

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

Before Commissioners:

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

Downtown Fernandina Beach Station
Fernandina Beach, FL

Docket No. A2013-7

ORDER REMANDING DETERMINATION

(Issued November 19, 2013)

I. INTRODUCTION

On July 22, 2013, David A. Granger and Julie L. Batts filed petitions with the Commission seeking review of the Postal Service's Final Determination to close the Downtown Fernandina Beach Station post office (Downtown Fernandina Beach Station post office).¹ Additional petitions for review were received from Jan S. Van Delinder and E. Clinch Kavanaugh, III.² The Granger Petition and the Kavanaugh Petition include requests for suspension of the Final Determination pending review. Granger Petition at 3; Kavanaugh Petition at 1. For reasons discussed below, the Final

¹ Petition for Review-Suspension Pending Review Requested-Appeal Final Determination to Close Fernandina Beach Downtown Station Post Office-Docket 1363326-32034, July 22, 2013 (Granger Petition); Post Office Closing Appeal from Julie L. Batts, July 22, 2013 (Batts Petition).

² Petition for Review Received from Jane S. Van Delinder Regarding the Fernandina Beach, FL Post Office 32034, July 31, 2013 (Van Delinder Petition); Comments Received from E. Clinch Kavanaugh, III, P.A., August 14, 2013 (Kavanaugh Petition). Those filing petitions are collectively referred to herein as Petitioners.

Determination to close the Downtown Fernandina Beach Station post office is remanded to the Postal Service for further action.

II. PROCEDURAL HISTORY

On July 24, 2013, the Commission established Docket No. A2013-7 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.³

On August 1, 2013, the Postal Service filed the Administrative Record with the Commission.⁴ The Administrative Record was supplemented several times over the course of this proceeding.⁵ Petitioner Granger and the Public Representative filed objections to the Administrative Record errata filed by the Postal Service on September 10, 2013.⁶

³ Order No. 1789, Notice and Order Accepting Appeal and Establishing Procedural Schedule, July 24, 2013.

⁴ The Administrative Record is attached to the United States Postal Service Notice of Filing Administrative Record, August 1, 2013.

⁵ United States Postal Service Notice of Filing of Supplemental Documents for Inclusion in the Administrative Record, August 9, 2013 (August 9 Supplement); United States Postal Service Second Notice of Filing of Supplemental Documents for Inclusion in the Administrative Record, August 14, 2013; Notice of the United States Postal Service of Filing Errata, September 10, 2013 (Errata Notice); Notice of the United States Postal Service of Filing Errata, September 16, 2013 (the August 1, 2013 filing, *supra* n.4, and the above documents constitute the Administrative Record). The August 14, 2013 filing was accompanied by a Motion for Late Acceptance, August 14, 2013. This motion is granted. Several documents alleging to be the Final Determination were filed in this docket. The Postal Service asserts that Item No. 35A titled Final Determination to Close the Fernandina Beach Downtown, FL Station and Continue to Provide Service by Contract Postal Unit (Final Determination) and attached to the September 10, 2013 filing is the actual Final Determination.

⁶ Petitioner's Opposition to Postal Service's Notice of Filing Errata, September 16, 2013; Public Representative's Opposition to Postal Service's Notice of Filing Errata, September 13, 2013. The Commission will allow the errata to be entered into the record.

On August 1, 2013, the Postal Service filed a motion to dismiss this proceeding.⁷ Petitioner Granger and the Public Representative filed in opposition to the Motion to Dismiss.⁸

The Public Representative filed a response in support of the request for suspension of the Final Determination pending review.⁹ On August 6, 2013, the Postal Service filed a statement stating the Downtown Fernandina Beach Station post office will remain open pending review.¹⁰ Therefore, the request for suspension of the Final Determination pending review became moot.¹¹

Petitioner Granger filed a statement and a brief in support of his appeal.¹² Additional comments were received from other interested persons.¹³ On September 27, 2013, the Public Representative filed reply comments.¹⁴

⁷ Motion of United States Postal Service to Dismiss Proceedings, August 1, 2013 (Motion to Dismiss).

⁸ Petitioner's Opposition to Postal Service's Motion to Dismiss, August 15, 2013; Public Representative's Opposition to the Postal Service's Motion to Dismiss, August 15, 2013 (PR Opposition).

⁹ Public Representative's Response in Support of Petitioner David A. Granger's Application for Emergency Suspension Pending Review, August 2, 2013.

¹⁰ Surreply of the United States Postal Service to the Public Representative's Response, August 6, 2013. The surreply was accompanied by Motion of the United States Postal Service for Leave to Surreply, August 6, 2013. This motion is granted.

¹¹ Petitioner Granger's allegation that the Postal Service intended to close the Downtown Fernandina Beach Station post office prior to the expiration of the 60 day waiting period required by 39 U.S.C. § 404(d)(4) is also moot.

¹² Petitioner Request to Affirm Appeal and Stop Closing, August 13, 2013 (Granger Statement); Petitioner's Initial Brief in Support of Petition, September 4, 2013 (Granger Brief).

¹³ Comments of Trivet Mock, LLC, July 29, 2013; Comments of William J. Mock Jr., July 29, 2013; Comments of John Joseph Cascade, Esq. P.A., August 1, 2013; Comments Received from Nils and Catherine Ingebrigtsen, August 5, 2013; Comments Received from Shawn Ryan, August 5, 2013; Comments Received from Lawrence R. Hertz, August 5, 2013; Comments Received from Carla and John Hartrich, August 6, 2013; Comments Received from Dr. Arnold L. Tanis, August 14, 2013; Comments Received from Maxine L. Tanis, August 14, 2013.

¹⁴ Public Representative's Reply Comments, September 27, 2013 (PR Reply Comments).

III. BACKGROUND

Downtown Fernandina Beach is an unincorporated community located in Nassau County, Florida.¹⁵ The community is administered politically by City of Fernandina Beach. *Id.* Police protection is provided by the Fernandina Beach Police Department. *Id.* Fire protection is provided by Fernandina Beach Fire Department. *Id.* Downtown Fernandina Beach Station is located in the center of a business district. The community is comprised of a mixture of local businesses such as shrimp boat owners as well as a large group of seasonal residences on Amelia Plantation. *Id.* Additionally, the community consists of retirees, those who commute to work and those working in local businesses. *Id.*

The Downtown Fernandina Beach Station post office provides retail postal services and service to 548 post office box or general delivery customers. *Id.* at 7. No delivery customers are served through this office. The Downtown Fernandina Beach Station post office, an EAS-21 level facility, provides retail service from 9:00 a.m. to 1:00 p.m. and 2:00 p.m. to 5:00 p.m., Monday through Friday, and is closed on Saturday. *Id.* at 1; Administrative Record, Item No. 1.

Office receipts have ranged from \$283,674 in FY 2009 to \$261,747 in FY 2012. Final Determination at 1. By closing this office, the Postal Service anticipates savings of \$315,359 over ten years. *Id.* at 6.

After the closure, retail services will be provided by the Fernandina Beach post office located approximately 3 miles away.¹⁶ Delivery service will be provided through the Fernandina Beach post office.¹⁷ *Id.* at 2. The Fernandina Beach post office has

¹⁵ Final Determination at 5. As discussed below, more than one Final Determination has been filed in this proceeding. For purposes of this Order, citations to the Final Determination are to the one submitted by the Postal Service on September 10, 2013. While there are differences, the content appears to be the same as the Final Determination submitted by Petitioner Granger on August 13, 2013.

¹⁶ *Id.* at 7. MapQuest estimates the driving distance between the Downtown Fernandina Beach Station and Fernandina Beach post offices to be approximately 2.91 miles (6 minutes driving time).

¹⁷ The Final Determination also states that following closure of the Downtown Fernandina Beach Station post office that delivery and retail services will be provided by a contract postal unit. Final Determination at 1.

retail hours of 8:30 a.m. to 5:00 p.m., Monday through Friday, and 9:00 a.m. to 12:00 noon on Saturday. *Id.* at 2. Customers will be assigned a carrier route address. *Id.* at 4, 5. However, the Postal Service will continue to use the community name and ZIP Code. *Id.* at 4, Concern No. 10.

Additional retail services will be provided by the Yulee post office located approximately seven miles away. *Id.* at 2. The Yulee post office is an EAS-20 level office, with retail hours of 8:30 a.m. to 5:00 p.m., Monday through Friday, and 8:30 a.m. to 12:00 noon on Saturday. *Id.*

IV. MOTION TO DISMISS

The Postal Service moves to dismiss the appeals on two jurisdictional grounds. First, it asserts that the closing of the Downtown Fernandina Beach Station post office represents a rearrangement of retail facilities within a community and thus falls outside the purview of 39 U.S.C. § 404(d)(5). Motion to Dismiss at 4-10.¹⁸

Alternatively, the Postal Service argues the Commission lacks subject matter jurisdiction because 39 U.S.C. § 404(d) applies only to post offices, not to stations or branches such as the Downtown Fernandina Beach Station. *Id.* at 7.

The Public Representative argues that the Postal Service's closing of the Downtown Fernandina Beach Station post office constitutes a consolidation of facilities under both its current regulations as well as its prior regulations. PR Opposition at 2-5. She argues that the Postal Service is required by law to follow its regulations. *Id.* at 4-5.

The Motion to Dismiss is denied. As to the Postal Service's alternate argument, the Commission has repeatedly held that 39 U.S.C. § 404(d) provides appeal rights to

¹⁸ The Postal Service states, "[t]ypically, a change to the Postal Service retail network in a community constitutes a 'rearrangement' if the move or elimination of a Postal Service retail facility in that community is performed as part of an overall realignment of the network of access points in that community." *Id.* at 4.

persons served by post offices that are labeled for administrative purposes as stations or branches.¹⁹

In this proceeding, the Postal Service proposes to close the Downtown Fernandina Beach Station post office to provide retail and delivery service by a contract postal unit (CPU). Final Determination at 1. The Public Representative persuasively argues that the Postal Service's action constitutes a consolidation of facilities under its regulations. This is not to say that the Commission's review authority may be altered by Postal Service regulations, simply that the Postal Service is bound to follow its regulations.²⁰

V. PARTICIPANT PLEADINGS

Petitioners. Petitioners Granger, Kavanaugh, Batts, and Van Delinder oppose the closure of the Downtown Fernandina Beach Station post office. Their principal objections include that: (a) the Postal Service failed to observe procedures required by law, Granger Petition at 1-2; Kavanaugh Petition at 2; (b) the record concerning the Final Determination and proposal is unclear in numerous respects, Granger Petition at 1-2; (c) replacement service will be inadequate, Van Delinder Petition; (d) the premise for the closing is erroneous, and (e) that the economic savings estimates are overstated, Granger Petition at 2; Kavanaugh Petition at 2.

Public Representative. The Public Representative contends the Postal Service has failed to comply with the requirements of 39 U.S.C. § 404(d). PR Reply Comments

¹⁹ See, e.g., Docket No. A82-10, Order No. 436, *In re Oceana Station, Virginia Beach, Virginia*, June 25, 1982, at 4 (*Oceana Station*); Docket No. A2006-1, Order No. 1480, *In re Observatory Finance Station Pittsburg, PA 15214-0651*, September 29, 2006, at 6-12; Docket No. A2011-16, Order No. 748, Akron-East Station, Akron, Ohio, June 17, 2011, at 2; Docket No. A2011-18, Order No. 865, Order Affirming Determination (Valley Falls Station), September 20, 2011; Docket No. A2011-49, Order No. 1037, Order Affirming Determination (Village Station), December 12, 2011; Docket No. A2012-108, Order No. 1317, Order Remanding Determination (South Valley Station), April 18, 2012.

²⁰ In a recent order, the Commission indicated that it would be preferable to revisit issues concerning rearrangement and relocation of facilities in a single proceeding. See Docket No. A2013-5, Order No. 1866, Order Affirming Determination, October 31, 2013, at 10-12. Issues concerning consolidations, such as these presented in this proceeding, may be reviewed at that time as well.

at 2. She comments on the “haphazard and piecemeal” filing of the Administrative Record and the confused state of the underlying record, including two different proposals to close and three different final determinations provided by the Postal Service. *Id.* She highlights discrepancies in the record, e.g., whether there was a Postmaster, the number of employees, the number of Post Office Boxes, and the magnitude of the estimated cost savings. *Id.* at 7-8.

Because of the competing information presented in these documents, the Public Representative argues the record did not provided the Postal Service with information necessary to make an informed decision, nor can the record be relied upon by the Commission in this proceeding. *Id.* at 6. She also question whether customers were provided with adequate notice given the competing versions of the proposals and final determinations.

The Public Representative contends that the inconsistencies and inaccuracies in the Administrative Record demonstrate that the Postal Service failed to consider the needs of the community. For example, the record incorrectly states that the Downtown Fernandina Beach Station is not in a historic building; the Postal Service statement that the downtown community is going to incorporate into the neighboring city is in dispute; and while the Postal Service cites to declining revenue numbers, it does not explain how this relates to its decision to end Post Office Box rentals in 2011. *Id.* at 8.

The Public Representative questions whether effective service will continue after closure. For example, the Final Determination provides no information concerning replacement box service. *Id.* at 11. This is important because of the unique nature of the downtown area. Boat owners receive mail through Post Office Boxes because there is no mail delivery to the Marina, and Cumberland Island residents take a ferry to the downtown area and walk to receive mail utilizing Post Office Boxes. *Id.* at 13.

Postal Service. The Postal Service did not file an answering brief in this docket.

VI. 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. *Id.* § 404(d)(5).

The record contains discrepancies concerning both the proposal to close the Downtown Fernandina Beach Station post office and the Final Determination. The Administrative Record contains two different proposals, both identified as Item No. 17. The first is preceded by a date-stamped cover letter, the second includes date stamps on the first page of the Administrative Record. It is not clear which, if either or both, were actually posted.

Three versions of the Final Determination have been submitted in this proceeding. On August 9, 2013 the Postal Service filed a Final Determination with the Commission signed June 17, 2013. Administrative Record, Item No. 35. At the same time, the Postal Service filed a cover page of a final determination with a single Fernandina Beach date stamp of July 9, 2013. Administrative Record, Item No. 36.

On August 13, 2013, Petitioner Granger filed a different version of a Final Determination with the Commission that was signed July 3, 2013. This document has a single July 9, 2013 Fernandina Beach date stamp on the first page.

On September 10, 2013, the Postal Service filed a third version of the Final Determination with the Commission that was signed July 3, 2013. Administrative Record, Item No. 35A. This document also has a single July 9, 2013 Fernandina Beach date stamp on the first page, but in a different location than the version filed by Petitioner Granger.

The Postal Service argues that its earlier filing of a Final Determination was a draft, and is inconsequential to its Motion to Dismiss. Errata Notice. Both the Public Representative and Petitioner Granger object to the late filed Errata Notice. Based on the confused state of the record, the Commission is unable to conclude that appropriate notice procedures were followed.

There is no reliable indication of when and where any of the Final Determinations were posted. They all exhibit date stamps. There is no explanation for why a draft document would be filed with a date stamped cover letter. Not one of the documents contains an end date stamp indicating whether the Final Determinations were posted for the required number of days.

The Postal Service has not provided a persuasive explanation concerning the conflicting documents (all of which were filed with date stamp pages indicating that they may have been posted). Because of this confusion, the Commission cannot conclude 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: (1) the effect on the community; the effect on postal employees; (2) whether a maximum degree of effective and regular postal service will be provided; and (3) the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A).

Effect on the community/ Effective and regular service. At the outset, a basic justification for the closing is unconfirmed. The Postal Service states that “[t]he current community that this office resides in is going to incorporate with the neighboring city and the Postal Service is determining what needs of the new community structure.”²¹ Petitioner Granger challenges that premise, contending that the community does not intend to incorporate into the neighboring city. Granger Brief at 1. The Postal Service did not attempt to rebut that statement.

The Downtown Fernandina Beach Station post office appears to serve a diverse clientele, consisting of local businesses, a large group of seasonal residences, residents of a nearby marina, as well as residents of nearby Cumberland Island. The record does not adequately address how service to this diverse clientele will be provided in the future.

The Final Determination provides conflicting statements about the service to be provided. On the one hand, it states that delivery and retail services will be provided by CPU. Final Determination at 1.²² On the other hand, it also indicates that delivery and retail services will be provided by the Fernandina Beach post office, located

²¹ Administrative Record, Item No. 35A. This Administrative Record also cites a steady decline in revenue and/or volume. The deteriorating physical condition of the building was cited in earlier Final Determinations, but has been dropped from the latest rendition.

²² There is no discussion of the CPU in the Final Determination. In its Motion to Dismiss, the Postal Service indicates that the CPU is located 0.16 mile from Downtown Fernandina Beach Station post office. Motion to Dismiss at 3.

approximately three miles from the Downtown Fernandina Beach Station post office. The next nearest office, the Yulee post office, is either seven or 11 miles away.²³

The Downtown Fernandina Beach Station post office serves 548 Post Office Box and general delivery customers. Final Determination at 7.²⁴ The CPU does not provide Post Office Box Service. Motion to Dismiss at 3, n.2. The record does not indicate the number of post office boxes available at the Fernandina Beach post office.

The record does not contain sufficient information concerning either the effect on the community or that customers will continue to receive effective and regular service. Accordingly, the Commission cannot conclude that 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) or has adequately considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

Effect on employees. The Administrative Record contains conflicting information about the number of employees at the Downtown Fernandina Beach Station post office, ranging from one to 48. Administrative Record, Item 17 (first occurrence), Administrative Record, Item 17 (second occurrence). In addition, there is confusion over whether one employee is a postmaster. *Id.* The number and disposition of the employees may have a bearing on the estimated economic savings. On remand, the Postal Service should clarify the record on this issue.

Economic savings. The record reflects two estimates of economic savings over ten years, ranging from \$315,359 to \$922,445.²⁵ The difference appears to relate to the employee complement assumed at the Downtown Fernandina Beach Station post office. On remand, the economic savings estimate should be clarified.

²³ Compare Final Determination at 2 with Motion to Dismiss at 2.

²⁴ Elsewhere, the record suggests that there are 625 Post Office Box customers. See Administrative Record, Item No. 1.

²⁵ Compare Final Determination at 4 with August 9 Supplement at 6.

VII. CONCLUSION

The Postal Service has not adequately considered the requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Downtown Fernandina Beach Station post office is remanded to the Postal Service for further action.

It is ordered:

The Postal Service's determination to close the Downtown Fernandina Beach Station post office is remanded to the Postal Service for further action.

By the Commission.

Ruth Ann Abrams
Acting Secretary