

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Decertification of) DOCKET NO. 06-2380-01
CeriStar)
)
) REPORT AND ORDER CANCELING
) CERTIFICATE

ISSUED: March 13, 2006

SYNOPSIS

CeriStar having failed to appear and show cause why CeriStar has failed to pay its public utilities regulation fee and file its annual report for 2004, and further to show cause why CeriStar should not be fined and have its Certificate of Public Convenience and Necessity cancelled for these failures, and no detriment to the public interest appearing, the Commission cancelled the certificate.

By The Commission:

PROCEDURAL HISTORY

On February 13, 2006, the Division of Public Utilities (“Division”) filed a memorandum requesting the Public Service Commission of Utah (“Commission”) cancel the Certificate of Public Convenience and Necessity (“certificate”) held by CeriStar for failure to pay its Public Utilities Regulation Fee for the 2004.

On February 24, 2006, the Commission issued a Notice of Hearing and Order to Show Cause. On March 9, 2006, hearing commenced as noticed before the Administrative Law Judge. Patricia Schmid, Assistant Attorney General, State of Utah, appeared on behalf of the Division. Mr. Wesley Huntsman testified on behalf of the Division. Representatives of CeriStar failed to appear.

BACKGROUND AND DISCUSSION

On February 1, 2002, in Docket No. 01-2380-01, the Commission granted CeriStar a certificate authorizing CeriStar “to provide local and public telecommunications services within the State of Utah.”

Utah Code Ann. § 54-3-21 provides:

(1) Every public utility shall furnish to the commission in such form and such detail as the commission shall prescribe all tabulations and computations and all other information required by it to carry into effect any of the provision of this title, and shall make specific answers to all questions submitted by the commission.

(2) Every public utility receiving from the commission any blanks with directions to fill the same shall cause the same to be properly filled so as to answer fully and correctly each question propounded therein; in case it is unable to answer any question, it shall give a good and sufficient reason for such failure.

In addition, *Utah Code Ann.* § 54-3-22 states:

Every public utility shall furnish to the commission at such time and in such form as the commission may require a report in which the public utility shall specifically answer all questions propounded by the commission upon or concerning any matter upon which the commission may desire information. The commission shall have authority to require any public utility to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matter about which the commission is authorized to inquire or to keep itself informed or which it is required to enforce. All reports shall be under oath when required by the commission.

Furthermore, regarding nonpayment of the Public Utilities Regulation Fee, *Utah Code Ann.* §

54-5-3 states:

(1) If the public utility fee is due and the payment is in default, a lien in the amount of the fee may be filed against the property of the utility and may be foreclosed in an action brought by the executive director of the Department of Commerce in the district

court of any county in which property of the delinquent utility is located.

(2) (a) If the fee computed and imposed under this chapter is not paid within 60 days after it becomes due, the rights and privileges of the delinquent utility shall be suspended.

(b) The executive director of the Department of Commerce shall transmit the name of the utility to the Public Service Commission, which may immediately enter an order suspending the operating rights of the utility.

At hearing, the Division submitted evidence indicating CeriStar had not filed its required annual report for the year ending December 31, 2004, and had failed to pay the Public Utilities Regulation Fee due on or before July 1, 2005, as required by *Utah Code Ann.* § 54-5-1.5(3)(b). The Division informed CeriStar by Final Notice dated June 13, 2005, that its annual report had been due not later than March 31, 2005, and that failure to file said report would cause the Division to request the Commission issue an order to show cause. This letter was received and signed for on June 14, 2005. However, the report has never been filed. The Division testified that cancellation of the CeriStar's certificate would be in the public interest and would not harm Utah ratepayers. The Division believes CeriStar currently serves very few, if any, customers in Utah.

We therefore find and conclude that CeriStar has failed to file an annual report for the year ended December 31, 2004, and has failed to pay its Public Utilities Regulation Fee in violation of statute. Cancellation of its certificate is in the public interest.

Wherefore, based upon the foregoing information, and for good cause appearing, the Administrative Law Judge enters the following proposed:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

- The Certificate of Public Convenience and Necessity, issued February 1, 2002, to CeriStar be, and it is, cancelled and annulled effective the date of this Order.
- Pursuant to *Utah Code Annotated* §§ 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of *Utah Code Annotated* §§ 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

Dated at Salt Lake City, Utah, this 13th day of March, 2006.

/s/ Steven F. Goodwill
Administrative Law Judge

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Approved and Confirmed this 13th day of March, 2006, as the Report and Order of
the Public Service Commission of Utah.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/Julie Orchard
Commission Secretary
G#48015