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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

ES 14

In the Matter of)
)
AOL Utility Corp.)
)
Application for Authority to Operate as an)
Electricity Service Supplier in the State of)
Oregon.)

ORDER

DISPOSITION: APPLICATION DISMISSED

On September 16, 2004, Staff filed a motion to dismiss, noting that AOL Utility Corp. (Applicant) had failed to file testimony by the September 1 deadline. Applicant submitted its response on September 24 by electronic mail, with copies of its testimony attached. Applicant asserted that it had mailed its testimony before the deadline. Staff submitted a reply on October 1, asserting that the motion to dismiss should be granted in light of irregularities in the testimony. We grant the motion to dismiss, but dismiss the application without prejudice and without adopting Staff's proposed order, so that Applicant may file again at a later date.

Procedural Background

On May 21, 2003, Applicant filed an application seeking certification as a scheduling Electricity Service Supplier (ESS) to sell electricity services to consumers in Oregon. Applicant is currently certified as an electricity service aggregator (EA), and there was no opposition to the application to serve as an ESS. On November 4, 2003, Paul Rossow of Staff sent a proposed Commission order rejecting the application for the following reasons: (1) Applicant does not have sufficient financial reporting controls; (2) Applicant does not have a contract with a scheduling ESS certified in Oregon; and (3) Applicant is owned by one individual who does not have the required technical competence, as judged by comparison to entities who have been previously certified.

On November 24, 2003, Applicant requested a hearing and stated that it disagreed with the proposed order for three reasons: (1) its financial statements were lacking because it was approved in California but California froze the deregulation process¹; (2) Staff had never before indicated that its scheduling ESS (referred to by

¹ In AOL Utility Corp.'s request for hearing, it states, "The reason for non-performing was that, California deregulation has been put on hold since California is the only state we are currently approved (sic), we did not serve any customer in 2002." It is unclear as to exactly what it was approved for in California.

Applicant as an SC) was insufficient, and it should have additional time to secure an SC; and (3) it should not be penalized because it is not a big company.

A prehearing conference was held December 5, 2003, and a schedule was set. Over the next few months, the parties worked together towards amending the application in such a way that Staff could recommend approval. After several delays and extensions, Applicant filed a letter with the Commission requesting a hearing and expressing concerns that Staff arbitrarily rejected its application as an ESS, that no company would sign a contract with it to serve as its SC, and that under the criteria used to reject its application, certification of six other ESS's should be revoked. Another prehearing conference was held June 11, 2004, to reset the schedule. At the conference, the Applicant and Staff discussed the legal criteria as set forth in the administrative rules, and Staff stated that a rulemaking would be held after this docket is closed to further develop the criteria.

Applicant's testimony was due September 1. Because the Applicant is represented by a pro se individual who does not regularly practice before the Commission, a one page primer titled "How to File Testimony" was sent to Applicant to assist with its preparation of testimony. No testimony was received September 1. As noted above, Staff filed a motion to dismiss, to which Applicant responded with an e-mailed opposition with testimony attached. The testimony consisted of questions posed by Applicant to Staff. The questions ranged from inquiries into Staff's credentials to legal criteria used to evaluate the application. Staff's reply noted that the filed testimony was deficient in several respects: (1) e-mail is not acceptable service without being followed by a copy by mail to each party, and an original and five copies to the Commission; (2) even if copies were mailed by September 1, neither Staff nor the Commission received them, and it is unlikely that both mailed copies would have been lost; and (3) Applicant's testimony does not provide additional facts to evaluate the application. Applicant submitted another letter on November 1, 2004, which did not cure the flaws of the earlier filing. The letter raises interesting questions regarding the Commission process of approving an ESS application, but does not aid this application.

Applicable Law

Testimony must be filed according to the specifications in Oregon Administrative Rule 860-014-0060(1). An original and five copies must be sent to the Commission. OAR 860-013-0060. Copies must also be served on the other parties in the docket, along with a certificate of service. OAR 860-013-0070. If a party fails to pursue its case, in particular, if the party that initiated the docket fails to pursue its case, the Commission may dismiss the docket upon a motion to dismiss by the opposing party. *See* Order No. 01-940 (complainant's failure to comply with schedule arranged at the prehearing conference persuaded Commission to grant motion to dismiss).

Conclusion

We appreciate Applicant's concerns regarding the legal criteria used to evaluate ESS applications, and we anticipate acting on a rulemaking in the near future on this subject and notifying Applicant of its opportunity to participate in the process. However, Applicant did not pursue its side of this proceeding properly. It did not file its testimony on time to all of the parties with an original and five copies to the Commission. Further, it did not file facts in support of its application, but instead submitted questions to Staff, something that should have been done in earlier discovery. Throughout the process, Staff and other employees of the Commission made an effort to assist the pro se Applicant, but Applicant did not follow Commission rules and procedures, nor did it ask additional questions. For these reasons, we dismiss the application without prejudice and without adopting Staff's proposed order, so that Applicant may file again at a later date.

ORDER

IT IS ORDERED that the application is dismissed without prejudice.

Made, entered, and effective _____.

Lee Beyer
Chairman

John Savage
Commissioner

Ray Baum
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.