

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter Of

MARITIME COMMUNICATIONS/LAND MOBILE, LLC

EB Docket No. 11-71

Participant in Auction No. 61 and Licensee of  
Various Authorizations in the Wireless Radio Services

File No. EB-09-IH-1751  
FRN: 0013587779

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 CORP., INC.;  
ATLAS PIPELINE—MID CONTINENT, LLC;  
DENTON COUNTY ELECTRIC COOPERATIVE,  
INC., d/b/a COSERV ELECTRIC; and  
SOUTHERN CALIFORNIA REGIONAL RAIL  
AUTHORITY

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

**ENL-VSL PETITION TO DENY DUQUESNE  
TRANSCRIPT CONFIDENTIALITY DESIGNATIONS**

Environmental LLC (“ENL”) and Verde Systems LLC (“VSL”), through their undersigned counsel and pursuant to the Protective Order herein and Section 0.459 of the Commission’s Rules, hereby petition to deny the transcript confidentiality designations filed by Duquesne Light Company (“Duquesne”) and in support hereof respectfully show as follows.

Under Section 3 of the Protective Order, the Presiding Judge may consider a petition to deny transcript confidentiality designations. The Designating Party bears the burden of establishing that the information is entitled to protection under Section 3(c). In order to meet this burden, the Designating Party first has to establish that the information is confidential, and therefore not in the public domain, under Section 3(a). Second, where the information is confidential and not in the public domain, then the designating party also has to demonstrate that the harm of disclosure would outweigh the public interest in disclosure under Section 3(b).

All of these same principles apply under Section 0.459 of the rules, namely that the burden is on the Designating Party, the information must be shown to be confidential and not public domain, and the harm of disclosure must outweigh the public interest in open proceedings. These principles all follow from the Freedom of Information Act which sets a strong policy in favor of open proceedings, prohibits agencies from designating as confidential information that is in the public domain, and puts the burden on the party seeking to withhold information to demonstrate harm from disclosure, as shown in the memorandums previously filed herein.

#### **I. Public Domain Information Cannot Be Redacted**

The Duquesne transcript confidentiality designations do not comply with the Protective Order and Section 0.459. The burden is on Duquesne to demonstrate, first, that the information is confidential and not in the public domain. Duquesne cannot meet this burden. Duquesne gave its testimony in this proceeding *without* requesting that the hearing be closed to the public and restricted to signatories of the Protective Order. Therefore, Duquesne cannot assert later that the designated information is “confidential,” after it has been released into the public domain by Duquesne in the public hearing in this case.

The Duquesne situation is no different than the broadcaster who broadcast information and then requested that the Commission keep the information confidential, a request that had to

be denied because at that point the information was in the public domain. *E.g., In the Matter of Station KNRK(FM)*, 18 FCC Rcd 25484, 2003 WL 22763780 (November 24, 2003).

## **II. Access To FCC Public Records Cannot Be Restricted**

Duquesne did not merely release the information into the public domain, it did so in a Commission public hearing. As such, the information not only went into the public domain, it went into the official records of the Commission. Thus, Duquesne is requesting that the Commission restrict access to the Commission's public records, namely the record of a public hearing proceeding. Duquesne cannot expect the Commission to restrict access to information that has become part of the public record at the Commission. *E.g., RCA Global Communications, Inc. v. F.C.C.*, 524 F.Supp. 579 (D. Del. 1981).

## **III. Intentional Waiver Of Rights**

The decision to testify at the public hearing cannot be deemed to be "accidental" for purposes of Section 15 of the Protective Order which states that accidental disclosure of confidential information shall not be deemed to be a waiver of rights. Although Duquesne was testifying as a witness for the Enforcement Bureau, the record reflects that Duquesne also was represented at the hearing by its own FCC counsel. Not only was Mr. Havens present for the Duquesne testimony, Mr. Havens asked questions of the Duquesne witness. Thus, it is not possible to believe that Duquesne somehow understood that its testimony was being given within the bounds of the Protective Order. On the contrary, under Section 15 of the Protective Order, it must be concluded that the waiver of rights was intentional and binding.

## **IV. No Cognizable Competitive Harm**

Even if Duquesne could somehow demonstrate that the redacted testimony is confidential and not in the public domain and in the Commission's public records, that is only the first step. Duquesne also would have to demonstrate that disclosure would cause competitive harm to Duquesne. Duquesne is an electric utility, not a communications company. Duquesne has to

explain how disclosure of information about an FCC license (which Duquesne admits it no longer uses) could somehow affect its competitive position in the electric utility industry. This hearing should not be sidetracked into an exploration of issues regarding electric utility competition. Even if there were some leeway to consider such issues, the fact remains that Duquesne failed to state any such concerns prior to giving public testimony at the hearing. It is simply too late for Duquesne to argue competitive harm to its electric utility business and draw the parties outside the realm of the matters set forth in the HDO.

**V. Conclusion**

Wherefore, for the foregoing reasons, the Presiding Judge must deny the transcript confidentiality designations of Duquesne.

Respectfully submitted,

          /s/            
James A. Stenger  
Chadbourne & Parke, LLP  
1200 New Hampshire Avenue, NW  
Washington, DC 20036  
(202) 974-5682

January 28, 2015

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he has on this 28th day of January, 2015, arranged to be mailed by first class United States mail copies of the foregoing Motion to:

The Honorable Richard L. Sippel  
Chief Administrative Law Judge  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Pamela S. Kane  
Deputy Chief  
Investigations and Hearings Division Enforcement Bureau  
Federal Communications Commission  
445 12th Street SW, Room 4-C330  
Washington, DC 20554

Sandra DePriest  
Maritime Communications/Land Mobile LLC  
206 North 8th Street  
Columbus, MS 39701

Dennis C. Brown  
8124 Cooke Court  
Suite 201  
Manassas, VA 20109  
*Counsel for Maritime Communications/Land Mobile LLC*

Jeffrey L. Sheldon  
Levine, Blaszak, Block & Boothby, LLP  
2001 L Street, NW, Suite 900  
Washington, DC 20036  
*Counsel for Puget Sound Energy, Inc*

Wesley Wright  
Jack Richards  
Keller & Heckman LLP  
1001 G Street, NW  
Suite 500 West  
Washington, DC 20001  
*DCP Midstream, LP; Enbridge Energy Co., Inc.; EnCana Oil and Gas (USA), Inc.; and Jackson County Rural Membership Electric Cooperative*

Charles A. Zdebski  
Gerit F. Hull  
Eckert Seamans Cherin & Mellott, LLC 1717 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006  
*Counsel for Duquesne Light Co.*

Paul J. Feldman  
Harry F. Cole  
Fletcher, Heald & Hildreth, P.L.C.  
1300 N. 17th Street, 11<sup>th</sup> Floor  
Arlington, VA 22209  
*Counsel for Southern California Regional Rail Authority*

Matthew J. Plache  
Law Office of Matthew J. Plache  
5425 Wisconsin Avenue, NW  
Suite 600, PMB 643  
Chevy Chase, MD 20815  
*Counsel for Pinnacle Wireless Corp.*

Albert J. Catalano  
Keller & Heckman LLP  
1001 G Street, N.W.  
Suite 500 West  
Washington, DC 20001  
*Counsel for Dixie Electric Membership Corp.*

Robert J. Keller  
Law Offices of Robert J. Keller, P.C.  
PO Box 33428  
Washington, DC 20033  
*Counsel for Maritime Communications/Land Mobile LLC*

