Before the
Federal Communications Commission
Washington, DC 20554

FCC 14M-25
10086

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 MEMBERSHIP 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: August 11, 2014 **Released: August 11, 2014**

In *Order*, FCC 14M-24, the Presiding Judge instructed the litigating parties to submit on or before August 6, 2014, proposed schedules of procedural and trial dates, as well as a report that fully delineates matters that need to be covered at a prehearing conference, or that can be considered and addressed without a prehearing conference.

On that deadline, August 6, a Joint Proposed Prehearing Procedural Schedule was submitted by the Enforcement Bureau ("Bureau") and Maritime Communications/Land Mobile, LLC ("Maritime"). An alternative Proposed Prehearing Schedule was submitted by entities Environmentel LLC ("Environmentel") and Verde Systems, LLC ("Verde") and joined by Warren Havens.

The Bureau and Maritime have met the Presiding Judge's interest in moving this case forward, as well as their own scheduling concerns, by proposing firm procedural deadlines that achieve a hearing commencement date of December 9, 2014.[1] They also show concern that Mr. Havens' decision to represent himself while leaving counsel to represent only Environmentel and Verde threatens to "further disrupt and delay these proceedings."[2] The Bureau and Maritime request that the Presiding Judge direct Mr. Havens and counsel to comply with directives set forth in *Order*, FCC 12M-52, and submit joint prehearing submissions that reduce the burden on the Presiding Judge, his staff, and the other litigating parties.[3]

Environmentel, Verde, and Mr. Havens propose a schedule that does not include any firm dates for prehearing deadlines. Rather, they propose a complex schedule of coded, tiered deadlines for filing motions to stay the case, motions for the extension of discovery, motions to bifurcate the proceeding, and motions for summary decision. No explanation or justification for any of these deadlines or motions was provided at the deadline.[4] The extrapolated dates suggested by Environmentel, Verde, and Mr. Havens are not acceptable, since any order adopting them would be prohibitively difficult to enforce and thus a waste of time.

The Proposed Prehearing Schedule of Environmentel, Verde, and Mr. Havens ("proposal") is also unacceptable because it disregards the Presiding Judge's directives. The Presiding Judge directed the litigating parties to set prehearing procedural deadlines and a new hearing date in the interest of moving this case forward. The proposal fails to set any firm dates for the hearing or any essential prehearing activities, but instead created an intricate schedule of extrapolated deadlines. The Presiding Judge instructed the litigating parties to schedule the hearing to commence before the end of the calendar year.[5] The proposal cannot accommodate a trial that starts in 2014. It requests at least fifteen additional weeks of motion practice that would make it effectively impossible to even begin essential prehearing activities until the next calendar year. The Presiding Judge has informed the

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[1] Joint Proposed Prehearing Procedural Schedule at 2-3 ¶¶ 2-3 (filed Aug. 7, 2014).
[2] *Id.* at 3 ¶ 4.
[3] *Id.* at 4-5 ¶ 6.
[4] On August 8, 2014, Environmentel and Verde filed a pleading titled Response Regarding Hearing Schedule. Mr. Havens reportedly concurred with the substance of the filing. Despite the pleadings name, it was not a "response." It made only passing references to the schedule proposed by the Bureau and Maritime. Instead, the vast majority of the pleading was focused on providing justification for the proposed schedule of Environmentel and Verde. The Presiding Judge will not permit any party to circumvent his deadlines by mischaracterizing as a response to the pleadings of other parties what is actually an untimely addendum to its own pleadings. Accordingly, the Response Regarding Hearing Schedule of Environmentel and Verde will not be considered.
[5] *Order*, FCC 14M-24 at 3.

parties that further discovery will be permitted only upon satisfactory explanation by the Bureau or if justified by extraordinary circumstances.[6] Yet the proposal would schedule at least an additional eight weeks of unauthorized discovery for which no justification is offered.

The proposal also seeks delays to await a pretrial ruling on a future Motion to Bifurcate the hearing. But such a motion would be useless since the Presiding Judge has already bifurcated the case by staying all issues but Issue G.[7] The proposal also seeks to delay the hearing on Issue G so that Environmentel and Verde can move for summary decision on those issues that have already been stayed. This approach makes little sense.

Overall, the proposal is a mess of convoluted and confusing deadlines, unnecessary motions, and proposed delays with no timely filed justification. It actually defies the Presiding Judge's aim to establish firm dates that will allow this proceeding to finally move forward.

Instructions to Counsel

On July 29, 2014, James A. Stenger of Chadbourne & Parke LLP filed a Notice of Appearance stating that he was entering this proceeding as counsel for Environmentel and Verde. Mr. Havens, the President of both Environmentel and Verde, would remain *pro se*, a strategy that indicates a lack of confidence in a prestigious law firm.

The Presiding Judge has found that this arrangement raises concerns about duplication, confusion, and delay.[8] He thus ordered Mr. Havens' participation to be governed by directives that maximize Mr. Havens' ability to participate *pro se* while minimizing the harms that might arise.[9] Mr. Stenger should familiarize himself with those directives, as they are still in effect.

In order to comply with those directives, Mr. Havens and Mr. Stenger **SHALL SUBMIT** prehearing submissions jointly. In addition, should Mr. Havens appear and participate *pro se* at hearing, Mr. Havens and counsel are now put on notice: (1) "double teaming" of witnesses will not be permitted; (2) objections made at hearing must be coordinated to avoid duplication and/or confusion, especially for the court reporter; and (3) additional management of Mr. Havens' *pro se* participation may be necessary if the integrity and decorum of the hearing require it.[10]

In practicing before the Commission, Mr. Stenger must be fully cognizant of Part 1 of the Commission's rules concerning Practice and Procedure. This includes Section 1.52 of the Commission's rules, which states that the signature of an attorney "constitutes a certificate by him that he has read the document; that to the best of his knowledge, information, and

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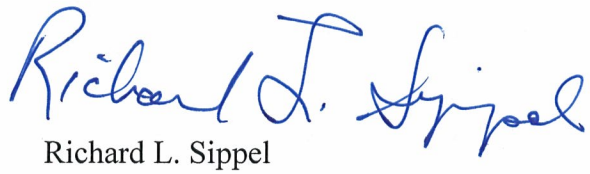
[6] *Order*, FCC 14M-22 at 3.
[7] *Order*, FCC 13M-6.
[8] *Order*, FCC 12M-52 at 3 (rel. Nov. 15, 2012).
[9] *Id.* at 4.
[10] *See* 47 C.F.R. § 1.243(f).

belief there is good ground to support it; and that it is not interposed for delay."[11] In this one instance, the Presiding Judge will attribute the proposal that Mr. Stenger submitted on behalf of his clients to his recent entry into the case and lack of familiarity with the history of this proceeding rather than an intentional effort to delay the hearing on Issue G.[12] Accordingly, Environmentel, Verde, and Mr. Havens are granted a second opportunity to propose their schedule of prehearing deadlines. They are expected to make a good faith effort to work with the other litigating parties in proposing a calendar, which **SHALL BE SUBMITTED on or before August 15, 2014**. As the Proposed Prehearing Schedule of Environmentel and Verde suggests that the parties intend to submit on August 15, 2014, one or more requests seeking to stay Issue G, those requests **SHALL BE SUBMITTED** in conjunction with the schedule that implements them, so that the Presiding Judge may rule on all simultaneously. The Joint Proposed Prehearing Procedural Schedule of Maritime and the Bureau will be ruled on at that time and does not need to be refiled, unless those parties seek to make justified modifications.

SO ORDERED.

FEDERAL COMMUINICATIONS COMMISSION [13]



Richard L. Sippel
Chief Administrative Law Judge

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[11] 47 C.F.R. § 1.52.

[12] Mr. Stenger should be aware that the Presiding Judge has previously found Mr. Havens to have submitted frivolous pleadings with the goal of delaying this proceeding. *E.g. Order*, FCC 14M-7 (rel. Feb. 26, 2014); *Order*, 14M-11 (rel. April 2, 2014). It is strongly advised that counsel take care to ensure that the pleadings he files on behalf of his clients are submitted in good faith and satisfy the ethical requirements of his profession, as well as the requirements of Commission rules.

[13] Courtesy copies of this *Order* sent by e-mail on issuance to each counsel and to Mr. Havens.