

FILED/ACCEPTED

APR 10 2012

Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re)
)
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)

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

ENFORCEMENT BUREAU'S REQUEST FOR CLARIFICATION

2. As written, the first ordering clause on page 2 of the Order appears to inadvertently omit certain information. Although it references “current financial statements” for each equity owner of Maritime Communications/Land Mobile, LLC (Maritime), this ordering clause does not clearly state what is to be done with these financial statements and by whom. Such information would ensure proper compliance with the Order.

3. The last ordering clause on page 2 of the Order relates to the production of Confidential materials in a manner that appears to be contrary to the terms of the Protective Order.¹ Specifically, this ordering clause, as written, directs Confidential financial statements and tax returns to be submitted to the Presiding Judge, counsel for parties *who have signed the Protective Order*, and Warren Havens. However, pursuant to Paragraph 6(a) of the Protective Order, a party’s *outside counsel* may freely review information that is designated “Confidential” *without* the need to execute a Declaration.² Since this ordering clause allows only those outside counsel who have signed a Declaration to receive the subject financial statements and tax returns, and the Protective Order does not require outside counsel to sign a Declaration before they may review such Confidential materials, this ordering clause appears to be inconsistent with the Protective Order. Stated otherwise, counsel of record who have not signed a Declaration should be entitled to the Confidential submissions that are the subject of the Presiding Judge’s April 6, 2012 Order.

4. As noted above, the last ordering clause on page 2 of the Order directs Confidential financial statements and tax returns to be submitted to, among others, Warren

“Authorized Representatives” and who have signed a Declaration may access Confidential materials. The term “Authorized Representative” is defined in paragraph 2(a) of the Protective Order as including the following four categories of persons: (i) In-House Counsel of a Reviewing Party; (ii) individuals who are independent of any Reviewing Party (*i.e.*, not a principal or employee of any Reviewing Party); (iii) technical or other experts retained in this proceeding; and (iv) any person designated by the Presiding Judge in the public interest.³

Warren Havens does not fall within the first three definitions of an Authorized Representative and thus, to the extent that the first three definitions are concerned, would not be entitled to access the Confidential materials referenced in the Presiding Judge’s Order. While Mr. Havens could conceivably fall within the fourth definition, it is unclear from the Order whether the Presiding Judge specifically concluded that it would be in the public interest to designate Warren Havens as an Authorized Representative for the limited purpose of reviewing the Confidential submissions that are the subject of the Order. Clarification as to whether the Presiding Judge intended to so designate Warren Havens as an Authorized Representative would be helpful.

5. Moreover, it is unclear from the Order how the parties are to proceed in the event that any financial statements and tax returns submitted in response to this Order suggest to the Presiding Judge that Maritime may not have the financial wherewithal to provide the discovery to which the Presiding Judge concedes the Bureau is entitled.⁴ In filing its Notice of Appearance nearly a year ago, Maritime *committed* to appearing on the date fixed for hearing and to presenting evidence on the issues specified in the HDO. If, for whatever reason (financial or

the discovery phase), it should withdraw its notice of appearance and relinquish its licenses to the Commission. If the discovery to which the Presiding Judge has deemed the Bureau is entitled is not forthcoming, the only reasonable alternative under the circumstances is for the Presiding Judge to (a) impose an adverse inference against Maritime regarding the status of its site-based authorizations and thereby allow the Bureau (and other parties) to move for summary decision adverse to Maritime on Issue (g); or (b) conclude that Maritime has effectively waived its opportunity to a hearing. In the absence of a complete factual record, the public interest is served by nothing less. Thus, clarification on this matter would assist the parties.

6. For the foregoing reasons, the Bureau requests that the Presiding Judge clarify his April 6, 2012 Order so that the record clearly reflects his intent.

Respectfully submitted,

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Chief, Enforcement Bureau



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CERTIFICATE OF SERVICE

Makia Day, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 10th day of April, 2012, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S REQUEST FOR CLARIFICATION" to:

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