

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Graves Mill Post Office
Graves Mill, Virginia

Docket No. A2011-3

PUBLIC REPRESENTATIVE RESPONSE OPPOSING MOTION OF THE
UNITED STATES POSTAL SERVICE TO DISMISS PROCEEDINGS

(December 14, 2010)

This proceeding concerns an appeal filed by Douglas M. Graves (Petitioner) of the Postal Service's decision to close the Graves Mill Post Office in Graves Mill, Virginia (Graves Mill).¹ On December 7, 2010, the Postal Service filed a motion to dismiss the Appeal, and the Petitioner opposed the motion the next day.² The Public Representative files this response under 39 CFR 3001.21(b) and Order No. 596.³

For the reasons set forth below, the Public Representative opposes the Motion to Dismiss and urges the Commission to proceed with this docket. The Postal Service did not follow proper procedures in closing Graves Mill. It thus failed to provide the Petitioner adequate notice and precluded his timely appeal of the Graves Mill closing.

I. BACKGROUND

In June 2001, the Postal Service placed Graves Mill under emergency suspension when its postmaster retired.⁴ Before the suspension, patrons had received general delivery services through an informal box delivery system at Graves Mill similar

¹ Petition for Review Received from Douglas M. Graves Regarding the Closure of the Graves Mill, VA Post Office 22721, Nov. 22, 2010 (Appeal). The Appeal includes several supporting documents, which are cited herein as "Appeal – [Title of Document] at [Page Number of Supporting Document]."

² Motion of the United States Postal Service to Dismiss Proceedings, Dec. 7, 2010 (Motion to Dismiss); Opposition to Motion of United States Postal Service to Dismiss Proceedings, Dec. 8, 2010 (Opposition).

³ Notice and Order Accepting Appeal and Establishing Procedural Schedule, Nov. 23, 2010, at 3 (Order No. 596).

⁴ Appeal – Notice of Post Office Emergency Suspension, Docket No. 22721, Item No. 31, at 27 (Notice).

in nature to a Cluster Box Unit (CBU). Notice at 27. During the suspension, the Postal Service continued to provide service to the CBUs through the rural carrier that served the area. *Id.* at 27-28.

On June 30, 2010, the Postal Service posted the final determination to close Graves Mill at the Madison and Wolftown Post Offices, both located in Virginia (Madison and Wolftown).⁵ On November 15, 2010, the Commission received the Appeal.⁶ On December 7, 2010, the Postal Service filed the Motion to Dismiss, alleging that the Petitioner did not file an appeal within the 30-day time period set forth in 39 U.S.C. § 404(d)(5). Motion to Dismiss at 2. On December 8, 2010, the Petitioner opposed the Motion to Dismiss, arguing that the appeal period had not yet expired because the Postal Service failed to provide proper notice of the closing. Opposition at 1-2.

II. DISCUSSION

In the Motion to Dismiss, the Postal Service claims that it followed the proper procedures in closing Graves Mill. Motion to Dismiss at 4. It assumes that it provided adequate notice to the Petitioner and other Graves Mill patrons by posting the Final Determination at Madison and Wolftown. See Motion to Dismiss at 1 n.1. However, under applicable law, the Postal Service should have posted the Final Determination at Graves Mill, the affected post office. By failing to do so, the Postal Service deprived the Petitioner of adequate notice and precluded him from filing a timely appeal.

39 U.S.C. § 404(d)(3) requires the Postal Service to make determinations and findings to close or consolidate a post office “available to persons served by such post office.” Postal Service regulations consider the Final Determination to be the determination and findings for purposes of section 404(d)(3). 39 CFR § 241.3(f)(2).

⁵ Motion to Dismiss at 1, n.1; *id.* at Exhibit 1, Docket No. 22721, Final Determination to Close the Suspended Graves Mill, VA Post Office and Continue to Provide Rural Route Service, June 30, 2010 (Final Determination).

⁶ The Commission considers the Appeal to be received on the postmark date of November 15, 2010. See Notice of Filing under 39 U.S.C. § 404(d), Nov. 23, 2010, at 1; 39 U.S.C. § 404(d)(6)(A).

The Postal Service requires the Final Determination to be posted “prominently in the affected post office or offices.” 39 CFR 241.3(g)(1)(i). The “affected post office” in this case is Graves Mill, the post office slated for closure. Both section 404(d)(3) and the Postal Service’s regulations require the Final Determination to be posted at Graves Mill.

Instead, the Postal Service posted the Final Determination at Madison and Wolftown, two nearby post offices that do not qualify as the “affected post office.” The Postal Service attempts to justify its actions as proper procedure under 39 CFR 241.3(d)(4)(v). Motion to Dismiss at 1 n.1. However, as the Petitioner points out, this provision has nothing to do with the proper procedure for providing notice of the Final Determination. Opposition at 2. Rather, section 241.3(d)(4)(v) governs *proposals* to close a post office, rather than final determinations, and relates to the public’s access to the record during the notice and comment period. Section 241.3(d)(4)(v) requires that

A complete copy of the record must be available for public inspection during normal office hours at the post office proposed for discontinuance or at the post office providing alternative service, if the office to be discontinued was temporarily suspended, beginning no later than the date on which notice is posted and extending through the comment period.

In other words, for post offices that are temporarily suspended, the record is available at the post office providing alternative service during the notice and comment period. However, postal regulations make clear that *both* proposals and final determinations must be posted prominently in the “affected post office.” See 39 CFR 241.3(d)(1); 241.3(g)(1)(i). The distinction between “affected post office” and “post office providing alternative service” is appropriate considering the purpose behind each provision. Section 241.3(d)(4), which relates to recordkeeping, requires the district manager to keep as part of the record all documentation gathered about the proposed discontinuance. For administrative purposes, the post office providing alternative service is a more convenient location to keep the record than the suspended post office, which is probably not staffed.

By contrast, the intent behind sections 241.3(d)(1) and 241.3(g)(1)(i) is to provide notice of the proposal and final determination to persons served by the post office to be closed. Those provisions require the Postal Service to post proposals and final

determinations prominently in the “affected post office”—the post office slated for closure—to ensure that the determination and findings are “made available to persons served by such post office.” See 39 U.S.C. § 404(d)(3).

The distinction between “affected post office” and “post office providing alternative service” shows that the Postal Service should have posted the Final Determination at Graves Mill. The facts in the record support this claim as well. From the time Graves Mill was suspended to the time it closed, Graves Mill patrons received postal services at the CBUs.⁷ The CBUs served as a point for Graves Mills patrons “to receive mail, send outgoing mail, receive packages, and to purchase postal stamps by mail and obtain money order application requests through [the] postal carrier.” Appeal at 3. The CBUs obviated the need for Graves Mill patrons to visit Madison or Wolftown to obtain any postal services no longer available from Graves Mill. The Postal Service could not expect a Final Determination at Madison or Wolftown to provide adequate notice because Graves Mill patrons were unlikely to be there.

III. CONCLUSION

For the reasons described above, the Public Representative opposes the requested dismissal and urges the Commission to proceed with this docket.

The Public Representative respectfully submits the preceding response for the Commission’s consideration.

⁷ Notice at 27-28 (during suspension, service to CBUs will be continued by the rural carrier who serves the area); Final Determination at 1, 3 (providing customers with the option of service to CBUs).

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