

**UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY  
GRID DEPLOYMENT OFFICE**

Macquarie Energy LLC

)

GDO Docket No. EA-479-A

**MOTION FOR LEAVE TO ANSWER AND  
ANSWER OF MACQUARIE ENERGY LLC  
TO ANSWER OF PUBLIC CITIZEN**

Macquarie Energy LLC (“Macquarie Energy”) submits this motion for leave to answer and answer (“Answer”) to the December 2, 2024, motion for leave to answer and answer (“December 2 Answer”) of Public Citizen, Inc. (“Public Citizen”). The December 2 Answer, like the November 19, 2024, Public Citizen protest (“Protest”) that preceded it, does not present factual information that establishes a basis for the Department of Energy (“DOE”) to reject Macquarie Energy’s application for renewal of its export authority in this proceeding (“Renewal Application”) or to establish additional hearing procedures. Accordingly, Macquarie Energy respectfully requests that the Commission deny the December 2 Answer and Protest and grant the requested authorization without further delay.

**I. MOTION FOR LEAVE TO ANSWER**

Pursuant to the Federal Register Notice in this proceeding,<sup>1</sup> Macquarie Energy submits this Answer pursuant to the Federal Energy Regulatory Commission (“FERC”) Rules of Practice and Procedure.<sup>2</sup> While FERC’s rules do not provide for answers to answers, FERC routinely accepts such filings to assist in its decision-making process, clarify disputed issues, and ensure that the record is accurate and complete.<sup>3</sup> Macquarie respectfully requests that the DOE accept the Answer for this purpose.

---

<sup>1</sup> [Federal Register: Application for Renewal of Authorization to Export Electric Energy; Macquarie Energy LLC](#) (Oct. 18, 2024)

<sup>2</sup> See 18 C.F.R. §§ 385.212, 213.

<sup>3</sup> *Pioneer Transmission, LLC v. N. Ind. Pub. Serv. Co. and Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,057, at P 93 (2012); *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,285 (2010); *Sw. Power Pool, Inc.*, 131 FERC ¶ 61,252, at P 19 (2010), *reh’g denied*, 137 FERC ¶ 61,075 (2011) (accepting answers that “provided information that assisted us in our decision-making process”); *Duke Energy Ky., Inc.*, 122 FERC ¶ 61,182, at P 25 (2008) (accepting answers in proceeding that “provided information that assisted us in our decision-making process”); *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 26 (2008); *PJM Interconnection, L.L.C.*, 120 FERC ¶ 61,083, at P 23 (2007) (answer to protests permitted when it provides information to assist the Commission in its decision-making process) “it provides information that clarifies the issues and aids us in the decisional process.”); *Duke Energy Oakland, LLC*, 102 FERC ¶ 61,093 at P 10 (2003) (finding good cause to accept an otherwise impermissible answer because it assisted the Commission in understanding and resolving the issues involved in the proceeding); *Carolina Power & Light Co.*, 97 FERC ¶ 61,048 at 61,278 (2001) (finding good cause to waive Rule 213 when the pleading helped to ensure a complete and accurate record); *Morgan Stanley Capital Group, Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was “helpful in the development of the record.”).

## II. ANSWER

### A. Macquarie Has Met the Filing Requirements

The December 2 Answer states that Macquarie Energy has concealed affiliations with franchised utilities, transmission, and power plants. While Public Citizen is incorrect, its arguments are also irrelevant.

DOE's regulations at 10 C.F.R. §§ 205.302 and 303 specify the contents of every application and supporting exhibit for authorization to transmit electric energy to a foreign country. Macquarie Energy provided all of the information required by these regulations. That information does not require Macquarie Energy to identify affiliations. If DOE's regulations required that information to be provided, then Macquarie Energy would have provided it. In fact, Macquarie Energy has held the authority to export electricity based upon a filing that provided essentially the exact same information as was contained in this application.<sup>4</sup>

Public Citizen's December 2 Answer, like its November 11, 2024 Protest, continues to raise issues that are outside the scope of DOE's filing requirements for an export application. Addressing the comments made in Public Citizen's December 2 Answer:

- Macquarie Energy correctly stated in its application that it does not own or control generation facilities. Macquarie Energy, in fact does not own or control such facilities. Entities that are indirect upstream affiliates of Macquarie Energy do own or control such facilities.<sup>5</sup> If DOE required consideration of affiliations in making an export application determination, it would include such requirement in its regulations. It does not.
- Macquarie Energy has never hidden, disputed, nor denied any of its affiliations – it has disclosed such affiliations in every regulatory filing wherein such affiliations are required to be made. As these filings are public, DOE has access to that information if it believes it to be germane to the instant analysis. This information is reflected in FERC's relational database, which Macquarie Energy is required to maintain because it is authorized by FERC to sell electricity at market-based rates.
- Whether Macquarie Energy has sales of electric energy to either Puget Sound or Cleco has no bearing on whether Macquarie Energy *controls* Puget Sound or Cleco's generation or transmission assets. Sales of electricity – to an affiliate or otherwise – do not convey control over the assets used to generate the transacted electricity any more than Macquarie's sales of electricity to a third party would

---

<sup>4</sup> See *Macquarie Energy LLC*, Order No. EA-479 (issued Nov. 21, 2019) (noting “MEL states that ‘it does not own operate, or control any electric generation, transmission, or distribution facilities and does not hold a franchise or service territory or native load obligation.’ App. at 3.”)

<sup>5</sup> Macquarie Energy stated in its Answer that there are information barriers and separation of functions that ensure that Macquarie Energy cannot control such facilities.

somehow convey control over the assets producing the electricity sold by Macquarie.<sup>6</sup>

## **B. Assertions of Market Misconduct are Irrelevant**

The December 2 Answer calls for the DOE to reject the Renewal Application or set it for hearing because “this is a case of first impression for the Department of Energy, as the agency has not considered an application to export electricity by a company under active investigation for energy market manipulation.”<sup>7</sup> Public Citizen’s assertions on this point are inflammatory, irrelevant, and, again, incorrect.

Simply because a state attorney general has filed a complaint against a company does not mean that the company actually has engaged in the conduct being alleged. But even so, neither Section 202 of the FPA nor the DOE’s regulations implementing electric export authorization procedures require an applicant to describe ongoing regulatory or legal proceedings to the DOE. Therefore, despite the fact that the Kansas Attorney General has filed a once-dismissed complaint against Macquarie Energy that is the subject to a second motion to dismiss and is being vigorously opposed, Macquarie did not disclose this in the instant application because it is not required to do so.

Second, Public Citizen’s comments *in toto* concerning whether Macquarie Energy has been, or is, the subject of a non-public FERC investigation into market manipulation are irrelevant and inapplicable. FERC investigations – up until there is an order to show cause– are non-public. There is no obligation in the DOE or FERC regulations requiring Macquarie Energy or any other export applicant to disclose whether it is the subject of a non-public investigation of any kind. Such a disclosure would necessarily make such non-public investigation, public, undermining FERC’s need to be able to conduct non-public investigations.

---

<sup>6</sup> Incidentally, the transactions between Macquarie Energy LLC and Puget Sound Energy cited by Public Citizen in its Answer were purchases by Macquarie of *transmission for others* – not energy – that were posted on the Open Access Same-Time Information System (OASIS).

<sup>7</sup> December 2 Answer at 3.

### III. CONCLUSION

The December 2 Answer, like the Protest before it, contains factual inaccuracies and does not address issues relevant to the DOE's review of the Renewal Application. The DOE should reject the obfuscation presented by the December 2 Answer and the Protest and grant the requested reauthorization without further process.

Respectfully submitted,

/s/ Michael A. Yuffee

Michael A. Yuffee

Ryan C. Norfolk

*Counsel for*

*Macquarie Energy LLC*

Dated: December 13, 2024

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 13<sup>th</sup> day of December, 2024.

/s/ Ryan C. Norfolk

Ryan C. Norfolk

Baker Botts L.L.P.

700 K Street, N.W.

Washington, DC 20001

Tel: (202) 717-4798

[ryan.norfolk@bakerbotts.com](mailto:ryan.norfolk@bakerbotts.com)