

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re )  
)  
MARITIME COMMUNICATIONS/LAND MOBILE, LLC ) 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 ) Application File Nos.  
Wireless Radio Services ) 0004030479, 0004144435,  
) 0004193028, 0004193328,  
Applicant with ENCANA OIL AND GAS (USA), INC.; ) 0004354053, 0004309872,  
DUQUESNE LIGHT COMPANY; DCP MIDSTREAM, LP; ) 0004310060, 0004315903,  
JACKSON COUNTY RURAL MEMBERSHIP ELECTRIC ) 0004315013, 0004430505,  
COOPERATIVE; PUGET SOUND ENERGY, INC.; ) 0004417199, 0004419431,  
ENBRIDGE ENERGY COMPANY, INC.; INTERSTATE ) 0004422320, 0004422329,  
POWER AND LIGHT COMPANY; WISCONSIN POWER ) 0004507921, 0004153701,  
AND LIGHT COMPANY; DIXIE ELECTRIC ) 0004526264, 0004636537,  
MEMBERSHIP CORPORATION, INC.; ATLAS ) and 0004604962  
PIPELINE-MID CONTINENT, LLC; DENTON COUNTY )  
ELECTRIC COOPERATIVE, INC., DBA COSERV )  
ELECTRIC; AND SOUTHERN CALIFORNIA )  
REGIONAL RAIL AUTHORITY )

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

OPPOSITION AND RESPONSE TO  
PUGET SOUND ENERGY  
MOTION FOR LEAVE TO FILE REPLY AND  
REPLY OF PUGET SOUND ENERGY<sup>1</sup>

Warren Havens, the undersigned, (“Petitioner” or “Havens”) hereby submits this opposition (the “Opposition”) to Puget Sound Energy, Inc.’s (“PSE” or “Puget Sound”) Motion for Leave to File Reply (the “Motion” or “PSE Motion”), and an associated reply to the Havens Response to the Joint Response of the EB and Maritime regarding Order, FCC 14M-9 (the “Reply” or “PSE Reply”) (the Motion and Reply together herein, the “PSE Filing”).

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<sup>1</sup> The defined terms used herein have the same meaning they had in Warren Havens’s April 9, 2014 Response to the FCC Enforcement Bureau and Maritime Communications/Land Mobile LLC Joint Response to ALJ Order 14M-9, filed on March 26, 2014 in Docket No. 11-71.

Petitioner requested of the PSE counsel (who is served a copy of this filing) that PSE agree to a short extension of time for the filing of this Opposition. PSE counsel declined. Petitioner requested that extension, so that he and PSE counsel could discuss some of the concerns expressed in the PSE Filing, and possibly reach an agreement on resolving some of the concerns, in order to reduce disputes before the Judge.

In this Opposition, Petitioner primarily opposes the Motion, and requests that if the Motion is granted, that Petitioner be permitted at that time to file a substantive response to the Reply. However, out of an abundance of caution, Petitioner provides certain response and opposition to the Reply below, by (i) text below and (ii) by reference to and incorporation of the relevant parts of Petitioner's Opposition and Reply to the FCC EB and Maritime Joint Motion to Strike, filed on April 25, 2014 in Docket 11-71.

#### Opposition to Motion

PSE could have responded to FCC 14M-9, with the essential information contained in the Reply, but chose not to do so. In addition, PSE could have submitted in this proceeding, under Section 1.65, and discovery obligations, the same essential information as PSE asserted in the Reply, but at no time did it choose to do so. That essential information is that PSE, after first stating in discovery responses that it was not using Maritime's spectrum under any lease (or otherwise), waited until reading Petitioner's Response to the Joint Response of Maritime and the Enforcement Bureau to FCC 14M-9, to announce its allegations that it was in some vague way using Maritime spectrum under an alleged lease, that is shown in ULS records as "pending" status for years (from the date it was initially submitted). Petitioner asserts that PSE had an obligation to timely inform the Judge and the parties in this proceeding if the responses it provided in discovery, noted above, were no longer accurate and complete, and that since PSE did not do so, its tardy assertion should be stricken or rejected for that reason alone.

In addition, PSE did not explain at what locations and in what manner it alleges to be using, or at some point to have used, Maritime's spectrum. Petitioner asserts that under the rules for and terms of the Maritime site-based licenses (which are solely for certain locations, and technical parameters, that were all "frozen" years before the first AMTS auction in 2004), that neither Maritime, nor any party under a lease, is permitted to use the Maritime spectrum at any location other than the locations shown in ULS records, and the actually constructed technical parameters that Maritime could have (but never did) prove up, or even assert. "Fill-in stations" are not permitted at all, unless there is a valid site-based station in operation with legitimate, proven up, service contours, as reflected in FCC Rule Section 80.385(b), and various FCC Orders.<sup>2</sup> As just noted, Maritime has never proven up, or even asserted, the technical parameters of its site-based AMTS stations, in this hearing, including those described in the PSE Reply.

In sum, PSE shows no reason why it should be permitted at this very late date to intervene into the long-standing sub-proceeding on Maritime's alleged leases. Thus, Petitioner opposes the PSE Motion.

#### Initial Opposition to Reply

As noted above, for purposes of this initial opposition to the Reply, Petitioner references and incorporates herein the relevant parts of his Petitioner's Opposition and Reply to the FCC EB and Maritime Joint Motion to Strike, filed on April 25, 2014 in Docket 11-71. The relevant portions are those that present information regarding the PSE lease history and status, taken from ULS records, and PSE's statements in discovery in this hearing in Docket 11-71, as to its non-use of Maritime's spectrum, and Petitioner's description of the importance of Rule Section 20.9(b), and other matters that apply to all of Maritime's asserted leases, and lessee operations under leases.

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<sup>2</sup> FCC Orders, DA 09-793 and DA 10-664.

Regarding Rule Section 20.9(b), PSE is incorrect to assert that the lease rule that references Section 20.9(a), and permits a licensee that is classified as CMRS under Section 20.9(a) to nevertheless lease spectrum to an entity to use it for PMRS: nothing in that lease rule diminishes the requirement in Section 20.9(b) to submit an application, to be put on 30-day public notice for challenges, to get approval of the change of status from CMRS to PMRS. That rule references both an existing licensee of AMTS spectrum, and any application for AMTS spectrum. Maritime is an existing AMTS licensee, and the lease application submitted with PSE, is an application. The PSE interpretation would render Section 20.9(b) in conflict with Section 20.9(a) and the lease rule that PSE cited, Section 1.9020. However, a well-known principle of law is that when rules can be read to not be in conflict, then they should be read in that manner.

In this case, the PSE interpretation would create a clear end run around the FCC's regulatory classification system in Section 20.9(a) and its orderly means in Section 20.9(b) to seek a modification to allow some or all CMRS-presumptive spectrum to be used for PMRS. Commission lease rules were created for efficient flexibility, but were not meant to be loopholes to avoid purposes of regulatory classification or proper means to change a regulatory classification. It would have been simple for Maritime to apply under Section 20.9(b) for PMRS status. It chose not to do so, apparently because it could not defend in the first place its site-based licenses, which would have been challenged by Petitioner, and the SkyTel entities, had Maritime applied under Section 20.9(b) and its application placed on Public Notice as the rule requires.

#### Conclusion

For the above reasons, Petitioner requests that the Motion be denied, and that he be permitted to address further the Reply if the Motion is granted. He further requests that the Reply be rejected for reasons given above.

Respectfully submitted,

**WARREN C. HAVENS**

/s/ Warren C. Havens  
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May 5, 2014

Declaration

I, Warren C. Havens, declare and certify under penalty of perjury that the facts within this Opposition are true and correct. Pursuant to 47 C.F.R. §§ 1.251(c) and 1.351 and other applicable law, said declaration and certification of the Facts is made on personal knowledge and sets forth such facts as would be admissible in evidence, and that I am competent to testify to said Facts and matters of said Facts. In this Declaration, “Facts” further means both factual assertions and denials. This Declaration is for the purpose of my Opposition (defined above) to the Motion (defined above).

Executed at Berkeley, California, on May 5, 2014.

/ s / [Electronically signed. Signature on file.]

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Warren Havens

CERTIFICATE OF SERVICE

The undersigned certifies that he has on this 5<sup>th</sup> day of May 2014, caused to be served by first class United States mail copies of the foregoing Opposition to:

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/ s / [Electronically signed. Signature on file.]

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Warren Havens