

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

Gepp Post Office
Gepp, Arkansas

Docket No. A2011-60

PUBLIC REPRESENTATIVE'S REPLY COMMENTS

October 12, 2011

I. INTRODUCTION AND SUMMARY

A. Gepp ("jeep"), Arkansas

Gepp is a small unincorporated community in Fulton County, Arkansas. Administrative Record, Item No. 33, Part II. It is near the Missouri border. It's apparently a mystery how the name of the town came to be pronounced the way it is, but knowledge of the conventional pronunciation makes it easy to sort out those who have ties to the community and those who don't.

News of the Postal Service's interest in closing the Gepp Post Office and substituting highway contract service out of Viola, which is 6 to 7 miles away, led some residents to think that the Postal Service had little interest in maintaining ties to the community. However, the Postal Service's intervening and insensitive "emergency suspension" removed any doubt. In short, instead of honoring its generally admirable practice of keeping post offices open during the appeal process, Postal Service apparently grasped at the thinnest of reeds to justify a premature shutdown of the Gepp Post Office.

B. Desired Outcome

The Petitioners in this case are articulate advocates for their position, but they now need help that only the Commission can provide. The joint Participant Statement filed by Petitioners Kathy Adams and Mary Rivera, filing on behalf of themselves and the Committee to Save Gepp Post Office and the Concerned Patrons of Gepp Post Office, meticulously, but fairly, reviews the record. They provide useful clarifications of many points, express concern about the evaluation of questionnaires, and provide photographic evidence of the Gepp Post Office's suspension. They also include a letter to the editor that Karen Schrable, officer in charge (OIC) at the time of the suspension, sent to the *Baxter Bulletin* clarifying some aspects of the stated reasons for the suspension. See Participant Statement (October 4, 2011). Their fair, careful, and respectful presentation warrants the Commission's attention.

The undersigned Public Representative joins the Petitioners in seeking due process. This can begin with a remand and, ideally, reconsideration of the decision to close the Gepp Post Office. As support for that result, these Reply Comments supplement the Participant Statement by focusing on additional aspects of procedural and substantive due process. The conclusion is that the Postal Service's actions and the Administrative Record in this case are not fully consistent with these principles.

As Senator Claire McCaskill stated at a recent congressional hearing in connection with responsiveness to patrons of post offices slated for closing:¹

Some of their hearts are breaking over this. Their post offices are going away. I want to make sure this process is fair and transparent.

A remand would rectify significant deficiencies in the Gepp case. It would not be a punitive response, nor an unduly burdensome one. Moreover, a remand in this case might prevent uncertainty about how to handle temporary breaks of service in the future. Thus, a remand is fully consistent with the interests of the general public.

II. THE “EMERGENCY SUSPENSION”

As the Commission is aware from earlier pleadings, the Postal Service placed the Gepp Post Office under emergency suspension while the instant appeal was underway. This meant the office was prematurely closed. As other filings in this case detail, the need for emergency suspension was suspect from the outset. The Postal Service has made confusing and conflicting statements about the reasons, and appears to have treated the OIC shabbily. See Participant Statement (Schrable Letter).

The Commission did not pursue an earlier opportunity to address the suspension. It now has an opportunity to do so, in the form of a remand, with the benefit of additional information from the Petitioners. This also would allow the Postal

¹ See September 6, 2011 hearing of the Committee on Homeland Security and Governmental Affairs of the U.S. Senate, “U.S. Postal Service in Crisis: Proposals to Prevent a Postal Shutdown.”

Service to consider and clarify its practices when an emergency suspension is based on a temporary break in service.

The outstanding question is why the Postal Service's well-staffed Human Resources division could not find a temporary replacement for the OIC despite:

- knowing a break in service was in the offing;
- apparently having located replacements before;
- having access to a large corps of postal retirees who might be able to step in if a trained person was otherwise unavailable; and
- continuing high unemployment.

The integrity of the Postal Service's actions is an essential component of its right to execute the policies of title 39 of the U.S. Code. In Gepp, that integrity — especially in the sense of “fair dealing” with an employee and the patrons with respect to the emergency suspension — is missing, but can be rectified, even at this juncture.

III. REPRESENTATION REGARDING “FORECLOSURE”

The Administrative Record (in Item No. 13) states: “The property this modular post office occupies, has been foreclosed on.” Technically, this statement is correct; however, there is much more concerning the foreclosure that is not the record. In the absence of this information, “the record before the Postal Service” is legally deficient.

Specifically, inquiries directed to the bank² handling the foreclosure and the bank's attorney reveal that the Gepp Post Office is one of several structures on a piece of land that was foreclosed upon. However, the bank's attorney states that the bank did not evict the Postal Service and, in fact, would like the Post Office to continue its occupancy of the existing building. (The bank's attorney, at the time of this conversation, apparently was not aware that the Postal Service had vacated the

² The reference is to the Bank of the Ozarks.

building.) The bank's attorney also said he believes the presence of the Post Office creates a synergy that helps in leasing the rest of the property. And, even though legal ownership has changed, he stated that there is no foreclosure-related obstacle to the Postal Service staying on, as the new owner's name could simply be substituted on the lease.

IV. DEFICIENCIES IN THE ASSESSMENT OF ECONOMIC EFFECTS

The Postal Service does not properly account for economic savings, as reflected in its treatment of salary expense and its lease obligation.

Salary. With respect to salary, the calculation provided in Administrative Record, Item No. 33, Part IV, uses the Postmaster's salary. However, it appears that the OIC is paid considerably less. It is misleading for the Postal Service to prepare the calculation using the higher figure; thus, transparency and accountability are lacking.

Failure to account for a continuing leasehold obligation. In Gepp, as in other recent "A" cases, the transparency of, and accountability for, the Postal Service's estimated economic savings is questionable. Specifically, the Postal Service's institutional position appears to be that a continuing leasehold obligation, as reflected in this case in Administrative Record, Item No. 15, (Post Office Fact/Survey Sheet), Question 3, does not enter into the calculation of economic savings. Instead, the Postal Service narrowly confines the inquiry to one year and \$1200. However, the Administrative Record shows that the Postal Service's lease expires August 31, 2017 ... and there is no 30-day cancellation clause.

The Postal Service may be confident that it can negotiate extremely favorable new terms with the successor landlord. Conversely, the Bank holds the Postal Service to its original, long-term contractual obligation. However, "the record before the Postal Service" clearly showed, at the time the Gepp Post's fate was being considered within the Postal Service, a substantial liability. It is perplexing from any perspective, be it common sense, Sarbanes-Oxley, Accounting 101, and even the Postal Service's overall financial condition, why the Postal Service seemingly wants to ignore this obligation.

IV. CONCLUSION

The controlling law clearly envisions a remand as a potential solution for problems. This is not appropriate solution in every case, and the Commission is wise to use its remand authority wisely and, perhaps, with restraint. However, a remand in this case would recognize that the Postal Service's actions with respect to the emergency suspension of the Gepp Post Office, the "foreclosure," and the continuing leasehold obligation are not consistent with applicable title 39 standards. A remand would provide the Petitioners and other patrons of the Gepp Post Office with an important measure of relief, without imposing an undue burden on the Postal Service. Moreover, a remand might provide useful guidance for the Postal Service and might eliminate the need to revisit these matters in future dockets.

Respectfully Submitted,

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