

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

Evansdale Branch		Docket No. A2013-2
Evansdale, Iowa		

INITIAL BRIEF OF PETITIONER CHAD DEUTSCH

(December 21, 2012)

Respectfully submitted,

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STATEMENT OF THE CASE

On November 13, 2012, the Commission received a petition for review of the determination by the Postal Service to close the Evansdale Branch in Evansdale, Iowa. The petitioner is Chad Deutsch, Mayor of the City of Evansdale. In Order No. 1540, issued on November 15, 2012, the Commission instituted a proceeding under 39 U.S.C. § 404(d)(5) and established Docket No. A2013-2 to consider petitioner's appeal. On November 23, 2012, the Postal Service filed the Administrative Record.

PREVIOUS APPEAL AND REMAND

There was a previous appeal to the PRC, Docket No. A2011-103. On January 18, 2012, the Commission issued Order No. 1141, in which the Final Determination to close the Evansdale post office was remanded for further consideration. Final Determination at 2.

On October 31, 2012, there was a letter addressed to Postal Customer. The letter stated "(t)his informs you that a revised final determination to discontinue the suspended Evansdale Branch has been posted at the Waterloo Post Office. The final determination provides that the Evansdale Branch will be permanently closed."

The October 31, 2012, letter describes the Evansdale Branch as "suspended." However, the Evansdale Branch was closed, not suspended. A letter

dated September 2, 2011, which was addressed to Postal Customer stated “(t)his is to advise you that the Evansdale Branch will be officially closed at the close of business Friday, 10/21/2011.” Administrative Record, Item No. 53. The Postal Service has not provided any information to show that the Evansdale Branch had been suspended.

The Revised Final Determination to Close the Suspended Evansdale, IA Branch has a round-date stamp for Waterloo, Iowa, dated November 1, 2012. As noted above, the Evansdale Branch had not been suspended. Thus, the Revised Final Determination title is not correct when it refers to the Evansdale Branch as being suspended.

ORDER REMANDING DETERMINATION

On January 18, 2012, the Commission issued an Order Remanding Determination. The Order included the following analysis at 10-11:

Economic savings. The Postal Service estimates total annual savings of \$62,935. Final Determination at 6. It derives this figure by summing the following costs: Manager and/or Craft savings (\$32,760), benefits (\$10,975) and annual lease costs (\$19,200). *Id.*

Petitioners contest the accuracy of the Postal Service’s estimated savings, contending that no labor savings will be realized since employees at the Evansdale post office will be relocated by the Postal Service. In addition, they argue that because the current lease of the Evansdale post office extends to January 31, 2016 no savings attributable to the lease will materialize for 4 years. *See* Chilton Participant Statement at 3; Petitioner Deutsch Initial Brief at 27.

The Postal Service indicates that employees at the Evansdale post office will be reassigned to other postal facilities. Postal Service Comments at 6; *see also* Final Determination at 6. It takes the position that all positions associated with the Evansdale post office will be eliminated upon its discontinuance. Postal Service Comments at 6-7.

The Commission has previously observed that the Postal Service should include in its estimate of savings only those costs likely to be eliminated by the closing. In this case, since the employee is simply being transferred to another facility and the lease continues until January 2016, there is no rational basis to conclude that the Postal Service will realize any savings until after the lease expires (or if it were able to sublet the property sooner). Thus, the Commission concludes that the Postal Service has not satisfied the requirements of section 404(d)(2)(iv).

Under section 404(d)(2)(iv), the Postal Service may, if it wishes, close a facility even if there are no (or even negative) savings. It has not done that here. Rather, it claims savings that it will not realize for at least 4 years. That result is not consistent with section 404(d)(2)(iv). [Footnote omitted.]

The Postal Service has not satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

The Commission then concluded at 11 that:

As discussed above, the Postal Service has not adequately considered all requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Evansdale post office is remanded for further consideration.

PERTINENT STATUTORY AUTHORITY

The applicable statute is 39 U.S.C. § 404(d). The Commission has explained that, under 39 U.S.C. § 404(d), the Postal Service must provide notice prior to making a determination to close any post office. Notice of its intent to close is required at least 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. If the Postal Service decides to close the post office, it must make its Final Determination available to the public for 30 days, allowing the patrons the opportunity to appeal the determination to the Commission. The Commission reviews the Postal Service's determination to close or consolidate a post office on the basis of the record before the Postal Service in the making of such determination, as required by 39 U.S.C. § 404(d)(5). The Postal Service shall take no action to close or consolidate a post office until 60 days after its written determination is made available to persons served by such office. *See* 39 U.S.C. § 404(d)(4).

In making a determination whether or not to close a post office, the Postal Service must consider the following factors, pursuant to § 404(d)(2)(A): 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.

The Commission has repeatedly rejected the Postal Service's jurisdictional arguments based on the Postal Service's internal categorization of its retail facilities. *See* Docket No. A2010-3, Order No. 477, Order Dismissing Appeal (East Elko), June 22, 2010, at 5-6.

The Commission shall set aside any determination, findings, or conclusions found 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 on the record. The Commission may affirm the determination of the Postal Service or order that the entire matter be returned for further consideration. *See* 39 U.S.C. § 404(d)(5).

FACTUAL BACKGROUND

City of Evansdale

The city of Evansdale is an incorporated community located in Black Hawk County, Iowa. It is governed by a Mayor and council. There are an Evansdale Police Department and Evansdale Fire Department. Evansdale has numerous businesses, organizations and churches. *See* Revised Final Determination at 6.

The Post Office Survey Sheet, dated June 20, 2011, indicates that the lease expires on 1/31/2016. It does not state whether there is a cancellation clause. This document includes the number "19200," which apparently is the annual lease

payment. The document also states that one career employee will be reassigned. Administrative Record, Item No. 15.

The Administrative Record includes a letter dated 9/02/2011, which is addressed to "Postal Customer." The letter states that "(t)his is to advise you that the Evansdale Branch will be officially closed at the close of business Friday, 10/21/2011." The letter also states that "(r)etail and delivery services from the Waterloo Main Post Office will ensure effective and regular services to the Evansdale customers." Administrative Record, Item No. 53.

Revised Final Determination

The Revised Final Determination was signed by Gregory G. Graves, (A)Vice President, Delivery and Post Office Operations, on October 25, 2012. It states at 7 that "(t)his is the revised final determination to close the suspended Evansdale, IA Branch and continue to permanently provide delivery and retail services by nearby Post Offices, alternate access, and city delivery carrier under the administrative responsibility of the Waterloo Post Office, located three miles away." This statement is not correct when it describes the Evansdale Branch as suspended.

The office receipts for the three years in the Revised Final Determination at 2 were \$270,763 (706 revenue units) in FY 2008; \$244,212 (637 revenue units) in

FY 2009; and \$253,050 (660 revenue units) in FY 2010. Thus, the revenue has been fairly steady and showed an increase from FY 2009 to FY 2010.

The Revised Final Determination at 6 includes only one advantage of the proposal, which is “(s)avings for the Postal Service contribute in the long run to stable postage rates and savings for customers while ready access to essential postal services is retained.” This purported advantage is not supported by the record and has no bearing on the individual situation of the Evansdale post office.

ARGUMENT

I. The Commission should remand the Revised Final Determination for further consideration, because the Postal Service failed to address the issues raised by the Commission in the Order Remanding Determination.

The Postal Service failed to address the issues raised by the Commission in the Order Remanding Determination. Therefore, the Commission should order a second remand.

In the Revised Final Determination, the Postal Service used a ten-year period for the cost savings estimate. The use of a ten-year period is much too speculative. The cost savings should be shown on an annual basis and presumably for a time period of five years or less.

Moreover, the Revised Final Determination omits any substantive discussion about the long-term lease that does not expire until January 31, 2016. There is

only a mention of the lease in a footnote. It is likely that the Postal Service used a ten-year period for its cost savings estimate in an effort to avoid admitting or discussing the fact that there would be no cost savings for the lease until 2016. The failure by the Postal Service to evaluate the effects of the long-term lease on the estimated cost savings indicates that the Postal Service failed to substantively review and analyze the issues raised in the Commission's Order.

The estimated savings are not supported by the record. The Revised Final Determination states at 7 that "(t)he sole employee assigned to the Evansdale Branch transferred to a vacant position within the administrative office of the Waterloo Post Office." Thus, it appears that there will be no employee cost savings.

The Revised Final Determination at 7 shows a ten-year cost savings for EAS Craft & Labor of \$687,615. This savings is not explained in any way, particularly considering that the only employee has transferred to a position in the Waterloo Post Office.

Perhaps even more confusing is the fact that the estimate for the total ten-year cost savings is \$604,406. That number is less than the cost savings for EAS Craft & Labor, which is \$687,615. There is no obvious explanation as to how the total cost savings is substantially less than the cost savings for EAS Craft & Labor.

There is an asterisk by the number 604,406, with a note stating "Net Present

Value (NPV) 10 year savings.” The total ten-year cost savings may be less than the total of the individual numbers because it was determined by a net present value calculation. However, the Postal Service did not explain that calculation or why it used such a calculation. The cost savings should be shown on an annual basis, not as a ten-year NPV total.

Finally, the Postal Service apparently is continuing its practice to refuse to discuss or analyze revenue. A proper analysis of economic savings should include revenue, as well as costs. The closing of any facility would result in cost savings, such as utilities. The mere listing of cost savings provides no record support for the determination of economic savings, which should include revenue and costs.

A decision to close post offices for economic reasons should be based on some consideration of profit and loss calculations, not on a mere summation of assumed cost savings. Closing the most profitable post office would result in cost savings, so the cost savings calculation on its own provides no record support for whether a post office should be closed.

It is obvious that the estimated cost savings are speculative and unexplained. These numbers cannot support any claim about cost savings. Also, cost savings are not the same as economic savings, which should include revenue calculations. Thus, the Postal Service has not satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

II. The Postal Service apparently has no established procedures to follow after a remand from the Commission.

After the remand, the Postal Service apparently did not follow any established procedures to consider the Commission's Order. In fact, the record provides no information as to what actions the Postal Service took to address the Commission's Order. There is no record to support or explain the changes made from the original Final Determination to the Revised Final Determination.

There should be remand procedures through which the Postal Service reviews and analyzes the Commission's Order. Based on the lack of any discernible procedure or analysis, the remand process is meaningless and wholly arbitrary. There is no assurance that the Postal Service actually considered the Commission's Order. In addition, there apparently is no time period during which the Postal Service is required or expected to consider the Commission's Order. It is possible that the Postal Service could simply take no action after a remand or delay any action until the Commission's Order is no longer timely.

One example of the problems with the remand process is that the Postal Service is now describing the Evansdale Branch as suspended, when it had already been closed. It is possible that the Postal Service has described the Evansdale Branch as suspended to make the Revised Final Determination appear to be a new determination, rather than merely a slight revision of the previous Final Determination. In any event, the sequence in which the Evansdale Branch went

from being closed to suspended and then being planned to close again shows that this closing process ignores the actual circumstances of the Evansdale Branch.

The entire remand process appears to be illusory and not based on any procedures or rules. The Postal Service should be required to consider the Commission's Order Remanding Determination in a substantive and timely manner. The Revised Final Determination should include record support for the procedures used by the Postal Service in considering the Commission's Order and making appropriate revisions to the previous Final Determination.

III. The Postal Service has provided no explanation or support for its determination to close the Evansdale Branch, particularly after the Postal Service has implemented the POSTPlan.

The Postal Service not explained why the Evansdale Branch should be closed. The only advantage listed in the Revised Final Determination is speculative boilerplate and has no relation to the Evansdale Branch.

Moreover, the Postal Service has now implemented the POSTPlan and has abandoned its initiative to close post offices. Evansdale is a city with a Mayor and council. There is no reason why the city of Evansdale should not have a post office. The Postal Service is now reducing the hours of rural post offices and has stopped the process of closing post offices. Evansdale should not be essentially the only community still subject to the abandoned plan of the Postal Service to close post offices. If the Postal Service wants to close the Evansdale Branch, it should

provide a substantive explanation and record support for the closing determination. The Evansdale Branch, located in the city of Evansdale, should not be closed, when rural post offices are no longer being closed.

CONCLUSION

For the foregoing reasons, the Postal Service's determination to close the Evansdale, Iowa, Branch should be remanded for the second time for further consideration.