

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

FILED/ACCEPTED

NOV 16 2011

Federal Communications Commission
Office of the Secretary

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

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Federal Communications Commission
Bureau / Office

To: The Honorable Richard L. Sippel, Chief Administrative Law Judge

DECLARATION UNDER OATH

Pursuant to the Memorandum Opinion and Order issued by the Presiding Judge in the above-captioned proceeding on November 1, 2011,¹ the attorneys for DCP Midstream, LP (“DCP”) hereby submit this *Declaration Under Oath*.

¹ *Maritime Communications/Land Mobile, LLC*, Memorandum Opinion and Order, FCC 11M-32 (rel. Nov. 1, 2011).

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On August 16, 2011, DCP filed a Motion to Withdraw its Notice of Appearance in this proceeding (“*Motion to Withdraw*”), stating that “DCP has determined not to prosecute further the captioned application and no longer wishes to participate as a party in this proceeding.”² In its motion, DCP recognized that by withdrawing its Notice of Appearance its application would be dismissed with prejudice by the Commission (not “withdrawn” by the applicant) pursuant to the Hearing Designation Order (“HDO”).³ DCP’s *Motion to Withdraw* did not cite the Commission’s *Second Thursday* precedent or Maritime’s bankruptcy filing and was unopposed.⁴

On October 25, 2011, a Prehearing Conference was held in this proceeding during which DCP requested that the Presiding Judge rule on its unopposed *Motion to Withdraw*. The Presiding Judge indicated that the motion would be granted. The same day, the Presiding Judge issued an *Order* granting in full DCP’s Motion to Withdraw without condition.⁵

On October 26, 2011, Interstate Power and Light Company (“IPL”) and Wisconsin Power and Light Company (“WPL”) submitted their own Motion to Withdraw Notice of Appearance.

On November 1, 2011, the Presiding Judge issued the Memorandum Opinion and Order, which apparently was not based on public filings in this proceeding. The Memorandum Opinion and Order stated that DCP’s *Motion to Withdraw* referenced Maritime’s bankruptcy filing and

² *Motion to Withdraw*, p. 2.

³ “...pursuant to section 1.221 of the Commission’s rules, 47 C.F.R. § 1.221, if any applicant to any of the captioned applications fails to file a timely written appearance, the captioned application shall be dismissed with prejudice for failure to prosecute.” *In re Maritime Communications/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, FCC 11-64 at ¶68 (*rel.* Apr. 19, 2011) HDO, ¶68.

⁴ Other parties evidently understood that DCP wished to withdraw as a party from this proceeding, since the Enforcement Bureau and SkyTel removed DCP from their respective service lists in subsequent filings. *See*, Enforcement Bureau’s Motion to Compel Maritime to Respond to the Bureau’s Outstanding Discovery Requests (Aug. 17, 2011), *see also*, Response to Reply to Oppositions to Maritime’s Motion to Defer All Procedural Dates (Aug. 19, 2011).

⁵ *Maritime Communications/Land Mobile, LLC*, Order, FCC 11M-30 (*rel.* Oct 25, 2011). In its entirety, the Order reads “For good cause shown, the unopposed Motion to Withdraw Notice of Appearance filed by DCP Midstream, LP and discussed at Prehearing Conference on October 25, 2011, IS GRANTED. SO ORDERED.”

the FCC's *Second Thursday* line of cases; a review of DCP's *Motion to Withdraw* confirms the fact that DCP did not reference Maritime's bankruptcy filing or the FCC's *Second Thursday* line of cases in its *Motion to Withdraw*.⁶ The Memorandum Opinion and Order also indicated that DCP's *Motion to Withdraw* had been granted "in part" and had requested withdrawal of counsel (not DCP) from this proceeding; a review of *the Order* confirms the fact that DCP's *Motion to Withdraw* was fully granted in the Order, not granted "in part," and, more significantly, that DCP itself -- not DCP's counsel -- requested and received the withdrawal.⁷

Statement by Executive Officer

The Memorandum Opinion and Order required DCP, IPL and WPL to file signed Statements by Executive Officers reciting the companies' commitment to withdraw their respective applications from the Wireless Bureau's official license application files and to notify the Bureau that they have withdrawn as parties to this proceeding by November 7, 2011.⁸ DCP filed its *Statement of Executive Officer* on November 7, 2011, as required.⁹ On the same day, counsel for DCP advised the Wireless Telecommunications Bureau in writing that "DCP does not wish to prosecute further the application identified by file number 0004354053 and no longer wishes to participate as a party in the MC/LM proceeding."¹⁰

Declaration Under Oath

The Memorandum Opinion and Order also required that "by 15 November 2011, counsel for these applicant parties shall file in this proceeding – with copies to all counsel of record and

⁶ Memorandum Opinion and Order at ¶4.

⁷ Memorandum Opinion and Order at ¶2.

⁸ Memorandum Opinion and Order at ¶¶4, 6.

⁹ IPL and WPL filed a *Response to Order Requiring Additional Information* ("IPL Response") on the same day.

¹⁰ Email to Jeff Tobias from Wes Wright dated November 7, 2011.

the Chief Judge – Declarations under oath affirming that the withdrawals of said applications from the Wireless Bureau have been fully effected, and that the respective companies have no further interest whatsoever in the outcome of this hearing, or in the Maritime bankruptcy proceeding.”¹¹

The Commission’s Universal Licensing System (“ULS”), however, does not permit an *assignee* to withdraw unilaterally a pending assignment application. The *assignor* controls the submission and withdrawal of such filings. Because DCP is the proposed assignee under ULS File Number 0004354053, and not the assignor, counsel for DCP instructed Maritime’s counsel on November 10, 2011, to withdraw the pending assignment application.¹² Counsel for DCP can confirm that according to ULS, Maritime withdrew the assignment application shortly thereafter.

Counsel for DCP are unable to declare under oath that DCP has “no further interest whatsoever in the outcome of this hearing or in the Maritime bankruptcy proceeding.”¹³ While DCP repeatedly has made clear that it has no further interest in participating in the hearing proceeding and understands as a result that its application will be dismissed with prejudice, counsel cannot state under oath that DCP has “no further interest whatsoever...in the Maritime bankruptcy proceeding.” DCP is a creditor of Maritime and reserves the right to pursue whatever contract claims it is legally entitled to pursue against Maritime in the Bankruptcy Court.

* * *

¹¹ Memorandum Opinion and Order at ¶7.

¹² Email to Curt Brown from Wes Wright dated November 7, 2011.

¹³ Memorandum Opinion and Order at ¶7.

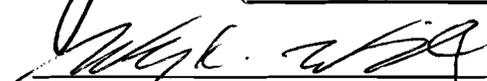
Pursuant to the Memorandum Opinion and Order, Counsel for DCP declare under penalty of perjury that the foregoing is true and correct¹⁴ and respectfully submit this *Declaration Under Oath*.

Respectfully submitted,



Jack Richards (richards@khlaw.com; 202.434.4210)

November 15, 2011



Wesley K. Wright (wright@khlaw.com; 202.434.4296)

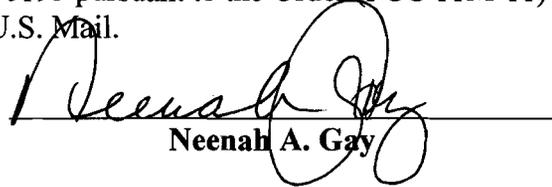
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Counsel for DCP Midstream, LP

¹⁴ See, 47 C.F.R. §1.16 (2010).

CERTIFICATE OF SERVICE

I, Neenah Gay, hereby certify that on this 15th day of November, 2011, a copy of the foregoing Declaration Under Oath was filed with the Commission, transmitted to the Office of Administrative Law Judges via fax number (202) 418-0195 pursuant to the Order (FCC 11M-11) and served on the parties listed below via First Class U.S. Mail.



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