

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Reinstatement of Pay Telephone)	DOCKET NO. 911134-TC
Certificate No. 1788 issued to SUNSHINE)	ORDER NO. 25581
SHELL.)	ISSUED: 1/8/92
_____)	

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER REINSTATING CERTIFICATE NO. 1788

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On May 13, 1991, we issued Order No. 24515 requiring Sunshine Shell (Sunshine or the Company) 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. 24515 also provided that if Sunshine elected to cancel its PATS certificate, no fine would be imposed. Finally, Order No. 24515 provided that if Sunshine failed to file a timely response, its certificate would be canceled and this docket closed.

On May 28, 1991, Sunshine filed a response to Order No. 24515. In its response, Sunshine indicated that it had filed the Annual Report along with its Regulatory Assessment Fee on December 17, 1990. As evidence of this assertion, Sunshine produced a copy of a money order made out to this Commission in the amount of \$25.

At the August 27, 1991 Agenda Conference, we considered and rejected Sunshine's response. We determined that Sunshine had failed to produce sufficient evidence to support its factual assertions and consequently, the proposed fine was appropriate. This decision was memorialized in Order No. 25144. That Order also provided that Sunshine could elect to avoid the fine by voluntarily canceling its certificate. In the event Sunshine failed to respond at all, Order No. 25144 provided for cancellation of Certificate No. 1788 and the docket closed.

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The response was due on October 30, 1991. On October 25, 1991, however, the certificate was inadvertently canceled for failure to file a response. On November 12, 1991, a money order in the amount of \$250 was received by the Bureau of Fiscal Services on behalf of Sunshine Shell. Upon further investigation, it was determined that there was a considerable delay in the delivery of the payment because the outside envelope was clearly postmarked October 28, 1991. Although the certificate was inadvertently canceled prior to the expiration of the payment period, it was also clear that the payment was not timely filed and the cancellation was justified. Notwithstanding the untimely filing, having paid the fine, we elect under these limited facts to reinstate Certificate No. 1788 because a PATS provider might reasonably expect three days to be sufficient time for delivery of the check.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Certificate of Public Convenience and Necessity No. 1788 held by Sunshine Shell is reinstated. It is further

ORDERED that any protest of this Order shall be filed pursuant to the requirements set forth below. It is further

ORDERED that if no timely protest is filed, this Order shall become final and this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 8th day of JANUARY, 1992.



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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on 1/29/92.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date 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.