

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

WESTBROOKVILLE POST OFFICE
WESTBROOKVILLE, NEW YORK 12785

Docket No. A2023-1

UNITED STATES POSTAL SERVICE MOTION TO DISMISS PROCEEDINGS
(August 4, 2023)

Pursuant to 39 CFR § 3010.160 and Order No. 6586,¹ the United States Postal Service (Postal Service or USPS) moves to dismiss Daniel and Dorothy Karmolinski's (together, Petitioners) appeal of the Postal Service's determination to close the Westbrookville, New York, Community Post Office (CPO) because, by operation of law, the Postal Regulatory Commission (Commission or PRC) lacks jurisdiction to hear this appeal.

On July 25, 2023, the Commission docketed an appeal challenging the Postal Service's determination to close the Westbrookville CPO, a contractor-operated retail facility located in Westbrookville, New York.² The Petitioners request, "[p]ursuant to 39 U.S.C. § 404(d)(5)," that the Commission review the Postal Service's decision to close the Westbrookville CPO.³ The Commission, in

¹ PRC Order No. 6586, Notice and Order Accepting Appeal and Establishing Procedural Schedule, PRC Docket No. A2023-1 (July 27, 2023).

² Handbook PO-101 refers to these types of facilities as contractor-operated retail facilities. See Handbook PO-101, Appendix A – Glossary of Terms; Postal Service Publication 156, Guide to Contract Postal Units for Postal Service Employees, January 2014; United States Postal Service, Contract Postal Units, <https://about.usps.com/suppliers/becoming/contract-postal-unit.htm> (last visited Jul. 21, 2023).

³ In the Matter of Westbrookville, New York, 12785 / Appeal on Closing, July 25, 2023 (Appeal). See also Participant Statement, July 25, 2023 (Participant Statement). The Commission subsequently docketed a letter from Cynthia Cartaya objecting to the closure of the Westbrookville CPO. See Letter Received from Cynthia Cartaya, August 2, 2023.

response, issued Order No. 6586, establishing Docket No. A2023-1 for consideration of the Petitioners' appeal.⁴ As demonstrated below, however, 39 U.S.C. § 404(d)(5) review is limited to discontinuances of Postal Service-operated Post Offices and does not apply to contractor-operated retail facilities, such as the Westbrookville CPO, which are not owned or operated by the Postal Service. The Commission's legal authority to entertain appeals of Post Office discontinuances does not include reviewing the Postal Service's administration of its contracts. An appeal of a contract matter like the Westbrookville CPO falls outside the scope of 39 U.S.C. § 404(d)(5). Indeed, as detailed below, the Commission has consistently recognized that limitation and declined to entertain appeals of the Postal Service's closing of other contractor-operated retail units under circumstances similar to presented here.⁵ The Postal Service, therefore, respectfully requests that the Commission dismiss the Petitioners' appeal.

FACTUAL BACKGROUND

Westbrookville is an unincorporated community located in the town of Deerpark, in Orange County, New York. From its inception on June 1, 2016, until it was closed on June 29, 2023, the Westbrookville CPO operated pursuant to a

⁴ PRC Order No. 6586, at 2. Pursuant to 39 U.S.C. § 404(d)(5), the Commission is required to issue its decision within 120 days from the date it receives the appeal, not from the date on which the appeal is docketed. The procedural schedule established by Order No. 6585 sets November 22, 2023, as the deadline for the Commission to issue its decision in this matter. November 22, 2023, however, is 120 days from the day on which the Petitioners' appeal was docketed (July 25, 2023), not from the day on which the appeal appeared on the Commission's website as a docketed proceeding (July 19, 2023). By setting the deadline for its decision 120 days from the date of docketing, the Commission established a timeline in which it will render its decision 126 days from the date on which it apparently received the appeal, not 120 days. This is in derogation of the statutory timeframe established in 39 U.S.C. § 404(d)(5), and the Commission should accordingly revise Order No. 6586 if it does not grant the instant motion.

⁵ See discussion of Docket Nos. A2021-2, *Neskowin*, A2021-1, *Spanish Fort*, A2020-1, *Rio Nido*, A2012-88, *Alplaus*, and A2015-2, *Careywood*, *infra* at 8-12.

CPO contract with the Postal Service. The CPO's address is listed as 1755 State Route 209, Westbrookville, NY 12785. Under the CPO Contract with the Postal Service, the Westbrookville CPO provided retail products and services similar to those provided by a Post Office, and offered up to 628 Group E Post Office Boxes to customers, 442 of which were in use at the time of closure.

Prior to the decision to terminate the Westbrookville CPO, the Postal Service issued four separate letters of warning (Warning Letters) notifying the CPO Operator of various violations of the terms of the CPO Contract. On December 2, 2022, the Postal Service sent the Operator the first Warning Letter citing failure to comply with the CPO Contract, including deliverable mail repeatedly being delayed for days and certain types of deliverable mail discarded as waste, among other reasons. On January 23, 2023, and again on April 7, 2023, the Postal Service sent the Operator the second and third Warning Letter, respectively, citing similar reasons for the alleged failure to comply with postal regulations and policies. On June 5, 2023, the Postal Service received a letter from the Hudson Insurance Company, which provided written notice of cancellation of the bond issued pursuant to the CPO Contract for the operation of the Westbrookville CPO. On June 5, 2023, the Postal Service sent a final Warning Letter to the Operator that notified her of the failure to pay past due invoices for shortages on stamp/cash counts and the failure to maintain a bond pursuant to the CPO Contract. The letter also stated that, if the Operator failed to post the required bond by June 29, 2023, the Postal Service would terminate the CPO Contract in accordance with its terms.

By written notice dated June 28, 2023, which was contemporaneously placed in each active Post Office Box of the Westbrookville CPO and displayed on the Westbrookville CPO's door, the Post Service informed customers that the Westbrookville CPO would permanently close effective June 29, 2023. The notice explained that customers receiving Post Office Box service would continue to receive mail through the Otisville Post Office, located at a driving distance of 3.3 miles away, with no disruption of service. All customers receiving Post Office Box service at the Westbrookville CPO were allowed to retain the Post Office Box address and ZIP Code of the Westbrookville CPO, and can continue to use their current Post Office Box keys for their boxes at the Otisville Post Office.

In addition to receiving retail services at the Otisville Post Office, retail services are also available to former Westbrookville CPO customers at the nearby Cuddlebackville (a driving distance of 3.5 miles away), Wurtsboro (a driving distance of 7.2 miles away), Howells (a driving distance of 8.1 miles away), and Port Jervis (a driving distance of 12 miles away) Post Offices, and through usps.com. Additionally, former Westbrookville CPO customers can purchase stamps through usps.com and at multiple nearby businesses in the area; usps.com indicates there are 16 such businesses located within 20 miles of the 12785 ZIP Code. Finally, the Postal Service intends in the near future to initiate a bid solicitation process in an attempt to secure a new contractor-operated retail facility in Westbrookville. To this end, on July 11 and 12, 2023, the Postal Service distributed a mailing to solicit interest from the public in operating such a facility in Westbrookville, New York.

ARGUMENT

The Commission's authority to hear Post Office closing appeals is prescribed by 39 U.S.C. § 404(d)(5) and is limited to Postal Service determination to close or consolidate Post Offices.⁶ In that regard, Petitioners' appeal does not fall within the scope of the Commission's jurisdiction under 39 U.S.C. § 404(d)(5) because the appeal does not concern a Postal Service determination to close or consolidate a Post Office; rather, Petitioners request that the Commission review a contract administration decision concerning the operation of a contractor-operated retail facility (e.g., a CPO). Section 404(d) does not apply to the Postal Service's management of its contracts, or to the operation of a retail facility whose existence derives solely from the terms and conditions of a voluntary contract.⁷ Accordingly, issues related to the administration of a services contract for the Westbrookville CPO, including whether the Postal Service should continue its contract for operation of that facility, do not fall within the Commission's 39 U.S.C. § 404(d)(5) jurisdiction.

Additionally, in recent appeals of the Postal Service's decisions to terminate contracts governing the operation of contractor-operated facilities, the Commission applied its "sole source" test to determine that section 404(d) procedures were intended to apply to contractor-operated retail facilities only when they are the "sole source" of postal services to a community.⁸ While the Postal Service questions the propriety of the Commission's "sole source" test to

⁶ 39 U.S.C. § 404(d).

⁷ *Id.*

⁸ See discussion of Docket Nos. A2021-2, *Neskowin*, A2021-1, *Spanish Fort*, A2017-2, *Rio Nido*, A2012-88, *Alplaus* and A2015-2, *Careywood*, *infra* at 8-12.

determine applicability of section 404(d) to contractor-operated retail facilities, the Postal Service submits, solely for purposes of argument, and without waiving its ability to challenge the Commission's "sole source" test, that the application of that test here further buttresses the Postal Service's position that section 404(d) procedures do not apply to its decision to close the Westbrookville CPO.

Therefore, the Petitioners' appeal should be dismissed.

I. 39 U.S.C. § 404(d) Does Not Apply to Contract Postal Units.

39 U.S.C. § Section 404(d)(5) provides that an appeal under that section must concern a "closing" of a "post office."⁹ Consistent with Handbook PO-101, *Postal Service-Operated Retail Facilities Discontinuance Guide*, a discontinuance occurs only from action directed towards a "Postal Service-operated retail facility."¹⁰ CPOs are part of the Postal Service's "Approved Postal Provider" network—retail outlets for postal products and services that include, inter alia, Community Post Offices, Village Post Offices, Approved Shippers, stamps on consignment locations, and Contract Postal Units.¹¹ CPOs are located within existing communities in a variety of locations, including convenience stores, local businesses and libraries, and are operated by the management of those locations.¹² The definition of "Postal Service-operated retail facility," therefore, specifically excludes CPOs like that in Westbrookville, New York. Comparatively, the definition of "contractor-operated retail facility"

⁹ *Supra*, note 7.

¹⁰ See Handbook PO-101 at Appendix A – Glossary of Terms; see *also* 39 CFR 241.3(a)(1)(i).

¹¹ See Handbook PO-101, Appendix A – Glossary of Terms; Publication 156, Guide to Contract Postal Units for Postal Service Employees, January 2014; United States Postal Service, Contract Postal Units, <https://about.usps.com/suppliers/becoming/contract-postal-unit.htm> (last visited July 21, 2023).

¹² *Id.*

specifically excludes any retail facility operated by a Postal Service employee.¹³ Thus, postal regulations are explicit in distinguishing between Postal Service-operated retail facilities and contractor-operated retail facilities, and they eliminate any confusion regarding whether a CPO, like that in Westbrookville, is subject to 39 U.S.C. § 404(d).

Petitioners request that in “accordance with applicable law, 39 U.S.C. § 404(d)(5),” the Commission review the Postal Service’s decision to close the Westbrookville CPO.¹⁴ As explained above, however, the Postal Service was not subject to such requirements because its decision concerned the administration of a contract by which a third-party contractor offered retail services. For purposes of 39 U.S.C. § 404(d), a discontinuance is limited to the discontinuance of a “post office,” and that term is understood as a retail facility “operated or staffed by a postmaster or by another type of postal employee at the direction of the postmaster. . . .”¹⁵ The term “discontinuance” does not extend to operations at a CPO.¹⁶ Thus, the Petitioners’ appeal in this matter does not concern the discontinuance of a Post Office subject to 39 U.S.C. § 404.

II. Postal Customers are Served by Nearby Post Offices and Alternate Methods of Access; thus, the Westbrookville CPO is not the “Sole Source” of Retail Services for Westbrookville.

In recent orders, the Commission concluded that it did not have jurisdiction to review Postal Service decisions to terminate contracts governing

¹³ 39 C.F.R. § 241.3(a)(2)(ii) (“‘Contractor-operated retail facility’ includes any . . . community Post Office, or other facility, including a private business, offering retail postal services that is operated by a contractor, and does not include any USPS-operated retail facility.”).

¹⁴ Participant Statement.

¹⁵ 39 C.F.R. § 241.1.

¹⁶ See Handbook PO-101 Section 233.1.

operation of contractor-operated facilities because contractor-operated facilities are not the sole source of postal services to the affected community. The Commission has consistently used its “sole source” test to determine its jurisdiction to hear an appeal of a Postal Service decision to close contractor-operated retail facilities, including CPOs.¹⁷ Because the Westbrookville CPO does not fall within the Commission’s own stated “sole source” exception espoused in *Knob Fork* and its progeny, the Commission does not have jurisdiction to hear the Petitioners’ appeal concerning this CPO.¹⁸

Most recently, the Commission dismissed an appeal initiated by a petitioner requesting to apply 39 U.S.C. § 404(d) to the Postal Service’s decision to terminate a contract governing the operation of the Neskowin Community Post Office (Neskowin CPO).¹⁹ The Postal Service provided notice to customers of its decision to terminate the contract governing the operation of this contractor-operated retail facility, and the availability of service at the nearby Cloverdale Post Office, located 9.5 miles from the Neskowin CPO. In this matter, the Commission specifically distinguished between traditional Post Offices and contractor-operated facilities like the Neskowin CPO, and noted that “in almost 40 years of Commission precedent, the Commission only possesses jurisdiction over CPO, VPO, and CPU closure and consolidation cases where the facility in

¹⁷ See discussion of Docket Nos. A2021-2, *Neskowin*, A2021-1, *Spanish Fort*, A2017-2, *Rio Nido*, A2012-88, *Alplaus*, and A2015-2, *Careywood*, *infra* at 8-12. As noted above, the Postal Service applies the Commission’s “sole source” test solely for purposes of argument, and without waiver of its prerogative to challenge this test or its application in future proceedings before the Commission or in other fora.

¹⁸ Commission Order Remanding Determination for Further Consideration, Docket No. A83-80, *Knob Fork, WV* (January 18, 1984) (*Knob Fork*).

¹⁹ PRC Order No. 5925, Order Granting Motion to Dismiss, PRC Docket No. A2021-2 (June 23, 2021) (*Neskowin*).

question is the ‘sole source’ of postal services for the community.”²⁰ Customers of the Neskowin CPO were found to have alternate access to postal services, including at the Cloverdale Post Office, located at a driving distance of 9.5 miles away, where the P.O. Boxes housed at the Neskowin CPO were transferred; at the Otis, Pacific City, and Neotsu Post Offices, located at driving distances of 7.3, 9.3, and 10.5 miles away from the Neskowin CPO, respectively; and through Highway Contract Route carrier service. The Commission accordingly determined that it lacked jurisdiction to hear the appeal of the closing of the Neskowin CPO.²¹

The Commission likewise granted the Postal Service’s motion to dismiss an appeal of the Postal Service’s decision to close the Spanish Fort Community Post Office (Spanish Fort CPO).²² Like the Neskowin CPO, the Spanish Fort CPO was not a Postal Service-operated retail facility.²³ As in the Neskowin case, the Commission distinguished between traditional Post Offices and non-Postal Service-operated contract offices like Spanish Fort CPO, and echoed previous orders, noting that “the Commission only possesses jurisdiction over CPO, VPO, and CPU closure and consolidation cases where the facility in question is the ‘sole source’ of postal services for the community;”²⁴ and specifying that the “sole source standard” focuses not on “the most convenient or desirable source of postal services,” but instead on “whether postal services are available.”²⁵ As was

²⁰ *Id.* at 3.

²¹ *Id.* at 8.

²² PRC Order No. 5831, Order Granting Motion to Dismiss, PRC Docket No. A2021-1 (February 10, 2021) (*Spanish Fort*).

²³ *Id.* at 2.

²⁴ *Id.* at 5.

²⁵ *Id.* at 10.

the case with customers of the Neskowin CPO, customers of the Spanish Fort CPO were found to have alternate means of access to postal services, including at the Daphne Post Office, located 4.8 miles away; through Post Office Box service that they could elect to move to the Daphne Post Office; the availability of rural carrier service; and customers' access to the postal services provided by usps.com. Thus, the Commission concluded that the Spanish Fort CPO was not the sole source of postal services to the Spanish Fort community, and accordingly determined that it lacked jurisdiction to hear the appeal of the closing of the Spanish Fort CPO.²⁶

Similarly, the Commission granted the Postal Service's motion to dismiss an appeal of the Postal Service's decision to close the Rio Nido, California Community Post Office (Rio Nido CPO).²⁷ Like the Spanish Fort CPO and Neskowin CPO, the Rio Nido CPO was not a Postal Service-operated retail facility.²⁸ The Postal Service provided notice to customers of its decision to terminate the contract governing the operation of this contractor-operated retail facility, and the availability of service at the nearby Guerneville Post Office, located 2.1 miles from the Rio Nido CPO. As in the Spanish Fort and Neskowin cases, the Commission distinguished between traditional Post Offices and non-Postal Service-operated contract offices like the Rio Nido CPO, and noted that "the Commission, through over 30 years of precedent, has established that the Postal Service's decision to close or consolidate a CPO is only within the

²⁶ *Id.* at 14.

²⁷ PRC Order No. 4088, Order Affirming Determination, PRC Docket No. A2017-2 (September 1, 2017) (*Rio Nido*).

²⁸ *Id.* at 8.

Commission's jurisdiction if the CPO is the sole source of postal services to the affected community."²⁹

Akin to the facts in the *Neskowin*, *Spanish Fort*, and *Rio Nido* cases, customers of the Westbrookville CPO will also still be served by a nearby Post Office. Customers of the Westbrookville CPO will be served by the Post Offices in Otisville, Cuddebackville, Wurtsboro, Howells, and Port Jervis, located at driving distances of 3.3 miles, 3.5 miles, 7.2 miles, 8.1 miles, and 12 miles from the Westbrookville CPO, respectively. This is similar to the availability of the nearest Post Office in the Spanish Fort (about 4.8 miles) and Rio Nido (about 2.1 miles) cases. Additionally, the Postal Service has relocated Post Office Box service from the Westbrookville CPO to the Otisville Post Office, as in the *Neskowin*, *Spanish Fort*, and *Rio Nido* cases. Customers will continue to have access to the postal services provided by usps.com and alternative stamp

²⁹ *Id.* at 8. Similarly, the Commission granted the Postal Service's motion to dismiss an appeal of the Postal Service's decision to close the Careywood, Idaho Community Post Office (Careywood CPO). PRC Order No. 2505, Order Dismissing Appeal, PRC Docket No. A2015-2 (May 27, 2015), at 15 (*Careywood*). There, the Postal Service informed customers that P.O. Box service would be relocated to the Athol, Idaho Post Office, located 7 miles away from the Careywood CPO. *Id.* at 3-4. In its Order granting the Postal Service's motion to dismiss, the Commission noted that "while approved shippers, contract units such as village post offices, and automated postal centers may not be currently available to many postal customers, other categories, such as another postal retail facility approximately a 7 minute drive away, rural carriers, www.usps.com, and the Internet, are available." *Id.* at 12. The Commission further noted that although these alternatives may not be as convenient as the Careywood CPO, "the Commission's review focuses on whether the Careywood CPO is the sole source of postal services to the community, not whether it is the most convenient or desirable source of postal services." *Id.* at 12-13. The Commission also dismissed an appeal in which a postal customer petitioned the Commission to apply section 404(d) to a decision to terminate a contract governing the operation of the Alpaus, NY Community Post Office. PRC Order No. 1293, Order Dismissing Appeal, PRC Docket No. A2012-88 (March 21, 2012) (*Alpaus*). There, the Postal Service provided notice to customers of the availability of service at a nearby Post Office, Rexford Post Office, which was located at a driving distance of approximately one mile away.

purchasing options offered by at least one retail business in the area.³⁰ Finally, the Postal Service intends in the near future to initiate a bid solicitation process in an attempt to secure a new contractor-operated retail unit in Westbrookville, and has already taken steps to solicit public interest in opening such a unit. Based on these facts, the Commission should also determine in this case that section 404(d) does not apply to the Postal Service's decision to close the Westbrookville CPO under the Commission's *Knob Fork* "sole source" standard.³¹

III. Strong Policy Reasons Support the Postal Service's Position that the Commission Lacks Jurisdiction to Consider the Appeal of a Contract Administration Decision for a Contract with a Third-Party CPO Operator.

The procedures imposed by 39 U.S.C. § 404(d) are not compatible with the requirements of contract management, negotiation, and implementation.³² The Postal Service's ability to negotiate reasonable contractual terms for the operation of a contract unit, or to require satisfactory contract performance, would be harmed if parties had the option of appealing contractual decisions. A third party, the Commission, would essentially become a party to contract negotiations, injecting more complexity into the contract negotiation process. In many situations, applying the section 404(d) procedures to CPO contract

³⁰ This illustrates the Postal Service's continuing commitment to provide postal services through more than traditional "brick and mortar," USPS-operated retail facilities. The Postal Service has made considerable strides in providing increased access to retail postal services through a myriad of methods, including traditional Post Offices, contract postal units, rural and highway carriers, Village Post Offices, Self-Service Kiosks, Approved Shippers, usps.com, and consignment stamp retailers. The Commission and Commissioners have taken note of these newer avenues of postal access in past dockets. See PRC Order No. 2505, Order Dismissing Appeal, PRC Docket No. A2015-2 (May 27, 2015), at 15 (*Careywood*). See also PRC Order No. 1293, Order Dismissing Appeal, PRC Docket No. A2012-88 (March 21, 2012) (*Alplaus*) (concurring opinion of Commissioner Taub).

³¹ See *Knob Fork*, *supra*.

³² See 76 Fed. Reg. 41416-41417, Section I (July 14, 2011).

decisions would provide contractors with a bargaining advantage over the Postal Service, and would force the agency to continue operating a contract, or enter into a new contract, even where sound business judgment would clearly suggest otherwise.

CONCLUSION

For the reasons discussed, the Postal Service respectfully requests that the Commission dismiss the Petitioners' appeal of the Postal Service's determination to close the Westbrookville CPO.

Respectfully submitted,

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