

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

Before Commissioners:

Dan G. Blair, Chairman;
Dawn A. Tisdale, Vice Chairman;
Mark Acton; Ruth Y. Goldway; and
Tony L. Hammond

Ecorse Classified Branch
Ecorse, MI 48229
(LaTonya Wilson, Petitioner)

Docket No. A2007-1

ORDER DISMISSING APPEAL
ON JURISDICTIONAL GROUNDS

(October 9, 2007)

I. INTRODUCTION AND SUMMARY

On July 27, 2007, the Petitioner filed an appeal claiming that the Postal Service did not follow all of the statutory requirements of 39 U.S.C. § 404(d)¹ before closing the Ecorse Classified Branch located near Detroit, Michigan.² The Postal Service claims that it did not have to follow those statutory requirements in this case, and instead followed other, less formal procedures with respect to the closing.³ After considering

¹ The Postal Accountability and Enhancement Act (PAEA) redesignated 39 U.S.C. § 404(b) as 39 U.S.C. § 404(d).

² Letter from LaTonya Wilson to Postal [Regulatory] Commission dated July 27, 2007 regarding the closing of the Ecorse Classified Branch, August 3, 2007 (Petition). The PAEA § 1006 amends 39 U.S.C. § 404(d) to make the date of receipt by the Commission of a post office closing appeal the date on which it receives a Postal Service postmark.

³ Notice of the United States Postal Service Regarding the Filing of Administrative Record, August 16, 2007 (Notice of Filing the Administrative Record). Contemporaneously with the Notice of Filing the Administrative Record, the Postal Service filed a Motion of the United States Postal Service for Late Acceptance of Administrative Record on August 16, 2007 (Motion for Late Acceptance). Since there does not appear to be any prejudice from the delay, the Commission grants the Postal Service's Motion for Late Acceptance.

the Petitioner's contentions, the administrative record, the Postal Service's comments, and the circumstances of this appeal in light of applicable law and precedent in earlier dockets, the Commission has concluded that this proceeding should be dismissed for lack of jurisdiction.

II. PROCEDURAL HISTORY

On July 27, 2007, the Petitioner filed an appeal petition with the Postal Regulatory Commission claiming the Postal Service did not follow the § 404(d) statutory requirements in closing the Ecorse Classified Branch. A supplement to the Petitioner's appeal petition was deemed filed on July 30, 2007.⁴ The Supplemental Appeal Petition contained a request that the Commission suspend the closing of the Ecorse Classified Branch pursuant to 39 C.F.R. § 3001.114, pending the Commission's review.⁵ The Commission issued a notice and order accepting the Petitioner's appeal and establishing a procedural schedule on August 9, 2007.⁶ The procedural schedule and Commission regulations required the Postal Service to file the administrative record in this case no later than August 13, 2007.⁷ On August 16, 2007, the Postal Service filed an administrative record in this proceeding (Administrative Record).⁸ With the Administrative Record, the Postal Service filed a notice stating the Administrative Record was prepared following the procedures of the Postal Operations Manual section 123.8 and chapter 7 of Handbook PO-101 since it does not believe that the statutory requirements of § 404(d) apply to this

⁴ Letter from LaTonya Wilson to Postal [Regulatory] Commission dated July 30, 2007 regarding the closing of the Ecorse Classified Branch, August 6, 2007 (Supplemental Appeal Petition). The Supplemental Appeal Petition was received by the Commission on August 6, 2007, yet due to the operation of 39 U.S.C. § 404(d)(6), it was deemed received on July 30, 2007.

⁵ The Petitioner's application that the Commission suspend the determination of the Postal Service to close did not contain specific information related to the suspension request "show[ing] the reasons for the relief requested and the facts relied upon" as required by 39 C.F.R. § 3001.114(a). Accordingly, the Commission can not find sufficient cause to grant the temporary relief of the suspension application.

⁶ Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. Section 404(d)(5), August 9, 2007.

⁷ *Id.* at 5; 39 C.F.R. § 3001.113.

⁸ Administrative Record A2007-1, Ecorse, Michigan 48229, August 17, 2007.

facility.⁹ The Postal Service also filed comments regarding the appeal.¹⁰ David B. Popkin and the American Postal Workers Union, AFL-CIO filed Notices of Intervention but did not file any other pleadings.¹¹

III. PETITIONER'S REQUEST FOR REVIEW

The Petitioner contends that the Postal Service was required to follow the statutory requirements of 39 U.S.C. § 404(d) prior to closing the Ecorse Classified Branch. The Petitioner argues that the Postal Service failed to follow applicable procedures since it: (1) did not make a written determination which considers the five factors of § 404(d)(2)(A); (2) failed to make such written determination available to persons served by the post office 60 days prior to closing as required by § 404(d)(4); and (3) failed to solicit or consider comments from the public prior to making a determination to close the facility as required by the Postal Service's Operations Manual.¹²

IV. THE ADMINISTRATIVE RECORD

Prior to closing the doors of the Ecorse Classified Branch, the Administrative Record shows that the Postal Service took the following steps:

- Sent out questionnaires on September 29, 2006 to all 145 post office box customers;¹³
- Analyzed the responses to those questionnaires and other public comments received;¹⁴
- Responded to those comments that expressed concerns;¹⁵

⁹ Notice of Filing the Administrative Record at 2.

¹⁰ United States Postal Service Comments Regarding Appeal, September 20, 2007.

¹¹ Notice of Intervention of David B. Popkin, August 10, 2007; Notice of Intervention of the American Postal Workers Union, AFL-CIO, August 24, 2007.

¹² Supplemental Appeal Petition at 1-2.

¹³ Administrative Record, Item No. 6.

¹⁴ *Id.* at Item 15.

- Reviewed the mail processing, financial, and human resources data of the Ecorse Classified Branch facility;¹⁶
- Reviewed the real property information of the facility, including its condition and location information;¹⁷ and
- Reviewed local businesses and community organizations and services.¹⁸
- The Administrative Record also contains information regarding the replacement service that is expected to take over the workload and retail facility operations of the Ecorse Classified Branch. Prior to beginning the process of considering closing the Ecorse Classified Branch, a new, larger postal retail facility was being constructed 1.7 miles away from the Ecorse Branch.¹⁹ This new River Rouge facility opened on December 16, 2006, and now has the same retail services available to the public as the Ecorse Branch.²⁰ This facility is also open longer hours than the Ecorse facility.²¹ The Administrative Record also indicates that the opening of this new facility was a primary justification for the Postal Service concluding that the Ecorse Classified Branch should be closed.²²

V. POSTAL SERVICE COMMENTS

The Postal Service's comments discuss the Commission's most recent post office appeal opinion in Docket No. A2006-1, *Observatory Finance Station, Pittsburgh, PA 15214*, and past litigation regarding the definition of the term "post office" as used in 39 U.S.C. § 404(d). It argues that the situation in Ecorse is similar to the case *Oceana*

¹⁵ *Id.* at Item 12.

¹⁶ *Id.* at Items 3, 4, 5, 9, 10, 16.

¹⁷ *Id.* at Items 7, 11, 13, 14, 21, 23, 24.

¹⁸ *Id.* at Items 17, 19.

¹⁹ *Id.* at Items 6, 16.

²⁰ *Id.* at Item 26.

²¹ *Id.*

²² *Id.* at Items 16, 26.

Station, Virginia Beach, VA,²³ where the Commission dismissed the appeal because “the Postal Service is merely rearranging the retail facilities in the community.” PRC Order No. 436 at (June 25, 1982) 7-9. In support of its argument that the Commission should follow its precedent in *Oceana*, the Postal Service draws attention to two items in the Administrative Record. First, it points out that a new postal facility was built near the Ecorse Branch. Second, it highlights the fact that Postal Service staff asked for customer feedback on their recommendation to close the Ecorse Branch long before a final decision to close the facility was made by the Postal Service. Thus, according to the Postal Service, these portions of the Administrative Record demonstrate that this situation was a rearrangement of retail facilities which is not subject to the requirements of § 404(d) under *Oceana*.

VI. COMMISSION ANALYSIS OF JURISDICTIONAL AUTHORITY

The Commission has jurisdiction to hear appeals of post office closings that are required to follow the statutory requirements of § 404(d). A review of the Administrative Record raises issues as to whether the current appeal is properly before the Commission. Whether the Commission has jurisdiction to hear an appeal is a finding which is necessary before the Commission may reach any decision on the merits. A review of applicable Commission precedent on its jurisdiction in post office closing appeals is instructive.

In *Oceana Station, Virginia Beach, VA*, the Commission recognized a jurisdictional exception to hearing appeals of post office closings under § 404(d). *Id.* In that case, the Postal Service was closing the Oceana station, but argued that “the decision to close the Oceana station must be considered in light of its planned network of postal facilities in Virginia Beach.” *Id.* at 4. According to the Postal Service, it was not just closing the Oceana station, it was “enhancing its network by opening a new Virginia Beach main post office 4 miles west of the Oceana station...[which] will permit the Postal Service to move the carriers out of the London Bridge station, making more

²³ Docket No. A82-10, *In re Oceana Station, Virginia beach, VA*, Order No. 436, June 25, 1982.

room for post office boxes and additional retail counter space.” *Id.* at 4-5.²⁴ The Commission found that the proposed closing “must be considered within the context of the Postal Service’s other actions in the area.” *Id.* at 7. Specifically, “[t]he requirements of section 404[(d)] do not pertain to the specific building housing the post office; but rather are concerned with the provision of a facility within the community.” *Id.* at 6. Accordingly, the Commission held that “the Postal Service is not required to follow the formal section 404[(d)] procedure when it is merely rearranging its retail facilities in a community, as it is doing in Virginia Beach.” *Id.* at 1.²⁵

In the later *Knob Fork, WV* case dealing with the closing of a community post office, the Commission noted that its decision was consistent with the *Oceana Station, Virginia Beach, VA* case.²⁶ In *Knob Fork, WV*, the Commission recognized that *Oceana* “involved a relocation of facilities within a community, rather than the closing of the only retail facility serving a community.” *Id.* at 7.

The *Oceana* case instructs the Commission to consider the closing of the Ecorse Branch within the context of the Postal Service’s other actions in the area. Here, as the Postal Service correctly points out, the Administrative Record includes information showing that the Postal Service opened a new, larger facility 1.7 miles away from the Ecorse Branch. This new River Rouge facility has the same retail services as the Ecorse Branch and was designed, among other things, to take over and replace the workload and retail services offered at the Ecorse Branch. The opening of this new facility was one of the chief justifications for the Postal Service’s decision to close the Ecorse Classified Branch.

²⁴ The Postal Service was also adding a Detached Lockbox Unit and self-service facility in the Lynnhaven area and establishing a contract station in the Great Neck area. *Id.* at 5.

²⁵ See also, Docket No. A2003-1, *In re Birmingham Green, AL*, Order No. 1387, December 3, 2003, at 6 (“These activities indicate that the Service’s action with regard to the Birmingham Green station is part of a rearrangement of the retail network serving the Birmingham community”); Docket No. A91-4, *In re San Francisco Main Post Office, CA*, Order No. 891, July 8, 1991, at 5-6 (“The plans regarding the San Francisco offices, as described by the Petitioners, are rearrangements of facilities. Therefore, the statute permits a decisionmaking process less formal than that established by section 404[(d)].”)

²⁶ Docket No. A83-30, *In re Knob Fork, WV*, Comm’n Op. Remanding Determination for Further Consideration — 39 U.S.C. § 404(b)(5), January 18, 1984.

These facts show that the Postal Service's action with regard to the Ecorse Classified Branch is part of a larger retail facility realignment plan serving the community, as with the *Oceana* case. For these reasons, the Commission concludes that the procedural requirements of § 404(d) do not apply, and that the appeal of the Postal Service's action regarding the Ecorse Branch does not fall within the Commission's jurisdiction under that section. Therefore, the Commission dismisses the appeal for lack of jurisdiction.

It is ordered:

1. The Motion of the United States Postal Service for Late Acceptance of Administrative Record filed on August 16, 2007, is granted.
2. The Petitioner's appeal of the closing of the Ecorse Classified Branch filed on July 27, 2007, is dismissed.
3. The Petitioner's Application for Suspension filed on July 30, 2007, is denied.

By the Commission.

Steven W. Williams
Secretary