

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Holmes Mill Post Office
Holmes Mill, Kentucky

Docket No. A2011-6

REPLY BRIEF OF THE PUBLIC REPRESENTATIVE
(February 16, 2011)

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AUTHORITIES

39 U.S.C. § 404(d)

39 CFR 241.3

USPS Handbook PO-101, *Post Office Discontinuance Guide*

Post Office Locations on the USPS Web site

I. STATEMENT OF THE CASE

This proceeding concerns an appeal of the Postal Service's Final Determination to Close the Holmes Mill, KY Post Office.¹ Dovie Hamblin (Petitioner) filed a timely appeal seeking review of the Postal Service's decision. For the reasons described below, the Commission should affirm the Postal Service's determination.

II. BACKGROUND

The Postal Service has decided to close the Holmes Mill, Kentucky Post Office (Holmes Mill). FD at 1, 7. It proposes providing regular and effective delivery and retail services by a rural route administered by the Evarts Post Office, located 18 miles away. *Id.* The carrier will provide postal services to roadside mailboxes installed by customers on the carrier's line of travel. *Id.* at 1. Retail services will continue to be available at the Closplint Post Office located 5.5 miles away. *Id.* Holmes Mill customers who do not wish to change to rural route delivery may continue to receive their mail via P.O. Box delivery at the Closplint Post Office.²

On May 24, 2007, the Holmes Mill postmaster retired, and a noncareer employee from the local office was installed as the temporary officer-in-charge. FD at 1. On June 22, 2009, the Postal Service initiated an investigation to consider a possible change in postal services for Holmes Mill. Item 2. The reasons cited for the investigation included a declining workload in mail volume and economic savings attributable to alternate service provided by rural route delivery. *Id.* The workload at Holmes Mill was minimal, averaging 9 transactions and 10 minutes of retail workload daily. FD at 1.

¹ Final Determination to Close the Holmes Mill, KY Post Office and Extend Rural Route Service, Docket No. 40843 (Final Determination or FD). The Postal Service filed the administrative record supporting the Final Determination. United States Postal Service Notice of Filing, December 22, 2010; Erratum to United States Postal Service Notice of Filing of Administrative Record, February 10, 2011 (together, Administrative Record). The Final Determination appears in the December 22 filing on pages 160 through 171.

² Administrative Record, Item 5 at 1; Item 24. This brief refers to specific items in the Administrative Record as "Item ___."

On November 27, 2009, the Postal Service distributed questionnaires to delivery customers of Holmes Mill concerning its proposed discontinuance. *Id.* 14 customers returned the questionnaires. *Id.* 1 customer favored the proposed carrier rural route delivery service, 1 customer disfavored it, and 11 customers either expressed no opinion or did not answer the question. *Id.*; see Item 5.

The Postal Service held a community meeting at Holmes Mill on December 17, 2009 to answer questions and provide information to customers. FD at 1; Item 26. 10 customers attended. *Id.* The Postal Service analyzed the concerns raised at the meeting and concluded its investigation into the proposed Holmes Mill discontinuance. Items 27 and 28. It prepared a proposal to close Holmes Mill (Proposal) based on the results of the investigation. Item 33.

The Postal Service posted the Proposal at the Holmes Mill, Evarts, and Closplint Post Offices from January 11 through March 15, 2010. FD at 5; Item 36. It invited Holmes Mill patrons to submit written comments on the Proposal. *Id.* The Postal Service received 5 comments, all disfavoring the Proposal. FD at 5; Items 38-40. The Postal Service revised the Proposal on April 20, 2010 to incorporate concerns raised by the comments. Items 40-41. The revised Proposal also made slight changes to the economic savings analysis, but was otherwise identical to the initial Proposal. Item 41 at 8. Because it made no significant changes, the Postal Service was not required to repost the revised Proposal.³

The Postal Service posted the Final Determination at the Holmes Mill, Evarts, and Closplint Post Offices from November 8 through December 10, 2010. Administrative Record at 169-171.

³ Docket No. N2009-1, USPS Handbook PO-101, *Post Office Discontinuance Guide* § 363 (2004), library reference USPS-LR-3 (July 27, 2009) (Handbook).

The Petitioner filed a timely appeal seeking review of the Postal Service's decision.⁴ The Commission received the Petitioner's appeal on December 2, 2010. See 39 U.S.C. § 404(d)(6)(A).

On December 10, 2010, the Commission issued a notice and order accepting the appeal and establishing a procedural schedule.⁵ The Postal Service subsequently filed the Administrative Record. See note 1, *supra*. The Petitioner filed a Participant Statement on January 12, 2011. The Postal Service filed comments on January 31, 2011.⁶

III. ARGUMENT

The Commission has the authority to review a post office closing determination based on the record before the Postal Service in making such determination. 39 U.S.C. § 404(d)(5). The Commission must set aside any determination, findings, and conclusions found to be: (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (2) without observance of procedure required by law; or (3) unsupported by substantial evidence on the record. *Id.*

The Public Representative has reviewed all pleadings and documents in this proceeding as well as applicable laws, regulations, and procedures. Based on this review, there appears to be no basis for remanding the determination. The Public Representative believes that the Postal Service sufficiently addressed all concerns raised by the Petitioner. Thus, the Commission should affirm the Postal Service's decision to close Holmes Mill.

⁴ Notice of Filing under 39 U.S.C. § 404(d), December 9, 2010. The appeal is signed by the pastor of Huff Settlement Baptist Church and 20 other individuals, including the Petitioner.

⁵ Notice and Order Accepting Appeal and Establishing Procedural Schedule, December 10, 2010 (Order No. 605).

⁶ United States Postal Service Comments Regarding Appeal, January 31, 2011 (Comments).

A. The Postal Service observed proper post office closing procedures.

Procedures for discontinuing post offices are located in 39 U.S.C. § 404(d), 39 CFR 241.3, and the Handbook. The Postal Service followed all applicable procedures in its determination to close Holmes Mill.

1. The Postal Service provided proper notice of the closing.

Before deciding whether to discontinue a post office, the Postal Service must provide adequate notice of its intention to close to persons served by such post office. 39 U.S.C. § 404(d)(1); 39 CFR 241.3(a)(2)(i). The Postal Service must provide such notice at least 60 days before the proposed closing date. *Id.* The Postal Service provides notice of its “intention to close” by creating a written proposal analyzing and justifying the discontinuance. 39 CFR 241.3(c); Handbook §§ 31-33. The Postal Service must post a copy of the written proposal and a signed invitation for comments in each affected post office for 60 days. 39 CFR 241.3(d)(1); Handbook § 34.

After the Postal Service receives and considers public comments, it may determine that the proposed discontinuance is justified. 39 CFR 241.3(e)-(f). This determination must be in writing and include findings discussing required considerations. 39 U.S.C. § 404(d)(3); 39 CFR 241.3(a)(2)(ii). A Final Determination qualifies as the Postal Service “determination” under 39 U.S.C. § 404(d). 39 CFR 241.3(f)(2). The Postal Service must post a copy of the Final Determination in the affected post office for 30 days. *Id.* § 241.3(g)(1); Handbook § 432.32. The Postal Service must make a Final Determination available to persons served by the post office at least 60 days before the discontinuance takes effect. 39 U.S.C. §§ 404(d)(3)-(4); 39 CFR 241.3(a)(2)(iii).

The Administrative Record shows that the Postal Service satisfied all of these requirements. See Comments at 3-5. The Postal Service prepared the Proposal and posted it in Holmes Mill, the affected post office, as well as the Evarts and Closplint Post

Offices. The Postal Service posted the Proposal from January 11 through March 15, 2010 (63 days) and sought written comments.

After analyzing the comments received, the Postal Service created a written Final Determination considering all required criteria. See Section I.A.3, below. The Postal Service made the Final Determination available to persons served by Holmes Mill by posting it in the same 3 post offices from November 8 through December 10, 2010 (32 days). Since posting the Final Determination, the Postal Service has taken no action to close Holmes Mill, and Holmes Mill remains open.⁷ Therefore, the Postal Service provided proper notice of the closing.

2. The Postal Service followed all other discontinuance procedures.

Besides providing proper notice, the Postal Service must follow other detailed procedures when discontinuing a post office. Postal Service regulations in 39 CFR 241.3 and the Handbook provide extensive instructions for discontinuing a post office. They include: conducting a discontinuance investigation, preparing a proposal and administrative record, and sending these items to Postal Service Headquarters for review and approval. See 39 CFR 241.3(c)-(f); Handbook Chapters 2-4.

The Public Representative has reviewed these procedures and concludes that, based on the Administrative Record, the Postal Service complied with all applicable requirements. It followed all instructions in its own regulations and the Handbook and documented all discontinuance actions with items in the Administrative Record.

3. The Postal Service considered all applicable criteria.

The law requires the Postal Service to consider certain criteria when determining whether to discontinue a post office. 39 U.S.C. § 404(d)(2); 39 CFR 241.3(a)(2) and (c)(4). These criteria include: the effect on the community, the effect on employees,

⁷ See 39 U.S.C. § 404(d)(4); 39 CFR 241.3(a)(2)(iii); Holmes Mill Post Office Location, *available at* http://usps.whitepages.com/service/post_office/holmes-mill-23534-highway-38-holmes-mill-ky-1367253.

responsiveness to community postal needs, economic savings, and any other necessary factors. *Id.*

In its Comments, the Postal Service explains how it considered each of these criteria before issuing the Final Determination. Comments at 5-12. It supports its assertions with multiple citations from the Administrative Record. *Id.* The Comments also address each of the issues raised by the Petitioner. *Id.*

The Public Representative has reviewed the Comments and the corresponding citations to the Administrative Record, which support the Comments. The Public Representative agrees that the Postal Service properly considered all applicable criteria in both the Proposal and Final Determination.

B. The Final Determination is supported by substantial evidence on the record.

The Final Determination is supported by substantial evidence in the 170-page Administrative Record. The Administrative Record is complete; all required documents are included and match the corresponding exhibits in the Handbook.⁸ The documents appear to have been completed by the appropriate Postal Service official. The Administrative Record demonstrates that the Postal Service followed all instructions from its regulations and the Handbook and documented its actions properly.

C. The Postal Service's decision was not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

The Postal Service's decision to close Holmes Mill was not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. The Postal Service investigated the possible closing of Holmes Mill after its postmaster retired. The workload at Holmes Mill was minimal and declining, averaging 9 transactions and 10 minutes of retail workload daily. The Postal Service concluded that it could save money

⁸ The Postal Service promptly responded to the Public Representative's informal requests to clarify the Administrative Record.

by instead offering rural route delivery, which would continue to provide regular and effective service to Holmes Mill customers. Furthermore, retail service would continue to be available at the Closplint Post Office, located just 5.5 miles away.

After considering all required factors, including concerns raised by the Petitioner, the Postal Service reasonably determined that the advantages of discontinuance outweigh the disadvantages. The Commission should thus affirm the Postal Service's decision to close Holmes Mill.

IV. CONCLUSION

For the reasons described above, the Commission should affirm the Final Determination to close Holmes Mill.

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