

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

Before Commissioners:

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

Rogers Avenue Station  
Fort Smith, Arkansas

Docket No. A2011-13

ORDER AFFIRMING DETERMINATION

(Issued July 20, 2011)

I. INTRODUCTION

On March 28, 2011, Kelly A. Procter-Pierce (Petitioner) filed an appeal with the Commission seeking review of the Postal Service's determination to close the Rogers Avenue Station located in Fort Smith, Arkansas (Rogers Avenue Station).<sup>1</sup> Based on a review of participants' comments and the Administrative Record, the Commission affirms the Final Determination to close the Rogers Avenue Station.

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<sup>1</sup> Petition for Review received from Kelly A. Procter-Pierce, March 28, 2011 (Petition). Attached to the Petition is the Postal Service press release dated February 1, 2011.

## II. PROCEDURAL HISTORY

In Order No. 709, the Commission established Docket No. A2011-13 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any pleadings responsive to the appeal.<sup>2</sup> On April 12, 2011, the Postal Service filed a notice in support of its decision, which also challenges the Commission's subject matter jurisdiction to hear this appeal, and indicates that an Administrative Record complying with standards applicable to post office closings for the Rogers Avenue Station is not required.<sup>3</sup> On May 23, 2011, the Postal Service filed additional comments.<sup>4</sup>

On May 2, 2011, Petitioner filed a Participant Statement expanding on her arguments against the closing.<sup>5</sup> On the same day, Robert Canaday, a post office box customer at the Rogers Avenue Station, intervened in the proceeding and filed a participant statement.<sup>6</sup> On June 3, 2011, the Public Representative filed a reply brief.<sup>7</sup>

The Commission issued an information request asking the Postal Service to provide the Administrative Record supporting its Final Determination to close the

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<sup>2</sup> Notice and Order Accepting Appeal and Establishing Procedural Schedule, April 5, 2011 (Order No. 709).

<sup>3</sup> Notice of United States Postal Service, April 12, 2011 (Notice). The Notice includes three exhibits: Exhibit 1, Final Determination to Close the Fort Smith Rogers Ave, AR Classified Station and Continue to Provide Retail and Post Office Box Service Through the Fort Smith Downtown, AR Classified Station (Final Determination); Exhibit 2 identifies five additional Postal Service retail facilities near ZIP Code 72901; and Exhibit 3 identifies five additional locations to buy stamps.

<sup>4</sup> Comments of United States Postal Service, May 23, 2011 (Postal Service Comments).

<sup>5</sup> Participant Statement received from Kelly A. Procter-Pierce, May 2, 2011 (Procter-Pierce Statement).

<sup>6</sup> Participant Statement received from Robert Canaday, May 2, 2011 (Canaday Statement).

<sup>7</sup> Public Representative's Reply Brief, June 3, 2011 (PR Reply Brief).

Rogers Avenue Station.<sup>8</sup> On June 17, 2011, the Postal Service filed the Administrative Record with the Commission.<sup>9</sup>

### III. BACKGROUND

The Rogers Avenue Station is located in Fort Smith, Arkansas. Final Determination at 3. The Postal Service states that Fort Smith includes a number of stores, banks, and religious institutions, and characterizes the community as having approximately 54,000 citizens. *Id.* The Postal Service has decided to close the Rogers Avenue Station and provide post office box and retail services at the Fort Smith Downtown Station (Downtown Station) located 1.73 miles away. *Id.* at 1.

The Rogers Avenue Station provides service 42.5 hours a week from 8:00 a.m. to 4:30 p.m., Monday through Friday, and is closed on Saturday. *Id.* In addition to providing retail services, *e.g.*, sale of stamps, stamped paper, and money orders, it provides service to 670 post office box customers. *Id.* Rent on the 4,964 sq. ft. Rogers Avenue Station facility is \$53,401 annually. Administrative Record, Item No. 1 at 2. The lease expires in June 2013.

Retail transactions have declined by approximately 7.4 percent since fiscal year 2008, while revenue has declined by approximately 4.9 percent for the same period. *Id.* Customers will continue to have access to service via the Downtown Station and Fort Smith Midland Station located within 2.5 miles of the Rogers Avenue Station. Notice at 2-3. Post office box customers will be able to retain their addresses if they move to the Downtown Station. Final Determination at 1.

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<sup>8</sup> Commission Information Request No. 1, June 9, 2011.

<sup>9</sup> See United States Postal Service Notice of Filing and Application for Non-Public Status, June 16, 2011; *see also* United States Postal Service Notice of Filing, June 17, 2011, which included a redacted copy of the Administrative Record. An unredacted copy was filed under seal. The Administrative Record is cited herein as Administrative Record.

On November 12, 2009, questionnaires regarding the possible closure were distributed to delivery customers. Questionnaires were also available over the counter at the Rogers Avenue Station. *Id.*

#### IV. PARTICIPANT PLEADINGS

*Petitioner.* Petitioner argues that the Postal Service's determination to close the Rogers Avenue Station should be remanded. Procter-Pierce Statement at 1. Petitioner contends that the facts relied on by the Postal Service in its Final Determination are erroneous. *Id.* at 1, 2. Petitioner references the Postal Service's statement that customers choosing to use the Downtown Station will retain their current box number and same mailing address. *Id.* at 2.

Petitioner asserts that customers were only allowed to maintain their addresses if they move to the Fort Smith GMF Station (GMF Station). *Id.* Further, Petitioner explains that the GMF Station is 3.11 miles away from the Rogers Avenue Station instead of the 0.8 mile distance stated by the Postal Service in its Final Determination. *Id.* at 2-3.

Petitioner also disputes the Postal Service's statement that Fort Smith is comprised of 54,000 citizens and has seen only minimal growth. *Id.* at 3. Petitioner notes that 2010 census data reports the population to be 86,209. *Id.*

Petitioner argues that the Postal Service failed to consider the true impact the closing would have on the community. Petitioner concludes that the Postal Service's decision is based on flawed information and should be remanded. *Id.*

*Intervenor.* Mr. Canaday requests that the Commission remand the determination for the following reasons. Like Petitioner, Mr. Canaday disputes the population figures reported by the Postal Service in the Final Determination. Mr. Canaday states that the census data being used are outdated making the Postal Service's decision flawed. Canaday Statement at 2. Mr. Canaday also disputes the savings reported in the Final Determination. He argues that since the Postal Service is reassigning the clerks from the Rogers Avenue Station to the Downtown Station, there

are no savings with respect to labor costs. *Id.* In addition, Mr. Canaday notes that he does not feel secure having personal documents delivered to his home and would be forced to drive a longer distance for Post Office Box Service.<sup>10</sup>

*Public Representative.* The Public Representative urges the Commission to remand the Final Determination for further consideration. PR Reply Brief at 6. The Public Representative acknowledges that the Postal Service complied with the first notice requirement of section 404(d)(1) by distributing questionnaires to customers in November 2009. *Id.* He explains, however, that the second requirement was violated. Section 404(d)(4) requires the Postal Service to take no action to close a post office until 60 days after the final determination to close that post office is made available to the community served by the post office. In a press release dated February 1, 2011, the Postal Service announced that the Rogers Avenue Station would close on March 26, 2011. *Id.* at 7. The Public Representative states that since there are only 53 days between the date of the press release and proposed closing date, the Postal Service violated the notice requirement. The Public Representative adds that while this technical violation alone does not justify remand, the Postal Service should be reminded that it is required to wait 60 days after the final determination is made available before taking action to close the office. *Id.*

The Public Representative contends that the Final Determination is based in part on material misrepresentations about the community. The Public Representative disputes the Postal Service's estimate of 54,000 citizens and statement that there has been minimal growth in recent years. *Id.*

The Public Representative argues that between 2000 and 2010, the population has grown by 7.4 percent. *Id.* at 8. The Public Representative concludes that the Postal Service's failure to elicit the most basic facts about the community it purports to be examining for purposes of determining the effect of the closure of the Rogers

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<sup>10</sup> *Id.* at 1; see also Request for Waiver and Notice of Intervention [Juanita Clark, intervenor], April 28, 2011.

Avenue Station require that the Final Determination be remanded to ensure factual accuracy. *Id.*

The Public Representative also contends that the economic savings reported by the Postal Service are overstated. *Id.* at 9.

*Postal Service.* The Postal Service argues that this appeal should be denied. The Postal Service maintains its position that section 404(d) review does not apply to closing the Rogers Avenue Station. The Postal Service contends that section 404(d) does not apply to retail locations such as stations which are subordinate to a post office. Postal Service Comments at 1-2.

The Postal Service argues that even if the requirements of section 404(d) were applied in the context of the discontinuance of the Rogers Avenue Station, it has satisfied the salient statutory provisions. *Id.* at 3. On November 12, 2009, the Postal Service distributed questionnaires to customers notifying them of the possible discontinuance and inviting comments on the potential change to the postal retail network. *Id.* The Postal Service notes that this notice was furnished to customers more than 60 days prior to discontinuance of the facility as required by law. The Postal Service adds that in a press release dated February 1, 2011, it informed the community of its decision to close the Rogers Avenue Station. *Id.*

Further, the Postal Service contends that it considered the pertinent criteria of section 404(d), including the effect on postal services, the community, and employees, and the economic savings gained from closing the Rogers Avenue Station. *Id.* at 3-4.

## V. COMMISSION ANALYSIS

Under 39 U.S.C. 404(d)(1), prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. If the Postal Service decides to close the post office, it must make its final determination available to the public for 30 days, allowing patrons the opportunity to appeal the determination to the Commission. The

Commission reviews the Postal Service's determination to close or consolidate a post office "on the basis of the record before the Postal Service in the making of such determination." See 39 U.S.C. 404(d)(5).

A. Notice to Customers

Rogers Avenue Station was included in the Postal Service's Station and Branch Optimization and Consolidation Initiative. As part of its investigation, on November 12, 2009, the Postal Service distributed questionnaires regarding possible closure to delivery customers. Questionnaires also were available over the counter for retail customers at the Rogers Avenue Station. Final Determination at 1. Three hundred eighty-six questionnaires were returned; 2 were favorable, 303 unfavorable, and 81 expressed no opinion regarding the proposed alternate service. *Id.*; see also Administrative Record, Item No. 17. On February 1, 2011, the Postal Service notified customers that the facility would be closed March 26, 2011.

The Public Representative concurs that the Postal Service's initial notice complies with section 404(d)(1), but asserts that the second notice constitutes a technical violation of section 404(d)(4). PR Reply Brief at 6-7. The Public Representative, however, does not advocate that the matter be remanded to the Postal Service for this reason. *Id.* at 7.

The Public Representative raises a valid point. Section 404(d) requires appropriate notice be given to persons served by the affected post office. In this instance, customers were apprised of the closing and a timely appeal was filed.

Moreover, on July 14, 2011, the Postal Service announced new rules governing procedures it will employ when considering closing retail postal facilities, including stations and branches.<sup>11</sup> Under the new rules, uniform notice procedures will be

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<sup>11</sup> Post Office Organization and Administration: Establishment, Classification and Discontinuance, Final Rule, 76 FR 41413, July 14, 2011 (to be codified at 39 CFR 241).

applied to all Postal Service operated applicable retail facilities. Thus, the issue raised by the Public Representative should not arise in future appeal proceedings.

#### B. Other Statutory Considerations

Under section 404(d)(2)(A), in making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; whether a maximum degree of effective and regular postal service will be provided; the effect on postal employees; and the economic savings to the Postal Service. In response to the Postal Service's proposal to close the Rogers Avenue Station, customers raised concerns in questionnaires regarding the effect of the closure on postal services, and the Postal Service responded to each of these concerns. Administrative Record, Item No. 16. Their concerns and the Postal Service's responses are summarized in the Final Determination.

*Effect on the community.* All participants claim that, in considering the effect on the community, the Postal Service relied on erroneous data. In particular, they state that the Postal Service's characterization of the community as having a population of approximately 54,000 is inaccurate. They point to 2010 census data indicating that the population of Fort Smith is approximately 86,000. See Procter-Pierce Statement at 3; see also Canaday Statement at 3; PR Reply Brief at 7.

Participants raise an important issue, which the Postal Service did not directly address in comments filed in this proceeding. Based on a review of the Administrative Record, however, the Commission concludes that the Postal Service adequately considered the effect of closing on the community. This is not to suggest that certain customers will not be inconvenienced, such as Petitioner and Mr. Canaday. On balance, the Postal Service considered customers' concerns and has offered adequate alternative postal services.

The statute does not define the term "community." Nonetheless, the record is clear that the Postal Service was aware at the outset of its investigation that the population of Fort Smith was (as of 2006) over 83,000. Administrative Record, Item



No. 3 at 2. Moreover, while the derivation of the Postal Service's estimate of 54,000 is not clear, in a more urban setting, such as Fort Smith, which is served by several retail postal facilities, that estimate is not an indication that the Postal Service failed to consider the effects of its actions on those served by the Rogers Avenue Station. It distributed questionnaires about the facility; it received 386 completed responses; and it responded to customers' concerns. *See id.*, Item No. 16 at 1-752. As discussed below, there are a variety of retail service options available to customers, including six retail facilities located within 5 miles of the Rogers Avenue Station.

*Effective and regular service.* Petitioner contends that the Postal Service's representations regarding replacement service offered to customers were erroneous. Procter-Pierce Statement at 1-2. She asserts that, contrary to the Final Determination, the Post Office Box section was not relocated to the Downtown Station, but rather relocated to the GMF Station. *Id.* at 2. She argues that this apparent change warrants a remand of the matter to the Postal Service.

Petitioner's contention regarding the GMF Station raised an ambiguity that should have been addressed directly by the Postal Service in response to the Procter-Pierce Statement. The Postal Service's failure to respond directly to claims made by participants complicates review of the record developed below.

The Commission is not persuaded that the change of venue, even if accurate, is sufficient cause to remand the matter. Nonetheless, the Commission has serious reservations that alternatives offered to customers do not track what is represented in the Final Determination. The Postal Service must provide correct and consistent information to its customers. Contradictions and confusion make it less likely customers will continue to use postal services.

The Final Determination indicates that the Rogers Avenue Station post office box customers will be able to retain their addresses if they move to the Downtown Station, but that they would have to change their addresses if they choose to rent a post office box at another location. Final Determination at 1. Postal Service Comments, however, imply that the right to retain an existing address may be somewhat broader. It indicates

that a change of address is necessary only for those customers choosing carrier delivery service, and that customers choosing Post Office Box Service could retain their existing addresses. Postal Service Comments at 4. The latter comment creates an ambiguity concerning whether all Postal Service post office box customers, including those relocating to the GMF Station could retain their current address, or whether, as stated in the Final Determination, only those relocating to the Downtown Station could retain their addresses. Admittedly, the record on this point could be clearer. Nonetheless, the change of venue does not undermine the conclusion that effective and adequate postal services will be available to the Rogers Avenue Station customers.

Six retail postal facilities are located within 5 miles of the Rogers Avenue Station. *Id.* at 4. Moreover, in lieu of Post Office Box Service, customers may elect carrier delivery. In addition, customers may purchase stamps by telephone, through the internet, or at stamp consignment locations listed at [www.usps.com](http://www.usps.com). In sum, the Commission finds that the Postal Service has adequately addressed customers' need for effective and regular postal services.

*Economic savings and effect on employees.* The Postal Service is required to consider economic savings and effect on employees. The Postal Service has adequately considered these issues.

The Postal Service estimates that closing the Rogers Avenue Station will produce annual savings of \$96,386. Final Determination at 4. Mr. Canaday and the Public Representative contend that this figure is overstated since the Postal Service plans to relocate the clerks to the Downtown Station. Canaday Statement at 2; PR Reply at 8-9.

The Rogers Avenue Station is a leased facility. The Postal Service has determined to buy out the lease and exit the facility.<sup>12</sup> While the estimated savings may

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<sup>12</sup> The estimated savings do not reflect a one-time expense of \$272,520 incurred for building modifications (\$98,964) and to buy out the existing lease which expires in June 2013 (\$173,556). Final Determination at 4.

be smaller than the Postal Service projects, no participant contends that no savings will be realized.

The record indicates that the Postal Service has considered the economic impact of its closure decision and taken steps to address the effect on employees. Based on a review of the record, the Commission concludes that the Postal Service has satisfied the requirements of section 404(d)(2)(A).

Lastly, the Public Representative suggests that the Postal Service apply more rigorous analyses when developing its savings estimates. PR Reply Brief at 9. In Docket No. N2009-1, the Commission urged the Postal Service to develop a more holistic approach for estimating the impact of decisions to close retail facilities.<sup>13</sup> In announcing its newly adopted rules governing closing of postal retail facilities, the Postal Service indicates it will implement a more robust measurement of financial impact. See 76 FR 41418, July 14, 2011. The Commission looks forward to the improved analysis.

## VI. CONCLUSION

Based on its review of the entire record before it, the Commission concludes that the Postal Service has adequately considered all requirements of 39 U.S.C. 404(d). Accordingly, its determination to close the Rogers Avenue Station is affirmed.

*It is ordered:*

The Postal Service's determination to close the Rogers Avenue Station is affirmed.

By the Commission.

Shoshana M. Grove  
Secretary

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<sup>13</sup> See Docket No. N2009-1, Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches, March 10, 2010, at 57-61.

## CONCURRING OPINION OF COMMISSIONERS HAMMOND AND LANGLEY

We support the decision to affirm the Final Determination, but write separately to underscore the need for the Postal Service to address issues raised by participants that challenge the sufficiency of the Postal Service's Final Determination. Both the majority decision and the dissent note that the Postal Service failed in more than one instance to respond directly to participants' assertions that the facts relied on by the Postal Service to reach its decision were either inconsistent with actions taken by the Postal Service or erroneous. This unnecessarily complicated the review process, and could be perceived as the Postal Service being dismissive of customers' legitimate concerns with the decision.

No postal customer wants to receive less service. However, Postal Service decisions to close retail facilities and realign its retail network must be considered in the context of its dire financial circumstances. In making its determinations to close a retail facility, it is critical for the Postal Service to demonstrate that it will continue to provide effective and regular postal services to all affected customers. This does not require that the Postal Service satisfy all customer demands. But it does require that, during the appeal process, it address participants' concerns going to the merits of its determination to close a facility.

As the majority opinion observes, the Postal Service recently implemented new rules improving the procedures it will employ when considering closing Postal Service operated retail facilities. In concert with the new rules, we expect the Postal Service to fully respond to issues raised by participants so that the Commission will have before it complete records on which to base its decisions, a responsibility Congress has entrusted to us.

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Tony L. Hammond  
Commissioner

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Nanci E. Langley  
Commissioner

## DISSENTING OPINION OF CHAIRMAN GOLDWAY

The Final Determination contains material flaws which justify remanding it to the Postal Service for further consideration. Participants identify factual issues which call into question the basis of the Postal Service's decision to close the Rogers Avenue Station. Principal among these issues, unrebutted by the Postal Service, are:

- Petitioner's claim that the Postal Service misrepresented both the facility to which the Post Office Box section would be relocated and the facility at which customers would be allowed to retain their existing addresses; and the distance the GMF Station is located from the Rogers Avenue Station. See Procter-Pierce Statement at 2-4.
- Participants' assertion that the Postal Service misrepresented the size of the community served by the Rogers Avenue Station. See *id.* at 3, Canaday Statement at 3, PR Reply Brief at 7.
- Questionable estimates of economic savings that fail to reflect one-time costs of approximately \$273,000. See Final Determination at 4.

A fair reading of the Final Determination demonstrates that it is based on questionable facts and analysis. It is not supported by substantial record evidence and thus requires a remand pursuant to 39 U.S.C. 404(d)(5)(C).

Moreover, while the Postal Service is authorized to close postal retail facilities pursuant to section 404(d), its decision to close the Rogers Avenue Station at this time is difficult to fathom. First, the population of Fort Smith has increased by 7.4 percent from 2000 to 2010. PR Reply Brief at 8. Thus, the community is growing.

Second, the record shows that since 2008 the number of transactions at the Rogers Avenue Station has declined by 7.4 percent, while revenues have declined by only 4.9 percent. Final Determination at 1. Stated otherwise, the revenue per transaction has increased, which benefits the Postal Service and demonstrates the increased value customers attach to postal services.

Finally, while the Postal Service may have valid reasons for incurring a one-time cost of \$273,000 to exit the facility more than 2 years prior to the expiration of the lease, the record is silent on the point. Given the growth in Fort Smith and the interest of the customers served by the Rogers Avenue Station in maintaining that service, the timing of the Postal Service's expenditure needs to be justified.

For the foregoing reasons, I dissent.

Ruth Y. Goldway  
Chairman