

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

**MARITIME COMMUNICATIONS/LAND)
MOBILE, LLC)**

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)

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)**

For Commission Consent to the Assignment of Various)
Authorizations in the Wireless Radio Services)

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

MOTION TO BIFURCATE HEARING AND FOR PROTECTIVE ORDER

Duquesne Light Company ("Duquesne"), by its undersigned counsel and pursuant to
Commission rule 1.313, hereby submits a Motion to Bifurcate Hearing and for Protective Order.¹

¹ Duquesne petitioned the Commission on May 19, 2011 to reconsider inclusion of the company in this proceeding, to remove Duquesne from the Hearing Designation Order (HDO), and to grant its pending Application (the "Petition"). The Petition has not been acted upon as of the date of this filing.

EB Docket No. 11-71
File No. EB-09-IH-1751
FRN: 001358779

Application File Nos. 0004030479,
0004144435, 0004193028,
0004193328, 0004354053,
0004309872, 0004310060,
0004314903, 0004315013,
0004430505, 0004417199,
0004419431, 0004422320,
0004422329, 0004507921,
0004153701, 0004526264,
0004636537, 0004604962

FILED/ACCEPTED

JUN 14 2011

Federal Communications Commission
Office of the Secretary

On June 13th and 14th counsel for Duquesne discussed the matters addressed in this Motion with counsel for the Enforcement Bureau and sought the Enforcement Bureau's consent to this Motion. The Enforcement Bureau declined to consent.

ARGUMENT

I. This Proceeding Should Be Divided Into Liability and Penalty Phases

The Commission has designated for hearing in this proceeding ten issues. *See* HDO ¶ 62. The first seven issues regard alleged conduct by Maritime Communications / Land Mobile LLC ("MCLM"), including whether MCLM failed to: disclose ownership information, disclose attribution information, or correctly certify its eligibility for Auction No. 61. Essentially, all of these issues (¶ 62 (a) - (g)) that are designated for hearing go to what can be called, for ease of reference, MCLM's "liability" under the Commission's rules.

The final three items (¶ 62 (h) - (j)), however, regard whether MCLM's license authorizations should be revoked and whether the listed applications—one of which involves Duquesne²—should be granted. This can be called, for shorthand, the "penalty" phase of the proceeding.

Duquesne is not privy to any information regarding the liability phase of this proceeding. Duquesne knows nothing about how MCLM came to Auction No. 61, how it conducted itself during that auction, or what it did regarding the auction and its licenses afterwards. Indeed, no allegations have been made whatsoever that Duquesne has knowledge of any of these issues. Duquesne is a mere innocent purchaser of a small, disaggregated portion of spectrum from one of MCLM's licenses.

² FCC File No. 0004193328, filed April 21, 2010 (the "Application").

Duquesne's only interest in this proceeding—if it is forced to be a part of it—is in seeing that it is able to have its Application granted so that it may use the sought-after spectrum for its smart grid and safety initiatives (as set forth more completely in Duquesne's Petition). Duquesne believes a better course would be for its Application to be removed from this proceeding and granted. To that end, it has requested that relief in its Petition. To the extent Duquesne and its Application are not removed from this proceeding, only the penalty phase affects Duquesne and its pending Application.

Bifurcation of this proceeding into liability and penalty phases will streamline, economize and speed the proceeding. For example, in the liability phase, the Enforcement Bureau and MCLM will be able to deal with the discovery necessary to illuminate and then adjudicate the first seven issues raised in the HDO. They will be able to do that without need for the time, expense and burden of full participation and discovery between and among the numerous applicants like Duquesne, who know nothing about and have no standing as to the liability issues in this proceeding.

If and when liability is determined, the presiding judge should allow the parties—including the applicants who remain in the proceeding—to participate in determining what penalty (if any) is appropriate. Only at this point would Duquesne have any interest in appearing to defend and protect the right of its Application to be granted.

II. A Protective Order Should Be Entered Protecting Duquesne From Discovery

In addition to bifurcating this action into a liability and penalty phase, the presiding judge should also enter a protective order that prevents burdensome, harassing, or otherwise unnecessary participation by Duquesne in this proceeding.³

³ Whether or not the presiding judge agrees that bifurcation is necessary, Duquesne requests a protective order as set forth herein.

A. Duquesne Seeks a Protective Order for all Discovery – with One Limited Exception -- Prior to the Penalty Phase

As set forth above, no part of the liability phase of this proceeding regards Duquesne. It has no information to provide, and does not seek information. Accordingly, Duquesne asks that it be protected from all discovery requests during this portion of the proceeding except for limited requests by which the participants may legitimately determine and verify that Duquesne has no discoverable information regarding the liability issues. Should the proceeding enter a penalty phase, which would appear to affect Duquesne's Application, only then should Duquesne be required to participate fully in discovery in this proceeding. Such action is merited by Commission rule 1.313, which permits the presiding judge to protect Duquesne from the expense and burden of participating in this proceeding at this juncture.

B. Duquesne Seeks a Protective Order Regarding SkyTel's Request for Admissions

Indeed, Duquesne already appears to be subject to burdensome discovery requests in this first phase of the proceeding. On June 1, 2011, SkyTel claims to have served a lengthy Request for Admissions ("Request"), which it emailed on June 3, 2011 to every party to the proceeding. Duquesne seeks an order protecting it from being required to answer the SkyTel Request for three reasons:

First, the Request is raised at the first, liability stage of the proceeding. As set forth above, Duquesne requests that it be exempted during this stage.

Second, the SkyTel Request does not appear to have been directed to Duquesne. The Commission's rules require a set of admissions to be directed to a party. *See* 47 C.F.R. § 1.246. The Request at issue here was mailed to a long service list, including counsel for Duquesne. Nowhere in the document is it stated, however, whether the request is directed to Duquesne.

Indeed, the mailed copy of the Request received by counsel shows the intended recipient to be “<Name>.” It is not at all evident whether the Request was sent to Duquesne as an intended “Respondent,” or if it was merely sent as required by Commission rule 1.246(c), which requires copies of such requests to be served “on all other parties to the proceeding.”⁴

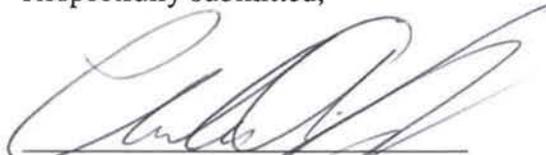
Third, presuming Duquesne was intended to be a “Respondent,” SkyTel needed to have served the Request on or before May 31, 2011 to be within the 20-day period from the date Duquesne appeared in the proceeding, as required by Commission rule 1.246(a). In fact, the certificate of service indicates the Request was not mailed until June 1 or 2, 2011, placing it out of time pursuant to Commission rules.

⁴ Notably, no particular part of the Request references Duquesne. For example, requests 1 and 2 (on pages 7-8), are directed to no party. Still other requests (such as requests 4, 5, 6 on pages 8-9) are directed to named parties that are not Duquesne. The request runs to a total of 22 pages, over multiple subparts and with repetitive use of numbering schemes, but with no reference to Duquesne or any definition of the class of “Respondents.”

CONCLUSION

The presiding judge should divide this proceeding into two parts: (i) an initial phase regarding MCLM and the charges leveled against it in the HDO; and (ii) a second phase that will begin only if MCLM is found to have violated any of the Commission's rules in regards to the allegations set forth in the HDO. Duquesne further requests that it be protected from unnecessary participation in all phases of this proceeding, including irrelevant discovery in the first, liability phase, beginning with the late-filed SkyTel Request for Admissions.

Respectfully submitted,



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Counsel to Duquesne Light Company

Dated: June 14, 2011

CERTIFICATE OF SERVICE

I, Charles A. Zdebski, certify that on this 14th day of June, 2011, I caused a true and correct copy of the foregoing Duquesne Light Company's Motion to Bifurcate Hearing and For Protective Order to be served via first-class mail, postage prepaid, upon:

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