Postal Regulatory Commission
Submitted 5/10/2011 2:54:37 PM
Filing ID: 72735
Accepted 5/10/2011

U.S. POSTAL REGULATORY COMMISSION
Washington, DC 20268-0001

Office of the Secretary

May 10, 2011

Bobby A. Davis
P.O. Box 234
Tateville, KY 42558

Re: Appeal of the Postal Service's Determination to Close the Tateville Post Office, Tateville, Kentucky

Dear Mr. Davis:

The Postal Regulatory Commission received your appeal of the Postal Service's determination to close the Tateville Post Office, Tateville, Kentucky. Your appeal has been assigned Docket No. A2011-14.

A copy of Commission Form 61 is enclosed. You may complete Form 61 or file a brief to provide the Commission with arguments to support your appeal. *See* 39 CFR 3001.115. The deadline for submission of your arguments is June 7, 2011.

Sincerely,

Shoshana M. Grove
Secretary

Enclosure

PLEASE READ THIS ENTIRELY BEFORE FILLING OUT THE ENCLOSED "PARTICIPANT STATEMENT"

APPEALS OF POSTAL SERVICE DETERMINATIONS TO CLOSE OR CONSOLIDATE POST OFFICES

INTRODUCTION

Congress statutorily requires the Postal Service to follow specific procedures and consider certain factors before making a Final Determination to close or consolidate a post office. The law gives any patron the right to appeal the Postal Service's final determination to the Postal Regulatory Commission, ("PRC" or "Commission"), an independent agency which is not affiliated with the Postal Service. When a patron appeals a Postal Service Final Determination, the PRC must decide whether the Postal Service's closure or consolidation of a post office is consistent with the law.

To assist the Commission in its consideration of an appeal of the Postal Service's decision to close or consolidate your post office, you may want to send a written statement explaining why you believe the Commission should reverse the Final Determination and return the entire matter for further consideration. Enclosed, please find a *Participant Statement* form that you may use to present your written argument.

POSTAL REGULATORY COMMISSION AUTHORITY

With respect to appeals of Postal Service Final Determinations to close or consolidate a post office, the Commission is limited to "appellate jurisdiction." As a result, the Commission cannot conduct its own fact-finding investigation and must consider appeals based solely upon the record which consists of the Proposal, Final Determination and other documents the Postal Service collected during closure or consolidation consideration. Postal Service regulations require that a copy of the record be available at the affected post office for thirty (30) days after the Final Determination is posted. After the initial posting period, Postal Service employees will have information on how a copy of the record may be obtained.

Limitations on the Commission's authority prohibits it from returning a Final Determination to the Postal Service simply because the Commission believes a different result might be better. Rather, the PRC may only examine the Postal Service's decision and record in order to determine whether the Postal Service abided by the statutory guidelines. Specifically, the law requires that the Commission affirm the Postal Service's Final Determination unless the determination is:

(A) arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law;

(B) without observance of procedure required by law; or

(C) unsupported by substantial evidence on the record.

Furthermore, the Commission may not change the Postal Service's Final Determination. It may only (1) affirm the decision or (2) remand the entire matter to the Postal Service for further consideration.

AUTHORITY OF POSTAL SERVICE

In keeping with its responsibility to operate the nation's mail system, the Postal Service has been given considerable authority over the operations of post offices; this authority includes the power to decide whether an office should be closed or consolidated. However, before reaching a decision to close or consolidate a post office, the Postal Service must follow a procedure set up by law as well as consider specific factors involved in such an action.

PROCEDURE

The law sets out the steps the Postal Service must take before it closes or consolidates a post office. Specifically, the Postal Service, prior to making a determination . . . as to the necessity of the closing and consolidation of any post office, shall provide adequate notice of its intention to close or consolidate such post office *at least sixty (60) days prior to the proposed date of such closing or consolidation* to persons served by such post office to insure that such persons will have an opportunity to present their views.

The Postal Service calls its "notice of its intention to close or consolidate" the "Proposal." As noted above, the proposal must be posted for sixty (60) days. During the sixty (60) days, patrons are invited to give the Postal Service their comments on the proposed closing or consolidation. The Postal Service calls its determination to close or consolidate the "Final Determination." Any determination of the Postal Service to close or consolidate a post office shall be in writing and shall include the findings of the Postal Service with respect to the considerations required to be made. Such determination and findings shall be made available to persons served by such post office. The Postal Service shall take no action to close or consolidate a post office *until sixty (60) days after its written determination is made available to persons served* by such post office.

FACTORS TO BE CONSIDERED

In addition to following the required procedure, the Postal Service must also consider certain factors.

The Postal Service, in making a determination whether or not to close or consolidate a post office, shall consider:

(A) the effect of such closing or consolidation on the community served by such post office;

(B) the effect of such closing or consolidation on employees of the Postal Service employed at such office;

(C) whether such closing or consolidation is consistent with the policy of the Government . . . that the Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities and small towns where post offices are not self-sustaining;

(D) the economic savings to the Postal Service resulting from such closing or consolidation; and

(E) such other factors as the Postal Service determines are necessary.

PARTICIPANT STATEMENT

We have included a form that you may use for your written argument. The purpose of the Participant Statement is the same a formal brief which is to point out issues that you believe that Commission should consider in its review of the Postal Service's actions. You may file a Participant Statement as a formal brief. General examples of some issues that would be proper to include would be:

1. That the Postal Service did not consider certain issues it is required to consider;

2. The facts relied on by the Postal Service have not been established;

3. The Postal Service did not follow the procedure required by law; or

4. The facts in the Postal Service's final determination are true, but they do not prove what the Postal Service says they prove.

The Participant Statement should be as specific as possible.

In reviewing Postal Service determinations to close or consolidate post offices, Commission proceedings can be much less formal than is customary in courts. The Commission does not require patrons appealing Postal Service decisions to meet the usual format requirements for filed documents. No technical formalities are required. However, it is important that papers sent to the PRC are legible. It is also important for statements to be clear and as specific as possible.

The due date for a Participant Statement or brief can be found in the schedule which is attached as an Appendix to the "Notice and Order of Filing of Appeal." You should have a copy of the Notice and Order. If you do not, you should be able to find a copy posted at the post office. Under its rules, the Commission expects to receive briefs on the day specified in the schedule, rather than receiving briefs that are simply postmarked by that day.

FILING THE PARTICIPANT STATEMENT OR BRIEF

Address the Participant Statement or brief to:

Office of the Secretary
Postal Regulatory Commission
901 New York Avenue, NW, Suite 200
Washington, DC 20268

Please include the PRC Docket Number on your Statement and any other papers you send to the Commission concerning the case.

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268

In the Matter of: :
:
_____, _____ _____ : Docket No: _____
Post Office State ZIP Code

_____, Petitioner(s) :

PARTICIPANT STATEMENT

1. Petitioner(s) are appealing the Postal Service's Final Determination concerning the _____ post office. The Final Determination was posted _____.
(date)

2. In accordance with applicable law, 39 U.S.C. § 404(b)(5), the Petitioner(s) request the Postal Regulatory Commission to review the Postal Service's determination on the basis of the record before the Postal Service in the making of the determination.

3. Petitioners: Please set out below the reasons why you believe the Postal Service's Final Determination should be reversed and returned to the Postal Service for further consideration. (See pages 1-2 of the Instructions for an outline of the kinds of reasons the law requires us to consider.) Please be as specific as possible. Please continue on additional paper if you need more space and attach the additional page(s) to this form.

_____

_____

_____

_____

_____

_____

_____

_____

_____