

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

Macquarie Energy LLC

GDO Docket No. EA-479-A

**Motion to Answer and Answer of Public Citizen, Inc.**

Public Citizen requests the Department of Energy to accept this answer to Macquarie's November 27 answer to our November 18 protest in order to correct Macquarie's numerous factual inaccuracies. The Nov 27 answer fails to rectify the clear deficiencies and omissions of the original August 30 application, and so the Department of Energy must either reject the application, or set the matter for hearing, per 16 USC § 824a(e).

**Macquarie Energy Makes a Radical and Unsupported Claim That Applications To Export Electricity Can Conceal Affiliated Control Of Franchised Utilities, Transmission And Power Plants**

Macquarie Energy LLC asserts at page 3 of their November 27 *Answer* that

*Macquarie Energy was completely accurate when it stated in its application that it 'does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area.' **Macquarie Energy does not own or control generation facilities. Affiliates of Macquarie Energy by virtue of common upstream ownership – Puget Sound Energy, Inc. and Cleco Power LLC – do own/control generation and transmission facilities and have franchised service areas. But neither of these entities is seeking renewal of its export authority through this proceeding.** Macquarie Energy is seeking export reauthorization from DOE. And critically, because of information/communication barriers, and separation of functions, Macquarie Energy is incapable of controlling any of the assets owned and/or operated by Puget or Cleco. [emphasis added]*

So Macquarie Energy and its counsel have proposed a ludicrous new legal concept that an entity applying to export electricity can actively conceal reporting of electricity infrastructure assets of any of its direct affiliates. So let's walk through a hypothetical. According to Macquarie's counsel, Exelon Corp—one of America's largest utility holding companies, with 9.2 million customers served through six franchised utilities, could set up an empty shell LLC—we'll name it Exelon Empty Shell LLC—for the sole purpose of having Exelon Empty Shell LLC apply to export electricity, and in that application Exelon Empty Shell LLC could claim that it has no control over franchised electric utilities or transmission, despite its direct affiliation with Exelon Corp.

Or let's take a more insidious hypothetical where the intent is to deliberately deceive. Let's say Macquarie Group secretly sets up a new LLC and gives it a name, such as Emer6 LLC, that is designed to obscure any relationship to its affiliates. Emer6 LLC then submits a stand-alone application to export electricity. Under Macquarie's unsupported legal theory, Emer6 LLC would be under no obligation whatsoever to disclose its affiliation with Macquarie Energy LLC or any Macquarie entity. Should Macquarie's counsel prevail with its radical legal thesis, any company can set up an empty shell LLC, have that empty shell LLC apply for permission to export electricity, and it would be *entitled* to conceal from regulators and the public an array of information required to determine compliance with the Federal Power Act. Should Macquarie's irresponsible and extreme position prevail, it would render federal law governing electricity exports unenforceable. Importantly, neither Macquarie Energy LLC nor its Baker Botts counsel provide a shred of regulatory or legal precedent justifying their laughably illogical proposed new evasion doctrine.

Modern corporations such as Macquarie are organized as a series of hundreds of limited liability companies (LLCs) that are under common control and centrally managed, where the LLCs segregate various assets and activities for a variety of purposes, including shielding investors from certain types of (mostly tax) liability. But a corporation's sprawling array of LLCs are under centralized control and management, and these LLCs financially interact with each other as affiliates. Evidence of this is found in the Form 561 *2023 Annual Report of Interlocking Positions of Macquarie Energy LLC* filed with the Federal Energy Regulatory Commission, listing the more than two dozen energy-related LLCs that feature directors or officers of Macquarie Energy LLC who simultaneously serve as officers or directors for other energy LLCs—none of which were listed in the August 30 application.<sup>1</sup>

Macquarie's absurd and unsupported theory aside, a variety of regulatory proceedings make clear that Macquarie Energy LLC's operations are directly affiliated with and connected to all of Macquarie's other operations, including franchised utilities, transmission and power generation assets—clearly demonstrating that Macquarie Energy LLC filed false and incomplete information in its August 30 application.

For example, an October 30, 2024 electricity tariff filing with the Federal Energy Regulatory Commission states:

*Through [Macquarie Group Limited] MGL, [power] Sellers are affiliated with Macquarie Energy LLC and Macquarie Energy Trading LLC, each of which is a power marketer with market-based rate authorization ... MGL is affiliated with Puget Sound Energy, Inc., a franchised public utility that is incorporated in the State of Washington. PSE is an investor-owned utility that provides electric and natural gas services in a service territory covering approximately 6,000 square miles in the Puget Sound region of the State of Washington. PSE's retail and wholesale utility business includes the generation, purchase, transmission, distribution, and sale of electric energy ... In*

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<sup>1</sup> Filed March 14, 2024, [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20240314-5171](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20240314-5171)

*addition to PSE, MGL is affiliated with Cleco Power, LLC, which owns certain transmission facilities<sup>2</sup>*

That’s because under FERC’s affiliation rules, Macquarie Energy LLC is directly affiliated with both Puget Sound Energy and Cleco Power, as well as a number of power generation facilities in the United States. The August 30 application concealed this information, resulting in a fatal error that must result in the Department of Energy either rejecting the application, or establishing an evidentiary hearing to sort through Macquarie’s assorted distortions of fact, per 16 USC § 824a(e).

The assertion made by Macquarie Energy LLC that “because of information/communication barriers, and separation of functions, Macquarie Energy is incapable of controlling any of the assets owned and/or operated by Puget or Cleco”<sup>3</sup> is false. On May 30, 2024, Puget Sound Energy filed a *Quarterly Financial Report* with the Federal Energy Regulatory Commission, reporting multiple financial transactions between Puget Sound Energy and Macquarie Energy LLC.<sup>4</sup> And Cleco Power reports routine affiliate transactions with Macquarie’s power marketing arm, Cleco Cajun, in its *Quarterly Financial Report* filed with the Federal Energy Regulatory Commission.<sup>5</sup> Not only is Macquarie Energy LLC affiliated with Puget Sound and Cleco, but its direct power marketing affiliates engage in affiliate transactions with both utilities, making the omissions of these facts from the August 30 application a fatal error.

### **Macquarie Energy LLC Status As A Defendant Accused of Market Manipulation Threatens “sufficiency of electric supply within the United States” and Impedes “the coordination in the public interest” of Power Facilities**

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.

Macquarie Energy LLC’s counsel continues its fabrications by writing: “Public Citizen resorts to hurling baseless allegations of manipulation and misconduct at Macquarie Energy.” The People of the State of Kansas—unrelated to Public Citizen—has active federal litigation with detailed, credible accusations of manipulation and misconduct by Macquarie Energy LLC.<sup>6</sup> Crucially, Macquarie’s November 27 *Answer* does not deny that Macquarie Energy LLC is the target of a non-public enforcement action by the Federal Energy Regulatory Commission for market manipulation. Market manipulation

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<sup>2</sup> FERC Docket ER25-286, at pages 3-4, [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20241030-5211](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20241030-5211)

<sup>3</sup> At page 3 of Macquarie’s November 27 *Answer*.

<sup>4</sup> Page 328-330, at Lines 33 and 65, [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20240530-8049](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20240530-8049)

<sup>5</sup> Example here [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20241114-8006](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20241114-8006)

<sup>6</sup> Case # 5:23-cv-04116-DDC-ADM, <https://ecf.ksd.uscourts.gov/>

interrupts the sufficiency of electric supply, and impedes the coordination of energy facilities in the public interest—the central tenets of the Federal Power Act’s standard of review for applications to export electricity.<sup>7</sup>

Furthermore, Macquarie appears to have systemic compliance problems. On September 19, 2024, the U.S. Securities and Exchange Commission forced a Macquarie Energy LLC affiliate to pay \$79.8 million to settle charges the company engaged in years-long fraud involving collateralized mortgage obligations.<sup>8</sup> And just last week, the U.K.’s Financial Conduct Authority fined a Macquarie Energy LLC affiliate £13 million (\$16.5 million) for “serious control failures” that allowed the execution of hundreds of fraudulent commodity trades.<sup>9</sup>

Macquarie Energy LLC’s August 30 application to export electricity is clearly incomplete, and contains material omissions. Rather than correct the record, Macquarie’s November 27 *Answer* doubles down on fabrications. The Department of Energy must either reject the application, or set the matter for hearing, per 16 USC § 824a(e).

Respectfully submitted,

*Tyson Slocum*

Tyson Slocum, Energy Program Director  
Public Citizen, Inc.  
215 Pennsylvania Ave SE  
Washington, DC 20003  
(202) 454-5191  
tslocum@citizen.org

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<sup>7</sup> 16 USC § 824a(e).

<sup>8</sup> <https://www.sec.gov/newsroom/press-releases/2024-140>

<sup>9</sup> [www.fca.org.uk/news/press-releases/mbl-fined-serious-control-failures-allowed-trader-conceal-over-400-fictitious-trades](http://www.fca.org.uk/news/press-releases/mbl-fined-serious-control-failures-allowed-trader-conceal-over-400-fictitious-trades)