

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

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Delaware Station Post Office, )  
Albany, New York 12209 )  
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Docket No. A2011-1

PUBLIC REPRESENTATIVE RESPONSE IN SUPPORT OF  
DELAWARE AREA NEIGHBORHOOD ASSOCIATION MOTION TO COMPEL  
POSTAL SERVICE TO FILE COMPLETE ADMINISTRATIVE RECORD

(December 14, 2010)

On December 7, 2010, the Delaware Area Neighborhood Association (DANA) filed a motion to compel the Postal Service to file a complete administrative record in this case.<sup>1</sup> The Motion also requested that, after the Postal Service files the complete administrative record, the Commission grant leave to file a supplemental brief based on the information contained in that record. The Public Representative files this response in support of DANA's Motion.

As DANA discussed in its Motion, the Postal Service has been unwilling to provide the Commission and DANA with a complete administrative record. The Postal Service instead filed a selected excerpt of the record with the Commission as a "courtesy" copy.<sup>2</sup> As DANA argues, that small portion of the administrative record may be only highlighting the positives of the Postal Service's "decision" without providing the Commission, DANA, or other interested parties a full and complete record on which

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<sup>1</sup> Delaware Area Neighborhood Association Motion to Compel Postal Service to File Complete Administrative Record, December 7, 2010 (Motion).

<sup>2</sup> Notice of United States Postal Service, November 5, 2010, at Exhibit 1.

rational, intelligent conclusion may be drawn. The full record may illuminate information that requires reevaluation of the Postal Service's decision on the closing of the Delaware Station Post Office.

As outlined in its Motion, DANA has taken all reasonable steps to obtain the full and complete record, including informally requesting it from the Postal Service and filing a Freedom of Information Act (FOIA) request. It has yet to receive the documents,<sup>3</sup> and with a closure date of December 31, 2010, time is of the essence. The irreparable harms identified in Appellant's Suspension Application and the Public Representative's Statement in Support of such application are already occurring.<sup>4</sup>

The Public Representative believes that without the complete record, DANA and other interested parties are at a distinct disadvantage. Since the closing decision was entirely within the Postal Service's control, it has all of the information with respect to the closing. By not providing that information to the appellants, it is effectively controlling the focus and outcome of this proceeding.

In addition to being a clear violation of the Commission's rules,<sup>5</sup> such action allows the Postal Service to only provide the information to the Commission that it wishes to provide about the circumstances surrounding the closing decision. It does not allow facts that are potentially unfavorable to the Postal Service to come to light. This severely inhibits parties' abilities to effectively litigate cases and raises significant due process concerns. Additionally, it forces the Commission to make decisions on an incomplete factual record.

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<sup>3</sup> The Appellants had hoped to receive the complete record via their FOIA request much earlier in this appeal making DANA's instant Motion unnecessary. Such action did not occur.

<sup>4</sup> See Public Representative Response in Support of Delaware Area Neighborhood Association's Application for Suspension of Determination to Close, November 3, 2010; Letter from DANA to Shoshana Grove dated October 19, 2010 entitled, "Application for Suspension of Closure of Delaware Station, Albany, New York.

<sup>5</sup> See 39 CFR 3001.113 ("The Postal Service shall file the [administrative] record with the Secretary of the Commission"); *see also* 39 CFR 3001.113 (The Postal Service may file the entire record or such parts thereof as the parties may designate by stipulation filed with the Postal Service"). The Public Representative is not aware of the Postal Service providing any opportunity for parties to designate portions of the administrative record to be filed with the Commission in this case.

The Public Representative also has substantial concerns that allowing the Postal Service to only make the complete closure record available through a lengthy Freedom of Information Act request process does not conform to the transparency and accountability goals of the Postal Accountability and Enhancement Act.

Accordingly, the Public Representative supports DANA's request that the Commission compel the Postal Service to file a complete administrative record in this case and provide a very abbreviated supplemental briefing schedule<sup>6</sup> based on the information contained in that administrative record.

Respectfully Submitted,

/s/ Robert Sidman

Robert Sidman  
Public Representative for  
Docket No. A2011-1

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<sup>6</sup> The Public Representative suggests an extremely abbreviated supplemental briefing schedule in part to minimize the ongoing irreparable harms.