [that] respect, the existing concept of universality of postal service is explicitly carried forward."). The PAEA leaves that goal largely intact.

c. Any Method Used for Evaluating Closures Should Include a Separate Standard Gauge for Community Issues

A clear standard would extend full and fair recognition of the variance between like-sized postal offices, which appraises the non-pecuniary attributes that support postal and mail-oriented community interests and closely linked public services. What kind of additional factors or kinds of variance might be material? First, a community's resilience to undue adverse impacts due to a closing usually is a function of available substitutes. For the fulfillment of alternative mailing services and communication needs, the record should reflect not only the closest operating post office, but also identify whether the affected community has a public library with public internet access and related communications services within even closer proximity. Second, it should probably reflect the availability of civic centers, public schools, or recreational centers that may offer alternate secular facilities useful for association by residents or for coordination in the event of a civic emergency. The Petitioner eighth point underscores that the Postal Service should disclose further data, including demographic data, to evaluate the extent of alternative access and postal network by-pass via Internet.

The community interests and social values at stake also typically include imperatives for protecting the underserved segments of our communities, along with ancillary supportive services that preserve residents' interests in health and safety. This can amount something more than a safety net, and even alternate kinds of mail delivery service cannot always fill the gaps. Of course, the underlying economics cannot be excluded altogether from the calculus either.⁷ 39 U.S.C. 404(d)(2)(A)(iv). The Postal

⁷ The more economic- oriented analysis of asking what would happen if the beneficiaries of the closure were to compensate the residents harmed has been addressed under studies of what is called the Kaldor-Kicks-efficiency. An action will ordinarily contribute to optimality if the maximum amount the gainers are prepared to pay is greater than the minimum amount that the losers are prepared to accept (Kaldor criterion). Consider how much you would have to pay those residing near the Commission to voluntarily accept being relegated to the next closest post office if it were in Arlington, Virginia.

Service's tendency to extend provisional treatment of community impact as a mere formality in the closure context cuts against the plain meaning of the statute.

1. The Harm From Discounting Community Factors Is Not Disputed

The Postal Service must balance short-term economic considerations with other public policy considerations such as the importance of maintaining an accessible and reliable government institution that provides postal services to all communities. The Commission is acutely aware of the import of closures on a community, and has already recognized reports and testimony on the question and its impact on universal service. In N2009-1, for instance, Witness Anita B. Morrison, a Founding Principal of Partners for Economic Solutions, provided testimony, reflecting her 32 years of personal experience in evaluating and developing community and business district economic impact studies. Witness Morrison testified that there is "statistical evidence that the study process discriminates against communities with high percentages of low income, minority and transit-dependent residents." Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches, N2009-1, March 10, 2010 (Advisory Opinion) at 29. The Commission observed that:

Witness Morrison's analysis reveals that there are more than 245,000 businesses and 3.16 million employees located within a one-half mile radius of the 371 facilities under consideration for closure. *Id.* at 12. Examining the economic and community development impact of postal facilities, she argues that the facilities anchor many business districts across the country and serve as activity generators drawing customers from broad areas. *Id.* at 12-13. She contends that the loss of a facility can create a significant void in the local business environment, which may result in dislocations for individual businesses and for local business districts as a whole. *Id.* at 13-14.

Id. at 27.

While it is not entirely clear that there is an actual merchant area adjacent to the Rentiesville facility even during regular music festivals, it appears that the Postal Service dispensed with any meaningful review of the impact of prospective tourism or growth, particularly as to a planned center with historical value. Rentiesville is a small

town that was also the location of the largest military clash to have occurred in Oklahoma, during the Battle of “Honey Springs” on July 17, 1863.

Following a recitation of the prescreening factors that the Postal Service takes into account for closure, which were reflected in testimony, the Commission found that the Postal Service has selected appropriate factors for consideration, and appears to have data available for analyzing certain relevant factors. However, one area that requires more attention is assessment of the distinctive needs of each community. *Id.* at 47.⁸

Additional community considerations ranging from protection of the underserved segments to the facilitation of association and coordination for emergency preparedness are among the factors that deserve to be weighed evenly when deciding to close an office of one small town rather than another.⁹ A multitude of socially valuable features and functions of the local post office have been subject to recent studies and quantification, both here and abroad. All things equal, some towns that lose the community support due to post office closures will likely confront a deficient social safety net, while others, are unlikely to see any adverse risk or distortion from closures. Until a standard is formulated, tested through notice and comment, and adopted, the process of closing offices likely will be conducted without due regard for statutory criteria, and, possibly, contrary to the legislative intent of Congress.

2. Formulate A Standard To Transparently Assess the Relative Harm

It is not always clear from the administrative record whether one community with an EAS-A level office will incur greater or less harm from the office’s closure than

⁸ “The first step should be to take community issues out of the “other” category, and create a separate category to analyze the specific needs of the community surrounding a potential station or branch closing.” *Id.* at 48.

⁹ In N2009-1, the Public Representative was critical of the lack of documentation explaining the Initiative to optimize the retail network and the lack of national guidance available to Districts. *Id.* at 42, *citing* Public Representative Brief, N2009-1, at 6-8. He asserted that the factors provided by Headquarters to Districts for the prescreening process are too subjective and will lead to inconsistency and unfairness. *Id. citing* Public Representative Brief, N2009-1 at 17-18. He called for Headquarters to provide more objective metrics for Districts to use in determining which facilities to study and which to close. *Id.* Additionally, he suggested that Districts be provided with relative weights to apply to each factor, or at the least, Districts should be informed which factors are to be considered more important. *Id.* at 18.

another community, even if non-community factors are the same. As many have pointed out before, the process of eliciting such information by the Postal Service is not without criticism by its detractors. In the present case, even the adequacy and form of notice is uncertain and the information of record is conflicting.

A proper evaluation could pivot upon whether the likely adverse impact on the community is low, medium, or high, relative to benchmarks for other EAS offices at the same level. Consideration and development of such a neutral standard,¹⁰ while constrained due to limited measurements and metrics today, could be advanced under 39 U.S.C. 404(d)(2)(A)(v). The Commission could consider exploring the proper standard, in view of earlier analyses, by issuing a notice of proposed rulemaking, in view of recent studies.¹¹

Indeed, pending a proper formulation of a reasonable and non-discriminatory standard that weighs relative adverse impacts upon the community, the Postal Service should bear the burden of demonstrating impartiality. It should make an affirmative evaluation of impairment to the community's interest, once a *prima facie* showing has been made by an appellant that an elevated degree of community-wide harm is likely to result. The Postal Service could be obliged to refute the allegations by showing that such harm is not distinct in degree from ordinary dislocations that would result to other similarly situated facilities. As history reflects in other business activities that impact on the welfare or environment of community residents, however, proper self-regulation, though evident in form, is often illusory in substance.

III. CONCLUSION

Without further benchmarks and standards, it remains difficult to confirm whether the closing comports with the statutory requirements in letter and spirit, or is instead contrary to the public interest. Given the imperfect prevailing "rule of law" for weighing the adverse impact to the community of Rentiesville, however, there appears no basis

¹⁰ Any standard could be designed, in view of multiple parameters that may be aggregated, to operate like a stoplight as to whether a more careful selection is required; that is, it could translate the level of such impact to register a green, yellow, or red light by the Postal Service and the Commission.

¹¹ See, e.g., The Urban Institute, A Framework for Considering the Social Value of Postal Services, (Feb. 2, 2010)[a study for the Commission] at <http://www.urban.org/publications/412097.html>

upon which to conclude that *the form* of Postal Service's comment have failed to support its decision. The substantive concern remains, however, that the Postal Service likely proceeded in suboptimal reliance upon satisfying some incomplete checklist, of a set of some of the clearest factors, but prematurely dispensed with any meaningful analysis of community interests.

Respectfully submitted,

Steven Hoffer
Public Representative

901 New York Ave. NW
Washington, DC
202-789-6811
FAX: 202-789-6891
steven.hoffer@prc.gov