S T A T E   O F   M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of **JORDAN DEVELOPMENT COMPANY, L.L.C.**; **MUZYL OIL CORPORATION**; and **NUENERGY, LLC**, against **PHILLIPS 66 COMPANY** and **DCP MICHIGAN PIPELINE & PROCESSING LLC**.	))))))	Case No. U-21938

At the August 27, 2026 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair
Hon. Katherine L. Peretick, Commissioner
Hon. Shaquila Myers, Commissioner

ORDER

History of Proceedings

On October 20, 2025, Jordan Development Company, L.L.C.; Muzyl Oil Corporation; and NuEnergy, LLC (Complainants) filed a complaint in this case against Phillips 66 Company and DCP Michigan Pipeline & Processing LLC (Respondents),[1] alleging discrimination against

[1] Complainants filed prior versions of their complaint in this case; however, those versions were deemed not *prima facie*—meaning they did not state a case for which the Commission has the authority to hold an evidentiary hearing and grant the relief requested, if the complaint were proven true. Subsequently, the complaint filed on October 20, 2025, was determined *prima facie* and thus accepted for further processing. On March 9, 2026, however, the Commission issued a memorandum letting Complainants know that their Act 16 of 1929 (Act 16) application included in their October 20, 2025 complaint could not be combined in this proceeding and must be withdrawn and filed in a new docket. On March 30, 2026, Complainants requested to withdraw their Act 16 application from this case. *See*, Case No. U-20938, filings #U-20938-0002 to -0012, -0022, and -0052.

Respondents in failing to deliver in-kind carbon dioxide (CO_2) to Complainants and in Respondents' service charges. The complaint was filed pursuant to Public Act 9 of 1929, as amended (Act 9); Public Act 16 of 1929, as amended (Act 16); Public Act 3 of 1939, as amended; and the Commission's Rules of Practice and Procedure, Mich Admin Code, R 792.10401 *et seq*.

On March 11, 2026, Respondents filed their answer to the complaint, along with a motion to dismiss for lack of jurisdiction (motion) and a brief in support pursuant to MCR 2.116(C)(4) and Mich Admin Code, R 792.10445 (Rule 445).

Between March 11-13, 2026, petitions to intervene were filed by Muskegon Operating Company LLC; VCP Michigan, LLC; Lambda Energy Resources LLC; and Core Antrim Company, LLC (collectively, Petitioners).

On March 17, 2026, Respondents filed objections to the petitions to intervene.

On March 18, 2026, a prehearing conference was held before Administrative Law Judge Sally L. Wallace (ALJ), wherein Complainants, Respondents, Petitioners, and the Commission Staff (Staff) appeared. During the prehearing conference, the ALJ placed the petitions to intervene in abeyance pending oral argument on Respondents' motion scheduled for March 27, 2026.

On March 19, 2026, Complainants filed their response to Respondents' motion.

On March 20, 2026, Petitioners filed responses to Respondents' objections.

On March 27, 2026, oral argument on Respondents' motion took place before the ALJ. Complainants, Respondents, Petitioners, and the Staff appeared at the hearing.

On April 22, 2026, the ALJ issued a ruling on Respondents' motion.

On April 28, 2026, the ALJ reissued her ruling on the motion as a Proposal for Decision (PFD), consistent with Mich Admin Code, R 792.10426.

On May 19, 2026, the Staff and Complainants filed exceptions. On June 2, 2026, Respondents filed replies to exceptions.

Proposal for Decision

The ALJ set forth the background for this case and the contents of the motion and responses on pages 1-12 of the PFD. The ALJ then identified three issues for present resolution on page 13 of the PFD: (1) “whether the Commission generally has statutory authority to address gas treatment services provided by contract,” (2) “whether Respondents are a common carrier under the provisions of Act 9 or Act 16,” and (3) “whether the treatment of CO_2 falls within the Commission’s jurisdiction under Section 2 of Act 16.”

Persuaded by the decision in Case No. U-11210, the ALJ found that the treatment service provided by Respondents in the instant case is not sufficiently related to gas transportation to fall under the Commission’s jurisdiction under Act 9. The ALJ further found that Respondents are not a common carrier under Act 9 as they are not transporting gas for compensation or for public use; rather, “the gas transportation that occurs under the contracts at issue is incidental to the treatment services that Respondents provide under a contractual arrangement that falls outside the Commission’s authority under Act 9.” PFD, p. 17. To this point, and in a footnote considering the circumstances in *Greyhound Corp v Mich Pub Serv Comm*, 360 Mich 578; 104 NW2d 395 (1960) (*Greyhound*), the ALJ likened the transportation actually provided by Respondents in the instant case to driving a bus from one end of a bus station to the other. PFD, p. 17, n. 39. Lastly, looking at Section 3(2) of Act 16, presuming Respondents are a private business under the statute, and albeit acknowledging that Complainants have a pecuniary interest in carbon capture and sequestration and also acknowledging general concerns about environmental harm associated with atmospheric carbon, the ALJ did not find a public interest in the conduct of the business involved in this case but rather found that "these issues can presumably be addressed and resolved in Complainants' application under Act 16 for a CO_2 pipeline." *Id*., p. 18.

Considering the foregoing, the ALJ thus granted Respondents' motion and dismissed the petitions to intervene as moot, ultimately finding that the Commission lacks jurisdiction over this matter. *Id*.

<u>Exceptions and Replies to Exceptions</u>

1. Exceptions

   a. The Commission Staff

The Staff objects to the PFD and asserts that, contrary to the ALJ's findings otherwise, Respondents were engaging in the transportation of natural gas when they took Complainants' gas for treatment and then returned it. Staff's exceptions, p. 1.

In support, the Staff first sets forth its disagreement with statements made at the hearing wherein Respondents' counsel stated that the Commission has never regulated treatment rates or required treatment contracts to be filed with the Commission, contending perhaps that is why the Staff took no part in Respondents' motion. *Id*., p. 1 (citing 2 Tr 22). In response to this, the Staff states that:

> [f]irst, just because the Commission has not taken formal action against a party for not filing a treatment contract does not mean the Commission believes it has no authority to regulate. Second, in a complaint case where both parties are represented by counsel Staff tends to let the parties make their own case and will take an active role where Staff believes the record needs clarification, or where Staff's opinion on the laws that gives the Commission authority to regulate needs to be stated. Staff's position in this case is that the Respondents taking the Complainants' gas for treatment and returning that gas over the Respondents' own lines consists of transportation under Act 9. In support, Staff will be citing to the text of Act 9 of 1929, MCL 483.101 *et seq*., *Savoy Oil & Gas, Inc v Preston Oil Company*, 210 Mich App 477, (1995) [*Savoy*], *Mich Consol Gas Co v Sohio Oil Co*, 321 Mich 102 (1948) [*Sohio*], *Nat'l Steel Corp v PSC*, 204 Mich App 630

> (1994) [*Nat'l Steel*], *Greyhound Corp v Pub Serv Co*., 360 Mich 578 (1960), and *Michigan Pub Utilities Comm v Krol*, 245 Mich 297 (1929).

Staff's exceptions, pp. 1-2.

Following further discussion on its cited legal authority mentioned above and legal authority cited therein, the Staff argues that Respondents are subject to Commission regulation under Act 9 because they are in the business of transporting gas for hire. The Staff asserts that, pursuant to case law, "[t]he only persons who transport gas that are not subject to Act 9 are those who are transporting their own gas through their own lines," and "Respondents are <u>not</u> transporting their own gas through their own lines, rather they are transporting Complainants['] gas through lines owned by Respondent." *Id*., p. 5 (citing *Savoy*, 210 Mich App at 482; *Sohio*, 321 Mich at 109; and *Nat'l Steel*, 204 Mich App at 633) (emphasis in original).

Underscoring a portion of MCL 483.101 and looking to *Black's Law Dictionary* (6th ed) for the definition of "fixture," the Staff asserts that:

> [f]or the Respondents to be able to treat gas, the pipeline that the Respondents use must, due to the nature of gasses, be attached to the treatment equipment. Staff asserts that this clearly indicates that this equipment for treating the gas must be and is a "fixture or equipment" necessary for the transportation of gas by the Respondents, for without that equipment and the treatment of the gas, there would be no transporting of gas to market by the Complainant.

Staff's exceptions, p. 6.

Lastly, and considering the court's decision in *Greyhound*, the Staff also objects to the ALJ's determination that Respondents are not a common carrier. Per the Staff:

> First, *Greyhound* had quoted 13 CJS, Carriers, Sec. 3, and Staff notes in particular this part: "1) He must be engaged in the business of carrying goods for others as a public employment, and must hold himself out as ready to engage in the transportation of goods for persons generally as a business, and not as a casual occupation." *Greyhound*, at 600. Staff asserts that was what the Respondent is doing, transporting gas, is a regular part of its business. Black's Law Dictionary defines casual as "Occurring without regularity, occasional, impermanent, as employment for irregular periods." *Black's Law Dictionary* (6th ed.). That the

> Complainants have contracted with the Respondent to treat their gas and return it is proof that this is not a casual or irregular thing, but rather an actual regular business transaction that is carried on by the Respondents. In addition, this is not a case of "driving a bus from one end of the station to the other" but rather a continuous ongoing relationship between the Complainants and the Respondents, with the gas that enters Respondent[s'] system and returning without the CO_2. To continue the analogy of the bus station, the passengers that enter the station at one end are the same passengers that leave at the other end. Staff notes that nowhere in the text of Sec. 1 of Act 9 is there any limitation of those who transport based on the volume of the transportation, there is no "incidental" or de minimis amount listed in the statute that below which a person would not be considered regulated as a transporter of natural gas. The only limitations are those laid out by the courts in the cases listed above, that being someone transporting his own gas through his own line is not subject to Act 9. Either one is a transporter subject to regulation by Act 9, or one is not based on the ownership of both the gas and the pipeline – there is no de minimis amount of someone else's gas one can transport and evade Act 9 regulation. Staff therefore asserts that Respondents are subject to regulation under Act 9 as a transporter of natural gas.

Staff's exceptions, pp. 6-8.

b. Jordan Development Company, L.L.C.; Muzyl Oil Corporation; and NuEnergy, LLC

Complainants also object to the PFD and allege three independent errors: (1) the ALJ incorrectly concluded that the Commission lacks subject-matter jurisdiction under Act 9 to regulate the treatment of natural gas when indistinguishable with the transportation of natural gas (as the required treatment of natural gas for pipeline transportation and the transportation of natural gas that occurs during the treatment process is a service that falls squarely within the Commission's jurisdiction under Act 9), (2) the ALJ erred in determining that Respondents are not a common carrier under Act 9 or Act 16 (because treatment of natural gas is not incidental to transportation services but rather an integral and necessary part of providing natural gas services throughout the state), and (3) the ALJ erroneously concluded that the capture and delivery of CO_2 falls outside the Commission's jurisdiction under Section 2 of Act 16 (because the public interest is inherently involved in the conduct of the business involved in this case). Complainants' exceptions, p. 2. For these reasons, Complainants request that the Commission reject the ALJ's recommendation and direct the ALJ to issue a scheduling memo for this contested case.

Prior to addressing these three alleged errors in greater detail, Complainants first address the legal standard for subject-matter jurisdiction and, in doing so, assert that "[s]ubject-matter jurisdiction is determined at the outset by examining the nature of the claims alleged, not by resolving disputed facts or weighing evidence." *Id*., p. 4. As applied to this case, Complainants thus argue that:

> [a]s an initial matter, the PFD improperly analyzes subject matter jurisdiction by making factual determinations, which is not appropriate at this stage. The inquiry is not, for example, whether Act 9 services—carrying or transporting someone else's natural gas—are involved. Rather, the question is whether the Complaint alleges that transportation and treatment services are provided, which it does. *Arlie D Murdock*, 304 Mich App at 572 ("Subject-matter jurisdiction is determined only by reference to the allegations listed in the complaint.") The proper inquiry therefore is whether the Complaint alleges facts that, if proven, would support relief within the Commission's jurisdiction. By resolving disputed factual issues against Complainants, the PFD applies an incorrect legal standard and prematurely adjudicates the merits.
>
> Complainants have stated facts sufficient for jurisdiction and should be afforded the opportunity to prove them. They will demonstrate that Respondents' facility is a bottleneck for the business of transporting natural gas since CO_2 removal is necessary for safe gas transport in Michigan, and that Respondents have discriminated by granting other suppliers access to their CO_2 and at much more favorable rates. Although Complainants have made multiple requests for the same services, Respondents continue to delay their response without any valid reason. This delay is unwarranted, particularly since Respondents have already afforded benefits to other parties. This case centers on Respondents exploiting their monopoly in natural gas treatment to disadvantage Complainants. There is a history of Respondents' actions which boarder [sic] on a lack of good faith, and which justify this case. For these reasons and those discussed below, the Commission should conclude that the disputed treatment service is essential under Act 9 services.

Complainants' exceptions, pp. 4-5 (footnote omitted). Here, Complainants also note that other states, such as Texas, Wyoming, North Dakota, Louisiana, and New Mexico, regulate the removal of CO_2 as an element of natural gas transportation. *Id*., p. 5, n. 2.

While Complainants acknowledge that the Commission has not actively exercised its existing jurisdiction over natural gas treating services in the past, they assert that the Commission should do so now, reasoning that:

> [a]t the outset of the Antrim natural gas production, producers dedicated their gas reserves so that the transportation pipelines and treating plants could be financed. Early on, there were competitive options for treating. Today, there is no treating competition and blending is no longer a viable alternative. Yet, treating remains essential to deliver natural gas to the marketplace. Without access to markets, natural gas production may effectively be shut in, resulting in economic waste.

Id., p. 5.

Further addressing why the ALJ erred in concluding that the Commission lacks subject-matter jurisdiction under Act 9, Complainants argue that the ALJ's conclusion that Respondents' natural gas treatment service is not sufficiently related to gas transportation is "an unduly narrow reading of the statute and an artificial separation between 'transportation' and the operational services necessary to make transportation possible." *Id*., p. 6. Referring to MCL 483.103 and application of the statute as provided in *Savoy*, Complainants assert that the Commission has jurisdiction in this matter as the complaint "alleges that Respondents provide treatment services in connection with the carrying or transporting of Complainants' natural gas, for which Complainants pay;" alleges that "Respondents are a 'common carrier' within the meaning of Act 9 and the common law;" and alleges "disputes concerning the price and terms by which Respondents provides [sic] natural gas services to Complainants, as well as Respondents' statutory obligations as a common carrier imposed by Act 9"—allegations which Complainants argue "fall squarely within the Commission's subject-matter jurisdiction." *Id*., p. 6 (citing the complaint, ¶¶ 6, 24-33). Asserting that MCL 483.103 is a broad grant of authority over direct or indirect transportation of natural gas for public use and considering the plain and ordinary meaning of transportation per dictionary definition, Complainants further argue that:

> [t]he Complaint alleges that Respondents' activities amount to the carrying of natural gas and are inseparable to the transportation of natural gas. It is not distinguished by the degree of moving gas or the incidental relationship to another essential service—treating. Key components to the Commission's jurisdiction is [sic] a person using pipelines (the facilities) to intentionally move natural gas. Jurisdiction does not depend on distance or length of the movement, nor does jurisdiction depend on the provision of other essential services. On the contrary, there is nothing incidental about treating natural gas to remove CO_2. Rather, treatment of natural gas is an essential part of the entire scope of moving natural gas under Act 9. Gas that does not meet quality specifications cannot be introduced into or transported through a pipeline.

Complainants' exceptions, p. 7. Complainants additionally argue that the ALJ's reliance on the June 26, 1998 order in Case No. U-11210 (June 26 order) is "misplaced," as the conclusion in that case was based on title-transfer tracking, a materially different service than the service at issue in the instant case and one that the Commission determined was "not 'integral to or required for the transportation of gas' and could be avoided entirely without affecting pipeline movement." Complainants' exceptions, pp. 7-8 (quoting June 26 order, p. 8). Moreover, per Complainants:

> Case No. U-11210 is inapplicable to the Complaint. Indeed, gas treatment, like that being provided by Respondents, is a required and essential step of gas transportation services. Unlike title-transfer tracking reviewed in Case No. U-11210, natural gas treatment is an operational perquisite to lawful and safe pipeline transportation. The treatment involves the use of pipes or pipelines to move the gas. Gas that does not meet quality specifications cannot be injected into, transported through, or redelivered from a pipeline. Transportation simply does not continue without treatment; it cannot safely occur at all. Properly applied, the Commission's analytical framework in Case No. U-11210 supports—not undermines—Commission jurisdiction where, as here, a service is integral to pipeline transportation.

Complainants' exceptions, p. 8. Complainants also argue that the ALJ discounted the August 7, 2007 order in Case No. U-14754 (August 7 order), which Complainants rely on and involves both natural gas treatment and transportation services that the Commission previously exercised jurisdiction over under Act 9. Complainants contend that, while the ALJ acknowledged the

Commission's jurisdiction in that case, the ALJ "improperly cabined its relevance to cases involving dedications." Complainants' exceptions, p. 9. Complainants, in this regard, assert:

> [t]hat limit is unsupported by the Commission's reasoning in this case. In Case No. U-14754, the Act 9 violation arose because a transportation contract imposed discriminatory treatment-related requirements. [August 7 order, p. 14.] The Commission's discrimination analysis did not depend on whether the treatment requirement was memorialized in a dedication or a standalone agreement; it depended on the fact that treatment obligations were imposed as part of pipeline service to some shippers but not others. *Id*. Here, the PFD fails to consider that under the treating agreement, Respondents receive gas at a defined Receipt Point at or near the Treating Plant and are required to deliver the treated gas at a Delivery Point downstream of the Treating Plant. In so doing, the Respondents are using pipes or pipelines to transport gas and deliver [gas] they do not own.

Complainants' exceptions, p. 9. Here, Complainants also note that Act 9 "does not contain a minimum distance the common carrier must transport gas owned by someone else" but rather "considers the use of pipes or pipelines to move the gas." *Id*., n. 3. In sum, Complainants conclude this point by arguing that:

> the PFD's recommendation rests on an unduly narrow view of Act 9 and a flawed analogy to services that are merely incidental to gas transportation. Act 9 extends to services that are integral to the physical movement of natural gas for public use, and gas treatment—unlike the ancillary administrative services addressed in Case No. U-11210—is a necessary prerequisite to lawful and safe pipeline transportation. Because the Complaint alleges disputes concerning the treatment and transportation of natural gas by a common carrier subject to Act 9, the Commission possessed subject-matter jurisdiction and erred in concluding otherwise.

Complainants' exceptions, p. 9.

On their second point, Complainants argue that the ALJ further erred in concluding that Respondents are not a common carrier under Act 9 or Act 16, despite Respondents being engaged in the transportation and treatment of natural gas, along with carrying and transporting CO_2. In contrast to the definition, meaning, and authority of common carrier set forth in MCL 483.106 and in *Greyhound*, Complainants assert that the ALJ instead improperly narrowed the definition. Addressing the ALJ's narrowed reasoning on page 16 of the PFD, Complainants contend that the

ALJ "impermissibly superimposed a 'primary purpose' requirement onto [MCL 483.106 and MCL 483.5]—one the Legislature did not enact." Complainants' exceptions, p. 10. Per the Complainants:

> There is no dispute that, once Complainants deliver natural gas at the delivery point under the terms of the Treating Agreement, that gas transported is through Respondents' pipeline system to Respondents' treating facility and, once treated, the gas is transported through Respondents' pipelines [to] a point of redelivery. Even though Respondents never take title of the gas or CO_2, by transporting the property of another, Respondents are engaged in a transportation business—moving property owned by someone else.
>
> The PFD does not conclude that Respondents' business involves no transportation at all; rather, the PFD characterizes that transportation is merely incidental to Respondents' treatment services. But without the transportation of the gas from the delivery point to the treatment facility—and again after treatment to the point of redelivery—no treatment could occur. Transportation is therefore not ancillary to Respondents' services; it is essential and indispensable to them. By minimizing transportation that is necessary to treatment, the PFD improperly discounts conduct that falls squarely within the statutory definition of common-carrier activity.
>
> The PFD's analogy further underscores these errors. The PFD likens Respondents' services to driving the bus from one end of the bus station to another." PFD at 17, n 39. That analogy fails. Unlike a bus moving within a terminal, Respondents transport Complainants' gas through a pipeline system to and from the treatment facility as a necessary component of their commercial operations. This is not trivial or internal movement divorced from transportation; it is the very act of moving property by pipeline for compensation, the definition of common-carrier service under Act 9 and Act 16.

Complainants' exceptions, p. 11. Accordingly, and in sum, the Complainants argue that the ALJ erred in concluding that Respondents are not a common carrier under Act 9 or Act 16 because:

> [t]he record establishes that Respondents transport natural gas and CO_2 owned by others through pipelines as part of a compensated commercial service. Neither Act 9 nor Act 16 requires that transportation be the primary service offered, nor do they exempt transportation that is integrated with treatment. By superimposing limitations found nowhere in the statutory text, the Ruling improperly narrows the Commission's jurisdiction, and excuses conduct that falls squarely within the Legislature's definition of common-carrier activity. The Commission should reject the PFD and hold that Respondents are [a] common carrier[ ] subject to its jurisdiction and anti-discrimination authority under Act 9 and Act 16.

Complainants' exceptions, p. 12.

On their last point, Complainants assert that the ALJ erred in concluding that the Commission lacks jurisdiction over Respondents' CO_2 services under Act 16 by reasoning that Respondents operate a purely private business with no public interest. That conclusion, per Complainants, "rests on an unduly narrow reading of Act 16 and a fundamental misunderstanding of the nature and consequences of the services at issue." *Id*. Referencing the express grant of authority to the Commission over business involving CO_2 substances in MCL 483.3, and despite the limited exception for certain entities within the statute, Complainants argue that the ALJ:

> treated this statutory exception as dispositive in concluding that the Commission lacked jurisdiction because Respondents' operations do not implicate the public interest. This finding is a question of fact that should not be decided based on a motion to dismiss which decides questions of law. Complainants do not dispute that Respondents operate a private business. They do, however, squarely challenge the PFD's conclusion that Respondents' treatment and disposition of CO_2 do not implicate the public interest. That conclusion is without merit.
>
> The treatment, handling, and disposal of CO_2 are plainly matters of public interest. "Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large." *Dome Pipeline Corp v Pub Serv Comm*, 176 Mich App 227, 236; 439 NW2d 700 (1989), quoting *Munn v Illinois*, 94 US 113, 126; 24 L Ed 77 (1876). The public has a clear and substantial interest in how CO_2 is treated, captured, and sequestered by natural gas producers and by entities engaged in processing gas for transportation. Recognizing the importance of carbon dioxide substances, the Legislature amended Act 16 in 2014 to ensure the Commission's Act 16 jurisdiction extended specifically do CO_2. See 2014 HB 5254. Additionally, the public interest in the administrative oversight of CO_2 is underscored by federal tax policy incentivizing CO_2 capture and sequestration through tax credits. See 26 USC § 45Q.

Complainants' exceptions, p. 13. Complainants state that the ALJ acknowledged the State's policy objective of achieving net-zero carbon emissions in the utility sector and, in doing so, could not then logically conclude that activities essential to carbon capture and sequestration do not implicate the public interest. Moreover, per Complainants, "improper handling, venting, or disposal of carbon dioxide presents environmental, safety, and economic risks that extend well beyond the parties to the treatment contracts, further underscoring the public consequences of Respondents' activities." *Id*. Despite all of this, Complainants contend that the ALJ determined, without meaningful analysis, that the public interest is not implicated and rather reached a flawed conclusion that the concerns raised in this case can be addressed and resolved in a separate Act 16 proceeding. In response to this, Complainants argue that:

> [t]he possibility that certain environmental issues may also be addressed in a different regulatory proceeding does not negate the public interest implicated by the treatment and disposition of CO_2 at issue here. Jurisdiction does not turn on whether regulatory concerns might be considered in a different proceeding, but on whether the activity itself affects matters of public consequence.
>
> By deferring consideration of public impacts of CO_2 treatment to a speculative future application, the PFD improperly narrowed Act 16 and insulated Respondents' monopoly activities from Commission oversight. Nothing in Act 16 authorizes the Commission to disclaim jurisdiction simply because related issues might later arise in a different regulatory context.

Id., p. 14. Complainants, in this regard, assert that they properly invoked the Commission's jurisdiction under Act 16 by showing that Respondents' treatment activities implicate the public interest, contend that the ALJ erred by concluding otherwise and by failing to explain why this type of activity does not affect matters of public concern, and request that the Commission reverse the ALJ's determination that the Commission lacks jurisdiction under Act 16 to regulate Respondents' activities.

For the foregoing reasons and in conclusion overall:

> Complainants respectfully request that the Commission reject the PFD's recommendation to dismiss the Complaint and direct the ALJ to issue a scheduling memorandum for this proceeding. The PFD rests on erroneous and unduly narrow conclusions regarding the scope of the Commission's subject-matter jurisdiction under Act 9 and Act 16. Because those jurisdictional errors foreclose the Commission's ability to carry out its statutory duties and permit discriminatory conduct to go unaddressed, prompt reversal is necessary to protect Complainants, the public interest, and the integrity of the Commission's regulatory authority.

Complainants' exceptions, pp. 14-15.

2. Replies to Exceptions

Respondents overall argue that Complainants' assertions in this case amount to a commercial dispute that, to the extent there is a claim, must be raised in circuit court. On this point, Respondents highlight that the Commission twice rejected Complainants' efforts to file this case and contend that "[t]he third attempt, while having passed prima facie review, was more of the same – an attempt to fabricate a regulatory veneer over what is a purely commercial claim." Respondents' replies to exceptions, p. 1. Moreover, per Respondents:

> While Complainants allege jurisdiction based upon Acts 9 and 16 of 1929, they admit – as they must – that in the past 97 years, neither the Commission nor any Court has construed those acts to apply to treating services, and in fact the Commission has stated expressly it lacks such jurisdiction.
>
> While Complainants urge the Commission to now strike out in a dramatically new direction for the first time in nearly a century, the bottom line remains that the Commission lacks jurisdiction and Complainants, if they have any viable claim for breach of contract, must seek recourse in the circuit court. The ALJ correctly proposed dismissal, and the Commission should adopt the PFD and issue a final order dismissing this case.

Respondents' replies to exceptions, pp. 1-2 (footnote omitted).

Respondents next discuss the Treating Agreements at issue in this case, attached as Exhibits C-1 to C-3 to the complaint, and emphasize that these agreements make clear that Complainants retain ownership over Complainants' natural gas and CO_2 at all relevant times. Respondents' replies to exceptions, pp. 2-3.

Respondents then discuss the complaint in more detail and highlight, among other things: (1) the July 11 and August 4, 2025 prima facie letters that the Commission issued with regard to Complainants' two previously rejected versions of their complaints submitted in this case; (2) that Complainants attempt to invoke the Commission's jurisdiction through Acts 9 and 16 in their accepted complaint but (a) do not, as it relates to Act 9, identify another customer of Respondents or actual rates that Respondents charge any other customer for like contemporary gas treatment services and cite to MCL 483.110 which does not mention contracts for gas treatment and (b) make violation claims under Act 16 despite specification in the parties' actual contracts that Respondents may dispose of the CO_2 without liability or obligation unless Complainants develop a takeaway system; and (3) Complainants' claim for economic damages seeks conflicting monetary amounts of over $5 million in one paragraph of the complaint and over $3 million in another. Respondents' replies to exceptions, pp. 3-5.

Respondents thereafter address legal standards applicable to summary disposition under MCR 2.116(C)(4). *Id*., pp. 5-7. Here, Respondents take the opportunity to note "thorny constitutional issues that will arise if the Commission attempts to stretch the language of Act 9 or Act 16 to exercise jurisdiction over the transactions memorialized in the Treating Agreements" and highlight that "all the ALJ properly relied on in issuing the PFD was the allegations in the Complaint and the Treating Agreements attached thereto that make plain that this dispute has nothing to do with the business of transporting natural gas or CO_2 for hire." *Id*., p. 6, nn. 3, 4.

Disputing Complainants' first alleged error, Respondents argue that the ALJ correctly ruled that Respondents' treating service is not sufficiently related to gas transportation to fall under the Commission's jurisdiction under Act 9. Applying MCL 483.103 to the instant case, Respondents contend that the ALJ was correct to rely on the June 26 order. Per Respondents:

> The ALJ properly reasoned that treating fees—like the title-tracking fees at issue in Case No. U-11210—are at most incidental to the business of natural gas transportation. Of particular importance is the fact that Respondents merely receive the gas from Complainants at Respondents' own facility, provide treatment services, and dispose of the gas and excess CO_2 consistent with the terms of the Treating Agreements. In other words, any "transportation" of gas related to the Treating Agreements happens only at and within Respondents' own facility and solely to facilitate the treatment of gas—or as the ALJ analogized, the '"transportation' service that Respondents provide is akin to driving the bus from one end of the bus station to the other." PFD at 17, fn 39. But that of course does

> not mean Respondents are "in the business of transporting natural gas." Further analogies help illustrate the point: A body shop that moves a person's car from the parking lot to the garage for repairs is not in the car transportation business. And a dry cleaner that moves clothes dropped off at a store front to its separate facility for cleaning and then back to the store for eventual pick up is not in the business of transporting clothes. Similarly, as the PFD correctly acknowledges, just because Respondents receive gas and move it within its own facility for treatment and subsequent redelivery to Complainants does not transform Respondents' gas treatment services into a transportation business.

Respondents' replies to exceptions, p. 8.

For these same reasons, Respondents argue that the Staff's reliance on MCL 483.101 is also inapt as, "[a]gain, this case deals not with the gas transportation business or transporting for compensation but with providing treatment services for which Complainants pay only a treating rate as they agreed to do under their respective Treating Agreement." *Id*., n. 5. Respondents assert that, despite this all, Complainants and the Staff miss the critical limitation and plain meaning of MCL 483.103 and contend that Complainants' and the Staff's arguments are simply at odds with the language of Act 9, Commission precedent, and related case law. Specifically, Respondents argue that:

> Staff and Complainants both ignore that under MCL 483.103 it is not simply the transportation—or movement of natural gas on one's own property—that triggers the Commission's jurisdiction under Act 9. Instead, to invoke the Commission's jurisdiction requires a showing that that a party is in the "business of … transporting natural gas for a public use." MCL 483.103. In that sense, the ALJ correctly acknowledged that natural gas can be moved in a manner that is incidental to or entirely detached from the business of gas transportation. Similarly, Staff's emphasis upon the statutory language that "the right to locate, maintain or operation the necessary pipelines, fixtures or equipment thereto" fails because of the rest of the sentence, which limits it to "concerning the said business of carrying or transporting natural gas." Staff's Exceptions at 6. The "business" at issue is treatment, not transportation.
>
> And while Complainants attempt to undermine the ALJ's reliance on the title-tracker case example in Case No. 11210, their arguments are unavailing. They claim gas treatment "is a required and essential step of gas transportation services. . . . [N]atural gas treatment is an operational perquisite to lawful and safe pipeline transportation. The treatment involves the use of pipes or pipelines to move the

> gas. Gas that does not meet quality specifications cannot be injected into, transported through, or redelivered from a pipeline." Complainants' Exceptions at 9. As an initial matter, that argument fails on the basis of Complainants' own allegations. If treatment is a necessary "prerequisite" to transportation—how can Complainants' natural gas be transported to Respondents' facility for treating? Or in other words, how can the gas be "transported" from Complainants' wells to the receipt point and then to the proper location within Respondents' facility for treating? That fact alone shows transportation can happen without treatment.

Respondents' replies to exceptions, pp. 9-10 (alteration in replies to exceptions). Respondents, in this regard, draw similarity again to Case No. U-11210 to further the point that transportation can occur without treatment and that the ALJ correctly found that treatment services are at most incidental to the business of transportation, thus leading to the conclusion that the Commission is without jurisdiction to regulate the Treating Agreements and the treatment rates that are the subject of the instant case.

Further disputing Complainants' arguments as to the ALJ's findings regarding the August 7 order, Respondents contend that the ALJ did not improperly limit Case No. U-14754 to natural gas dedications. Instead, Respondents state:

> as the ALJ thoroughly explained, "[w]hile the Commission found that the pipeline had discriminated against the shipper by requiring super treatment, it also found that the dedication was in perpetuity *for both transportation and treatment services*." PFD at 14-15 (emphasis added). Thus, the ALJ did not cabin Act 9's reach to dedications, but only to contracts that address *both* treatment and transportation. To explain further, while the Commission ultimately exercised jurisdiction over the contract at issue in that case under *Dominion Reserves, Inc v Michigan Consolidated Gas Co*, 40 Mich App 216; 610 NW2d 282 (2000), it did so because the treatment provisions were included as part of a "complex transportation contract," and therefore invoked the Commission's primary jurisdiction. Neither Case No. U-14754 nor Case No. U-15766 involved the circumstances at issue in this case, which deals exclusively with a treatment-only contract and a treatment-only rate.
>
> In fact, Case No. U-15766 rebuts Complainants' and Staff's argument that Act 9 allows the Commission to regulate treatment-only transactions. The Commission there found that "Act 9 does not address natural gas treatment. Sections 3, 6, and 10 of Act 9 address requirements for [only] the purchase and transport of natural gas. MCL 483.103, 483.106, 483.110." In doing so, the Commission rejected

> Staff's argument—which is the same argument they make here—that "the Commission initiate rate regulation of treatment services." PFD at 15. In sum, the Commission's precedent demonstrates that it has long disavowed authority to regulate gas treatment under Act 9 consistent with that statute's plain language and the limited nature of the Commission's jurisdiction. Now is not the time and this is not the case through which the Commission should attempt to expand Act 9's jurisdictional bounds. The ALJ correctly found the Commission lacks subject matter jurisdiction under Act 9 and that this case should be dismissed.

Respondents' replies to exceptions, pp. 10-11 (emphasis in original; alteration in Respondents' replies to exceptions).

Responding to Complainants' second alleged error, Respondents argue that the ALJ correctly found that Respondents are not a common carrier under Act 9. *Id.*, p. 11 (citing PFD, p. 17). Respondents, in this context, assert that both Complainants and the Staff erroneously rely not on language in MCL 483.103 but on the court's application of MCL 483.103 in *Greyhound*, the latter being a case that had nothing to do with Act 9 but rather the Commission's regulation of the United Parcel Service (UPS) under the Motor Carrier Act. Moreover, per Respondents:

> while Staff is correct that the court in *Greyhound* looked to the factors provided in 13 CJS, Carriers, Sec. 3, pp 26-28, to determine whether one is "engaging in the transportation of goods for hire [as] a common carrier," none of those apply to Respondents' business of providing natural gas treatment under individual contracts with each Complainant. For instance, such gas treatment services are distinct from "the *business of carrying goods for others* as a public employment" or providing transportation services. And, for good reason, Complainants have not alleged that Respondents have held themselves "out as ready to engage in the transportation of goods for persons generally as a business," or "undertake[n] goods…of the kind to which [their] business is confined." *Greyhound*, at 600. If anything, those factors merely confirm that Respondents' treatment services are entirely inapposite from a traditional common carrier relationship—such as UPS. Indeed, other factors cited by Staff are even more facially inapplicable, such as that the person "must undertake to carry by the methods *by which his business is conducted* and over his *established roads*," and that it is the "the transportation" itself that "must be for hire." *Id*; See also Staff's Exceptions at 4, quoting *Jackson Archtectural Iron Works v Hurlburt*, 158 NY 34 (1899) ("A common carrier is one who, by virtue of his calling, undertakes, for compensation, to transport personal property from one

> place to another for all such as may choose to employ him; and everyone who undertakes to carry for compensation the goods of all persons indifferently …").

Respondents' replies to exceptions, p. 12 (alterations in original). Considering this background, Respondents argue that the ALJ properly saw the type of business provided by Respondents as having nothing to do with being paid to transport natural gas and underscore that the Commission has never sought to use its Act 9 authority to regulate gas treatment and should not start now.

As for Complainants' third alleged error, Respondents contend that Complainants fail to allege that the treatment transactions in this case involve a public use. Respondents argue that "[c]ourts have construed MCL 483.103 to preclude Commission jurisdiction under Act 9 where there is no public use stemming from the transport of the gas at issue—especially where ownership of the gas does not change." *Id*., p. 13 (citing *Nat'l Steel*, 204 Mich App at 632-633 and *Sohio*, 321 Mich at 110). Per Respondents:

> Complainants have not alleged that the transactions at issue—which involve Respondents' treatment at their own facility of gas over which Complainants maintain title—involves the transportation, sale, or purchase of gas "for public use." And that is consistent with the Treating Agreements, which state that it is Complainants' obligation to deliver their natural gas to Respondents for treatment. See Treating Agreements, ¶ 3.1. The Treating Agreements further clarify that Complainants retain title to the natural gas throughout the treatment process . . . .
>
> As was the case in *Sohio* and *Nat'l Steel*, the Treating Agreements do not involve the transfer of title to others in the transportation stream or to end-users. For good reason, Complainants fail to allege that the Treating Agreements at issue involve the sale, purchase, or transportation of gas for a *public use*. Act 9 has no bearing on the transactions between the parties discussed in the Complaint, which is merely that of private parties that entered an agreement for natural gas treatment services and nothing more. For that reason, the Commission does not have subject matter jurisdiction under Act 9, and the ALJ properly recommended that this case be dismissed.

Respondents' replies to exceptions, pp. 14-15 (emphasis in original).

With regard to Complainants' fourth alleged error, Respondents assert that the ALJ correctly found that Act 16 does not grant the Commission with jurisdiction over the complaint.

Respondents argue that Act 16 says nothing about processing CO_2 and, while Complainants attempt to rectify their pleadings to now assert that all treatment, handling, and disposing of CO_2 are plainly matters of matter interest and point to amendments to Act 16 in 2014 and federal tax policy incentivizing CO_2 capture in support, Complainants' interpretation of MCL 483.3 "would entirely swallow and render meaningless the exception contained in MCL 483.3(2)." *Id*., p. 16. Respondents assert:

> As with all statutes, the Commission "must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory," *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich. 142, 146, 644 N.W.2d 715 (2002). In keeping the exception in MCL 483.3(2) when it added CO_2 to the statute in 2014, the Legislature made clear its intent that certain business can be private, not implicate a public interest, and still involve the handling of CO_2. Complainants' vague statements about "environmental concerns" that are always present in dealing with CO_2 do not mean the Commission suddenly has free rein to exercise jurisdiction over all conduct that touches and concerns CO_2.

Respondents' replies to exceptions, p. 16. Respondents, in this regard, further emphasize that the Treating Agreements at issue in this case provide that Complainants retain title to their CO_2 throughout the entire treatment period and detail what occurs with the use or disposal of CO_2, which Respondents contend does not involve any public interest or transportation of CO_2 as a common carrier. Per Respondents:

> Like Act 9, Act 16 also does not grant the Commission jurisdiction over purely private business transactions where no public use or interest is involved. Here, the Treating Agreements illustrate that Respondents merely receive natural gas from Complainants, provide treatment services, and then use or dispose of excess CO_2 resulting from such treatment under the terms of the Treating Agreements. At no time during the transaction does CO_2 pass to other parties. Act 16 does not govern such private commercial relationships and cannot serve as the basis of the Commission's jurisdiction. For that reason, the ALJ correctly proposed dismissing the Complaint for lack of subject matter jurisdiction.

Id., p. 17 (footnote omitted).

For the reasons set forth above, Respondents request that the Commission adopt the PFD, dismiss the complaint in its entirety for lack of subject-matter jurisdiction, and grant Respondents any other relief deemed just. *Id*.

Discussion

The Commission agrees with the Staff's position in exceptions and, in doing so, finds that it does indeed have jurisdiction over this matter pursuant to Act 9, and the matter should therefore be remanded to allow the case to proceed as a contested case and for the previously filed petitions to intervene, dismissed by the ALJ as moot, to also be reconsidered as a result. *See*, generally, Staff's exceptions, pp. 1-8.

The Commission has historically had oversight of natural gas treatment contracts in the past, notably with several currently on file with the Commission. In the past, however, treatment facilities were a shared asset, with pooled resources contributing to the operation of them, all companies signing the same agreement, and more self-regulation occurring. The Commission has, therefore, only needed to act in those rare instances when an issue was brought to the Commission's attention. This past practice has been changing over recent years though with the consolidation of pipeline operators and treatment assets and assets being sold. Considering the changing market and the claims presented in this case, however, the Commission will be reminding all new market participants of their obligations under the Commission's pipeline requirements, notably the requirement to file their contracts with the Commission pursuant to applicable law. *See*, e.g., MCL 483.110.

To be clear, this order is merely an interim order finding jurisdiction to allow the matter to proceed through the full contested case process under the Michigan Administrative Procedures Act of 1969, Public Act 306 of 1969, MCL 24.201 *et seq*., including the opportunity for a proposal for decision and any exceptions and replies to exceptions thereto. This order is *not* an adjudication on the merits of the complaint filed in this case but rather provides opportunity for a fully developed record on which the Commission can render a decision on the merits when the case is ripe to do so.

THEREFORE, IT IS ORDERED that this matter is remanded to the administrative law judge division to set a schedule for the case to proceed as a contested case proceeding in accordance with the Michigan Administrative Procedures Act of 1969, Public Act 306 of 1969, MCL 24.201 *et seq*., and for the petitions to intervene previously filed by Muskegon Operating Company LLC; VCP Michigan, LLC; Lambda Energy Resources LLC; and Core Antrim Company, LLC, to also be reconsidered as a result.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at LARA-MPSC-Edockets@michigan.gov and to the Michigan Department of Attorney General - Public Service Division at sheac1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Daniel C. Scripps, Chair

Katherine L. Peretick, Commissioner

Shaquila Myers, Commissioner

By its action of August 27, 2026.

Lisa Felice, Executive Secretary

P R O O F   O F   S E R V I C E

STATE OF MICHIGAN)

Case No. U-21938

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on August 27, 2026 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

Brianna J. Brown

Brianna Brown

Subscribed and sworn to before me
this 27th day of August 2026.

Angela P. Sanderson

Angela P. Sanderson
Notary Public, Shiawassee County, Michigan
As acting in Eaton County
My Commission Expires: May 21, 2030

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