

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause) DOCKET NO. 910267-TC
proceedings against LA NUEVA ESTRELLA) ORDER NO. 25099
RESTAURANT, INC. for violation of Rule) ISSUED: 9/24/91
25-24.520, 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:

La Nueva Estrella Restaurant, Inc. (La Nueva or the Company) has been a certificated pay telephone service (PATS) provider since April 25, 1987. As a certificated PATS provider, La Nueva is subject to our jurisdiction.

On May 8, 1991, we issued Order No. 24507 requiring La Nueva 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. 24507 also provided that if La Nueva elected to cancel its PATS certificate, no fine would be imposed. Finally, Order No. 24507 provided that if La Nueva failed to file a timely response, its certificate would be canceled and this docket closed.

On May 16, 1991, La Nueva filed a response to Order No. 24507. In its response, La Nueva indicated that it had failed to file the Annual Report in a timely manner because it had not received any reminder of the requirement. La Nueva included the required information as a late-filed Annual Report.

La Nueva's response seems to be two-pronged. The Company seems to believe that a late-filed report and not having received a report form somehow relieves it of liability. We find this reasoning without merit. We have repeatedly ruled that timeliness is an essential element of the Annual Report Requirement and that a late-filed report is inadequate as a defense. Furthermore, we

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have also ruled that Annual Report forms are mailed out simply as a convenience and a courtesy. The Annual Report Requirement creates an affirmative duty to file the required information. It is incumbent upon a certificated PATS provider to file this information, regardless of whether a form is sent to the utility or not.

La Nueva fails to set forth any legal or factual argument sufficient to set aside the proposed fine. Essentially, La Nueva's response is an admission of the facts alleged in Order No. 24507, 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 La Nueva Estrella Restaurant, Inc. shall, within 30 days, pay the \$250 fine proposed in Order No. 24507 or, in the alternative, voluntarily cancel its Certificate of Public Convenience and Necessity No. 1550. It is further

ORDERED that if La Nueva Estrella Restaurant, Inc. 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 La Nueva Estrella Restaurant, Inc. fails to respond to this Order, its Certificate of Public Convenience and Necessity No. 1550 shall be canceled and this docket closed.

By ORDER of the Florida Public Service Commission, this 24th day of SEPTEMBER, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

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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 19, 1991

TO : DIVISION OF RECORDS AND REPORTING
FROM : DIVISION OF LEGAL SERVICES (ADAMS)
RE : DOCKET NO. 910267-TC

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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

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