

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

In the Matter of	)	
	)	
<b>MARITIME COMMUNICATIONS/LAND MOBILE, LLC</b>	)	EB Docket No. 11-71
	)	File No. EB-09-IH-1751
	)	FRN: 0013587779
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 <b>ENCANA OIL AND GAS (USA), INC.;</b> <b>DUQUESNE LIGHT COMPANY; DCP</b>	)	Application File Nos. 0004030479,
<b>MIDSTREAM, LP; JACKSON COUNTY RURAL</b>	)	0004144435, 0004193028,
<b>MEMBERSHIP ELECTRIC COOPERATIVE;</b>	)	0004193328, 0004354053,
<b>PUGET SOUND ENERGY, INC.; ENBRIDGE</b>	)	0004309872, 0004310060,
<b>ENERGY COMPANY, INC.; INTERSTATE POWER</b>	)	0004314903, 0004315013,
<b>AND LIGHT COMPANY; WISCONSIN POWER</b>	)	0004430505, 0004417199,
<b>AND LIGHT COMPANY; DIXIE ELECTRIC</b>	)	0004419431, 0004422320,
<b>MEMBERSHIP CORPORATION, INC.; ATLAS</b>	)	0004422329, 0004507921,
<b>PIPELINE – MID CONTINENT, LLC; DENTON</b>	)	0004153701, 0004526264,
<b>COUNTY ELECTRIC COOPERATIVE, INC., DBA</b>	)	0004636537, and 0004604962
<b>COSERV ELECTRIC; AND SOUTHERN</b>	)	
<b>CALIFORNIA REGIONAL RAIL AUTHORITY</b>	)	
	)	
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

**REPLY OF PUGET SOUND ENERGY  
TO “HAVENS RESPONSE TO THE JOINT RESPONSE  
OF THE ENFORCEMENT BUREAU & MARITIME TO ORDER, FCC 14M-9”**

Puget Sound Energy, Inc. (“PSE”), a party to the above-referenced proceeding, submits the following reply to correct serious misstatements of fact and law in a document titled, “Havens Response to the Joint Response of the Enforcement Bureau & Maritime to Order, FCC

14M-9,” (hereinafter “Havens Response”), filed on April 9, 2014, by Warren Havens (“Havens”). PSE feels compelled to correct these misstatements because the Havens Response accuses PSE of operating its private land mobile radio network unlawfully, a serious allegation that is not well-grounded in fact or law, and that is irrelevant to the issues that have been designated for hearing. PSE will limit this reply to the following three assertions in the Havens Response, without conceding the validity of any other factual statements or legal arguments raised in the Havens Response:

1. PSE has not constructed and is not operating any radio facilities on spectrum PSE is leasing from Maritime Communications/Land Mobile, LLC (“Maritime”).
2. Any operation by PSE on Maritime’s spectrum is unlawful because PSE does not have an “FCC-approved” lease with Maritime; and
3. PSE may not use the spectrum leased from Maritime for private mobile radio service (“PMRS”) because Maritime’s licenses only authorize commercial mobile radio service (“CMRS”).

Each of these assertions is patently incorrect and should be disregarded. In any event, they are beyond the scope of the issues designated in this hearing and are not responsive to the arguments raised by Maritime and the Enforcement Bureau in their “Joint Response.”<sup>1</sup>

### **I. PSE Has Constructed and Is Operating a Wide-Area Private Mobile Radio Network on Spectrum Leased from Maritime and Purchased from the “SkyTel Entities”**

The Havens Response repeatedly asserts that PSE has no radio facilities operating under a spectrum lease with Maritime.<sup>2</sup> PSE explained in its August 29, 2012, Answers to Interrogatories that it had entered separate agreements for the purchase and lease of Automated

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<sup>1</sup> PSE notes that on April 16, 2014, Maritime and the EB filed a “Joint Motion to Strike” the Havens Response on the basis that the Havens Response went beyond the Presiding Judge’s limited request for additional information on the Maritime/EB joint motion for partial summary decision on “Issue G.”

<sup>2</sup> See, e.g., Havens Response at 7, 11, 14, 15, 16, 17, 23, and 24.

Maritime Telecommunications Service (“AMTS”) spectrum with Maritime and with Environmental LLC and Skybridge Spectrum Foundation, two of the so-called SkyTel entities controlled by Havens and that were also named as parties to this proceeding.<sup>3</sup> PSE further explained that it was at that time constructing a new Consolidated Radio System to provide mobile communications service to PSE’s field personnel throughout its electric and gas utility service areas. PSE’s system design, at that time, called for construction of approximately 57 fixed base station transmitter sites in order to provide coverage over PSE’s approximately 6,000 square mile utility service area. PSE also projected activating approximately 2,000 vehicular and portable radio units to be used by PSE’s employees and contractors working on PSE’s utility system.<sup>4</sup> PSE estimated the cost of the radio system at \$36 million, of which about two-thirds had been spent as of August 2012.

Further information about the planning and implementation of PSE’s new radio system has been a matter of public record with the Commission. For example, the FCC issued a Public Notice inviting comment on PSE’s request for a rule waiver related to the challenges PSE was facing in converting its old radio systems to the new Consolidated Radio System.<sup>5</sup> The Commission released an Order granting the rule waiver based on the sheer size and complexity of PSE’s new system.<sup>6</sup> As confirmed in the Declaration of Radio System Operation attached hereto, PSE’s new radio system, consisting of 54 transmitter sites, was activated in stages over

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<sup>3</sup> “Answers of Puget Sound Energy, Inc. to the Enforcement Bureau’s First Set of Interrogatories,” filed August 29, 2012 (“PSE’s Answers”) at 5.

<sup>4</sup> PSE’s Answers at 5-6.

<sup>5</sup> Wireless Telecommunications Bureau Seeks Comment on Puget Sound Energy, Inc. Request for Waiver of the January 1, 2013 VHF-UHF Narrowbanding Deadline, *Public Notice*, WT Docket No. 99-87, DA 12-700 (WTB MD rel. May 3, 2012).

<sup>6</sup> In the Matter of Puget Sound Energy, Inc., Request for Waiver of Section 90.209(b) of the Commission’s Rules, *Order*, 27 FCC Rcd 7010 (WTB MD 2012). Official notice is requested of these Commission documents and PSE’s underlying submissions in WT Docket No. 99-87 in support of the waiver request.

the period of approximately September, 2012 to September, 2013, and is now fully operational.<sup>7</sup> Thus, it is inaccurate for Havens to claim that PSE has not constructed a radio system on the leased spectrum.

## **II. PSE Is Operating Pursuant to a Valid Spectrum Manager Lease Agreement with Maritime**

The Havens Response argues that any use of Maritime's spectrum under a spectrum lease agreement is "unlawful" because PSE does not have "an actual FCC-approved lease."<sup>8</sup> The Havens Response also argues that PSE and other holders of spectrum leases from Maritime should be ordered to cease operations because they "have no lease filed with the FCC."<sup>9</sup> As stated in PSE's Answers to Interrogatories, PSE entered a "Spectrum Manager Lease Agreement" with Maritime on May 20, 2010. Notification was filed with the FCC on June 28, 2010, and was assigned FCC File No. 0004299952. The Notification is shown in the FCC's Universal Licensing System as still "pending." However, this does not mean that PSE does not have a valid lease or that it must be "approved" or "granted" by the FCC before it can become effective. As explained below, spectrum manager leases do not require affirmative approval or grant before they become effective.

Section 1.9020 of the FCC's Rules governs the leasing and use of spectrum under a "spectrum manager lease." Pursuant to Section 1.9020(a) a licensee and lessee may enter a spectrum manager leasing arrangement "without the need for prior Commission approval,

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<sup>7</sup> Havens could have easily ascertained the operational status of PSE's radio system through inquiry to PSE or through monitoring of the AMTS frequencies his SkyTel entities assigned to PSE and that Maritime leased to PSE in 2010.

<sup>8</sup> Havens Response at 7, 11 and 17. The Havens Response incorrectly states that Maritime is leasing its "stations" to PSE. (Havens Response at 23). Maritime is leasing spectrum, not stations, to PSE pursuant to the Spectrum Manager Lease Agreement.

<sup>9</sup> Havens Response at 17.

provided that the licensee retains *de jure* control of the license and *de facto* control, as defined and explained in [subpart X of Part 1 of the FCC’s Rules], of the leased spectrum.”<sup>10</sup> Section 1.9020(a) also provides that the licensee must “notify the Commission of the spectrum leasing arrangement” pursuant to the rules in that section. Significantly, Section 1.9020 does not require any form of “grant” or affirmative “acceptance” of a lease notification for a spectrum manager lease; indeed, Section 1.9020(a) provides that the lease can be entered “without the need for prior Commission approval.”<sup>11</sup>

As initially adopted, the rules for spectrum manager leases required the lease notification to be filed at least 21 days in advance of operation by the lessee (for lease terms longer than one year) or at least 10 days in advance of operation (for lease terms of one year or less). However, the requirements for spectrum manager leases were further streamlined in the Second Report and Order in WT Docket No. 00-230, 19 FCC Rcd 17503 (2004) to provide for an optional “immediate processing procedure” for spectrum manager leases. Under the immediate processing procedure, a lease notification can be “accepted” by the Commission as early as the day after the notification is filed, thereby allowing the lessee to commence operations

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<sup>10</sup> 47 C.F.R. §1.9020(a).

<sup>11</sup> The Commission adopted rules for the leasing of spectrum in the Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 00-230, 18 FCC Rcd 20604 (2003). In adopting two different options for spectrum leasing – spectrum manager leases and *de facto* transfer leases – the Commission made clear that spectrum manager leases do not require prior Commission approval because the licensee retains *de jure* control over the license and *de facto* control over the leased spectrum. By contrast, prior FCC consent to a *de facto* transfer lease is required because the licensee is proposing to transfer *de facto* control over the leased spectrum to the lessee, thus raising issues under Section 310(d) of the Communications Act. *See* 47 C.F.R. §§1.9030(a) and 1.9035(a).

immediately and without waiting the full 10 or 21 days as required for a notification filed pursuant to the “general notification procedures.”<sup>12</sup>

On the FCC’s webpage, the Wireless Telecommunications Bureau has summarized the notification requirements for spectrum manager leases as follows:

The licensee must file a spectrum manager lease notification with the Commission using Form 608. Each such notification must be filed in advance of commencing any operations under the leasing arrangement. The Commission’s general notification procedures require that the licensee submit the lease notification to the Commission at least 21 days in advance of operations, unless the lease is for one year or less in duration, in which case the licensee is required to submit the notification at least 10 days in advance of commencing operations. If, however, the particular spectrum leasing arrangement qualifies for the Commission’s immediate processing procedures (based on establishing the requisite certifications in the notification), the notification will be processed overnight and operations may commence immediately thereafter.<sup>13</sup>

In this case, Maritime filed the notification of PSE’s spectrum manager lease more than 21 days in advance of PSE’s planned commencement of operation. PSE is therefore operating under a valid spectrum manager lease.

### **III. PSE is Permitted to Use the Leased AMTS Spectrum for Private Mobile Radio Service**

Havens argues that it is impermissible for PSE to use the spectrum it leases from Maritime for private mobile radio service (“PMRS”) because Maritime’s licenses only authorize provision of commercial mobile radio service (“CMRS”).<sup>14</sup> Havens argues that AMTS is classified in Section 20.9(a) of the Commission’s Rules as presumptively CMRS, and that

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<sup>12</sup> Compare 47 C.F.R. §1.9020(e)(2), on “immediate processing procedures” for spectrum manager leases, with 47 C.F.R. §1.9020(e)(1), on “general notification procedures” for spectrum manager leases. Pursuant to Section 1.9020(e)(1), the general notification procedures apply to a spectrum manager lease notification unless it qualifies for immediate processing procedures.

<sup>13</sup> “Spectrum Leasing,” [http://wireless.fcc.gov/licensing/index.htm?job=spectrum\\_leasing](http://wireless.fcc.gov/licensing/index.htm?job=spectrum_leasing) (last visited April 21, 2014).

<sup>14</sup> Havens Response, at 23.

Maritime has not filed for nor received Commission approval to provide PMRS pursuant to the procedures defined in Section 20.9(b). Based on this, Havens argues that PSE may not use the spectrum for PMRS.<sup>15</sup>

Section 20.9(a) does not preclude PSE from using the leased spectrum for PMRS. Section 1.9020(d)(6) of the Commission's rules, governing spectrum manager leases, specifically provides that "§20.9(a) of this chapter shall not preclude a licensee in the services covered by that rule from entering into a spectrum leasing arrangement with a spectrum lessee that chooses to operate on a Private Mobile Radio Service (PMRS), private, or noncommercial basis." Thus, PSE is clearly entitled to use the leased spectrum for PMRS.

For all of the foregoing reasons, PSE respectfully requests that the Presiding Judge disregard the erroneous facts and arguments asserted against PSE in the Havens Response.

Respectfully submitted,

**PUGET SOUND ENERGY, INC.**

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Dated: April 24, 2014

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<sup>15</sup> Havens Response, at 23-24.

## DECLARATION OF PSE RADIO SYSTEM OPERATION

I, Charlie Seese, hereby declare under penalty of perjury that the following statements are true and correct:

1. I am Manager of Telecommunications Services for Puget Sound Energy, Inc., and am very familiar with the construction and operation of PSE's new private mobile radio system operating on Automated Maritime Communications System (AMTS) spectrum, some of which has been leased from Maritime Communications/Land Mobile, LLC.
2. The new radio system was activated in stages over the period of approximately September, 2012 to September, 2013. The system consists of 54 transmitter sites, all of which are operational and providing service to PSE's field crews.
3. The facts recited in the foregoing "Reply of Puget Sound Energy," other than those of which official notice may be taken, are true and correct to the best of my knowledge and belief.



Charlie Seese

4/22/14

Executed on April 22, 2014

**CERTIFICATE OF SERVICE**

I, Michaeleen Terrana, do hereby certify that on this 24th day of April, 2014, a copy of the foregoing “Reply of Puget Sound Energy” was sent by first class mail, postage prepaid, to each of the following (except as otherwise noted):

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