

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

Ogden Post Office
Ogden, Arkansas

Docket No. A2012-31

REPLY BRIEF OF THE PUBLIC REPRESENTATIVE

(January 3, 2012)

I. INTRODUCTION AND BACKGROUND

On October 24, 2011 the Commission docketed the petition to review the Postal Service's decision to close of the Ogden Post Office.¹ On October 28, 2011 the Commission issued an order instituting the current review proceedings, appointing a Public Representative, and establishing a procedural schedule.² Thereafter, on November 8, 2011, the Postal Service filed an electronic version of the administrative record concerning its Final Determination, Postal Service Docket Number 1375897 - 71853.³ On November 23, 2011, the Commission received a Participant Statement

¹ Letter by Sandra Furlow, Mayor, City of Ogden, October 24, 2011. The Commission also received four similar petition filings: (1) Letter by Richard Furlow et al., October 25, 2011; (2) Letter by Mary Ann Morrison et al., October 25, 2011; (3) Letter by Sandra Furlow et al., October 25, 2011; and (4) Letter by Brenda Tate, November 17, 2011.

² Notice and Order Accepting Appeal and Establishing Procedural Schedule, October 28, 2011. (Order No. 936).

³ United States Postal Service Notice of Filing Administrative Record, November 8, 2011. (AR). On December 19, 2011, the Postal Service filed an addendum to AR, Item No. 17. See United States Postal Service Notice of Filing of Addendum to the Administrative Record, December 19, 2011.

from the Residents and Customers of the Ogden, AR Post Office.⁴ The Postal Service filed comments supporting its closure determination on December 19, 2011.⁵

II. STATEMENT OF FACTS

The Ogden Post Office is an EAS-13 level post office in Ogden, Arkansas that is located in Little River County. AR, Item No. 1 at 1. Before being closed, the Ogden Post Office provided service to 184 post office box customers and 72 intermediate rural route customers. *Id.* The Ogden Post Office customers engaged in a daily average of 31.8 transactions. AR, Item No. 10 at 1.

On May 5, 2011, the Manager of Post Office Operations requested permission to investigate the possible closure of the Ogden Post Office. AR, Item No. 1 at 1. The District Manager approved the request. *Id.*

On May 27, 2011, the Postal Service notified customers of the Ogden Post Office of a "possible change in the way your postal service is provided." AR, Item No. 21 at 1. The notice explains that the Postal Service was studying the feasibility of providing postal services from the Ashdown Post Office. *Id.* Included was a questionnaire to be completed and returned by June 14, 2011. *Id.* In addition, customers were invited to attend a public meeting on June 14, 2011, at which Postal Service representatives would be available to answer questions. *Id.*

Of the 259 questionnaires distributed by the Postal Service, 105 were completed and returned: 3 responded favorably to the proposal; 86 expressed opposition or concern; and 16 expressed no opinion. AR, Item No. 33 at 2.

On May 31, 2011, the Postal Service received a letter from the Congressman Mike Ross. AR, Item No. 28 at 1. Congressman Ross stated that he adamantly opposed the discontinuance study to close the Ogden Post Office. *Id.* Congressman

⁴ Participant Statement of the Residents and Customers of the Ogden, AR Post Office, November 23, 2011. (Participant Statement).

⁵ United States Postal Service Comments Regarding Appeal, December 19, 2011. (Postal Service Comments).

Ross explained that the area surrounding Ogden is very rural with a large number of residents on a fixed income that must have postal services available to them within a reasonable distance from their home. *Id.*

The public meeting was held on June 14, 2011, as scheduled, with 107 customers in attendance. AR, Item No. 24 at 1. At the meeting, customers submitted a petition with 154 signatures supporting the retention of the Ogden Post Office. AR, Item No. 33 at 2.

On June 23, 2011, a formal proposal to close the Ogden Post Office was forwarded to that post office for posting for a period of sixty days. AR, Item No. 31 at 1. An invitation to file comments was also posted in the Ogden Post Office. AR, Item No. 32 at 1. Two comments were received during the posting period that ended August 26, 2011. AR, Item No. 40 at 1. That proposal was transmitted to the Vice President for Delivery and Post Office Operations on September 7, 2011. AR, Item No. 45 at 1.

On September 26, 2011, the Final Determination to close the Ogden Post Office was approved.⁶ The decision was based upon (1) the close proximity of the Ogden Post Office to another office; (2) the postmaster vacancy; (3) and the minimal hours earned by the Ogden Post Office (1.71 hours per day). *Id.* at 2. The Final Determination considered and responded to various concerns expressed by postal customers in response to the proposal to close the Holman Post Office. *Id.* at 2-3.

III. POSITIONS OF THE PARTIES

A. The Petitioners

The Petitioners present two arguments in opposition to the closing of the Ogden Post Office: (1) the Postal Service failed to consider the impact of the closing on maintaining effective and regular postal services to the Ogden community; and (2) the Postal Service inaccurately estimated its financial savings. Participant Statement at 2-3.

⁶ AR, Item No. 47, Final Determination to Close the Ogden, AR Post Office and Continue to Provide Service by Rural Route Service, posted September 29, 2011. (FD).

B. The Postal Service

On December 19, 2011, the Postal Service filed comments in lieu of the answering brief permitted by Order No. 936. In that filing, the Postal Service supports its decision to close the Ogden Post Office, on the basis that: (1) it followed the proper procedural requirements of 39 U.S.C. 404(d); (2) it considered the effect of closing the Ogden Post Office on postal services provided to Ogden customers; (3) it considered the effect of closing on the Ogden community; (4) it properly considered the economic savings that would result from the closing; and (5) the effect on employees is minimal. Postal Service Comments at 4-15.

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.

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

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 Ogden 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 Ogden Post Office is not arbitrary or capricious, and that the Postal Service's decision is supported by substantial evidence.

VI. CONCLUSION

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

Respectfully Submitted,

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