

BEFORE THE PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause) DOCKET NO. 920547-TC
proceedings for violation of Rule) ORDER NO. PSC-92-1136-FOF-TC
25-4.0161(2) - Regulatory) ISSUED: 10/07/92
Assessment Fee Filing Requirement)
TRAIL & 27TH EXXON STATION)
_____)

The following Commissioners participated in the disposition of this matter:

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

ORDER TO SHOW CAUSE WHY A FINE SHOULD NOT BE IMPOSED
FOR VIOLATION OF RULE 25-4.0161(2), F.A.C.

This Order addresses the same subject matter previously addressed in Order No. PSC-92-0888-FOF-TC. This Order is being reissued to insure adequate notice in recognition of the difficulties caused by Hurricane Andrew and is limited to Docket No. 920547-TC.

Trail and 27th Exxon Station (Exxon) is a certificated pay telephone service (PATS) provider. As a certificated PATS provider Exxon is subject to our jurisdiction pursuant to Chapter 364, Florida Statutes.

In December 1991, Regulatory Assessment Fee (RAF) Returns for the period July 1, 1991 through December 30, 1991 were mailed to all certificated PATS providers. These forms were recently designed to serve as both the RAF Return and as the Annual Report required by Rule 25-24.520, Florida Administrative Code. The forms were due in the Bureau for Fiscal Services so as to comply with Rule 25-4.0161(2), Florida Administrative Code.

Rule 25-4.0161(2) provides:

Regulatory assessment fees and the applicable regulatory assessment fee return form are due each January 30 for the preceding period or any part of the period from July 1 to December 31, and on July 30 for the preceding period or any part of the period from January 1 until June 30....From PSC/CMU 26, entitled "Pay Telephone Service Provider Regulatory Assessment Fee Return." Each company shall have up to and including the due date in which to submit the applicable form and:

(a) Remit the total amount of its fee, or

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- (b) Remit an amount which the company estimates is its full fee, or
- (c) Seek and receive from the Commission a 30-day extension of its due date.

The current form is also designed to conform with the annual report requirements of 25-24.520. Previously these requirements consisted of two separated forms, which were merged to facilitate the process for small PATS providers.

Exxon, holder of Certificate No. 1048 failed to timely file a RAF return, has not paid a RAF fee amount for the period between July 1, 1991 through December 31, 1991, nor did it request an extension of time in order to comply.

Pursuant to Section 364.285, Florida Statutes, this Commission is authorized to levy a fine of up to \$25,000 for each violation of a statute, rule or order subject to the Commission's jurisdiction or to revoke a certificate of public convenience and necessity. Accordingly, we find it appropriate to require Exxon to show cause in writing why it should not be fined \$250, or in the alternative, have its certificate revoked for failure to file its 1991 RAF Return as required by Rule 25-4.0161(2). All responses to this Order to Show Cause shall be filed in conformance with Rules 25-22.036(7)(a) and 25-22.037(1), Florida Administrative Code. Exxon's response shall contain specific statements as to fact and law.

If Exxon fails to respond to this show cause in the form and within the time limits prescribed, the facts alleged in this Order shall be deemed true and shall constitute an admission of guilt of the violation of Rule 25-24.0161(2) and waiver of the right to a hearing. If no response is received from Exxon, we find it appropriate that no fine be imposed and that the company's certificate is hereby cancelled.

To avoid the potential of either a fine or revocation of its certificate as a result of this show cause order, Exxon may request voluntary cancellation of its certificate. If Exxon requests cancellation of its certificate, this show cause order is withdrawn. A request for cancellation pursuant to this Order shall be filed within the time limits set forth herein. A request for cancellation of a certificate must include (a) a statement of intent and date to pay Regulatory Assessment Fee and (b) a statement of why the certificate is proposed to be cancelled. Payment of fine or a written request to cancel a certificate should be mailed to:

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Director of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0850.

Therefore, based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Trail and 27th Exxon Station shall show cause in writing why it should not be fined \$250 or, in the alternative, have its certificate revoked for failure to file the Regulatory Assessment Fee Return required by Rule 25-4.0161(2), Florida Administrative Code, or return a written request that its certificate be cancelled and the docket will be administratively closed. It is further

ORDERED that any response filed by Trail and 27th Exxon Station must contain specific statements as to fact and law. It is further

ORDERED that a response or a request for cancellation shall be filed within 20 days of the date of this Order. It is further

ORDERED that upon receipt of a response as outlined above, and upon Trail and 27th Exxon Station's request for a hearing, further proceedings will be scheduled by the Commission, at which time Trail and 27th Exxon Station will have an opportunity to contest the violations alleged above. It is further

ORDERED that Trail and 27th Exxon Station's failure to respond in the form and within the prescribed time will constitute an admission of the violations alleged above and a waiver of the right to a hearing. It is further

ORDERED that if Trail and 27th Exxon Station elects to pay the \$250 fine within 20 days of the date of this Order, this docket shall be closed. It is further

ORDERED that if no timely response to this Order is filed by Trail and 27th Exxon Station, that Company's certificate is hereby revoked as set forth in the body of this Order.

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By ORDER of the Florida Public Service Commission this 7th day
of October, 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.

This order is preliminary, procedural or intermediate in nature. 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 25-22.037(1), 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 October 27, 1992.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

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If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any 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.