

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show) DOCKET NO. 920452-TC
cause proceedings against) ORDER NO. PSC-92-1408-FOF-TC
F & D RESTAURANT for) ISSUED: 12/3/92
violation of Rule)
25-4.0161(2), F.A.C.,)
Regulatory Assessment Fee)
Filing.)

The following Commissioners participated in the disposition of this matter:

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

ORDER RESOLVING SHOW CAUSE PROCEEDINGS

BY THE COMMISSION:

F & D Restaurant, (F & D) has been a certificated pay telephone service (PATS) provider since March 19, 1991. As a certificated PATS provider, F & D is subject to Commission jurisdiction pursuant to Chapter 364, Florida Statutes.

On August 27, 1992, we issued Order No. PSC-92-0827-FOF-TC requiring F & D to show cause, in writing why its Certificate No. 2724 should not be cancelled for failure to timely file the Regulatory Assessment Fee Return/Annual Report Form for the period July 1, 1991 through December 31, 1991 as required by Rule 25-4.0161(2) Florida Administrative Code. On September 29, 1992, F & D filed a response to Order No. PSC-92-0827-FOF-TC.

Essentially, F & D's response appears to be based on confusion regarding the requirements of Rule 25-4.0161(2) and the facts alleged. Furthermore, the response is a waiver of the right to a formal hearing.

F & D asserts that it has filed the Regulatory Assessment Fee Return/Annual Report form and overpaid the Regulatory Assessment Fee. This appears to be correct. However the documentation provided by F & D indicates that the filing was over 6 months late. This documentation indicates that F & D filed several reports at the same time and used one check to pay 3 separate regulatory assessments.

We have frequently ruled in the past that timely filing of the
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form is an essential element of the requirement. Accordingly, subsequent compliance does not cure the violation. F & D's assertion that it should not be fined fails simply because F & D's own account of the facts confirm the alleged violation.

We find that the penalties proposed in Order No. PSC-92-0827-FOF-TC should be imposed. If F & D elects to voluntarily cancel its certificate or fails to timely respond to the Final Order, no fine should be imposed and Certificate No. 2724 should be cancelled. If F & D elects to pay the \$250 fine this docket should be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the penalties proposed in Order No. PSC-92-0827-FOF-TC are hereby imposed against F & D Restaurant. It is further

ORDERED that if F & D Restaurant elects to voluntarily cancel its certificate or fails to respond to this Order in a timely fashion, Certificate No. 2724 shall be cancelled, no fine imposed and this docket closed. It is further

ORDERED that if F & D Restaurant pays the \$250 fine in a timely manner, this docket shall be closed. It is further

ORDERED that this docket shall remain open 30 days from the date of this order to permit F & D Restaurant to respond.

By ORDER of the Florida Public Service Commission, this 3rd day of December, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

by: Kay DeLeon
Chief, Bureau of Records

(S E A L)

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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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.