

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

Peach Orchard Post Office  
Peach Orchard, Arkansas

Docket No. A2011-22

REPLY BRIEF OF THE PUBLIC REPRESENTATIVE

August 30, 2011

I. INTRODUCTION AND BACKGROUND

On July 14, 2011, the Postal Regulatory Commission (Commission) docketed the Petition For Review of the closing of the Peach Orchard Post Office (Peach Orchard), located in Peach Orchard, Arkansas.<sup>1</sup> The Petition was filed by Marietta Austin, a former Peach Orchard Postmaster, and contained fifty signatures.<sup>2</sup> On July 19, 2011, the Commission issued an order instituting the current review proceedings, appointing a Public Representative, and establishing a procedural schedule.<sup>3</sup> Thereafter, on July 29, 2011, the Postal Service filed an electronic version of the Administrative Record concerning its Final Determination to Close the Peach Orchard, AR Post Office, Postal

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<sup>1</sup> Petition for Review Received from Marietta Austin Regarding Peach Orchard, AR Post Office 72453 (Petition)

<sup>2</sup> Marietta Austin and the fifty individuals who signed the Petition will be collectively referred to as the Petitioners.

<sup>3</sup> Notice and Order Accepting Appeal and Establishing Procedural Schedule, July 19, 2011 (Order No. 763).

Service Docket Number 1377033-72453.<sup>4</sup> Petitioner Marietta Austin filed a Participant Statement on August 2, 2011.<sup>5</sup> On August 25, 2011, the Postal Service electronically supplanted its July 29, 2011, filing with a Notice of Filing Corrected Administrative Record -- Errata.<sup>6</sup>

## II. STATEMENT OF FACTS

The Peach Orchard Post Office is described by the Postal Service in its Final Determination as an EAS-11 level post office located in Peach Orchard, Arkansas. AR Item No. 1. Before closure, Peach Orchard provided service to 69 post office box customers, 59 rural intermediate box customers, and retail customers who engaged in an average of 15 daily window transactions accounting for 14 minutes of retail workload, daily. *Id.*

On November 30, 2010, the Manager of Post Office Operations in Clay County, Arkansas requested permission to investigate the possible closure of Peach Orchard. AR Item No. 1. The request was granted. *Id.*

On March 17, 2011, the Postal Service notified Peach Orchard's customers of a "possible change in the way [their] postal service is provided." AR Item No. 21 at 1. As described in the posted notice, customers were given the option of receiving carrier delivery service to a roadside mailbox at their residence or post office box delivery at the Knobel Post Office, located 4.7 miles away. AR Item No. 15, at 18.<sup>7</sup> Included with the posted notice was a questionnaire customers were asked to completed and returned by March 30, 2011. AR Item No. 21 at 1. In addition, customers were invited

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<sup>4</sup> United States Postal Service Notice of Filing of Administrative Record, July 29, 2011.

<sup>5</sup> Participant Statement of Marietta Austin, August 2, 2011 (Participant Statement).

<sup>6</sup> United States Postal Service Notice of Filing Corrected Administrative Record -- Errata (AR), August 25, 2011.

<sup>7</sup> In the Administrative Record, there is a slight discrepancy as to the travel distance between the Peach Orchard and Knobel postal retail facilities: AR Item No. 47 states they are 3 miles apart, while AR Item No. 15 states they are 4.7 miles apart. The 1.7 mile difference does not substantively affect these comments. AR Item No. 47, at 2; Item No.15, at 18.

to attend a public meeting on March 30, 2011, at which Postal Service representatives would be available to answer questions and provide information about postal service and patrons could express their thoughts about the potential change in service. *Id.*

Of the 150 questionnaires distributed by the Postal Service, 35 were completed and returned: 1 responded favorably to the proposal; 33 expressed opposition or concern; and 1 expressed no opinion. AR Item No. 21; Item No. 23, at 1. The public meeting was held on March 30, 2011, as scheduled, with 49 customers in attendance.<sup>8</sup> AR Item No. 20; Item No. 24 at 1b.

On April 8, 2011, a formal proposal to close Peach Orchard was forwarded to that post office for posting for a period of 60 days. AR Item No. 47 at 3. An invitation to file comments was also posted in Peach Orchard, yet no comments were received during the posting period that ended June 9, 2011. *Id.*

On June 28, 2011, the Final Determination to close Peach Orchard was approved by the Vice President of Delivery and Post Office Operations. AR Item No. 47, at 5. The decision was based upon: (1) the fact the postmaster was promoted on July 3, 2010, and replaced by a non-career postmaster; (2) the post office workload had declined; (3) the existence and availability of retail postal services at the Knobel Post Office approximately 4.7 miles away with 218 available post office boxes; and (4) estimated annual savings to the Postal Service of approximately \$47,396. *Id.*, at 2, 5; Item No. 15, at 17f; Item No. 29, at 2. In the Final Determination, the Postal Service considered and responded to various concerns expressed by postal customers during the March 30, 2011, public meeting. *Id.*, at 2-3.

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<sup>8</sup> There is a discrepancy within the Administrative Record pertaining to the number of Peach Orchard customers present at the public meeting held March 30, 2011. The Administrative Record has two distinct page ones for Item No. 24 (hereinafter "1a" and "1b," respectfully), that are separated only by AR Item No. 23. Page 1a states there were 54 customers present at the March 30, 2011, public meeting. It is this number the Postal Service incorporates into its Final Determination summary. See, AR Item No. 47, at 2. Conflictingly, page 1b states there were 49 customers present. It is followed by a list of 49 separate, hand-written, signatures. The PR will use the attendance total provided on AR Item No. 24, at 1b, given its supportive documentation and the lack of such support for the attendance stated on page 1a.

### III. POSITIONS OF THE PARTIES

#### A. The Petitioners

In the Petition, the Petitioners oppose the closing of Peach Orchard, arguing its negative effect on: (1) convenience; (2) access for the elderly; and (3) service reliability. See, Petition, at 1. Petitioners assert that Peach Orchard is a small community, consisting primarily of farmers and retirees who rely on Peach Orchard to service their postal retail needs and serve as a community meeting place. *Id.*; Participant Statement, at 5. In their questionnaires, Peach Orchard patrons take great care to express the emotional attachment to the retail facility.

#### B. The Postal Service

On July 29, 2011, the Postal Service filed comments that included the Administrative Record and Final Determination to Close the Peach Orchard Post Office, in lieu of an answering brief permitted by Order No. 763.<sup>9</sup> In that filing, the Postal Service argues that: (1) it has met all procedural requirements of 39 U.S.C. § 404(d); (2) will provide delivery and retail services via a carrier alleviating the need to travel to a post office; and (3) will save an estimated \$47,396 annually, by closing Peach Orchard. AR Item No. 47.

### IV. STANDARD OF REVIEW AND APPLICABLE LAW

#### A. Standard of Review

The Commission's authority to review post office closings provided by 39 U.S.C. § 404(d)(5). That section requires that the Postal Service's determination be reviewed on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and

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<sup>9</sup> United States Postal Service Comments Regarding Appeal, July 29, 2011 (Postal Service Comments).

conclusions that it finds are: arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; without observance of procedure required by law; or unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.<sup>10</sup>

#### B. The Law Governing Postal Service Determinations

Prior to making a final determination to close or consolidate a post office, the Postal Service is required by 39 U.S.C. § 404 to consider: (i) the effect of the closing on the community served; (ii) the effect on the employees of the Postal Service employed at the office; (iii) whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;" (iv) the economic savings to the Postal Service due to the closing; and (v) such other factors as the Postal Service determines are necessary. See 39 U.S.C. § 404(d)(2)(A)

In addition, the Postal Service's final determination must be in writing, address the aforementioned considerations, and be made available to persons served by the post office. 39 U.S.C. § 404(d)(3). Finally, the Postal Service is prohibited from taking any action to close a post office until 60 days after its final determination is made available. 39 U.S.C. § 404(d)(4).

#### V. ADEQUACY OF THE POSTAL SERVICE'S FINAL DETERMINATION

The Postal Service appears to have followed applicable procedures of section 404(d) and weighed the appropriate elements in the decision to close Peach Orchard.

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<sup>10</sup> Section 404(d)(5) also authorizes the Commission to suspend the effectiveness of a Postal Service determination pending disposition of the appeal. None of the petitioners in this proceeding requested suspension of the closure of the Peach Orchard Post Office.

Concerning accessibility to and quality of services, the Postal Service has met the requirements of 39 U.S.C. §404. While some Peach Orchard patrons expressed concern that the Knobal Post Office is too far away, many patrons checked “Yes” in their questionnaires to “pass[ing] another Post Office during business hours while traveling to or from work, or shopping, or for personal needs,” and some stated that they simply preferred to patronize Peach Orchard. See, AR Item No. 21. However, due to the fact that there is no grocery store or school in Peach Orchard, Peach orchard residents must drive to other areas farther away than Knobal, such as Corning (24 miles), Pocahontas (27 miles) or Paragould (30 miles), for their shopping and educational needs. AR Item No. 47, at 2. In light of such information, the 4.7 mile drive to Knobal is comparatively short and fails to illustrate a practical travel inconvenience for Peach Orchard customers. Others expressed concern that they did not travel, had no means of travel, or did not travel frequently enough to obtain regular access to the Knobal Post Office or another nearby retail facility. See, AR Item No. 21. The Postal Service has sufficiently assured consumers they will still have access to postal retail services at the Knobal Post Office and to rural route and contract carriers. *Id.* The latter will provide delivery and provide retail services to senior citizens and others in cases of hardship. *Id.*

Economically, the Postal Service has shown it will save \$47,396, annually by closing Peach Orchard. This amount is significant given Peach Orchard’s extremely low daily earned workload of 1.5 hours. The \$47,396 figure is derived by adding the salary the Postal Service would pay a replacement Postmaster, that Postmaster’s fringe benefits, and the annual lease amount, less the annual costs of replacement services.<sup>11</sup> The only ambiguity in the Postal Service’s cost and savings calculation regards the property lease. While the Postal Service states its \$5,700 annual lease amount does

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<sup>11</sup> AR Item No. 47 at 5. Peach Orchard’s Postmaster was promoted on July 3, 2010. Since that date, a non-career contractor has been serving as the Peach Orchard Officer-in-Charge (OIC). On August 25, 2011, a Postal Service representative stated that if Peach Orchard were to remain open, a career-employee would be hired and paid the last Postmaster’s salary.

not include a 30-day clause, it fails to state whether it will be financially penalized for breaking the lease prior to the May 31, 2015, expiration date. AR Item No. 15 at 1. This information will either offset the savings amount or increase it. However, if the Postal Service is required to pay the remainder of the lease in full, i.e., until May 31, 2015, costing it a total of approximately \$22, 800, such a payment would not deplete the overall savings enough to render Peach Orchard's closure economically unfavorable.<sup>12</sup>

After review of the Postal Service's Final Determination, the materials in the Administrative Record, the arguments presented by Petitioners, the Participant Statement, and the Postal Service Comments, the Public Representative concludes that the Postal Service has followed applicable procedures, that the decision to close the Peach Orchard Post Office is neither arbitrary nor capricious, and that the Postal Service's decision is supported by sufficient and substantial evidence.

## VI. CONCLUSION

For the reasons set forth above, the decision of the Postal Service to close the Peach Orchard Post Office should be affirmed.

Respectfully Submitted,

/s/ Tracy N. Ferguson

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<sup>12</sup> The \$22,800 amount is derived by multiplying the annual rent paid by the Postal Service to the Peach Orchard lessor (\$5,700) by the number of years remaining on the Peach Orchard lease (approximately 4).