

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

Lafayette Postal Facility
Freehold, New Jersey

Docket No. A2011-19

REPLY BRIEF OF THE PUBLIC REPRESENTATIVE

August 31, 2011

I. INTRODUCTION

On June 22, 2011, the Commission received a petition to review the Postal Service's decision to close the Lafayette Postal Facility in Freehold, New Jersey (Lafayette Facility).¹ Included with the petition were a request for suspension of the closure decision pending resolution of the appeal and a request for the opportunity to present oral argument. *Id.* Two additional petitions for review were filed on June 24, 2011, and June 28, 2011, respectively.² The decision to close the Lafayette Facility was made by the Postal Service on March 14, 2011,³ and was communicated to customers on or about May 25, 2011.⁴

On June 28, 2011, the Commission issued an order instituting the current review proceeding, appointing a Public Representative, and establishing a procedural

¹ Petition for Review, Application for Suspension of Determination of the Postal Service to Close Lafayette Postal Trailer Pending Appeal and Petition for Review, and Request for Oral Arguments (sic) filed by the Freehold Center Management Corp., June 22, 2011 (FCMC Petition).

² Petition for Review of Closure Decision—Postal Facility at 13 Lafayette Street, Freehold, New Jersey 07728, filed by the Township of Freehold, New Jersey, June 24, 2011 (Freehold Township Petition), and Petition to Appeal Postal Service Determination to Close Post Office filed by the Borough of Freehold, New Jersey, June 28, 2011 (Freehold Borough Petition).

³ Final Determination, Lafayette NJ Classified Station 07728-9998, March 24, 2011. (Final Determination). The Final Determination was filed with the Commission on July 7, 2011, as Item No. 15 to the Administrative Record (AR). Notice of the United States Postal Service, July 7, 2011 (Postal Service Notice).

⁴ Freehold Township Petition, Exhibit A.

schedule.⁵ On July 19, 2011, the Commission denied the request for suspension.⁶ As a result, the Lafayette Facility closed on July 29, 2011. Freehold Township Petition, Exhibit A.

II. STATEMENT OF FACTS

The predecessor of the Lafayette Facility was a contract postal unit (CPU). The facility housing the CPU was condemned during 2002 and was replaced by a trailer staffed by career postal clerks. Final Determination at 1. That trailer is the postal facility that is the subject of the current appeal. *Id.* The trailer was located at 13 Lafayette Street, Freehold, NJ 07728. *Id.* According to the Postal Service, the trailer, which it acquired by lease and situated on property provided by the Freehold Borough on a rent-free basis, was originally intended as a temporary solution until CPU service could be reestablished. *Id.* The Postal Service states that multiple attempts to reestablish CPU service were unsuccessful. *Id.* As a result, the trailer had continued to operate for approximately 9 years. The Postal Service asserts that at the time of its closure decision, the trailer was in standard condition. *Id.*

Before it was closed, the Lafayette Facility provided service to 354 post office box customers and to retail customers who purchased such products and services as stamps, money orders, registered and certified letters, and Express Mail. *Id.*

It appears that the Postal Service began considering the possibility of closing the Lafayette Facility during early 2009. See Freehold Township Petition, Exhibit B. At the request of the area's congressman, a public meeting attended by representatives of the Postal Service was held in Freehold on March 16, 2009. *Id.* A further meeting was held on July 20, 2009. AR Item No. 8. Shortly thereafter, on July 31, 2011, authority was given to investigate the possible closure of the Lafayette Facility. AR Item No. 1.

⁵ Notice and Order Accepting Appeal and Establishing Procedural Schedule, June 28, 2011 (Order No. 754).

⁶ Order Denying Application for Suspension, July 19, 2011 (Order No. 762).

On October 7, 2009, questionnaires were distributed to the Lafayette Facility's post office box customers and were made available at the counter line to walk-in retail customers. Final Determination at 1. One hundred eighty four questionnaires were returned. *Id.* The Postal Service states that of the questionnaires that were returned, 19 were favorable, 86 were unfavorable, and 79 expressed no opinion. *Id.*

On November 2, 2009, a third and final public meeting was held in Freehold to discuss the Lafayette Facility. AR Item No. 7. At that meeting, the Postal Service's District Manager promised to have his team re-examine the closure issue in light of information presented at the meeting and to provide cost information that had previously been requested regarding the operation of the trailer. *Id.*

On November 17, 2009, the Official Record was forwarded to Postal Service Headquarters together with a proposal to discontinue the Lafayette Facility. AR Item No. 14, Page 1.

Sixteen months later, on March 21, 2011, the Postal Service approved the Final Determination closing the Lafayette Facility. The decision was based principally upon Postal Service findings: (1) that Lafayette Facility's trailer was in "substandard condition"; and (2) that there had been a decline in retail transactions. Final Determination at 1. The Postal Service also supported its decision by asserting: (1) that the clerks who were working at the Lafayette Facility would be reassigned to the Freehold Post Office; and (2) that closure of the Lafayette Facility would generate an estimated annual savings of \$153,368. *Id.* at 5. Finally, the Final Determination purports to consider and respond to various concerns expressed by postal customers in their responses to the Postal Service's questionnaire. *Id.* at 1-4.

On or about May 25, 2011, customers received letters advising them of the March 21, 2011 Final Determination. FCMC Petition, Exhibit 1.

III. POSITIONS OF THE PARTIES

A. Petitioner and Others Supporting the Lafayette Facility

On July 22, 2011, Petitioner Freehold Center Management Corporation (FCMC) filed a Participant Statement in lieu of an initial brief.⁷ Included among the attachments to the Participant Statement is a document titled "Supplement to Participant Statement" (FCMC Supplement). The FCMC Participant Statement (including the FCMC Supplement) presents essentially five arguments⁸ to support its challenge to the closure of the Lafayette Facility: (1) that the Lafayette Facility is a "post office" and, as such, its closure is subject to review by the Commission (FCMC Participant Statement, ¶¶ 1-2.); (2) that the Freehold Post Office is inadequate to meet the needs of both its existing customers and the needs of the Lafayette Facility Customers, which includes a substantial number of senior citizens, immigrants, and low income residents (FCMC Participant Statement, ¶¶ 5-6; and FCMC Supplement, ¶ 4); (3) that access to the Freehold Post Office is inadequate (FCMC Participant Statement, ¶ 5); (4) that the Postal Service's analysis of the 2009 questionnaire survey is fatally flawed (FCMC Supplement, ¶ 1); and (5) that the economics of the Lafayette Facility support continued operation of the facility (FCMC Supplement, ¶¶ 2-3).

On July 25, 2011, Freehold Township filed a Participant Statement in lieu of an initial brief.⁹ In that Participant Statement, Freehold Township incorporates the six reasons for appeal set forth in its original petition for review. Freehold Township Participant Statement at 1. Those six reasons relate to issues of access to the Freehold Post Office and to the fact that closure of the Lafayette Facility will leave Freehold

⁷ Participant Statement, July 22, 2011 (FCMC Participant Statement).

⁸ The FCMC Participant Statement was filed, in part, to support FCMC's request for suspension of the Postal Service's discontinuance decision pending completion of the Commission's review proceedings. FCMC Participant Statement at 1. Paragraphs 2 through 4 address the suspension issue. However, the FCMC Participant Statement was not filed until three days after the Commission had issued Order No. 762 denying the suspension. The remaining portions of the FCMC Participant Statement address the merits of the Postal Service's decision to close the Lafayette Facility.

⁹ Participant Statement, July 25, 2011 (Freehold Township Participant Statement).

Borough as the only county seat in the State of New Jersey without a post office. *Id.* In addition, Freehold Township incorporates by reference the FCMC Participant Statement and attaches a copy of the Freehold Borough Petition together with various other documents that it cites in its Participant Statement.

On July 27, 2011, Freehold Borough filed a Participant Statement in lieu of an initial brief.¹⁰ In addition to arguments set forth in the Participant Statement, Freehold Borough incorporates by reference the reasons for appeal set forth in its original petition for review, as well as the FCMC Participant Statement. Freehold Borough Participant Statement at 1. In addition to the arguments incorporated from the FCMC Participant Statement, Freehold Borough's principal contentions are: (1) that as the county seat for Monmouth County, New Jersey, the absence of a post office would adversely impact government services and related businesses (Freehold Borough Participant Statement, ¶¶ 3; and Freehold Petition, ¶¶ 5-7); (2) that access to the Freehold Post Office and other post offices allegedly "proximate" to Freehold Borough is inadequate (Freehold Borough Participant Statement, ¶¶ 3.A. and 3.B.; and Freehold Borough Petition, ¶¶ 9-12); (3) that the Freehold Post Office will not meet the needs of customers, including, in particular senior citizens, immigrants, and low income residents (Freehold Borough Participant Statement, ¶ 4; and Freehold Borough Petition, ¶ 8); and (4) that economics of the Lafayette Station do not support its closure (Freehold Borough Participant Statement, ¶ 5).

B. The Postal Service

On August 16, 2011, the Postal Service filed comments in lieu of the answering brief permitted by Order No. 754.¹¹ In its filing, the Postal Service once again reiterates its position that the Lafayette Facility is not a "post office" and is therefore not subject to 39 U.S.C. § 404(d) or 39 CFR § 241.3. *Id.* at 1-2. It also repeats its argument that the

¹⁰ Participant Statement, July 27, 2011 (Freehold Borough Participant Statement).

¹¹ Comments of United States Postal Service, August 16, 2011 (Postal Service Comments).

procedural requirements of section 404(d) do not apply to cases like this in which customers do not lose access to postal services. *Id.* at 2-3. Finally, the Postal Service argues that even if the requirements of section 404(d) applied, it has met those requirements because: (1) it has met all procedural requirements; and (2) it has considered all pertinent criteria, including the effect of the closing on postal services, the community, employees, and the economic savings from the discontinuance of the Lafayette Facility. *Id.* at 3-9.

IV. STANDARD OF REVIEW AND APPLICABLE LAW

A. Standard of Review

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 on the basis of the record that was before the Postal Service. The Commission is empowered by § 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.¹²

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

¹² Section 404(d)(5) also authorizes the Commission to suspend the effectiveness of a Postal Service determination pending disposition of the appeal. As noted above, the Commission in this proceeding denied a request for suspension.

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. ARGUMENT

A. The Commission Has Jurisdiction Over Closure of the Lafayette Facility

The Commission has repeatedly rejected the Postal Service's assertions that stations and branches are not "post offices" under section 404(d)(5). Docket No. A2010-3, *East Elko Station*, Order No. 477 (June 22, 2010) at 5-6; and Docket No. N2009-1, Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches, March 10, 2010 at 65-66. Accordingly, the Commission should reject the Postal Service's argument in this case that section 404(d)(5) does not cover the Lafayette Facility because it is a station.

Similarly, the Commission should reject the Postal Service's argument that the requirements of 39 U.S.C. § 404(d) do not apply when postal services remain available from postal facilities in close proximity to the facility being closed. The Postal Service bases its argument on the Commission decision in PRC Docket No. A2010-3.¹³ The argument is misplaced. In *East Elko*, the Commission, relying on its earlier decision in

¹³ Docket No. A2010-3, Order Dismissing Appeal, June 22, 2010 (*East Elko*).

Ecorse that the procedural requirements of section 404(d) do not apply to a retail facility realignment within a community,¹⁴ dismissed an appeal on the grounds that the customers of the East Elko were not losing access to postal services in their community. *East Elko* at 7-8. This case does not involve the rearrangement of facilities within a community. The Postal Service's Final Determination by its own terms refers to its actions with respect to the Lafayette Facility as a "closing." Final Determination at 1.

B. The Procedures Followed by the Postal Service Were Deficient

The Postal Service asserts that it has "satisfied the salient provisions of section 404(d)." Postal Service Comments at 2. It appears that this sweeping statement is intended to apply not only to the merits of the decision to close the Lafayette Facility, but to the procedures employed in reaching that decision. Even a cursory review of the record belies that claim.

Among the glaring omissions from the procedures followed by the Postal Service is its failure to publicly post either the proposal to close the Lafayette Station or the Final Determination. See Handbook PO-101, § 342.1 and § 432.32. The seriousness of these omissions is underscored by the unfilled promises to provide the additional information requested by customers and their representatives during the period leading up to issuance of the Final Determination. See, e.g., AR Item No. 7, page 1 (November 3, 2010 Postal Service File Memorandum noting requests by customer representatives for information had gone unanswered and promising to provide requested information).

In fact, both the proposal to close the Lafayette Facility and the Final Determination were not provided to the customers or their representatives until July 7, 2011, when the Postal Service filed the Administrative Record in this proceeding. AR

¹⁴ Docket No. A2007-1, Order Dismissing Appeal on Jurisdictional Grounds, October 9, 2007 (*Ecorse*).

Item Nos. 13 and 15. It was not until after this date that the petitioners were able to inform themselves of the specific grounds for the Postal Service's actions.¹⁵

This case appears to be the latest in a series of cases in which the Postal Service has failed to follow procedures intended to provide customers affected by a proposed closing with a meaningful opportunity to inform themselves regarding a proposed closing and to present their views in a timely manner. See Reply Brief of the Public Representative at 7-9, July 12, 2011, Docket No. A2011-15. Those procedures are mandatory, not optional. Docket No. A2011-15, *Gwynedd Post Office*, Order No. 832 (August 30, 2011) at 8 ("The process must be honored."). In this case, petitioners were belatedly provided with basic information regarding closure of the Lafayette Facility that should have been made available months earlier. While it is fortunate that this information became available before the initial briefs of petitioners were due, that does not justify continuation of the practice of withholding such basic information until the last minute.

While this and other procedural shortcomings in this proceeding¹⁶ do not by themselves justify a remand, the Commission should once again reaffirm that procedures for post office closings must be observed in order to ensure a transparent and meaningful opportunity for customers to express their views. Public acceptance of the process depends upon the procedures being faithfully observed.

C. The Decision to Close the Lafayette Facility Should Be Remanded

The Postal Service justifies its decision to close the Lafayette Facility on essentially three grounds: (1) the Postal Service trailer is in substandard condition; (2) closure of the facility will produce cost savings; and (3) the concerns raised by

¹⁵ See, e.g., FCMC Supplement at 1 (Petitioner FCMC appears not to have been aware of the exhibits contained in the Administrative Record, which included the proposal to close the Lafayette Facility (Item No. 13) and the Final Determination (Item No. 15), until some time after July 7, 2011, when the Postal Service filed the Administrative Record).

¹⁶ In this case, as in others, it appears that customers were never advised of their appeal rights.

customers have been adequately considered. Each of these grounds has shortcomings which, considered collectively, warrant a remand for further reconsideration of the decision to close the facility.

1. The Condition of the Trailer

The Public Representative has no reason to question the Postal Service's claim that the condition of the trailer is substandard. However, at least two questions are not answered by the Final Determination. First, is a contract postal unit (CPU) a viable alternative to the Lafayette Facility? Second, if the possibility of a CPU has not been finally ruled out, is the condition of the trailer such that its operation can be extended at least for an interim period while the possibility of a CPU is considered?

As the history of the Lafayette Facility demonstrates, Freehold Borough was served by a CPU prior to use of the Postal Service trailer. Final Determination at 1. The Postal Service states that numerous attempts to reestablish a CPU have been attempted but have been unsuccessful. *Id.* While the Public Representative accepts this representation as true, the record does not reflect when the last such attempt was made. Nor does the record reflect how extensive these prior efforts have been.¹⁷ In this connection, Petitioner FCMC states that at some point prior to the issuance of the Final Determination there were discussions of the possibility of finding an alternative permanent structure. FCMC Participation Statement at ¶ 3. Given the prior use of a CPU as the Freehold Borough postal facility and in light of the alleged importance of the facility to the community, it would appear that, if not recently explored, a CPU should be considered before permanently abandoning a postal facility in the borough.

¹⁷ A number of alternative methods are available to the Postal Service to find an operator of a CPU. Publication 156, Postal Service Guide to Contract Postal Units, Chapter 5 – Identifying Prospective CPU Suppliers.

2. Alleged Cost Savings

The Postal Service estimates annual savings of approximately \$153,368 from closure of the Lafayette Facility:

Clerk Salary (PS-6, Minimum)	\$81,116
Fringe Benefits @ 33.5%	27,174
Inter-Station Transportation Costs	24,028
Rental Costs, Plus Utilities	<u>21,620</u>
Total Annual Costs	\$159,492
Less Cost of Replacement Service	- <u>6,124</u>
Total Annual Savings	\$153,368

Final Determination at 5.

This economic justification is seriously flawed and requires further consideration and explanation by the Postal Service. In its current state, the purported economic justification does not constitute substantial evidence supporting the Postal Service's decision.

Over half of the projected savings are attributable to the salary and related benefits of the postal employees who worked at the station. However, as the Postal Service itself states, the clerks at the Lafayette Facility are to be reassigned to the Freehold Post Office. *Id.* Without a more complete explanation by the Postal Service, it is unclear how, or in what sense, the salary and related benefits can be considered "savings" to the Postal Service. This practice of characterizing the salaries and benefits of reassigned employees as "savings" has previously been questioned by the Commission. Advisory Opinion at 58-59; and Commission Comments at 7-8. Unless and until the Postal Service provides a justification for considering the salary and related benefits of the reassigned Valley Falls clerk to be bona fide "savings," the annual savings projected by the Postal Service should be reduced by the amount of such salary and benefits.

When the projected savings for salaries and benefits are eliminated, total projected annual savings are substantially reduced as follows:

Clerk Salary (PS-6, Minimum)	\$81,116
Fringe Benefits @ 33.5%	27,174
Inter-Station Transportation Costs	24,028
Rental Costs, Plus Utilities	<u>21,620</u>
Total Annual Costs	\$ 45,648
Less Cost of Replacement Service	- <u>6,124</u>
Total Annual Savings	\$ 39,524

It is interesting to note that the Final Proposal forwarded to Postal Service Headquarters made an adjustment comparable to the adjustment proposed above thereby implicitly recognizing, as it should, substance over form. AR Item No. 13 at 4.

Of even greater importance is the fact that, in this case, the facility that the Postal Service has closed is a facility that has generated revenues significantly in excess of expenses. As the Final Determination itself sets forth, revenues for FY2008, FY2009, and FY2010 were, respectively, \$745,402; \$660,794; and \$660,928. Final Determination at 1. These revenues are over 4 times the magnitude of the alleged cost savings relied upon by the Postal Service. This was not a facility that was losing money. But for the fact that the trailer was in substandard condition, this was a viable postal facility. This fact overshadows the significance of even the adjusted savings shown above and, together with the other deficiencies identified in the Postal Service's decision, warrants remand for further consideration.

Related to the issue of whether closure of this post office will produce savings to the Postal Service is the question of whether the closure will otherwise leave revenues unaffected. The Postal Service appears to assume that closure of the Lafayette Facility will reduce expenses, but will not adversely affect revenues. The Commission has itself questioned whether such an assumption is justified and has urged the Postal Service to "develop a better methodology for analyzing potential salary and benefit cost savings from discontinued facilities." Advisory Opinion at 59 and 60; and Commission Comments at 7-8. If it were to be concluded that revenues would decline because of

the closing, any such loss in revenues would justify a further downward adjustment in projected "savings."

3. Concerns Raised by the Customers

In their Participant Statements, petitioners have raised a variety of concerns regarding the decision to close the Lafayette Facility, including: questions regarding the adequacy of access to the Freehold Post Office; questions regarding the adequacy of service available to seniors, immigrants, and low income residents; and questions regarding the adequacy of service to governmental entities and related businesses in light of the fact that Freehold Borough is the county seat for Monmouth County, New Jersey. Neither the Final Determination nor the Postal Service Comments adequately address these concerns. As discussed earlier, the Final Determination was issued without giving customers the opportunity to comment on the proposal to close the Lafayette Facility. The Postal Service therefore put itself in a position in which, by definition, it could not respond to those comments. While the Postal Service Comments do technically "address" the customers concerns, in the sense that they acknowledge their existence, they fail to provide any discussion that would evidence genuine consideration of the customers' concerns.

VI. CONCLUSION

The Postal Service's Final Determination to close the Lafayette Facility is seriously flawed. Aside from the procedures used by the Postal Service, which are contrary to law, the Postal Service's analysis fails to satisfy the arbitrary and capricious standard and its essential findings are not supported by substantial evidence. The Commission cannot affirm the closure determination in its present condition and should remand the case to the Postal Service to remedy the deficiencies identified above and in the submissions by Petitioners.

Respectfully Submitted,

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