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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Cytel, Inc. for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.

Application 12-04-002
(Filed April 4, 2012)

ADMINISTRATIVE LAW JUDGE'S RULING REQUIRING APPLICANT TO SHOW CAUSE WHY APPLICATION SHOULD NOT BE DISMISSED

1. Introduction

Cytel, Inc. (Cytel) failed to appear at the prehearing conference (PHC) scheduled for July 27, 2012 at 10 a.m.. Cytel previously failed to appear at the PHC scheduled for July 2, 2012 at 10 a.m.. This ruling permits Cytel to file a brief, no later than August 6, 2012, to show cause why Cytel's application should not be dismissed.

2. Background

On April 4, 2012, Cytel filed an application to register under Pub. Util. Code § 1013 to provide resold interexchange service as a switchless reseller in California.

On May 9, 2012, Consumer Protection and Safety Division (CPSD) filed a protest requesting that the Commission conduct further review of the Cytel application because CPSD alleges Cytel has violated Rule 1.1 of the

Commission's Rules of Practice and Procedure¹ and because CPSD has concerns about Cytel's fitness to operate as a utility. In its application, Cytel's President, Carmen Asorey, declared under penalty of perjury that none of Cytel's officers had been found liable for fraud or violation of a law regulating public utilities.² CPSD asserts that, contrary to Ms. Asorey's sworn statement, there are at least five separate incidents of investigations or sanctions related to companies in which Ms. Asorey held an officer role. CPSD asserts that failure to disclose these incidents is a violation of Rule 1.1. In addition, CPSD alleges that Cytel's President has a history of working for or with companies that have been the subject of slamming allegations and other complaints.

Cytel did not reply to CPSD's protest.

On June 19, 2012, I issued a ruling, the Administrative Law Judge's Ruling Setting a Prehearing Conference and Requiring the Parties to Meet and Confer

¹ All references to Rules are to the Commission's Rules of Practice and Procedure.

² The relevant portion of the verified statement reads as follows:

"Neither applicant . . . any of its officers . . . or owners . . . or anyone acting in a management capacity for applicant: . . . (b) been personally found liable or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose or misrepresentations to consumers or others; . . . (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of . . . any other statute, regulation or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (g) been found to have violated any statute, law or rule pertaining to public utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other monetary forfeitures in resolution of any action by any regulatory body, agency or attorney general."

and to File a Joint Prehearing Conference Statement (June 19 Ruling). On June 28, 2012, the parties served their Joint Prehearing Conference Statement (Joint PHC Statement) as required by the June 19 Ruling. The undisputed material facts in the Joint PHC Statement include five instances of investigations or sanctions against either Cytel or a company in which Ms. Asorey held an officer level position that should have been disclosed in Cytel's application.

On July 2, 2012, Cytel failed to appear at the PHC scheduled in the June 19 Ruling.

When Cytel failed to appear at the PHC, the assigned Administrative Law Judge (ALJ) attempted to contact Cytel by telephone from the hearing room. The phone number listed on the service list for Cytel was answered by voicemail. The assigned ALJ also attempted to contact Charles Helein of Helein Law Group. Although Mr. Helein is not on the service list, he is listed as the attorney for Cytel on the Joint PHC Statement. Mr. Helein's telephone number was also answered by voicemail. The assigned ALJ left messages at both telephone numbers.

On July 3, 2012, Mr. Helein left a voicemail for the assigned ALJ stating that he had been unable to attend the July 2 PHC because of a major power outage in McLean, VA. The power outage was the result of a severe storm on June 29, 2012 that left portions of Virginia without power for days.

On July 11, 2012, I issued a second ruling, Administrative Law Judge's Ruling Setting a Prehearing Conference (July 11 Ruling).

On July 27, 2012, Cytel failed to appear at the PHC scheduled in the July 11 Ruling.

When Cytel failed to appear at the PHC, the assigned ALJ attempted to contact Cytel by telephone from the hearing room. The phone number listed on

the service list for Cytel was answered by voicemail. The ALJ also attempted to contact Mr. Helein at the number listed on the Joint PHC Statement.

Mr. Helein's telephone number was also answered by voicemail. The ALJ left messages at both telephone numbers.

At the July 27 PHC, CPSD moved to dismiss the application.

3. Discussion

As the summary above indicates, Cytel, without explanation, failed to participate in two separate scheduled PHC. As of the date of this ruling, Cytel has not contacted the ALJ about its failure to appear at the second PHC.

Therefore, we conclude that the record should be closed and the matter submitted for a Commission decision dismissing the application.

We will allow applicant to file and serve a brief to show cause why this application should not be dismissed no later than August 6, 2012. Pursuant to Rule 11.1(e), I will permit this brief to also serve as a response to CPSD's oral motion to dismiss this case.

If the application is dismissed, the Commission may open a separate proceeding to investigate the alleged violations of Rule 1.1 resulting from Cytel filing false information.

Therefore, **IT IS RULED** that the applicant may show cause why this application should not be dismissed by filing and serving a brief no later than August 6, 2012.

Dated July 30, 2012, at San Francisco, California.

/s/ JEANNE M. MCKINNEY
Jeanne M. McKinney
Administrative Law Judge