

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

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman;
Dan G. Blair;
Tony L. Hammond; and
Nanci E. Langley

Delaware Station Post Office
Albany, New York 12209

Docket No. A2011-1

ORDER AFFIRMING FINAL DETERMINATION

(Issued February 15, 2011)

I. INTRODUCTION

On October 21, 2010, the Delaware Area Neighborhood Association (DANA) filed a petition seeking review of the Postal Service's determination to close the Delaware Station in Albany, New York.¹ Six additional petitions for review were filed with

¹ Appeal of Closure of Delaware Station, Albany, New York 12209, October 21, 2010 (Petition).

the Commission.² DANA contends that the Postal Service's determination to close Delaware Station failed to follow procedures required by law. Petition at 1.³

The Commission established Docket No. A2011-1 to consider the appeal and directed the Postal Service to file its administrative record or responsive pleading.⁴ In its responsive pleading, the Postal Service argues that the appeal should be dismissed for lack of subject matter jurisdiction. Alternatively, it argues that the discontinuance of Delaware Station does not qualify as a closure under 39 U.S.C. § 404(d).⁵ For the reasons discussed below, the Postal Service's determination is affirmed.

II. BACKGROUND

Delaware Station is located in Albany, New York and provides Post Office Box Service to 154 customers, along with retail services. Final Determination at 1, 5. Service is available over 36 hours a week between the hours of 8:45 a.m. and 4:40 p.m., Monday through Friday, and 9:00 a.m. to 12:00 p.m. on Saturday. Retail services include the sale of stamps, stamped paper, money orders, and special services

² The additional petitions were filed by Diana L. Wright (Wright Petition) and the Delaware Avenue Merchants Group (DAMG Petition), both filed on October 26, 2010; Dominick Calsolaro, Albany Common Council Member, 1st Ward (Calsolaro Petition), Catherine M. Fahey, Albany Common Council Member 7th Ward (Fahey Petition), Eleanor R. Laing (Laing Petition), and Laura Welles (Welles Petition) all filed on October 27, 2010. The issues raised by these additional petitions were subsumed in DANA's comprehensive pleadings. This Order disposes of all the petitions for review.

³ See *also* Calsolaro Petition at 2; Fahey Petition at 1-2; Wells Petition at 2; and Wright Petition at 2.

⁴ Notice and Order Accepting Appeal and Establishing Procedural Schedule, October 22, 2010 (Order No. 567).

⁵ Notice of United States Postal Service, November 5, 2010 (Notice). The Notice includes two exhibits: Exhibit 1, Final Determination to Close the Delaware Station, NY Classified Station and Provide Retail and Post Office Box Service Through the Albany Hudson Avenue, NY Post Office (Final Determination); Exhibit 2 identifies 10 nearby Postal Service retail facilities.

such as Registered mail. *Id.* The Postal Service identifies 33 stores, banks, religious institutions, and businesses located in the community. *Id.* at 5.⁶

In July 2009, the Postal Service initiated its review of Delaware Station operations in conjunction with its Station and Branch Optimization Initiative. Administrative Record, Item No. 1; *see also id.* Item No. 13.⁷ To gather community input on the possible discontinuance of Delaware Station, all post office box holders received notification of a community meeting. In addition, notice of a November 4, 2010 meeting was posted at Delaware Station and published in a local newspaper for 5 business days. *Id.* Item No. 25; Item No. 39 at 2; Item No. 35 at 4. Newspaper articles also discussed the possible closing and the community's interest in preserving the office. *See id.* Item No. 14 at 1-3; Item No. 31.

On November 4, 2009, representatives from the Postal Service convened a community meeting to discuss the possible closure of Delaware Station. Thirty-eight customers attended the meeting. Final Determination at 1. The Postal Service received a petition signed by 864 individuals supporting the retention of the Delaware Station on the same day. *Id.*

On September 22, 2010, the Postal Service announced its decision to close the Delaware Station on December 31, 2010.⁸ Among other things, the Postal Service

⁶ DANA states that this number appears to represent only post office box holders. It asserts that the actual number of stores, banks, religious institutions, and businesses in the area is substantially higher. Supplemental Brief of the Delaware Area Neighborhood Association in Response to the Postal Service's January 6, 2011 Filing of the Record, January 18, 2011, at 11 (Supplemental Brief).

⁷ In Order No. 620, the Commission, *inter alia*, directed the Postal Service to file a copy of the administrative record on which it based its Final Determination. Order Granting Motion to Compel, December 22, 2010 (Order No. 620). On January 6, 2011, the Postal Service filed an unredacted copy of the administrative record under seal to protect certain information the Postal Service deemed confidential under the Freedom of Information and Privacy Acts. United States Postal Service Notice of Filing and Application for Non-Public Status, January 6, 2011, at 2. A redacted copy of the administrative record was also filed publicly. DANA sought and was granted access to certain material filed under seal. Order No. 651, Order Granting Request for Access, January 18, 2011. The administrative record is cited herein as Administrative Record.

⁸ The announcement was made in separate letters addressed to Post Office Box Service customers and to postal customers. The letters are attached to the Petition.

announcement indicated that local mail delivery would be unaffected by the change and that Post Office Box Service customers could retain their existing box number and ZIP Code at the Albany main post office, located on Hudson Avenue. The announcement also notes alternate means for obtaining service, e.g., purchasing stamps and package pickup.

The Postal Service plans to provide retail and delivery service through the Hudson Avenue post office, located 1.42 miles away. Post Office Box Service customers who do not elect to continue Post Office Box Service would receive carrier delivery service. Final Determination at 6.

III. PARTICIPANT PLEADINGS

In Order No. 567, the Commission gave notice of the appeal, appointed a Public Representative, and established a procedural schedule.

DANA's pleadings. DANA provides background on the community surrounding the Delaware Station. It includes small retail stores and other businesses, single-, two-, and multi-family housing, and relatively few larger apartment buildings. Residents of the area are characterized as demographically diverse.⁹

DANA argues that 39 U.S.C. § 404(d) applies to Delaware Station. It contends that Delaware Station is a post office as that term is ordinarily used, and that it fits the description used by the Commission in prior appeals proceedings. DANA Statement at 3-4. It also distinguishes the closing of Delaware Station from closings found not to qualify as closures under section 404(d) because they represented a rearrangement of postal retail facilities. *Id.* at 4.

In support of its appeal, DANA argues that the Postal Service did not observe procedures required by law, including failing to:

⁹ DANA Participant Statement, November 23, 2010, at 2-3 (DANA Statement). See also Calsolaro Petition at 2, Laing Petition at 1, Welles Petition at 1, Wright Petition at 2, and DAMG Petition at 1.

- inform customers of their right to appeal the determination, *id.* at 13;
- include required findings when notifying customers of the closing, *id.*;
- post the Final Determination at Delaware Station, *id.* at 14;
- make the Administrative Record available for inspection, *id.* at 14-15;
- consider the effects of closure on the community, *id.* at 16-18; and
- consider the impact of the Delaware Avenue construction project, *id.* at 19-20.

DANA requests that the Commission set aside the Postal Service's determination to close Delaware Station. *Id.* at 22.

Postal Service response. The Postal Service suggests that this proceeding should be dismissed for two reasons. First, the Postal Service argues that the Commission lacks subject matter jurisdiction under 39 U.S.C. § 404(d) to review its determination to close Delaware Station. The Postal Service asserts that the Commission's authority to review closings applies to independent post offices and not station and branches. Notice at 2.

Further, the Postal Service contends that the procedural requirements of section 404(d) do not apply when a station closes and the community where it is located retains service. The Postal Service indicates that Delaware Station customers will not lose access to postal services due to the location of alternate retail facilities in close proximity to the discontinued station. *Id.* at 3. The Postal Service asserts that there are five other postal facilities located within 1.7 miles of Delaware Station. *Id.*

Public Representative brief. The Public Representative argues that the Commission has jurisdiction over this closing.¹⁰ The Public Representative urges the Commission not to consider arguments made by the Postal Service in its Notice because it incorporates by reference in violation of rule 39 CFR § 3001.115(b).

¹⁰ Reply Brief of the Public Representative, December 15, 2010 (PR Brief).

The Public Representative contends that the Commission considers multiple factors when determining whether a closing is covered by section 404(d). *Id.* at 3. In past cases, the Commission has considered the proximity of alternate service locations within the community, the range of services offered at the alternative locations, and the makeup of the community. *Id.* at 3-4.

IV. COMMISSION ANALYSIS

DANA contends that the closing of Delaware Station is subject to the requirements of section 404(d). In appealing the Postal Service's determination to close Delaware Station, DANA argues that the Postal Service failed to follow procedures applicable to post office closings, and that it failed to comply with the requirements of section 404(d)(2). Claims that the Postal Service failed to follow applicable procedures relate to the process used by the Postal Service, not the substance of its determination.

The record in this proceeding indicates that customers were afforded adequate notice that the Postal Service was reviewing Delaware Station for possible discontinuance as part of the Station and Branch Optimization Initiative. Customers were given an opportunity to provide input to the Postal Service, both at the November 4, 2010 public meeting and in writing.¹¹ In addition, customers were duly informed of the decision to close Delaware Station and various appeals were timely filed.

DANA argues that the Postal Service failed to inform customers of their right to appeal in its September 22, 2010 letters to customers announcing its decision to close Delaware Station. DANA Statement at 13. However, DANA (and others) did file a timely appeal. Thus, the failure to provide notice caused it no injury.

¹¹ Delaware Station was part of the Station and Branch Optimization Initiative undertaken prior to its opinion in Docket No. R2009-1. In an advisory opinion in response to the Postal Service's Station and Branch Optimization and Consolidation Initiative, the Commission recommended that the Postal Service adopt uniform closure and consolidation provisions for all retail Postal Service facilities. Having a uniform process would ensure that customers receive adequate notice and time to provide input to the Postal Service without appreciably delaying the Postal Service from closing any facility that can otherwise justifiably be closed. Docket No. N2009-1, Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches, March 10, 2010, at 64.

DANA also argues that the Postal Service, in making its decision known, failed to (a) make its determination and findings available to the public; (b) post its Final Determination at Delaware Station; and (c) provide the Administrative Record on which it based its determination. *Id.* at 13-15. These documents were not available to DANA at the time it filed its appeal, which as both DANA and the Public Representative point out, impeded Petitioners' ability to argue on appeal. DANA Statement at 10; PR Brief at 7. Subsequently, however, each of the documents was provided for the record.

The Postal Service submitted a copy of the Final Determination November 5, 2010. See Notice, Exhibit 1. Pursuant to Order No. 620, the Postal Service filed a copy of the Administrative Record January 6, 2011. DANA was afforded an opportunity to review the record and, on January 18, 2011, filed a supplemental brief with the Commission. See Supplemental Brief. While it would have been preferable for these materials to be made available to customers at the outset, the failure to do so initially has been cured by their subsequent inclusion in the record.

More substantively, DANA argues that the Postal Service failed to comply with section 404(d)(2), which, among other things, requires that the Postal Service consider the effect of closing on the community, the effect on Postal Service employees, and economic savings to the Postal Service. DANA Statement at 16-21.

Effect on the community. First and foremost, DANA asserts that the Postal Service failed to meaningfully consider the effect of closing on the community. Its contentions, made before it had access to the Administrative Record, are that the Postal Service failed to consider the needs of certain constituent groups, including the elderly, the vision impaired, those with limited English language skills, and local businesses. *Id.* at 16-18. In its Supplemental Brief, DANA appears to acknowledge that the Administrative Record includes input from the community on the effect of the proposal to close the facility. Supplemental Brief at 14.

The Postal Service responded to the written comments by addressing the concerns raised by customers. See, e.g., Administrative Record, Item No. 40 at 1-90. In addition, the record indicates that the Postal Service addressed customers' concerns

raised at the November 4, 2010 public meeting. *Id.*, Item No. 39. For example, regarding loss of community identity, the Postal Service emphasized that the community's ZIP Code will be retained in the mailing address. Final Determination at 5. Regarding growth in the community, the Postal Service indicated that service provided at nearby stations could accommodate future growth. Regarding the needs of particular customers, *e.g.*, the elderly and individuals without automobiles, the Postal Service noted that carriers would provide delivery and various retail services to customers. *Id.* at 2. The Postal Service also states that there are five other postal facilities located within 1.7 miles of Delaware Station to serve the community's needs. Notice at 2.

Based on a review of the record, the Commission is not persuaded by DANA's arguments that the Postal Service failed to consider the effects of closing on the community. DANA has not provided a convincing basis for setting aside the Final Determination on those grounds.

Economic savings. The Postal Service estimates that closing Delaware Station will net the Postal Service annual savings of \$95,558. Final Determination at 6. DANA asserts that this figure is inflated, contending it does not take into account income lost when and if customers use competitors to send mail and ship packages. DANA Statement at 20.

While the net figure provided by the Postal Service does not include potential losses to competitors, it is not clear how the Postal Service could definitively estimate the possible diversion. In evaluating whether to close Delaware Station, the Postal Service examined service and efficiency to all customers. *See, e.g.*, Administrative Record, Item No. 40 at 10. While it recognizes that convenience is an important attribute of service, the Postal Service is compelled by changing circumstances to consider its network of facilities and alternate means of providing efficient and reliable services to all customers. It believes that the alternate postal services available to Delaware Station customers will satisfy their demand for postal services even if, for some customers, service may be less convenient.

Other factors. Section 404(d)(2)(A)(v) provides that, in determining whether or not to close a post office, the Postal Service shall consider such other factors as it determines are necessary. DANA asserts that the Postal Service failed to consider the effects of a construction project on Delaware Avenue, which adversely affected the income of and activity at Delaware Station. DANA Statement at 19; *see also* Supplemental Brief at 14-15.

Myriad factors are considered when evaluating whether or not to close a particular facility. Net income (economic savings) is one. The Final Determination, as DANA notes, does reference the construction project. Final Determination at 3. The failure to give it more weight, as DANA urges, does not amount to error.

Section 101(a). DANA argues that the closing of Delaware Station is inconsistent with 39 U.S.C. § 101(a), which provides, in part, that the “basic function” of the Postal Service is “to bind the nation together” and provide “reliable and efficient services to patrons in all areas and...render postal services to all communities.” DANA Statement a 21. DANA states that “service needs to be accessible to urban residents, including those who do not have cars.” *Id.*

As part of its determination, the Postal Service evaluated alternate service available to Delaware Station customers, including carrier service, access via the Internet, permitting Post Office Box Service customers to retain their existing box number and ZIP Code, and the availability of five postal facilities within 1.7 miles. The Postal Service determined that these alternatives would provide regular and effective postal services to the community. *See* Final Determination at 1-3, 5-7. The closing of Delaware Station is not inconsistent with 39 U.S.C. § 101(a).

V. CONCLUSION

The record reflects that DANA (and other petitioners) were afforded notice of the Postal Service’s proposal to close Delaware Station and an opportunity to comment on that proposal at an early stage. Likewise, they were duly informed of the decision to close the facility and timely filed an appeal of that decision.

Based on a review of the record in this proceeding, the Commission finds no basis to set aside the Postal Service's determination to close Delaware Station. Therefore, the Postal Service's Final Determination is affirmed.

It is ordered:

1. The Postal Service's Final Determination to close the Delaware Station is affirmed.
2. All outstanding motions filed in this proceeding are denied.

By the Commission.

Shoshana M. Grove
Secretary