

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

NORTH PLATTE MAIN POST OFFICE,
NORTH PLATTE, NE 69101

Docket No. A2015-3

**MOTION OF UNITED STATES POSTAL SERVICE
TO DISMISS PROCEEDINGS**

(May 1, 2015)

This matter commenced with a letter received by the Postal Regulatory Commission from City of North Platte, Nebraska, Mayor Dwight Livingston (Petitioner), in which he appeals “the decision by the United States Postal Service to consolidate the North Platte main post office.”¹ Contrary to Petitioner’s assertions, however, the Postal Service decided to relocate the North Platte Main Post Office (North Platte MPO) to the North Platte Mail Processing Center and no discontinuance will occur. As the Commission has consistently held, the scope of section 404(d)(5) is limited to the discontinuance of a Post Office, and does not apply to the relocation of retail operations within a community. Because Petitioner’s appeal concerns the relocation of a Post Office, an event that falls outside the scope of 39 U.S.C. § 404(d)(5), the Postal Regulatory Commission (Commission) lacks subject matter jurisdiction and should dismiss the appeal.

PROCEDURAL HISTORY

On April 20, 2015, the Commission docketed correspondence from City of North Platte, Nebraska, Mayor Dwight Livingston and opened PRC Docket No. A2015-3 as an

¹ Petition for Review Received from Mayor Dwight Livingston Regarding the North Platte, NE Post Office 69101, PRC Docket No. A2015-3 (April 20, 2015).

appeal pursuant to 39 U.S.C. § 404(d). Petitioner asserts that the Postal Service action is a consolidation subject to 39 U.S.C. § 404(d) and that the Postal Service failed to satisfy the discontinuance procedural requirements found in 39 U.S.C. § 404(d). Petitioner also alleges that the Postal Service failed to comply with its regulations applicable to relocations of postal retail services (39 C.F.R. § 241.4) when it made the decision to relocate retail operations from the North Platte MPO.

FACTUAL BACKGROUND

North Platte is a city in Lincoln County, in the state of Nebraska. On March 12, 2015, Tom A. Samra, Vice President of Facilities of the Postal Service, issued a final decision letter stating that the Postal Service was relocating retail operations housed at the North Platte MPO, located at 300 E. 3rd Street, North Platte, Nebraska, to the North Platte Mail Processing Center, located at 1302 Industrial Avenue, North Platte, Nebraska. See Exhibit 1. Mr. Samra explained that the Postal Service complied with its regulations for notifying the community and for soliciting and considering community input. On December 16, 2014, Postal Service representatives attended a North Platte City Council public meeting and provided local officials and members of the public information regarding this relocation project. The Council's December 16, 2014 meeting agenda and minutes indicate that there was advance notice to the public of the meeting, that the meeting was public; that the Postal Service made its presentation concerning the proposed relocation, and that members of the public attended and provided comments.²

² Minutes of the Regular City Council Meeting, December 16, 2014 (North Platte City Council Meeting Minutes), available at: <http://www.ci.north-platte.ne.us/wp-content/uploads/2014/01/12-16-14.pdf>.

The Postal Service also provided the public an opportunity to submit written comments on the proposal. On February 4, 2015, after considering public comments, the Postal Service issued its initial decision to relocate retail operations from North Platte MPO to the North Platte Mail Processing Center. That initial decision letter informed the community that appeals of the decision could be submitted to Vice President of Facilities on or before March 9, 2015.

After considering the appeals, in the final decision letter, Mr. Samra explained that the Postal Service will install retail counters at the North Platte Mail Processing Center and Post Office Boxes sufficient to meet the needs of the current North Platte MPO customers. Additionally, North Platte MPO customers can obtain services through <http://www.USPS.com/> and other alternate access options, including eight stamp consignment sites located within one mile of the North Platte MPO. See Exhibit 2. In the final decision letter, Mr. Samra explained that by relocating from leased premises to a Postal Service-owned facility, the Postal Service will avoid a significant rental expense, while maintaining the same level of service for customers within the North Platte community. Exhibit 1.

ARGUMENT

I. The Commission Lacks Jurisdiction to Review Final Decisions to Relocate Retail Operations

The Postal Regulatory Commission does not have jurisdiction to consider an appeal of a Post Office relocation under 39 U.S.C. § 404(d). As this Commission has previously held, section 404(d) does not apply to a relocation of operations at postal retail operations within the same community. See PRC Order No. 1588, Order Dismissing Appeal, PRC Docket A2013-1, *Santa Monica, California* (December, 19,

2012) (ruling that transfer of retail operations to a carrier annex less than one mile away from the main post office was a relocation of retail services, and 39 U.S.C. § 404(d) did not apply); PRC Order No. 1166, Order Dismissing Appeal, PRC Docket A2012-17, *Venice, California* (January 24, 2012) (ruling that transfer of retail operations to a carrier annex 400 feet away from the main post office was a relocation of retail services, and 39 U.S.C. § 404(d) did not apply); PRC Order No. 804, Order Dismissing Appeal, PRC Docket A2011-21, *Ukiah, California* (August 15, 2011) (ruling that transfer of retail operations to a carrier annex one mile away from the main post office was a relocation of retail services, and 39 U.S.C. § 404(d) did not apply); PRC Order No. 37, PRC Docket No. A2007-1, *Ecorse, Michigan 48229* (October 9, 2007)(same where the new location was 1.7 miles away from the former location); PRC Order No. 696, PRC Docket No. A86-13, *Wellfleet, Massachusetts 02667* (June 10, 1986) (same where new location was 1.2 miles away from the former location); PRC Order No. 448, Order Dismissing Appeal, PRC Docket No. A2010-2, *Steamboat Springs, Colorado* (April 27, 2010) (ruling that the transfer of retail operations to a facility within the same community constituted a relocation or rearrangement of facilities, and 39 U.S.C. § 404(d) did not apply); Order No. 436, PRC Docket No. A82-10, *Oceana Station* (June 25, 1982) (same where new location was four miles away from the former location). Section 404(d) provides that an appeal under that section must concern a closing or consolidation. See 39 U.S.C. § 404(d).

In previous cases, the Commission has concluded that a particular action affecting a postal retail facility constitutes relocation exempt from 39 U.S.C. § 404(d) if both the current site and the proposed future site of the retail facility reside in the same

community. For instance, in 1982, the Commission upheld a Postal Service determination to close the Oceana Station in Virginia Beach as part of an overall plan to rearrange postal retail and delivery operations within the Virginia Beach community. The plan included the future establishment of a new retail facility within Virginia Beach and four miles away from the site of Oceana Station.³ Residents served by Oceana Station claimed that the change in retail operations qualified as a discontinuance under 39 U.S.C. § 404(d). In rejecting their claim, the Commission opined that in enacting Section 404(d), “Congress intended to permit the Postal Service to rely on less formal decision-making, and correspondingly, to give the Commission no jurisdiction to hear appeals of such decisions, when considering where retail facilities are to be located within the community.” Order No. 436, PRC Docket No. A82-10, *Oceana Station*, at 7 (June 25, 1982). The Commission held the “requirements of section 404([d]) do not pertain to the *specific building* housing the [P]ost [O]ffice; but rather are concerned with the provision of a facility within the community.” Order No. 436, PRC Docket No. A82-10, *Oceana Station*, (June 25, 1982) at 7 (emphasis in the original).

Following its decision in *Oceana Station*, the Commission provided further guidance when dismissing an appeal of the relocation of the Post Office in Wellfleet, Massachusetts. In that proceeding, the Postal Service had decided to move the Wellfleet Post Office from the center of the village of Wellfleet to a shopping center development approximately 1.2 miles away. The petitioners contended that the new

³ The City of Virginia Beach is relatively large at 307 square miles. See http://www.vbgov.com/file_source/dept/comit/Document/vb_facts_and_figures.pdf.

location was actually within the neighboring village of South Wellfleet.⁴ The Commission upheld the Postal Service position and characterized the Postal Service's action as a relocation outside the scope of Section 404(d). The Commission explained:

If our record shows that the Postal Service is only relocating a [P]ost [O]ffice within a community, section 404([d]) does not apply and we must dismiss the appeal, since we have no jurisdiction. Section 404([d]) sets up a formal public decision[-]making process for only two types of actions concerning [P]ost [O]ffices – closing or consolidation. The meaning of “closing a [P]ost [O]ffice” as used in the statute is the elimination of a [P]ost [O]ffice from a community. The Postal Service has the authority to relocate a [P]ost [O]ffice within a community without following the formal section 404([d]) proceedings.

PRC Order No. 696, PRC Docket No. A86-13, *Wellfleet, Massachusetts 02667*(June 10, 1986) at 7 (internal citations omitted).

The Commission reiterated its position that a relocation to another facility within the community was not a discontinuance when it dismissed an appeal of a relocation of a post office in Ukiah, California. In this proceeding, the Postal Service decided to move the Ukiah Main Post Office to the Ukiah Carrier Annex; the two locations were one mile from each other. The Commission found that after retail services were transferred to the Ukiah Carrier Annex, and in light of the one-mile distance between the locations, customers would “continue to have the same level of access to retail services in the community.” As such, the Commission determined that the Postal Service's action was a relocation, and not a discontinuance, and consequently, was not subject to an appeal under section 404(d). PRC Order No. 804, Order Dismissing Appeal, PRC Docket No. A2011-21, *Ukiah, California* (August 15, 2011) at 4.

⁴ Wellfleet and South Wellfleet are both villages within the Town of Wellfleet, Massachusetts. Given that village boundaries were unclear, the Commission held that Wellfleet involved a relocation rather than a discontinuance.

Similarly, in Santa Monica, the Postal Service decided to transfer retail operations from the Santa Monica Post Office to the Santa Monica Carrier Annex, located in the same community less than one mile away. The Commission found that postal customers will continue to have the same level of access to retail services in the community. PRC Order No. 1588, Order Dismissing Appeal, PRC Docket No. A2013-1, *Santa Monica, California* (December, 19, 2012) at 5. The Commission dismissed the appeal, stating that the petitioners misinterpreted section 404(d) by applying it to the “elimination of a specific building in Santa Monica as opposed to the provision of a facility within the community.” *Id.* (internal citations omitted).

The Postal Service’s relocation of retail operations from the North Platte MPO to the North Platte MPO is the same as the relocation actions described above. Here, the Postal Service is relocating operations within the city of North Platte and the former and future sites reside approximately 1.5 miles apart.⁵ As was the case in *Ukiah, California*, and *Santa Monica, California*, the Postal Service plans to transfer retail operations from the North Platte MPO to an existing Postal Service facility where retail services are not currently offered. Thus, the North Platte community will maintain the same level of access to retail facilities after the Postal Service implements the planned relocation.

In his request for Commission review, Petitioner argues that the Postal Service actions affecting the North Platte MPO fall within the definition of “consolidation” and since the Postal Service is consolidating the North Platte MPO, the procedural requirements and protections of 39 U.S.C. § 404(d) and 39 C.F.R. § 241.3 apply. Petition at 2. However, the actions affecting the North Platte MPO do not fall within the

⁵ Driving distance between the North Platte MPO and the North Platte Mail Processing Center is approximately two miles.

definition of “consolidation.” “Consolidations” are defined as actions that convert a Postal Service-operated retail facility into a contractor-operated retail facility.” 39 C.F.R. § 241.3(a)(2)(iv). Here, the instant action is not a consolidation because a Postal Service-operated retail facility is not being converted to a contractor-operated retail facility. Rather, operations at one Postal Service-operated retail facility are being moved to a new Postal Service-operated retail facility within the community, which did not previously offer retail services. Moreover, North Platte customers will retain the same level of access to postal retail services after retail operations are transferred to the North Platte Mail Processing Center.

In sum, although this appeal purports to concern a consolidation, it actually concerns the relocation of a Post Office. Thus, 39 U.S.C. § 404(d) and 39 C.F.R. § 241.3 do not apply, and the Commission lacks jurisdiction to consider the appeal. Accordingly, the Commission should dismiss the appeal.

II. Even if the Commission has Jurisdiction to Review Final Decisions to Relocate Retail Operations, the Postal Service Complied with its Relocation Regulations.

Petitioner claims that the Postal Service failed to comply with its relocation regulations, found in 39 C.F.R. § 241.4. First, Petitioner alleges that the Postal Service failed to “attend or conduct one or more public hearings to describe the project to the community, invite questions, solicit written comment, and describe the process by which community input will be considered.” Petition at 1. However, the Council’s minutes belie that claim. As shown in the minutes, the council meeting was public, the Postal Service made its presentation concerning the proposed relocation at that meeting, and members of the public attended and provided comments. *Id.* at 3. The fact that the Postal Service attended the Council meeting instead of holding a separate meeting is in

accordance with the regulation's preference for the Postal Service to make its presentation of the relocation project an item "on the regular agenda of a public meeting or hearing."⁶ Accordingly, there is no requirement to hold another separate public meeting. Here, the Postal Service requested and was granted an opportunity to present at the December 16, 2014 City Council public hearing. In his appeal requesting Commission review, Petitioner acknowledges that Postal Service representatives attended a City Council meeting. The official minutes of December 16, 2014 City Council public meeting recount how Postal Service representatives provided details outlining the community input process, including a description of the comment period and the period in which parties could submit appeals to the Postal Service. North Platte City Council Meeting Minutes at 2.

Second, Petitioner also alleges that, pursuant to the relocation regulations, the Postal Service must "first attempt to find an existing building in the same area as the current facility when a need to relocate is identified." Petition at 1. However, Petitioner incorrectly applies section 241.4(c)(1)(ii) to this relocation action. That sub-paragraph is limited to instances when the Postal Service has identified the "need for increased space." 39 C.F.R. § 241.4(c)(1)(ii).⁷ Here, the Postal Service will be decreasing its space. Therefore, section 241.4(c)(1)(ii) does not apply and there is no requirement

⁶ See 39 C.F.R. § 241.4(c)(1)(iii) (2014) and 241.4(c)(2) (2015). The Postal Service revised its regulations governing relocations on February 20, 2015. 80 Fed. Reg. 9193 (2015). Pursuant to 39 C.F.R. § 241.4(a)(3), the new regulations apply to relocation decisions made on or after March 23, 2015. Here, since both the Initial Decision and Final Decision were issued before March 23, 2015, the former regulations apply. Even if the Commission were to apply the new regulations, however, a Postal Service presentation at a city council meeting would satisfy the Postal Service's regulations.

⁷ The Postal Service revised its regulations governing relocations on February 20, 2015. 80 Fed. Reg. 9193 (2015). Under the revised regulations, there is no section 241.4(c)(1)(ii). However, pursuant to 39 C.F.R. § 241.4(a)(3), since both the Initial Decision and Final Decision were issued before March 23, 2015, the former regulations apply.

that the Postal Service first attempt to find an existing building in the same area as the current facility.

CONCLUSION

For the reasons stated, the United States Postal Service respectfully requests that the Postal Regulatory Commission dismiss this appeal for lack of jurisdiction.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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May 1, 2015

TOM A. SAMRA
VICE PRESIDENT, FACILITIES



March 12, 2015

**Final Determination Regarding the Relocation of Retail Services
North Platte Main Post Office located at 300 East 3rd Street, North Platte, NE**

In accordance with the procedures set forth at 39 C.F.R. 241.4(6), this is the final review determination of the Vice President, Facilities, of the United States Postal Service with respect to the Postal Service's initial decision dated February 4, 2015, regarding relocation of retail services from the North Platte Main Post Office to the USPS owned facility located at 1302 Industrial Avenue.

Following the initial decision, the Postal Service received a number of requests for review of the Postal Service's initial decision. I have considered the concerns expressed in those communications, along with relevant portions of the project file relating to the relocation proposal. While I appreciate the concerns raised, upon a review of the facts, for the reasons set forth below, I will not set aside the Postal Service's initial decision.

The Postal Service has followed the process set forth in its regulations, and has satisfied the requirements for notifying the community and for soliciting and considering community input. The Postal Service has taken into account the location of the existing facility as compared to the USPS facility at 1302 Industrial Avenue and believes the new site will be appropriate for servicing customers. The Postal Service plans to equip the 1302 Industrial Avenue site with the same number of retail counters as the Postal Service provides at the existing Main Post Office. Additionally, by relocating from leased premises to a Postal-owned facility, the Postal Service will avoid a significant rental expense.

While the Postal Service is sensitive to the impact of this determination on its customers and the North Platte community, I am satisfied that the initial decision properly took into account community input and is consistent with Postal Service objectives. Postal Service operations are not supported by tax dollars. To be self-sustaining, the Postal Service must make decisions that ensure it provides adequate and affordable postal services in a manner that is as efficient and economical as possible.

Accordingly, I conclude that there is no basis to set aside the initial decision to relocate the retail services from the North Platte Post Office. This is the final review determination of the Postal Service with respect to this matter, and there is no right to further administrative or judicial review of this determination.

A handwritten signature in black ink, appearing to read "Tom A. Samra".

Tom A. Samra



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