Exhibit 10

ALJ's **FCC 14M-5. Denies H4**

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

FCC 14M-5

In the Matter of	)	EB Docket No. 11-71
	)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC	)	File No. EB-09-IH-1751 FRN: 0013587779
	)	
Participant in Auction No. 61 and Licensee of Various Authorizations in the Wireless Radio Services	)	
	)	Application File Nos.
Applicant for Modification of Various Authorizations in the Wireless Radio Services	)	0004030479, 0004144435, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004314903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, 0004153701, 0004526264, 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 MEMBERHIP CORPORATION, INC.; ATLAS PIPELINE-MID CONTINENT, LLC; AND SOUTHERN; CALIFORNIA REGIONAL RAIL AUTHORITY**	)	
	)	
For Commission Consent to the Assignment of Various Authorizations in the Wireless Radio Service	)	

ORDER

Issued: January 28, 2014 **Released: January 28, 2014**

On January 17, 2014, the Presiding Judge released *Order*, FCC 14M-3, overruling the unsupported and overly broad claims of attorney-client privilege made by Warren Havens in a prehearing conference held on the morning of even date. After 5:00 pm on the same day, Mr. Havens filed his Objections, Requests and Clarifications Regarding the Prehearing under Order FCC 14M-1 (the "Order"). In that filing, Mr. Havens requested:

> That the date from which the 5 days for an interlocutory appeal under rule section 1.301(a) will run, as to your ruling at the prehearing conference of today, will be the date of the latter of: (i) the date upon which you release the ruling in an Order filed on ECFS and served on myself (and others you believe it should be served upon), and (ii) the date upon which the of today's [sic] prehearing transcript (approved as to accuracy by the persons that spoke, and made final) is made available to me by proper notice and service. As to '(ii)': I cannot draft or submit any such appeal without said final transcript.[1]

The Presiding Judge reads this text as constituting a request to grant an extension of the date for filing an appeal of right. The request was denied because the Presiding Judge lacks authority to extend the five day filing window for appeal to the Commission.[2] This denial was communicated to Mr. Havens first by e-mail on January 22 and later by order that was released by e-mail on January 27.

After 4:00 pm on January 27, Mr. Havens informed the Presiding Judge by e-mail that he was not asking for an extension of the time for appeal. Rather, Mr. Havens was asking for the Presiding Judge to exercise his discretion to make his January 17 ruling effective on a later date. Mr. Havens argues that he cannot draft and submit an appeal "without the transcript, and reasonable time after [he] gets it." He requests that the Presiding Judge's ruling on attorney-client privilege take effect on January 28 instead of on January 17. That would allow Mr. Havens more time to prepare his appeal.

Order, FCC 14M-3

Mr. Havens is correct that the Presiding Judge has the authority to set the effective date of his rulings. However, the appeal window does not commence on the effective date of his ruling. Section 1.301(c)(2) unambiguously states that "Appeals filed under paragraph (a) of this section shall be filed within 5 days *after the order is released or (if no written order) after the ruling is made*."[3] *Order*, FCC 14M-3, was released on January 17, so the filing window must be measured within five days as the rule provides.

Mr. Havens has not argued that *Order*, FCC 14M-3, should be re-released on a later date. To do so would make no sense. The Presiding Judge ruled upon claims of privilege as they were asserted by Mr. Havens and so-called "assisting counsel" in open court. Mr. Havens, assisted by counsel, had full opportunity to present argument in support of privilege. Instead, they chose to assert vague, incipient privileges in a manner that approached the inscrutable. Amazingly, Mr. Havens and counsel were unwilling to share even basic foundational facts. Additional time would be unlikely wear away that stonewall.

The Commission should review the Presiding Judge's ruling as soon as possible. A speedy resolution benefits the Enforcement Bureau and Maritime Communications, as

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[1] Objections, Requests and Clarifications Regarding the Prehearing under Order FCC 14M-1 (the "Order") at 3.
[2] *See Order*, FCC 14M-4.
[3] 47 C.F.R. § 1.301(c)(2) (emphasis added).

it ensures that their pending Joint Motion for Summary Decision on Issue G is considered and ruled upon without further delay. An immediate review of the decision would also benefit Mr. Havens, who was so eager for a rapid Commission ruling on the issue of attorney-client privilege that he initially filed for appeal on January 15, two days before the conference.

Request for Additional Time

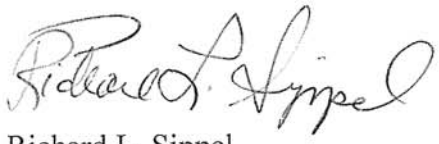
Mr. Havens' request seems to be an attempt to end run the established deadline in order to gain additional time. Mr. Havens has had the full five days allowed by Section 1.301(c)(2) of the Commission's rules. He also has had four additional days due to Martin Luther King, Jr.'s Birthday; an unrelated weather-related Commission closure; and a resulting additional weekend. Mr. Havens, with assistance of counsel, had eleven days to prepare an appeal, which is more than ample time.[4]

Mr. Havens asserts that he cannot draft or submit an appeal without the transcript. However, on January 22, Mr. Havens was informed by e-mail and his counsel was informed by telephone as to how to obtain an expedited copy of the transcript. Mr. Havens in fact acquired the transcript on Friday, January 24.[5] Thus, Mr. Havens has had access to the transcript for three full days. His request simply amounts to a plea for extra time to "prepare a more effective appeal,"[6] not as an expediency to meet an unexpected negative event.[7]

Accordingly, the Presiding Judge denies Mr. Havens' request.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION[8]



Richard L. Sippel
Chief Administrative Law Judge

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[4] Further, Mr. Havens was informed of the Presiding Judge's ruling on his request for additional time by e-mail on January 22, which was the first day on which the Commission was operating following his filing. If Mr. Havens was truly pressed for time, he could have clarified his request to the Presiding Judge immediately, rather than wait until one day before the deadline.

[5] E-mail from Warren Havens (January 27, 2014).

[6] *Id.*

[7] Mr. Havens states that he cannot appeal without a "final transcript." *Id.* Presumably, he is referring to a transcript that is "approved as to accuracy by the persons that spoke and made final" as he previously mentions. *Id.* The Presiding Judge has not established any process for "approving" and "finalizing" a transcript, nor does he see the need for one. The transcript that Mr. Havens has acquired from the court reporting company is sufficient for purposes of preparing his appeal. Errors in the transcript, should any exist, will be noted and corrected as they arise.

[8] Courtesy copies of this *Order* are e-mailed on issuance to each counsel and Mr. Havens.