

OCT 28 2014

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Federal Communications Commission
Office of the Secretary

In re)	
)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC)	EB Docket No. 11-71
)	File No. EB-09-IH-1751
)	FRN: 0013587779
Participant in Auction No. 61 and Licensee of Various Authorizations in the Wireless Radio Services)	
)	
Applicant for Modification of Various Authorizations in the Wireless Radio Services)	Application File Nos. 0004030479, 0004144435, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004314903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, 0004153701, 0004526264, 0004636537, and 0004604962
Applicant with ENCANA OIL AND GAS (USA), INC.; DUQUESNE LIGHT COMPANY; DCP MIDSTREAM, LP; JACKSON COUNTY RURAL MEMBERSHIP ELECTRIC COOPERATIVE; PUGET SOUND ENERGY, INC.; ENBRIDGE ENERGY COMPANY, INC.; INTERSTATE POWER AND LIGHT COMPANY; WISCONSIN POWER AND LIGHT COMPANY; DIXIE ELECTRIC MEMBERSHIP CORPORATION, INC.; ATLAS PIPELINE – MID CONTINENT, LLC; DENTON COUNTY ELECTRIC COOPERATIVE, INC., DBA COSERV ELECTRIC; AND SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY)	

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To: Marlene H. Dortch, Secretary
Attention: Chief Administrative Law Judge Richard L. Sippel

**ENFORCEMENT BUREAU'S MOTION TO STRIKE
EVH'S MOTION FOR SUMMARY DECISION ON ISSUE (G)**

1. The Chief, Enforcement Bureau (Bureau) respectfully moves to strike from the record the prohibited and improper motion for summary decision on Issue (g) submitted by

Environmental, LLC, Verde Systems, LLC and Mr. Havens (collectively “EVH”).¹

2. *The Motion is Prohibited.* On July 15, 2014, the Presiding Judge issued *Order*, FCC 14M-22, stating unequivocally to all of the parties, *including EVH*, that he would “not entertain a further motion for summary decision.”² The Presiding Judge emphasized that “[a]s three summary decision motions have been filed and considered in this proceeding and substantial issues of fact still remain to be heard, [he] does not see how efficiency could be served by a fourth motion.”³

3. Nonetheless, in direct contravention of the Presiding Judge’s directive – and indeed, without even acknowledging its existence – EVH filed what constitutes the fourth motion for summary decision in this case. Instead of demonstrating “how efficiency could be served” by the filing of its Motion, however, EVH appears to base its Motion on nothing more than its assumptions concerning “Maritime’s purported legal theory”⁴ and conclusory statements of fact for which it offers little or no evidence. Having thus failed to present any basis whatsoever for the Presiding Judge to reconsider his directive regarding motions for summary decision, EVH’s Motion immediately should be struck.

4. *The Motion is Improper.* EVH has again flooded the record and precipitated further waste and inefficiency by filing its Motion just two days before the Presiding Judge’s October 29, 2014 noon deadline for the Bureau (and other parties) to serve objections to EVH’s 440-plus direct case exhibits and written direct testimony, and the week before the Tuesday, November 4, 2014 evidence admission session where the Presiding Judge and the parties will be

¹ See ENL-VSL Motion for Summary Decision on Issue (g), filed Oct. 27, 2014, which was joined by Mr. Havens (“Motion”).

² *Order*, FCC 14M-22 (ALJ, rel. July 15, 2014) at 3.

³ *Id.*

⁴ EVH’s Motion at 8.

forced to consider over 10,000 pages of exhibits filed by EVH. If the Presiding Judge were to entertain EVH's Motion, the Bureau (and other parties) would be obligated to prepare a response to EVH's Motion at the same time as they are preparing for, and participating in, the evidence admission session, and, furthermore, as they are drafting the trial briefs set by the Presiding Judge's prehearing procedural schedule (due November 25, 2014).⁵ In addition, the Presiding Judge would be burdened with reviewing EVH's Motion (which is largely citation-free)⁶ and any responses thereto, including countermotions for summary decision, at the same as he is considering the parties' trial briefs. Simply put, this is not an efficient use of the Presiding Judge's, the Bureau's, and other parties' resources.

5. The Presiding Judge has the discretion to disregard an improper summary decision motion and retains "broad authority to go forward with a hearing, regardless of the showing made, if the nature of the proceeding and of circumstances surrounding the request persuade him that a hearing is desirable."⁷ Here, although EVH filed its Motion at least 20 days before the December 9, 2014 hearing commencement date,⁸ the filing is not efficient, but instead extremely disruptive of the Presiding Judge's and the parties' prehearing preparations. The Commission has warned that the requirement that a motion for summary decision be filed "at least" 20 days before the hearing is meant "to avoid undue disruption" and ensure the hearing

⁵ See, e.g., 47 C.F.R. § 1.251(b) (requiring that objections or countermotions to summary decision motions be filed within 14 days after a motion for summary decision is filed).

⁶ See, e.g., Motion at 12 (stating, without citation, that "[t]he PSE PLMRS system uses modern technology that is based on low power, low site transceivers.... EVH previously has explained that the Commission transitioned AMTS to geographic area licensing that allows the licensee to place radio cell sites anywhere within its geographic license with (sic) obtaining site-by-site authority."). Moreover, the Motion is facially defective in that EVH acknowledges, for example, that issues of fact remain. See, e.g., Motion at 14 (arguing that PSE makes a "baseless claim" regarding whether it has "permanently abandoned" its authorizations).

⁷ *In the Matter of Summary Decision Procedures*, Report and Order, 34 F.C.C.2d 485, 487, ¶ 5 (1972) ("Summary Decision Order").

⁸ See 47 C.F.R. § 1.251(a)(1)(requiring motions for summary decision be filed "at least" 20 days before the hearing).

is “conducted in the orderly manner intended.”⁹ Given that EVH has again and again filed inefficient pleadings (including causing the Presiding Judge to repeatedly address Mr. Havens’ purported *pro se* status), refused to stipulate with other parties on basic facts of the case, and declined to agree to a simple schedule for the case, EVH should not be rewarded for submitting a summary decision motion in the heart of the Presiding Judge’s prehearing calendar and during the parties’ preparations.¹⁰

6. For the foregoing reasons, the Bureau respectfully requests that the Presiding Judge strike EVH’s Motion.¹¹

⁹ *Summary Decision Order*, 34 F.C.C.2d at 490, ¶ 9.

¹⁰ Notably, the parties’ preparations have been complicated by EVH’s 440-plus largely-irrelevant exhibits and inexplicable last minute naming of approximately 30 witnesses for which EVH filed no direct testimony. In sum, EVH’s litigation tactics have caused nearly all of the “delay” it complains of (*see* Motion at 24) regarding the Issue (g) hearing, and, therefore, EVH should not be permitted to file a last-minute motion for summary decision.

¹¹ If necessary, the Bureau will be prepared to discuss this further at the evidence admission session scheduled for November 4, 2014. Moreover, if this Motion to Strike were denied, the Bureau would be forced to seek an extension of time to respond on the merits to EVH’s Motion and to seek permission to file its own cross motion for summary decision.

Respectfully submitted,

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October 28, 2014

CERTIFICATE OF SERVICE

Alicia McCannon, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that he has on this 28th day of October, 2014, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S MOTION TO STRIKE EVH'S MOTION FOR SUMMARY DECISION ON ISSUE (G)" to

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