

FILED/ACCEPTED

JUL 15 2011

Federal Communications Commission
Office of the Secretary

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)

EB Docket No. 11-71
File No. EB-09-IH-1751
FRN: 0013587779

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

To: The Commission

REQUEST FOR EXPEDITED ACTION

Atlas Pipeline Mid-Continent, LLC
DCP Midstream, LP
Denton County Electric Cooperative, Inc. d/b/a CoServ Electric
Dixie Electric Membership Corporation, Inc.
Enbridge Energy Company, Inc.
EnCana Oil & Gas (USA) Inc.
Interstate Power and Light Company
Jackson County Rural Electric Membership Corporation
Wisconsin Power and Light Company

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LIST A B C D E

By their attorneys and pursuant to Section 1.41 of the Commission's rules,¹ Atlas Pipeline Mid-Continent, LLC;² DCP Midstream, LP; Denton County Electric Cooperative, Inc. d/b/a CoServ Electric; Dixie Electric Membership Corporation, Inc.; Enbridge Energy Company, Inc.; EnCana Oil & Gas (USA) Inc.;³ Interstate Power and Light Company; Jackson County Rural Electric Membership Corporation;⁴ and Wisconsin Power and Light Company (collectively, the "*CII Petitioners*") hereby submit this *Request for Expedited Action*. All of the petitioners are Critical Infrastructure Industry ("CII") companies as defined in the Commission's rules.⁵

The Commission already has given a CII company, a railroad (the Southern California Regional Rail Authority, or "SCRRA"), the opportunity to have its captioned application removed from the hearing in the public interest. All of the undersigned CII companies also serve critical public needs and should be given the same opportunity to prove that their captioned applications qualify for removal from the hearing in the public interest.

As SCRRA recently demonstrated, the hearing will last for a protracted, indefinite period. The public safety needs of the undersigned CII companies, and their consumers, cannot be placed on hold while the issues raised against Maritime Communications/Land Mobile, LLC ("Maritime") are adjudicated.

¹ 47 C.F.R. § 1.41 (2010).

² The spelling of the corporate name in the caption of this proceeding has been corrected.

³ *Id.*

⁴ *Id.*

⁵ 47 C.F.R. § 90.7 (2010).

As discussed more fully below, the *CII Petitioners* request that the Commission expedite consideration of their *Petition for Reconsideration*, remove their assignment applications from the hearing and grant them *post haste*.

BACKGROUND

On April 19, 2011, the Commission released an Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing (“HDO”) to determine whether Maritime is qualified to be and to remain a Commission licensee.⁶ Maritime’s pending applications seeking to assign portions of its licenses to the *CII Petitioners* and others in particular geographic areas also were designated for hearing, although the HDO alleged no misconduct by any of the proposed assignees.

Of the 12 critical infrastructure companies whose applications were included in the HDO (7 electric utilities, 4 oil and gas companies, and 1 railroad), only SCRRA, the railroad, was given the opportunity to demonstrate why its application should be removed from the hearing in the public interest and processed independently. The *CII Petitioners* were not permitted to demonstrate why their applications, too, should be removed from the hearing in the public interest.

The Commission justified treating SCRRA differently because SCRRA plans to use the assigned spectrum to comply with the Rail Safety Improvement Act of 2008 (“RSIA”).⁷ By 2015, the RSIA requires implementation of positive train control systems to automate braking and help prevent train collisions. As a result of the potential safety of life considerations in the

⁶ *Maritime Communications/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, FCC 11-64 (*rel.* Apr. 19, 2011) (“HDO”).

⁷ HDO at *fn* 7.

positive train control area, the Commission concluded that SCRRRA should be allowed to show why its application should be removed from the HDO.⁸

While SCRRRA is the only applicant covered by the RSIA, the Commission offered no analysis or explanation of why the “potential safety of life considerations” arising from the positive train control area are any more critical or important than the potential safety of life considerations raised by the other critical infrastructure providers (*i.e.*, oil and gas companies and electric utilities). In fact, there is not even any mention in the HDO of why the oil and gas companies and electric utilities require the use of the assigned spectrum.

On May 9, 2011, SCRRRA submitted its “Showing Pursuant to Footnote 7,” arguing that removal of its applications from the hearing would serve the public interest.

On May 19, 2011, the *CII Petitioners* filed their *Petition for Reconsideration* supporting the removal of SCRRRA’s applications from the hearing but requesting that the Commission allow them to show why their applications likewise should be removed from the hearing. The *CII Petitioners* argued that railroads, electric utilities and oil and gas companies are all “Critical Infrastructure Companies” as defined in the Commission’s rules and decisions; that all are involved in inherently hazardous businesses; that all provide essential services to the public pursuant to federal mandates; that all use their communications systems in the public interest to protect safety of life and property; that all are constrained in obtaining frequencies; and that all are entitled to equal consideration and protection by the Commission.

On June 2, 2011, the FCC’s Enforcement Bureau filed an Opposition to the *Petition for Reconsideration*, noting that the relief sought by the *CII Petitioners* was “inconsistent with the Commission’s clear intent in the HDO.”⁹

⁸ *Id.*

On June 10, 2011, the *CII Petitioners* filed a *Reply*, pointing out that the Enforcement Bureau failed to account for the improper discrimination against the *CII Petitioners* in the HDO, misapplied applicable precedent, and exceeded its delegated authority by opining on the relative merits of various critical infrastructure companies without any basis in the record to do so.

On June 21, 2011, SCRRA submitted a “Supplement to Showing Pursuant to Footnote 7,” expressing its concerns that the hearing will not be completed soon enough to satisfy its communications requirements and renewing its request that the Commission take prompt steps to remove its applications from the hearing.

On July 14, 2011, the Administrative Law Judge presiding over the hearing proceeding (“ALJ”) denied the *CII Petitioners’* request to hold the hearing in abeyance pending the Commission’s resolution of the *Petition for Reconsideration*.¹⁰ As a result, the *CII Petitioners’* participation in the hearing will be required and their applications will remain in pending status unless the Commission acts favorably on the *Petition for Reconsideration*.

The *CII Petitioners* share SCRRA’s concerns regarding the pace of the hearing and, like the railroad, ask for expedited treatment of their pending *Petition for Reconsideration* and prompt grant of their applications.

REQUEST FOR EXPEDITED ACTION

Pursuant to an Order issued by the ALJ on June 16, 2011, the discovery period in this proceeding began on July 5, 2011, and is scheduled to conclude on January 13, 2012. The hearing will not begin until March 20, 2012,¹¹ and the completion date is unknown at this point.

⁹ Bureau Opposition, p. 2.

¹⁰ Order, EB Docket No. 11-71, FCC 11M-20, July 14, 2011.

¹¹ Order, EB Docket No. 11-71, FCC 11M-15, June 16, 2011.

Meanwhile, the *CII Petitioners'* applications remain pending indefinitely until final resolution of the hearing. Unlike SCRRA, the *CII Petitioners* have not been permitted to show why their applications should be removed from the hearing and processed now rather than later.

In the HDO, the Commission offered no explanation for why the “potential safety of life considerations” arising from positive train control were more critical or important than the potential safety of life considerations raised by oil and gas companies and electric utilities, and none exists.

Like SCRRA, the *CII Petitioners* require use of these frequencies to support critical infrastructure communications requirements. Like SCRRA, access to these frequencies is required now, not later, to ensure that the *CII Petitioners'* facilities continue operating safely and efficiently in the public interest. Like SCRRA, the *CII Petitioners* use their communications systems to protect safety of life and property in inherently hazardous businesses. Like SCRRA, the *CII Petitioners* provide essential services to the public pursuant to federal mandates.

As detailed in their *Petition for Reconsideration and Reply*, the petitioning oil and gas companies require access to this spectrum to support their operations and comply with Pipeline and Hazardous Materials Safety Administration requirements related to Supervisory Control and Data Acquisition (“SCADA”) systems and control room facilities allowing for the automated operation and remote monitoring of pipelines and liquefied natural gas facilities. Similarly, the petitioning electric utilities need the spectrum for smart grid applications and to control and operate their distribution systems in compliance with government requirements. Reliable communications for these *CII Petitioners* are especially critical in times of emergencies, including hurricanes and other natural disasters.

As with a grant of SCRRA's applications, grant of the *CII Petitioners'* applications outside the ambit of the hearing would be consistent with the public interest and would not benefit an alleged wrongdoer or compromise the Commission's enforcement efforts in any way. The *CII Petitioners* have proposed that all funds would be placed in escrow until the hearing is concluded and only then would be distributed to either Maritime or the U.S. Treasury in accordance with a final decision. Further, the spectrum to be assigned to the *CII Petitioners* is but a small portion of Maritime's overall license holdings, which provides ample opportunity for the Commission to take whatever enforcement action is appropriate at the conclusion of the hearing.

In light of the continued urgency for access to these frequencies, the *CII Petitioners* ask the Commission to expedite consideration of their *Petition for Reconsideration*, remove their applications from the hearing and grant them *post haste*.

Respectfully submitted,

Albert J. Catalano /s/

Albert J. Catalano (ajc@catalanoplache.com)

Matthew J. Plache

(mjp@catalanoplache.com)

Catalano & Plache, PLLC

3221 M Street, NW

Washington, DC 20007

Counsel for Dixie Electric Membership Corporation, Inc.

Jack Richards

Jack Richards (richards@khlaw.com)

Wesley K. Wright (wright@khlaw.com)

Keller and Heckman LLP

1001 G Street NW

Suite 500 West

Washington, DC 20001

Counsel for Atlas Pipeline Mid-Continent LLC, DCP Midstream, LP, Enbridge Energy Company, Inc., Encana Oil & Gas (USA) Inc., and Jackson County Rural Electric Membership Corporation

Robert J. Miller /s/

Robert J. Miller (rmiller@gardere.com)

Gardere Wynne Sewell LLP

1601 Elm Street, Suite 2800

Dallas, TX 75201

Counsel for Denton County Electric Cooperative, Inc. d/b/a CoServ Electric

Kurt E. DeSoto /s/

Kurt E. DeSoto (kdesoto@wileyrein.com)

Joshua S. Turner

Wiley Rein LLP

1776 K Street, NW

Washington, DC 20006

Counsel for Interstate Power and Light Company and Wisconsin Power and Light Company

CERTIFICATE OF SERVICE

I, Neenah A. Gay, hereby certify that on this 15th day of July, 2011, a true copy of the Request for Expedited Action was served via first class, postage paid United States Mail upon the following:

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

Robert J. Keller
Law Offices of Robert J. Keller, P.C.
P.O. Box 33428
Washington, DC 20033

Robert J. Miller, Esquire
Gardere Wynne Sewell LLP
1601 Elm Street, Suite 3000
Dallas, Texas 75201

Robert M. Gurss, Esquire
Paul J. Feldman, Esquire
Harry F. Cole, Esquire
Christine Goepf, Esquire
Fletcher, Heald & Hildreth,
P.L.C.
1300 N Street, 11th Floor
Arlington, Virginia 22209

Kurt E. Desoto, Esquire
Joshua S. Turner
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20006

Dennis C. Brown
8124 Cooke Court, Suite 201
Manassas, Virginia 20109

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

Laura H. Phillips
Howard M. Liberman
Patrick R. McFadden
Drinker Biddle & Reath LLP
1500 K Street, NW, Suite 1100
Washington, DC 20005

Albert J. Catalano, Esquire
Matthew J. Plache, Esquire
Catalano & Plache, PLLC
3221 M Street, N.W.
Washington, DC 20007

Charles A. Zdebski, Esquire
Eric J. Schwalb, Esquire
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Avenue, N.W.
Washington, DC 20006

Jeffrey L. Sheldon, Esquire
Fish & Richardson, P.C. 1425
K Street, N.W.
11th Floor
Washington, DC 20005

Sandra DePriest
Maritime Communications/Land Mobile LLC
218 North Lee Street
Suite 318
Alexandria, Virginia 22314

Neenah A. Gay

