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Dated: December 8, 2003.

**Connie M. Downs,**

*OPIC Corporate Secretary.*

[FR Doc. 03-30744 Filed 12-8-03; 3:43 pm]

BILLING CODE 3210-01-M

## POSTAL RATE COMMISSION

### Sunshine Act Meetings

**AGENCY:** Postal Rate Commission.

**TIME AND DATE:** Monday, December 8, 2003 through December 11, as needed, during Commission business hours (8 a.m. to 4:30 p.m.).

**PLACE:** Commission conference room, 1333 H Street, NW., suite 300, Washington, DC 20268-0001.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Personnel and compensation matters.

**FOR FURTHER INFORMATION CONTACT:**

Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268-0001, (202) 789-6820.

Dated: December 8, 2003.

**Steven W. Williams,**

*Secretary.*

[FR Doc. 03-30730 Filed 12-8-03; 2:41 pm]

BILLING CODE 7710-FW-M

## POSTAL RATE COMMISSION

[Order No. 1387; Docket No. A2003-1]

### Dismissal of Appeal of Post Office Closing in Birmingham Green, AL

**AGENCY:** Postal Rate Commission.

**ACTION:** Order.

**SUMMARY:** The Commission is dismissing an appeal (brought by George Prince *et al.*, petitioners) of the closing of a Birmingham Green, Alabama 35237 postal facility. The reason for dismissal is lack of jurisdiction. This facility is a classified postal station, rather than a post office. Controlling precedent holds that the Commission does not have jurisdiction over a closing or consolidation of a postal station.

**ADDRESSES:** Submit correspondence concerning this matter via the Commission's Filing Online system at <http://www.prc.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Stephen L. Sharfman, General Counsel, 202-789-6818.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

68 FR 56350 (September 30, 2003).

### Introduction and Summary

On September 17, 2003, three individuals petitioned the Commission to review the Postal Service's actions regarding the Birmingham Green, Alabama Post Office.<sup>1</sup> The Commission gave notice and accepted the appeal in order no. 1384, issued on September 23, 2003.<sup>2</sup> The Postal Service subsequently moved to dismiss this proceeding, arguing that the Commission lacks jurisdiction to consider an appeal under 39 U.S.C. 404(b).<sup>3</sup> After considering 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.

### Petitioners' Request for Review

Petitioners George Prince, Terry Finch, and James E. Roberts contest a Postal Service action—which they characterize as a “closing or consolidation”—affecting the Birmingham Green post office, located at 317 North 20th Street in Birmingham, Alabama 35237. Joint Petition at 1. Petitioners document the Postal Service action in two attachments to their pleading.

The first attachment is a letter dated August 27, 2003 and signed by Paul T. Barrett, postmaster of Birmingham. In the letter, Mr. Barrett advises postal customers that “the Birmingham Green Post Office will be officially closed September 12, 2003.” In light of this development, he states that customers will be required to change their post office boxes, and that mail will be forwarded in accordance with postal regulations. He further states that “[r]etail services from the Main Post Office will ensure effective and regular services to the Downtown Birmingham community.”

The second attachment is a document entitled “Proposal to Consolidate the Birmingham Green Station and Establish a Contract Postal Unit,” dated June 20, 2003. According to the document's cover page, the matter was assigned docket number 35237.

The document states at the outset that the Postal Service “is proposing to consolidate the Birmingham Green Station and provide retail services by establishing a contract postal unit (CPU)

under the administrative responsibility of the Main Post Office, located 4 blocks away.” Proposal to Consolidate at 1. The remainder of the document consists of assessments of the proposal's anticipated effects, under headings entitled “Responsiveness to Community Postal Needs,” “Effect on Community,” “Effect on Employees,” “Economic Savings,” and “Other Factors.” These areas of inquiry correspond to the criteria the Postal Service is directed to consider in making a statutory determination to close or consolidate a post office, pursuant to 39 U.S.C. 404(b)(2).

Petitioners assert that the Postal Service's determination to close the Birmingham Green facility, announced in a notice of final determination on August 27, 2003 violates the requirement in 39 CFR 241.3(a)(2)(iii) that such determinations be available in writing at least 60 days before discontinuance takes effect. On this basis, petitioners argue that the process was “without observance of procedure required by law,” in contravention of 39 U.S.C. 404(b)(5)(B). Joint Petition at 1.

Petitioners also challenge the merits of the Service's decision. They allege that it will have adverse effects on the community served by the Birmingham Green facility and will degrade the degree of service provided; that the Service failed to take into account all the disadvantages of closing the facility; that the Service provided no statement of the facility's income or revenue in its proposal; and that it did not adequately respond to the concerns raised by community members in both questionnaire responses and in a public hearing. *Id.* at 1-2.

### Postal Service Motion To Dismiss

Order no. 1384 established October 3, 2003 as the date for the Postal Service's filing of its administrative record in this appeal. On that date, rather than filing an administrative record, the Service submitted a motion to dismiss this proceeding.<sup>4</sup>

In its motion, the Postal Service submits that the petition does not fall within the Commission's jurisdiction under § 404(b)(5). The Service cites two bases for this conclusion. First, it asserts that the Birmingham Green facility is a classified postal station—one of at least four USPS-operated facilities in downtown Birmingham—and thus is not a post office. Second, the Service represents that operations at the Birmingham Green facility “are currently suspended rather than

<sup>1</sup> Joint Petition for Review and Application for Suspension, September 17, 2003.

<sup>2</sup> Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5), September 23, 2003.

<sup>3</sup> United States Postal Service Motion to Dismiss Proceeding, October 3, 2003.

<sup>4</sup> *Id.*