

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause ) DOCKET NO. 910188-TC  
proceedings against BAILEY'S GROCERY ) ORDER NO. 25090  
for violation of Rule 25-24.520, ) ISSUED: 9/23/91  
Annual Report Requirement. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
SUSAN F. CLARK  
J. TERRY DEASON  
BETTY EASLEY

FINAL ORDER RESOLVING  
SHOW CAUSE PROCEEDINGS

BY THE COMMISSION:

Bailey's Grocery (Bailey's or the Company) has been a certificated pay telephone service (PATS) provider since April 14, 1989. As a certificated PATS provider, Bailey's is subject to our jurisdiction.

On May 2, 1991, we issued Order No. 24469 requiring Bailey's to show cause why it should not be fined \$250 for failure to file an Annual Report for 1990 as required by Rule 25-24.520, Florida Administrative Code. Order No. 24469 also provided that if Bailey's elected to cancel its PATS certificate, no fine would be imposed. Finally, Order No. 24469 provided that if Bailey's failed to file a timely response, its certificate would be canceled and this docket closed.

On May 30, 1991, Bailey's filed a response to Order No. 24469. Bailey's indicated that it did in fact file an Annual Report for 1990. Bailey's enclosed a copy of a document it purported to be its Annual Report. The document in question was actually a copy of a PATS application and not the Annual Report.

Based on Bailey's response, we can only infer that the Company does not completely understand the Annual Report Requirement set forth in Rule 25-24.520. PATS providers are placed on notice of our requirements by completing an application for a PATS certificate. We have often ruled that PATS providers that confuse the Annual Report Requirement with the Regulatory Assessment Fee

DOCUMENT NUMBER-DATE

09408 SEP 23 1991

FPSC-RECORDS/REPORTING

ORDER NO. 25090  
DOCKET NO. 910188-TC  
PAGE 2

Requirement may not rely on such confusion as a defense for failure to properly file an Annual Report. Similarly, confusing the Annual Report Requirement with the application is inadequate as cause for failure to file an Annual Report.

Bailey's response contains no arguments of either fact or law sufficient to set aside the fine proposed in Order No. 24469. Bailey's response effectively constitutes a default and a waiver of the right to a hearing.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Bailey's Grocery shall, within 30 days, pay the \$250 fine proposed in Order No. 24469, or, in the alternative, voluntarily cancel its Certificate of Public Convenience and Necessity No. 2273. It is further

ORDERED that if Bailey's Grocery elects to voluntarily cancel its certificate, the \$250 fine shall not be imposed, but the Company shall still be liable for the 1991 Regulatory Assessment Fee. It is further

ORDERED that if Bailey's Grocery fails to respond to this Order, its Certificate of Public Convenience and Necessity No. 2273 shall be canceled and this docket closed.

By ORDER of the Florida Public Service Commission, this 23rd day of SEPTEMBER, 1991.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

JKA

ORDER NO. 25090  
DOCKET NO. 910188-TC  
PAGE 3

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

MEMORANDUM

September 17, 1991

TO : DIVISION OF RECORDS AND REPORTING  
FROM : DIVISION OF LEGAL SERVICES (ADAMS)  
RE : DOCKET NO. 910188-TC

*JKA* *TR*

*25090*

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Attached is a FINAL ORDER RESOLVING SHOW CAUSE PROCEEDINGS in the above-referenced docket, which is ready to be issued.

JKA/ttl  
Attachment  
cc: Division of Communications  
910188a.ttl

DOCUMENT NUMBER-DATE  
09408 SEP 23 1991  
FPSC-RECORDS/REPORTING