

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

Nooksack Post Office
Nooksack, Washington 98276

Docket No. A2011-17

ORDER DISMISSING MOTION AND ADOPTING PROCEDURES

(Issued September 12, 2011)

I. INTRODUCTION AND SUMMARY

The Postal Service's actions regarding the Nooksack, Washington branch have resulted in an unusual and incomplete record on which to assess the merits of the City of Nooksack's (Petitioner) appeal. Initially, the Postal Service characterized its actions as a closing. It subsequently claimed, however, that operations at the Nooksack branch were not closed, but merely suspended. Accordingly, it moved to dismiss the appeal, a motion both Petitioner and the Public Representative oppose. Subsequently, in a recent filing, the Postal Service informed the Commission that, on July 11, 2011, a Final Determination was made to close the facility.

Given the change in status of the facility, the Postal Service's motion is dismissed as moot. Further, while the Postal Service's recent filing is helpful in

clarifying the status of the Nooksack branch, questions remain.¹ Neither the Final Determination nor the underlying Administrative Record has been filed with the Commission. To afford Petitioner and other interested persons an opportunity to submit briefs (or comments) on the record developed below, the Commission will establish a new procedural schedule. In accord with this, given the Postal Service's July 11, 2011 determination to close the Nooksack branch, the Commission will compute the 120-day review period under 39 U.S.C. 404(d)(5) as commencing August 10, 2011.

II. BACKGROUND

Petitioner's appeal. On May 17, 2011, the City of Nooksack petitioned the Commission seeking review of the Postal Service's actions regarding the Nooksack branch.² In Order No. 734, the Commission accepted the appeal and established a procedural schedule.³

Postal Service pleadings. On May 27, 2011, the Postal Service filed in opposition to Petitioner's application for suspension, contending that: (1) the Commission lacks jurisdiction to hear the appeal because the Nooksack facility is a branch, not a post office; (2) there is not a loss of postal services to the community; (3) the Commission previously has not interfered with station and branch closures; and

¹ It may be that discussions between the Postal Service and Petitioner subsequent to July 11, 2011 have resolved issues related to the appeal. If that is the case, the Petitioner is requested to advise the Commission no later than September 19, 2011 whether or not it wishes to pursue its appeal.

² Appeal of Closure of Nooksack Post Office, Nooksack, Washington 98276, May 17, 2011 (Appeal). Seven exhibits are attached to the Appeal: Exhibit A—a copy of a Dear Postal Customer letter; Exhibit B—a copy of a letter to the Postal Service regarding an opportunity to discuss the possible changes in service in Nooksack; Exhibit C—a copy of the Landlord's Notice of Termination from the Postal Service; Exhibit D—a copy of the Final Determination to Consolidate the Nooksack, WA Post Office and Establish a Classified Station; Exhibit E—a copy of Docket No. A92-7, Commission Opinion Affirming Decision Under 39 U.S.C. 404(b); Exhibit F—an email from Anne Blair to Virginia Radder regarding month-to-month rent to the Postal Service; and Exhibit G—Affidavit of Virginia Radder.

³ Notice and Order Accepting Appeal and Establishing Procedural Schedule, May 19, 2011 (Order No. 734).

(4) the relief requested will frustrate Postal Service plans.⁴ Subsequently, on the same day, the Postal Service filed a supplemental response, informing the Commission that it “learned recently that a suspension, and not a discontinuance, of the Nooksack Branch is scheduled for today, May 27, 2011.”⁵ Thereafter, on May 31, 2011, the Postal Service moved to dismiss the appeal contending that operations at the Nooksack branch were not closed, but merely suspended.⁶ Both Petitioner and the Public Representative oppose the motion to dismiss.⁷

Commission Order No. 829. In Order No. 829, the Commission directed the Postal Service to provide a status report addressing various service related issues concerning the Nooksack branch and its customers.⁸ The Postal Service responded, indicating, among other things, that on July 11, 2011 “the final determination [was made] to close the Nooksack Branch.”⁹ In addition, the Postal Service states that “[l]ocal Postal Service officials met with the Nooksack Mayor on August 15, 2011 to discuss the Nooksack community’s concerns and suggestions for improving the service provided to the community.” *Id.* question 5.

⁴ Response of United States Postal Service to Petitioner’s Application for Suspension of Discontinuance for the Nooksack Branch, Nooksack, Washington 98276, May 27, 2011, at 1-4 (Response). The Response was preceded by the Motion of the United States Postal Service for Late Acceptance of Response of United States Postal Service to Petitioner’s Application for Suspension of Discontinuance for the Nooksack Branch, Nooksack, Washington 98276, May 26, 2011. The motion is granted.

⁵ Supplemental Response of United States Postal Service to Petitioner’s Application for Suspension of Discontinuance for the Nooksack Branch, Nooksack, Washington 98276, May 27, 2011 at 1 (footnote omitted). The accompanying footnote indicated that “[t]he Nooksack Branch is being suspended due to the expiration of its lease.” *Id.*

⁶ Motion of United States Postal Service to Dismiss Proceedings, May 31, 2011 (Motion to Dismiss).

⁷ Answer of the Petitioner, the City of Nooksack, in Opposition to Postal Service Motion to Dismiss, June 7, 2011 (Petitioner’s Answer); Answer of the Public Representative in Opposition to Postal Service Motion to Dismiss, June 7, 2011 (PR Answer).

⁸ Interim Order Concerning Service Status, August 26, 2011 (Order No. 829).

⁹ United States Postal Service Response to Order No. 829, September 1, 2011, question 4 (Response to Order No. 829).

Postal Service's actions prior to appeal. The Nooksack branch is located in Whatcom County, Washington and is under the administrative responsibility of the Everson post office. The Everson post office is located within 1 mile of the Nooksack branch. Motion to Dismiss at 2. The Nooksack branch provides post office box service and retail service to customers. No city delivery or rural routes emanate from the Nooksack branch.¹⁰

On February 23, 2011, postal officials requested the authority to conduct an investigation of the possible change in postal services for the Nooksack branch. Administrative Record, Item No. 1 at 1. As part of its investigation, on March 22, 2011, the Postal Service distributed 400 questionnaires regarding the possible change in service. *Id.* Item No. 23 at 1.

On April 1, 2011, the Postal Service notified the lessor of the facility housing the Nooksack branch that the lease would not be renewed. Appeal, Exhibit C. The same day "the Postal Service posted its initial notice in the Nooksack [branch] of a 'possible' change in the way postal service would be provided." PR Answer at 5. Subsequently, the lessor offered to lease the facilities to the Postal Service on a month-to-month basis. *Id.* Exhibit F.

To gather customer input, on April 7, 2011, the Postal Service held a community meeting to discuss the possible closure. *Id.* Item No. 26 at 1.

On May 2, 2011, Petitioner received a letter indicating that the Nooksack branch would be vacated on May 27, 2011. *Id.* Exhibit A. On May 17, 2011, Petitioner filed its appeal with the Commission seeking review of the Postal Service's action.

¹⁰ In response to Order No. 753, the Postal Service indicated that "[t]he Nooksack Branch has been suspended, and it has not been discontinued, and thus a complete administrative record does not exist." United States Postal Service Notice of Filing and Application for Non-Public Status, July 1, 2011, at 2. The Postal Service did, however, provide "an administrative record that reflects the Postal Service's current action regarding the Nooksack Branch." *Id.* The Postal Service did file both a redacted and unredacted copy of the assembled administrative record. The Administrative Record is cited herein as Administrative Record.

III. COMMISSION ANALYSIS

On May 31, 2011, the Postal Service moved to dismiss the appeal on the grounds that postal operations at the Nooksack branch were suspended, and that the facility has not been closed. It asserted, *inter alia*, that the suspensions fall outside the scope of 39 U.S.C. 404(d)(5). Motion to Dismiss at 1. Petitioner and the Public Representative oppose the motion, arguing, among other things, that the event that triggered the suspension, the Postal Service's termination of the existing lease, was an emergency of its own doing and was simply designed to skirt the requirements of section 404(d). Petitioner's Answer at 3-4; PR Answer at 4-5.

The Postal Service's motion is dismissed as moot. The status of the facility is no longer in doubt. The Postal Service recently informed the Commission that, as of July 11, 2011, it had made a Final Determination to close the Nooksack branch. Response to Order No. 829, question 4.

While the Postal Service's response is helpful in clarifying the status of operations at the Nooksack branch, it leaves several questions unanswered.¹¹ The Postal Service notes that it has had recent discussions with the Petitioner to address various outstanding issues. Response to Order No. 829, questions 5 and 6. It is possible that these discussions have resolved outstanding issues between the parties. Given that possibility, Petitioner is requested to advise the Commission by September 19, 2011 whether or not it wishes to continue to pursue its appeal.

It is possible, as well, that the discussions have not resolved all issues related to the appeal. The Postal Service's response does not state when the Final Determination was made available to persons served by the Nooksack branch or if the complete

¹¹ The Postal Service provided additional details in response to questions from the bench in Docket No. A2011-17. Response of United States Postal Service to Bench Request During September 8, 2011 Hearing, September 9, 2011. Among other things, it explains that local Postal Service officials met with the Mayor of Nooksack to discuss the community's concerns and any suggestions for improving service to the community. *Id.* at 3. Further, based on what has transpired at the local level, the Postal Service expressed its understanding that "former Nooksack customers have, with the assistance of local postal officials, worked through all transitional issues and that customers are reasonably satisfied with their access to retail and delivery services today." *Id.* at 5.

Administrative Record was made available for review. In any event, neither the Final Determination nor the complete Administrative Record has been filed with the Commission. To afford Petitioner and others an opportunity to address the record from the proceeding below, the Commission requests the Postal Service to file the Final Determination and the Administrative Record no later than September 26, 2011.¹² To accommodate the filing of briefs, the following procedural schedule is adopted:

- Petitioner's Brief is due no later than October 12, 2011;
- Postal Service's answering brief is due no later than October 21, 2011;
and
- Replies to the Postal Service's brief are due October 28, 2011.

It is ordered:

1. The Motion of United States Postal Service to Dismiss Proceedings, filed May 31, 2011, is dismissed as moot.
2. Petitioner shall notify the Commission no later than September 19, 2011 indicating whether or not it wishes to continue to pursue its appeal.
3. If Petitioner files notice indicating its intent to pursue the appeal, the Postal Service shall file the Final Determination and the applicable complete Administrative Record no later than September 26, 2011.

¹² If the Petitioner notifies the Commission that it is withdrawing its appeal (or otherwise electing not to pursue it), there will be no need for the Postal Service to make these filings.

4. Petitioner's brief and the brief of any person supporting Petitioner are due no later than October 12, 2011
5. Postal Service's answering brief is due no later than October 21, 2011.
6. Replies to the Postal Service's brief are due no later than October 28, 2011.

By the Commission.

Ruth Ann Abrams
Acting Secretary