

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

Elmo Post Office
(Elmo, Missouri)

Docket No. A2012-48

REPLY BRIEF OF THE PUBLIC REPRESENTATIVE

(December 29, 2011)

I. INTRODUCTION AND BACKGROUND

On November 2, 2011, the Postal Regulatory Commission (Commission) received a petition for review of the closing of the Elmo Post Office.¹ On November 16, 2011, the Commission issued an order instituting the current review proceedings, appointing a Public Representative, and establishing a procedural schedule.² On November 18,

¹ Petition Received from Joyce Ecker, November 2, 2011 (Petition).

² Notice and Order Accepting Appeal and Establishing Procedural Schedule, November 16, 2011 (Order No. 971).

2011, the Postal Service filed an electronic version of the administrative record concerning its Final Determination, Postal Service Docket Number 1362458- 64445.³

On December 6, 2011, the Petitioner, Joyce Ecker, has filed a Participant Statement in lieu of a formal legal brief in which she set forth her objections to the closure of the Elmo Post Office.⁴ On December 7, 2011, a Participant Statement was filed by Beverly kent supporting the petition.⁵ On December 8, 2011, a notice of intervention was filed by Wilma Bayless supporting the petition.⁶ On December 20, 2011, the Commission received a letter from Larry and Sharron Ecker opposing the closing of the Elmo Post Office.⁷ The Postal Service filed comments supporting its closure determination on December 23, 2011, in lieu of a legal brief.⁸

II. STATEMENT OF FACTS

The Elmo Post Office is described by the Postal Service in its Final Determination as an EAS-53 level post office located in Elmo, MO 64445-9998, Nodaway County. AR, Item No. 1 at 1. The record shows that Elmo is unincorporated community administered by the city of Elmo. The community consists of retirees, farmers, self-employed and commuters who commute to work at nearby communities. There are a number of businesses and organizations in the community.

The Elmo Post Office is open for business Monday to Friday from 12:15pm – 4:15pm, and Saturday from 12.15pm – 2:15pm. *Id.*, Item 4 at 1. Before being closed, the Elmo Post Office provided service to 38 post office box customers and 135 retail

³ United States Postal Service Notice of Filing Administrative Record, November 18, 2011 (AR).

⁴ Participant Statement of Joyce Ecker, December 6, 2011 (Participant Statement1).

⁵ Participant Statement of Beverly Kent, December 7, 2011 (Participant Statement2)

⁶ Notice of Intervention by Wilma Bayless, December 8, 2011 (Intervention).

⁷ Letter from Larry and Sharron Ecker, December 20, 2011 (Letter).

⁸ United States Postal Service Comments Regarding Appeal, December 23, 2011 (Postal Service Comments).

customers who engaged in an average of 10.1 daily window transactions. *Id.*, Item No. 1 at 1 & Item No. 10 at 1.

On May 16, 2011, the Manager of Post Office Operations requested permission to investigate the possible closure of the Elmo Post Office. *Id.*, Item No. 1 at 1. The request was granted. *Id.*

On June 7, 2011, the Postal Service notified customers of the Elmo Post Office of a possible change in the way their postal service is provided. *Id.*, Item No. 21 at 1. As described in the notice, customers were given the option of receiving pickup, delivery, sale of stamps and all other customary postal services by rural route services from the Burlington Junction Post Office located 12.5 miles away. *Id.* Included was a questionnaire to be completed and returned by June 21, 2011. *Id.* In addition, customers were invited to attend a public meeting on June 21, 2011, at which Postal Service representatives would be available to answer questions and provide information about postal service to the community. *Id.*

Of the 135 questionnaires distributed by the Postal Service, 48 were completed and returned: 3 responded favorably to the proposal; 21 expressed opposition or concern; and 24 expressed no opinion. *Id.*, Item No. 23 at 1. The meeting was held on June 21, 2011 as scheduled with 76 customers in attendance. *Id.* Item No. 24 at 1.

On July 20, 2011, a formal proposal to close Elmo Post Office was forwarded to that post office for posting for a period of sixty days. *Id.* Item No. 31 at 1. On June 25, 2011, an invitation to file comments on the proposal was posted in the Elmo Post Office, Burlington Junction Post Office, and Clearmont Post Office. *Id.* Item No. 32 at 1. A total of 19 comments were received during the posting period that ended on September 20, 2011. *Id.* Item No. 40 at 1. That proposal was transmitted to the Vice President for Delivery and Post Office Operations on September 27, 2011. *Id.* Item No. 45 at 1.

On October 11, 2011, the Final Determination to close the Elmo Post Office was approved. *Id.* Item No. 47 at 11. The decision was based upon (1) declining workload; (2) improving operational efficiencies by providing the alternate service; (3) planning to provide regular and effective service by a rural carrier from Burlington Junction, MO

15.42 miles away; and (4) availability of other 8 post offices within 12.5 mile radius. *Id.* at 2. The Final Determination did consider and respond to various concerns expressed by postal customers. *Id.* Item No. 47.

III. POSITIONS OF THE PARTIES

A. The Petitioners

In the Petition, the Petitioners present the following arguments in opposition to the closing of the Elmo Post Office: (1) Regular and effective service – the Petitioners claim that mail currently coming from Burlington Junction Post Office with the rural carrier is often late. Participant Statement1. The Petitioners expressed concern about effective and timely delivery of mail by rural carrier. Participant Statement1. Additionally, the Petitioners argue that closing the Elmo Post Office will be hardship for the community, and inconvenient for business. Participant Statement1. The Petitioners state that several people cannot drive, many people do not have a computer to buy online, and it would be impossible to drive during Winter due to bad road condition. Participant Statement1. (2) Economic savings - the Petitioners dispute the use of postmaster's salary and benefits in the calculation of economic savings. 3) Factual errors in the Final Determination - the Petitioners dispute Postal Service's assertion of the availability of 8 post offices in the 12.5 mile radius from Elmo Post Office. Participant Statement1 and Participant Statement2. (4) Effect on the community – the Petitioners emphasized the importance of the Elmo Post Office to the surrounding community and requested to keep it open.

B. The Postal Service

On December 23, 2011, the Postal Service filed comments in lieu of the answering brief permitted by Order No. 971. In that filing, the Postal Service supports its decision to close Elmo Post Office for the following reasons: (1) the vacancy of the

postmaster since October 4, 2008; (2) a minimal workload; (3) low office revenue; (4) availability of a variety of delivery and retail options, including the convenience of rural delivery and retail services; (5) no projected growth in the area; (6) minimal impact upon the community; and (7) expected financial savings. Postal Service Comments at 4. The Postal Service asserts that it has given a serious consideration to the issues raised by the Petitioners as reflected in the administrative record of this case. Therefore, the determination to discontinue the Elmo Post Office should be affirmed. *Id.*, at 2.

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 conclusions that it finds are: (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 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.⁹

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

⁹ Section 404(d)(5) also authorizes the Commission to suspend the effectiveness of a Postal Service determination pending disposition of the appeal.

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

After careful review of the Postal Service's Final Determination, the materials in the Administrative Record, the arguments presented by Petitioners and the Petition submitted by customers of the Elmo Post Office, and the Postal Service Comments, the Public Representative concludes that the Postal Service has followed applicable procedures, that the decision to close the Elmo Post Office is not arbitrary or capricious, and that the Postal Service's decision is supported by substantial evidence.

Notice to Customers - The Postal Service complied with the procedural requirements related to providing discontinuance notices and postings. The Postal Service has complied with 39 U.S.C. 404 (d) (1) by providing notice of its intention to close the Elmo Post Office allowing customers and the general public to comment on the possible closing, and by responding to their concerns. The Postal service provided copies of documentation posted at the Elmo Post Office, Burlington Junction Post Office, and Clearmont Post Office as part of the administrative record. AR Item No. 32 at 1. The Final Determination to close the Elmo Post Office was also posted at Elmo Post Office, Burlington Junction Post Office, and Clearmont Post Office on October 12, 2011 and removed on November 5, 2011. *Id.*, Item No. 48.

Effective and Regular Service - The Petitioners are concerned that the alternative rural route service may not provide effective and regular service. In the administrative record, the Postal Service states that it will provide pickup and delivery of mail, sale of stamps and all other customary postal services by rural route service from Burlington Junction Post Office. *Id.*, Item No. 21 at 1. It also states that retail and post office box services are available at the Burlington Junction Post Office located 12.5 miles away. *Id.* This Post Office is open Monday to Friday from 8:30am to 11:30am and 1:00pm to 4:15pm; and on Saturday from 8:00am to 9:30am. *Id.* Post office box service is provided at this post office at the same price. *Id.* The Postal Service also mentioned the Clearmont Post Office located 5.5 miles away as an alternative. *Id.* However, the Public Representative finds that the Clearmont Post Office is a candidate for closing within the Retail Optimization Initiative (RAOI) and it should not be offered as alternative.

In response to the Petitioners concern about delays in mail delivery, the Postal Service explains that it carefully considered the volume of mail for each route so that it can deliver the greatest amount of mail at the earliest possible hour. *Id.*, Item No. 33 at 3. A customer's location on a carrier's line of travel determines the time of the day the mail is delivered. *Id.*, Item No. 33 at 3. For customers who cannot receive early delivery, the Postal Service offers alternative delivery service such as Post office box service that provide access to their mail earlier and throughout the day. *Id.*, Item No. 33 at 4.

Addressing the Petitioners concern about the hardship to the community resulting from the closing of the Elmo Post Office, the Postal Service explains that carrier service is beneficial to many senior citizens and those who face special challenges as it allows obtaining postal services to roadside mailboxes or Centralized Box Units without having to travel to the post office. *Id.*, Item No. 33 at 5. It further states that the Postal Service will provide delivery service to the home of a customer in hardship cases. *Id.* The Postal Service also offers other options, such as stamps by mail; Money Order Application forms at customer convenience; and stamp sales in stores and gas stations, online at usps.com, or by calling 1-800-stamp-24. *Id.*, Item No. 33 at 3.

Economic Savings - The Postal Service includes a review of the economic savings that will result from the closing of the Elmo Post Office. The Postal Service estimates an annual savings of \$15,984 after deducting the estimated cost of replacement rural route service. *Id.*, Item No. 33 at 9.2. This includes the Postmaster's salary and benefits of \$20,492, and a rental cost of \$3,000. The cost of the replacement rural carrier service is estimated at \$7,508. *Id.*

The Petitioners disagree with the use of salary and benefits of a carrier employee in the calculation of economic savings. In its comments, the Postal Service explains that "the economic savings calculation conducted as part of a discontinuance study is forward-looking; that the Postal Service may have paid less in salary and benefits over the past years does not mean that it could count on those savings annually in the future." Postal Service Comments at 10. It further suggests that "if the Post Office is not discontinued, that slot would have been filled with a career employee, and the salary and benefits to be paid would be as shown for a postmaster." *Id.*

The Public Representative thinks that Postal Service's economic savings estimate in the record is inflated. As a result of the closing of the Elmo Post Office, the Postal Service may lose some customers to competitors for certain services, and others may switch to the Internet for some services. Additionally, not all of Elmo's post office box customers will continue to use post office box service at nearby post offices. Some post office box customers may opt for contract service. The Public Representative recommends that the Postal Service should count a certain percent of the annual revenue of Elmo Post Office against any economic benefits that the Postal Service will realize by closing this office.

Effect on the Community and Business – the Petitioners expressed concern about the effect on the community and business. Based on the record in this case, the Public Representative finds that the Postal Service has considered inputs from the community by distributing questionnaires, holding a community meeting, and responding to customers' concerns about the closure of the Elmo Post Office. The Postal Service acknowledges the importance of regular and effective postal service to

the community and business. It states that it will continue to provide effective and regular postal service to the Elmo Community. *Id.*, Item No. 38 at 14. Regarding the effect on business, it explains that no business will be adversely affected by the closure of the Elmo Post Office. *Id.* The Postal Service believes that there has been minimal growth in the area and carrier service will accommodate future growth. *Id.*, Item No. 33 at 6.

The community's identity will be preserved. The Postal Service states that it will preserve the community identity by continuing the use of the community name, zip code and addresses. *Id.*

Factual Error - the Petitioners dispute the availability of 8 post offices within 12.5 mile radius of the Elmo Post Office as reported in the administrative record. The Public Representative verified the number of post offices located close to the Elmo Post Office at usps.com, 'find locations.' Based on this source, the Public Representative found 8 post offices within the 12.5 mile radius of the Elmo Post Office. However, some of the post offices, such as Clearmont Post Office, Braddyville Post Office, and College Springs Post Office, are candidates within the Postal Service's Retail Access Optimization Initiative (RAOI). The Public Representative recommends that the Postal Service should not offer RAOI candidate post offices as alternative to the closure of the Elmo Post Office.

Effect on Employees - The postmaster's position has been vacant since the retirement of the postmaster on October 4, 2008. *Id.*, Item No. 33 at 9. The administrative record shows that a temporary officer-in-charge (OIC) has been assigned to operate the office since then. *Id.* The Postal Service comment indicates that the temporary OIC will be offered the same position at a nearby Post Office if available. Postal Service Comments at 11.

VI. CONCLUSION

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

Respectfully Submitted,

/s/ Getachew Mekonnen
Getachew Mekonnen
Public Representative

901 New York Avenue, N.W.
Washington, D.C. 20268-0001
(202) 789-6825; Fax (202) 789-6891
Getachew.Mekonnen@prc.gov