

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

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Breaks Post Office
Breaks, Virginia

Docket No. A2011-88

ORDER AFFIRMING DETERMINATION

(Issued January 12, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012.”¹ The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly, the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

The Postal Service's Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service's request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On September 23, 2011, Keith Mullins (Petitioner Mullins) filed a petition with the Commission seeking review of the Postal Service's Final Determination to close the Breaks, Virginia post office (Breaks post office).² A second appeal was filed by Wayne Cline, Jr. (Petitioner Cline) on September 28, 2011. A third appeal was filed by James L. Childress (Petitioner Childress) on October 4, 2011.³ The Final Determination to close the Breaks post office is affirmed.

II. PROCEDURAL HISTORY

On September 28, 2011, the Commission established Docket No. A2011-88 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.⁴

² Petition for Review received from Keith Mullins regarding the Breaks, Virginia post office 24607, September 23, 2011 (Mullins Petition). Attached to the Mullins Petition is a letter to Mr. Charles Griffith, Manager of Post Office Operations, which includes over 335 signatures of Breaks' citizens opposed to the post office closure. Petitioner Mullins also submitted a Supplemental Petition to the Commission on September 27, 2011. Supplemental Petition for Review received from Keith Mullins regarding the Breaks, Virginia post office 24607, September 27, 2011 (Supplemental Petition).

³ Petition for Review received from Wayne Cline, Jr. regarding the Breaks, Virginia post office 24607, September 28, 2011 (Cline Petition); Petition for Review received from James L. Childress regarding the Breaks, Virginia post office 24607, October 4, 2011 (Childress Petition).

⁴ Order No. 880, Notice and Order Accepting Appeal and Establishing Procedural Schedule, September 28, 2011.

On October 11, 2011, the Postal Service filed the Administrative Record with the Commission.⁵ The Postal Service also filed comments requesting that the Commission affirm its Final Determination.⁶

Petitioners filed participant statements supporting their petitions.⁷ On December 2, 2011, Petitioner Childress filed a reply brief.⁸ On December 1, 2011, the Public Representative also filed a reply brief.⁹

III. BACKGROUND

The Breaks post office provides retail postal services and service to 208 post office box customers. Final Determination at 2. No delivery customers are served through this office. The Breaks post office, an EAS-11 level facility, has retail access hours of 8:00 a.m. to 12:00 p.m. and 12:30 p.m. to 4:15 p.m., Monday through Friday, and 9:30 a.m. to 11:30 a.m. on Saturday. The lobby is accessible 24 hours a day, Monday through Saturday. *Id.*

The postmaster position became vacant on August 31, 2009 when the postmaster retired. A non-career officer-in-charge (OIC) was installed to operate the post office since the postmaster vacancy. Retail transactions average 17 transactions daily (16 minutes of retail workload). Post office receipts for the last 3 years were \$25,975 in FY 2008; \$21,464 in FY 2009; and \$16,221 in FY 2010. There are no permit

⁵ The Administrative Record is attached to the United States Postal Service Notice of Filing, October 11, 2011 (Administrative Record). The Administrative Record includes, as Item No. 49, the Final Determination to Close the Breaks, VA Post Office and Establish Service by Community Post Office (Final Determination).

⁶ United States Postal Service Comments Regarding Appeal, November 17, 2011 (Postal Service Comments).

⁷ Participant Statement received from Wayne Cline, Jr., October 18, 2011 (Cline Participant Statement); Participant Statement received from Keith Mullins, October 25, 2011 (Mullins Participant Statement); Participant Statement received from James L. Childress, October 26, 2011 (Childress Participant Statement).

⁸ Petitioner Comments on United States Postal Service Comments Regarding Appeal, December 2, 2011 (Childress Reply Brief).

⁹ Reply Brief of the Public Representative, December 1, 2011 (PR Reply Brief).

or postage meter customers. *Id.* By closing this post office, the Postal Service anticipates savings of \$31,315 annually. *Id.* at 9.

After the closure, retail services will be provided by the Maxie post office located approximately 8 miles away. *Id.* at 10.¹⁰ Delivery service will be provided by a rural or contract delivery carrier through the Maxie post office. The Maxie post office is an EAS-13 level office, with retail hours of 8:30 a.m. to 12:30 p.m. and 1:30 p.m. to 4:30 p.m., Monday through Friday, and 8:30 a.m. to 11:30 a.m. on Saturday. *Id.* at 2. Two-hundred-twenty-two (222) post office boxes are available. The Postal Service will continue to use the Breaks name and ZIP Code. *Id.* at 8, Concern No. 9.

IV. PARTICIPANT PLEADINGS

Petitioners. Petitioners oppose the closure of the Breaks post office. Petitioners contend that the Maxie post office is farther than noted in the Final Determination and that it would be difficult and costly for many customers to travel there. Mullins Petition at 1; Cline Petition at 1; Childress Reply Brief at 2. Petitioner Mullins asserts that, for some senior and handicapped customers, it would be a hardship to walk to their mailbox each day. Mullins Petition at 1. He also discusses that installing and maintaining a mailbox at their residence would represent an added cost for customers, and notes potential theft and security issues with the use of such mailboxes. *Id.* at 1-2.

Petitioners assert that the closure of the Breaks post office would adversely affect the Breaks community identity and that Breaks is a growing community. Mullins Petition at 2-3; Cline Petition at 1; Childress Petition at 1; Childress Reply Brief at 3. Petitioners Mullins and Childress further argue that the cost savings are inaccurate because they are based on the salary and benefits of a postmaster rather than an OIC who operates the post office, and that the Postal Service has underestimated the cost of

¹⁰ MapQuest estimates the driving distance between the Breaks and Maxie post offices to be approximately 9.2 miles (18 minutes driving time).

rural delivery. Mullins Petition at 3; Childress Participant Statement at 2-3; Childress Reply Brief at 1.

Participant statements filed by each Petitioner reiterate the concerns raised in their petitions. In his Participant Statement and reply brief, Petitioner Childress argues that the post office did not comply with all notice requirements. Childress Participant Statement at 2-3; Childress Reply Brief at 2.

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the Breaks post office. Postal Service Comments at 2. The Postal Service believes the appeal raises two main issues: (1) the effect on postal services; and (2) the impact on the Breaks community. *Id.* at 4-5. The Postal Service asserts that it has given these and other statutory issues serious consideration and concludes that the determination to discontinue the Breaks post office should be affirmed. *Id.* at 6.

The Postal Service explains that its decision to close the Breaks post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload and declining office revenue;
- a variety of other delivery and retail options (including the convenience of rural delivery and retail service);
- minimal impact on the community; and
- expected financial savings.

Id. at 3-5. The Postal Service contends that it will continue to provide regular and effective postal services to the Breaks community when the Final Determination is implemented. *Id.* at 6.

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by Petitioners regarding the effect on postal services, effect on the Breaks community, economic savings, and effect on postal employees. *Id.* at 5-6.

Public Representative. The Public Representative contends that the Postal Service has followed applicable procedures, that the decision to close the Breaks post office is not arbitrary or capricious, and that the Postal Service's decision is supported by substantial evidence. PR Reply Brief at 5. She states that although the Postal Service has followed applicable procedures, she questions whether the Postal Service will realize the full amount of the estimated cost savings. However, she concludes that the Final Determination appears to be procedurally in order and that no persuasive argument has been presented that would prevent the Commission from affirming the determination. *Id.*

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office 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 to be (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.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action

to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. 39 U.S.C. § 404(d)(5).

Petitioner Childress claims that the Postal Service failed to comply with all notice requirements based upon the fact that the Postal Service did not post copies of the Commission's Order No. 888 or the Postal Service's comments at either the Breaks or Maxie post offices. Childress Reply Brief at 2. However, neither section 404(d), nor Postal Service or Commission regulations, requires the posting of these documents at either post office.

The record indicates the Postal Service took the following steps in reaching its Final Determination. On March 18, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Breaks post office. Final Determination at 2. A total of 230 questionnaires were distributed to delivery customers. Other questionnaires were made available at the retail counter. A total of 58 questionnaires were returned. On April 6, 2011, the Postal Service held a community meeting at the Breaks Community Center to address customer concerns. One-hundred-ten (110) customers attended. *Id.*

The Postal Service posted the proposal to close the Breaks post office with an invitation for comments at the Breaks and Maxie post offices from June 1, 2011 through August 2, 2011. Final Determination at 2. The Final Determination was posted at the same two post offices from September 2, 2011 through October 4, 2011. Administrative Record, Item No. 49. While there is no round stamp on the Final Determination, neither Petitioners nor the Public Representative allege that the Final Determination was not properly noticed. *Id.*

The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A).

Effect on the community. Breaks, Virginia is an unincorporated community located in Dickenson County, Virginia. Administrative Record, Item No. 16. The community is administered politically by the Buchanan County Commission. Police protection is provided by the Buchanan County Sheriff's Department. Fire protection is provided by the Harman Volunteer Fire Department. The community is comprised of retirees, seasonal tourists, and those who commute to work at nearby communities and may work in local businesses. *Id.* Residents may travel to nearby communities for other supplies and services. *See generally* Administrative Record, Item No. 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal Service met with members of the Breaks community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to close the Breaks post office, customers raised concerns regarding the effect of the closure on the community. Their concerns and the Postal Service's responses are summarized in the Final Determination. Final Determination at 7-9.

Petitioners raise the issue of the effect of the closing on the Breaks community identity. Mullins Petition at 2-3; Cline Petition at 1; Childress Petition at 1; Childress Reply Brief at 3. Petitioners assert the Breaks community identity derives from the public facilities and infrastructure that connect and serve residents. Childress Petition at 1. The Postal Service contends that it considered this issue and explains that the community identity will be preserved by continuing the use of the Breaks name and ZIP Code. Postal Service Comments at 5; Final Determination at 8. The Postal Service

further explains that Petitioners' submissions show that the identity of the Breaks community revolves far more significantly around the Breaks Interstate Park and on its place on the Coal Heritage trail than it does on the Breaks post office. Postal Service Comments at 5.

The Postal Service has adequately considered the effect of the post office closing on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

Effect on employees. The Postal Service states that the Breaks postmaster retired on August 31, 2009, and that an OIC has operated the Breaks post office since then. Final Determination at 9. It asserts that after the Final Determination is implemented, the temporary OIC may be separated and that no other Postal Service employee will be adversely affected. *Id.*

The Postal Service has considered the possible effects of the post office closing on the OIC and has satisfied its obligation to consider the effect of the closing on employees at the Breaks post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

Effective and regular service. The Postal Service contends that it has considered the effect the closing will have on postal services provided to 208 customers. Postal Service Comments at 5. It asserts that customers of the closed Breaks post office may obtain retail services at the Maxie post office located 8 miles away. Final Determination at 2. Delivery service will be provided by either rural or contract delivery carriers through the Maxie post office. *Id.* at 10. The Breaks post office box customers may obtain Post Office Box service at the Maxie post office, which has 222 boxes available. *Id.* at 2.

For customers choosing not to travel to the Maxie post office, the Postal Service explains that retail services will be available from the carrier. Postal Service Comments at 4. The Postal Service adds that it is not necessary to meet the carrier for service since most transactions do not require meeting the carrier at the mailbox. *Id.*

Petitioners argue that the alternative means through which the Breaks community will continue to receive postal services is inadequate. Mullins Petition at 1; Cline Petition at 1; Childress Reply Brief at 2. Specifically, Petitioners argue that the

Maxie post office is farther than noted in the Final Determination and that it would be difficult and costly for many customers to travel there. *Id.* The Postal Service responds to this concern by stating that while the Maxie post office may be located at a distance greater than 8 miles for some customers, the distance may be shorter for other customers and that carrier service will serve as an adequate alternative for those who find it difficult to travel to the Maxie post office. Postal Service Comments at 4. It also states that the carrier will make delivery to a roadside mailbox close to customers' residences and that the carrier will be able to accept any letters or packages for mailing. *Id.*

Petitioner Mullins asserts that, for some senior and handicapped customers, it would be a hardship to walk to their mailbox each day and that installing and maintaining a mailbox at their residence would represent an added cost for customers. Mullins Petition at 1. The Postal Service responds that in hardship cases, it can provide delivery service to the home of a customer and that it is unclear how customers with such hardships would be able to reach the Breaks post office. Postal Service Comments at 4. Moreover, it asserts the installation and maintenance of a mailbox are not unreasonable costs, as customers all across the country are able to do so for carrier delivery. *Id.* at 5.

Petitioner Mullins also discusses concerns regarding potential theft and security issues with the use of residential mailboxes. Mullins Petition at 2. The Postal Service responds that it considered the concerns regarding the security of mailboxes by stating that customers may install a lock on their mailboxes as a security measure. Postal Service Comments at 5.

The Postal Service has considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. The Postal Service estimates total annual savings of \$31,516. Final Determination at 9. It derives this figure by summing the following costs:

postmaster salary and benefits (\$44,279) and annual lease costs (\$0), minus the cost of replacement service (\$12,763).¹¹ *Id.*

Petitioners Mullins and Childress assert that the cost savings are inaccurate because they are based on the salary and benefits of a postmaster rather than an OIC who operates the post office, and that the Postal Service has underestimated the cost of rural delivery. Mullins Petition at 3; Childress Participant Statement at 2-3; Childress Reply Brief at 1. The Postal Service responds that it carefully considered the economic savings that would result from the proposed closing. Postal Service Comments at 5.

The Public Representative concludes that the Postal Service considered the economic savings from the closing. PR Reply Brief at 5. However, she contends that the Postal Service may not realize the full amount of the estimated cost savings because the Breaks postmaster retired in 2009, and the post office is managed by an OIC at a lower salary than a postmaster. *Id.*

The Commission has previously stated that the Postal Service should not compute savings based on compensation costs unless there is a reasonable assurance that closing will actually eliminate those costs. The Breaks post office postmaster retired on August 31, 2009. Final Determination at 2. The post office has since been staffed by a non-career OIC who, upon discontinuance of the post office, may be separated from the Postal Service. The postmaster position and the corresponding salary will be eliminated. *See, e.g.,* Docket No. A2011-67, United States Postal Service Comments Regarding Appeal, October 24, 2011, at 13; Docket No. A2011-68, United States Postal Service Comments Regarding Appeal, November 2, 2011, at 10. Furthermore, notwithstanding that the Breaks post office has been staffed by an OIC for over two years, even assuming the use of the presumably lower OIC salary, the Postal Service would have satisfied the requirements of section 404(d)(2)(A)(iv).

The Postal Service has satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

¹¹ The building in which the Breaks post office is located is owned by the Postal Service. Administrative Record, Item No. 18.

VI. CONCLUSION

The Postal Service has adequately considered all requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Breaks post office is affirmed.

It is ordered:

The Postal Service's determination to close the Breaks, Virginia post office is affirmed.

By the Commission.

Shoshana M. Grove
Secretary

DISSENTING OPINION OF CHAIRMAN GOLDWAY

The Administrative Record is inaccurate with regard to economic savings. As such, the Postal Service has not adequately considered economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

The Postal Service argues that savings should be calculated based on a full-time postmaster's salary. Yet the Breaks post office has been operated by an officer-in-charge (OIC) since the former postmaster retired on August 31, 2009. On the one hand, the Postal Service argues that the effect on employees of this closing will be minimal; yet on the other hand, it argues that the savings should be calculated using a full-time position.

There are inherent and blatant contradictions in the record that must be corrected on remand.

It is not the statutory responsibility of the Commission to correct the Administrative Record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data was in the Administrative Record. Therefore, the decision to close should be remanded to the Postal Service to correct the record and present a more considered evaluation of potential savings.

Moreover, the Postal Service recently announced a moratorium on post office closings. It is confusing and perhaps unfair to require some citizens whose post offices have received a discontinuance notice as of December 12, 2011 to gather evidence and pursue an appeal to the Commission, while others whose post offices were in the review process, but had not yet received a discontinuance notice by December 12, 2011 have the respite of a 5-month moratorium.

The citizens of Breaks, Virginia and their concerns regarding the loss of a neighborhood post office should be afforded the same opportunity to be heard and considered as the citizens of the approximately 3,700 post offices fully covered by the moratorium.

Ruth Y. Goldway

DISSENTING OPINION OF VICE CHAIRMAN LANGLEY

The Postal Service did not adequately consider the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The Postal Service should take into consideration that since August 2009, a non-career postmaster relief (PMR) has been in charge of this facility, not an EAS-11 postmaster. The PMR's salary and benefits should be reflected in the Postal Service's cost savings analysis.

As a government entity, the Postal Service should ensure that its cost/benefit analysis accurately identifies capturable cost savings and does not overstate savings.

I find that the Postal Service's decision to discontinue operations at the Breaks post office is unsupported by evidence on the Administrative Record and thus, should be remanded.

Nanci E. Langley