

July 12, 2006

Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48909

Re: *Quicksilver Resources and Terra Energy v MichCon Gathering Company and Michigan Consolidated Gas Company, MPSC Case No. U-14821 (paperless)*

Dear Secretary Kunkle:

Enclosed for filing are Michigan Consolidated Gas Company's and MichCon Gathering Company's Motion to Strike Prefiled Direct Testimony and Rebuttal Testimony of Gregory A. Fogle, Motion to Strike Prefiled Direct Testimony and Rebuttal Testimony of Frank M. Murray and Motion to Strike Prefiled Direct Testimony and Rebuttal Testimony of Thad Shumway. A Proof of Service is also enclosed.

Very truly yours,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

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Aaron

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Enclosures

LANSING.263170.1

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

QUICKSILVER RESOURCES, INC. and
TERRA ENERGY, LTD.

Complainants,

vs.

Case No. U-14821

MICHCON GATHERING COMPANY and
MICHIGAN CONSOLIDATED GAS
COMPANY,

Respondents.

**MOTION TO STRIKE PREFILED DIRECT TESTIMONY AND REBUTTAL
TESTIMONY OF GREGORY A. FOGLE**

Michigan Consolidated Gas Company (“MichCon”) and MichCon Gathering Company (“MGAT”) move to strike and exclude from the record the following portions of the prefiled direct testimony saying:

PREFILED DIRECT TESTIMONY OF GREGORY A. FOGLE

1. Page 3, lines 12-16.

- **Irrelevant**

The testimony identified above presents inadmissible, irrelevant and immaterial evidence which has no bearing on the ultimate conclusion in this case. The question and answer intends to interject Mr. Fogle’s understanding as to the reason for this proceeding. Mr. Fogle’s understanding is irrelevant.

Mr. Fogle is neither an agent nor employee of any of the parties to this proceeding. His employment and professional experience do not afford him any personal knowledge from which he can factually testify.

- **Not Qualified Expert**

Mr. Fogle's experience with respect to oil and gas production and a CO₂ processing plant does not afford him expertise in the management or operation of an Act 9 transmission pipeline. Mr. Fogle was not involved in the negotiations between complainants and respondents nor was he involved in any transactions between complainants, respondents and CMS Antrim LLC, the entity owning and operating a CO₂ treating facility connected to the Antrim Expansion Pipeline. As such, Mr. Fogle is not qualified to render an opinion as an expert under MRE 702.

2. Page 4, lines 1-16.

The question asks Mr. Fogle to describe how MichCon contracted with shippers.

- **Lack of Foundation**

Mr. Fogle lacks personal knowledge that enables him to testify to the facts asserted in this testimony. Mr. Fogle was not employed nor has he acted on behalf of MichCon in contracting with shippers. He is not in a position to personally know MichCon's flexibility with respect to blending, or MichCon's relationship with CMS in building a processing plant. The testimony lacks foundation for demonstrating his testimony is based on personal knowledge – not obtained second hand.

- **Speculation**

Mr. Fogle engages in speculation when he expresses his understanding based on former relationships, none of which were acting on behalf of MichCon. There is no foundation to suggest that Mr. Fogle has personal direct knowledge of the facts alleged and therefore he engages in speculation.

- **Best Evidence**

To the extent that Mr. Fogle testifies as to the contents of documents, his testimony violates the best evidence rule and is unnecessary when the documents are available.

3. Page 4, line 17 through Page 5, line 5.

The questions seek Mr. Fogle's understanding on how MichCon could blend and join with CMS to build a CO₂ plant.

- **Lack of Foundation**

Mr. Fogle lacks personal knowledge that enables him to testify to the facts asserted in this testimony. Mr. Fogle was not employed nor has he acted on behalf of MichCon in contracting with shippers. He is not in a position to personally know MichCon's flexibility with respect to blending or MichCon's relationship with CMS in building a processing plant. The testimony lacks foundation for demonstrating his testimony is based on personal knowledge – not obtained second hand.

- **Speculation**

Mr. Fogle engages in speculation when he expresses his understanding based on former relationships, none of which were acting on behalf of MichCon. There is no foundation to suggest that Mr. Fogle has personal direct knowledge of the facts alleged and therefore he engages in speculation.

- **Best Evidence**

To the extent that Mr. Fogle testified as to the contents of documents, his testimony violates the best evidence rule and is unnecessary when the documents are available.

4. Page 5, lines 9-16.

The identified testimony attempts to interject Mr. Fogle's opinion as to what MichCon desires.

- **Irrelevant**

Mr. Fogle's opinion as to MichCon's desire is irrelevant.

- **Unqualified Opinion Testimony**

Mr. Fogle is not qualified to offer expert testimony to speculate as to what MichCon wants. Expert testimony under MRE 702 is intended to assist the trier of fact to understand the evidence or determinative fact at issue and a witness must be qualified by knowledge, skill, experience training or education. Mr. Fogle's testimony does not rise to the level of having expertise to express an opinion on such matters.

- **Speculation**

The proffered testimony involves speculation on Mr. Fogle's part and is inadmissible

5. Page 5, lines 17-23.

The identified testimony offers Mr. Fogle's opinion as to whether discrimination has taken place or the possible discrimination by MichCon.

- **Unqualified Expert Testimony**

Mr. Fogle is not qualified to offer a legal opinion as to the existence of discrimination.

- **Irrelevant**

Mr. Fogle's speculative opinion is therefore irrelevant.

6. Page 6, lines 1-18.

The identified testimony attempts to interject Mr. Fogle's observations with respect to a witness' testimony in a completely separate proceeding.

- **Irrelevant**

This strawman question and answer is not relevant as the predicate testimony is not in this case. Furthermore, it is an inappropriate attempt to rebut testimony offered in another proceeding.

7. Page 6, line 19 through Page 7, line 7.

The identified testimony attempts to interject Mr. Fogle's opinion as to whether a process is discriminatory to Terra and Quicksilver.

- **Unqualified Expert Testimony**

Mr. Fogle is not qualified to offer a legal opinion as to whether a process is discriminatory.

- **Speculation**

Mr. Fogle's response to the question involves speculation on his part because he lacks personal knowledge as to the facts asserted in the testimony.

- **Irrelevant**

Mr. Fogle's unqualified opinion and speculative testimony is irrelevant to the issues in this proceeding.

8. Page 7, line 8 through Page 8, line 5.

The identified testimony attempts to interject Mr. Fogle's unqualified opinion as to whether MichCon may act lawfully in a manner it proposes to act.

- **Unqualified Expert Testimony**

Mr. Fogle is not qualified to offer a legal opinion as to whether a process is discriminatory.

- **Speculation**

Mr. Fogle's response to the question involves speculation on his part because he lacks personal knowledge as to the facts asserted in the testimony.

- **Irrelevant**

Mr. Fogle's unqualified opinion and speculative testimony is irrelevant to the issues in this proceeding.

REBUTTAL TESTIMONY OF GREGORY A. FOGLE

9. Page 1, lines 7-11.

The identified testimony attempts to correct prefiled direct testimony and as such is not proper rebuttal. Corrections to direct testimony may be made on the stand.

- **Improper Rebuttal Testimony**

The testimony is not proper rebuttal. Rebuttal evidence is that which explains, contradicts or otherwise refutes the other parties' evidence. The purpose is to cut down the other parties' case, not merely to confirm the case of a party introducing the rebuttal evidence. *Gonzalez v Hoffman*, 9 Mich App 522, at 530 (1968). By its own context, the testimony merely confirms and corrects testimony Mr. Fogle has already presented. Mr. Fogle does not refute or contradict any evidence.

10. Page 1, line 22 through Page 2, line 10.

The identified testimony attempts to interject Mr. Fogle's speculative belief as to the reason MGAT needs a 0.75% outlet speculation.

- **Lack of Personal Knowledge**

Mr. Fogle lacks personal knowledge that enables him to testify to the facts asserted in this testimony. Mr. Fogle was not employed nor has he acted on behalf of MichCon in contracting with shippers. He is not in a position to personally know MichCon's flexibility with respect to blending or MichCon's relationship with CMS in building a processing plant. The testimony lacks foundation for demonstrating his testimony is based on personal knowledge – not obtained second hand.

- **Unqualified Opinion Testimony**

Mr. Fogle is not qualified to offer expert testimony to speculate as to what MichCon wants. Expert testimony under MRE 702 is intended to assist the trier of fact to understand the

evidence or determinative fact at issue and a witness must be qualified by knowledge, skill, experience training or education. Mr. Fogle's testimony does not rise to the level of having expertise to express an opinion on such matters.

- **Irrelevant**

Mr. Fogle's personal belief is irrelevant. It is not facts nor proper opinion.

- **Argument**

The testimony presents in essence Complainants' argument, which can be briefed. The parties and record need not be burdened with argument as evidence.

- **Violates Best Evidence Rule**

To the extent that Mr. Fogle testified as to the contents of documents, his testimony violates the best evidence rule and is unnecessary when the documents are available.

11. Page 3, lines 10-15 and lines 19-21.

The identified testimony attempts to interject irrelevant and immaterial evidence concerning the contents of a Commission order, facts which the witness lacks any personal knowledge of and expresses an opinion as to the witness' belief of MGAT's needs.

- **Lack of Personal Knowledge**

Mr. Fogle lacks personal knowledge that enables him to testify to the facts asserted in this testimony. Mr. Fogle was not employed nor has he acted on behalf of MichCon in contracting with shippers. He is not in a position to personally know MichCon's flexibility with respect to blending or MichCon's relationship with CMS in building a processing plant. The testimony lacks foundation for demonstrating his testimony is based on personal knowledge – not obtained second hand.

- **Best Evidence Rule**

The content of the Commission order speaks for itself and the parties are free to brief and argue what the order says. The parties need not take testimony as to the content of the order.

- **Speculation**

The witness offers testimony concerning what Terra and Quicksilver plan. The witness is not a party to the negotiation nor does his testimony demonstrate he has personal knowledge as to Terra and Quicksilver's plans. Further, the testimony purports to describe what MGAT desires. This witness lacks personal knowledge as to those facts.

- **Unqualified Opinion Evidence**

The identified testimony expresses the witness' belief concerning MGAT's needs which he is not qualified to provide. It is not proper opinion testimony under MRE 702.

12. Page 4, lines 1-7.

The identified testimony is improper supplemental direct testimony and not rebuttal.

- **Improper Rebuttal**

In its own context, Mr. Fogle's testimony attempts to add what was missing from his direct testimony. As such, the testimony attempts to confirm and supplement what was already presented in his direct testimony and does not contradict or otherwise refute directly the case presented by respondents.

13. Page 4, lines 14-22.

The identified testimony is improper supplemental direct testimony and not rebuttal.

- **Improper Rebuttal**

In its own context, Mr. Fogle's testimony attempts to add what was missing from his direct testimony. As such, the testimony attempts to confirm and supplement what was already presented in his direct testimony and does not contradict or otherwise refute directly the case presented by respondents.

14. Page 5, lines 14-19.

The identified testimony is improper supplemental direct testimony and not rebuttal.

- **Improper Rebuttal**

In its own context, Mr. Fogle's testimony attempts to add what was missing from his direct testimony. As such, the testimony attempts to confirm and supplement what was already presented in his direct testimony and does not contradict or otherwise refute directly the case presented by respondents.

15. Page 6, lines 7-9.

The testimony offers facts as to what a non-party promised.

- **Lack of Foundation**

Mr. Fogle lacks personal knowledge that enables him to testify to the facts asserted in this testimony. Mr. Fogle was not employed nor has he acted on behalf of MichCon in contracting with shippers. He is not in a position to personally know MichCon's flexibility with respect to blending, or MichCon's relationship with CMS in building a processing plant. The testimony lacks foundation for demonstrating his testimony is based on personal knowledge – not obtained second hand.

- **Speculation**

Mr. Fogle engages in speculation when he expresses his understanding based on former relationships, none of which were acting on behalf of MichCon. There is no foundation to suggest that Mr. Fogle has personal direct knowledge of the facts alleged and therefore he engages in speculation.

16. Page 6, line 11 through Page 7, line 23.

The identified testimony attempts to interject facts about which the witness has no personal knowledge and therefore is speculation and lacks foundation for its submission. The

testimony also violates the best evidence rule in purporting to describe the contents of the capacity agreement. The testimony also offers the witness' speculation as to whether MichCon collected money and what MichCon could have done in contracting for CMS or Terra. The witness is not qualified to offer opinion and testimony. Additionally, the subject testimony contains argument, neither fact nor opinion, rebutting MichCon's case, which argument could be presented by the complainants and briefed.

RELIEF

WHEREFORE, Michigan Consolidated Gas Company and MichCon Gathering Company respectfully request that the Administrative Law Judge grant this Motion to Strike and exclude from the record the above identified testimony.

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

**Richard
Aaron**

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Dated: July 12, 2006

1 Q. Have you previously testified before the Michigan Public Service Commission
2 ("MPSC")?

3 A. Yes, I have given testimony in proration matters and Act 9 pipeline certifications.

4 Q. What is the purpose of your testimony in this proceeding?

5 A. The purpose of my testimony is to present the findings of a review I conducted of
6 various document files related to this proceeding.

7 Q. What have you reviewed?

8 A. I have reviewed Antrim Gas Transportation and Treating Service Agreements
9 (ASATTs), Antrim Gas Transportation Agreements (ASATs) and I have reviewed
10 the exhibits and testimonies presented in this proceeding and in the proceeding
11 brought by Dominion Resources, U-14754.

~~12 Q. What is your understanding of the reason for this MPSC proceeding?~~

~~13 A. It is my understanding that MichCon has taken the position that it can impose a
14 new carbon dioxide content on shippers on the Antrim Expansion Pipeline
15 ("AEP") (1) without getting MPSC approval; and (2) without getting the consent or
16 approval of the shippers.~~

17 Q. Please describe the relationship of shippers and MichCon as it pertains to the
18 AEP.

19 A. Shippers, who are producers of natural gas in Michigan, enter into ASATTs with
20 MichCon. Pursuant to the ASATTs, shippers transport their gas to receipt points.
21 MichCon then transports the gas to facilities located on the AEP which remove a
22 portion of the CO₂ from the gas. MichCon then delivers the gas back to shippers
23 at delivery points.

1 Q. Describe how MichCon contracted with shippers for inlet gas.

2 A. MichCon contracted through the ASATT's for producer inlet gas with up to 14%
3 CO₂, with the treating service priced to remove enough CO₂ such that the final
4 product would be 2% CO₂ gas. This met the AEP outlet order specification of 2%
5 or less. The AEP order only specified what MichCon could deliver, not what it
6 could accept.

7 Q. Describe the flexibility MichCon had to blend non-Antrim gas.

8 A. MichCon had the flexibility to blend non-Antrim gas (i.e. Niagaran wet gas) at
9 some places to reduce the outlet stream below 2% CO₂ for a safety net.

10 Q. Describe how MichCon joined with CMS to build CO₂ processing plants.

11 A. It is my understanding from my former relationships with MichCon entities that
12 MichCon joined with CMS to build CO₂ processing plants. As with most plants,
13 only a portion of the stream is actually treated, with a plant outlet usually less
14 than 1% CO₂; that gas is blended with untreated gas to achieve a 2% CO₂
15 combined stream. At a later date MichCon sold its interests in the Plants to CMS
16 for its own business purposes.

17 Q. How did MichCon contract with non-AEP producers?

18 A. MichCon contracted with other Antrim producers with ASATT's to take gas up to
19 14% CO₂ at receipt points that were downstream of the CMS plants. The
20 ASATT's for the downstream receipt points were identical to the ASATT's for
21 upstream receipt points. This treating could only be accomplished by blending
22 with the gas that was already at 2% CO₂ or below. So in order to meet the
23 requirements of the AEP order, MichCon contracted with CMS to remove

1 additional CO₂ such that the delivery points CO₂ content would be at the
2 mandated 2% or below. CMS accomplished this by treating more of the
3 commingled inlet gas stream they were receiving to an outlet specification of
4 0.75% CO₂. MichCon most likely paid for that service out of the funds they
5 received from the downstream producers for treating.

6 Q. What has happened now that some of the ASATTs have expired?

7 A. Producers like Terra and Quicksilver want to contract directly with CMS for
8 treating, based on CMS's promise to provide sufficient capacity to eliminate
9 curtailments due to processing plant outages. However, it is my opinion that
10 MichCon now wants producers like Terra and Quicksilver to assume the
11 additional burden of processing their gas to a 0.75% CO₂ content so that
12 MichCon can continue to blend other gas at or above 2% CO₂ content. This is
13 the burden MichCon was carrying before, with their processing agreement with
14 CMS. This is not a burden the producers should bear. MichCon should bear this
15 burden because MichCon chose to use blending rather than treating to meet the
16 CO₂ requirements.

17 Q. Is this discrimination?

18 A. In my opinion, yes. This is clearly discrimination between producers. Whether or
19 not Mich Con signed (or will sign in the future) transportation agreements (ASAT)
20 with other producers with a 2% or a .75% is irrelevant to this first discrimination.

21 Q. Could there be other examples of discrimination?

22 A. Yes. A second case of discrimination would occur if MichCon signs ASAT's with
23 other producers at any CO₂ specification other than .75%.

~~1 Q. Have you reviewed the testimony of Todd Percells in the MPSC proceeding~~

~~2 brought by Dominion Resources?~~

~~3 A. Yes.~~

~~4 Q. What are your observations of Mr. Percells' testimony?~~

~~5 A. I agree that MichCon collects funds from producers on gas delivered downstream
6 of the CMS plants to provide the service of reducing the CO₂ content of their gas
7 to 2% or less at the four outlet (delivery) points from the AEP. But, rather than
8 treat this gas they have chosen to accomplish the goal by dilution via blending
9 with Niagaran, PdC and Antrim gas treated to 0.75% CO₂. There is no question
10 that they have this right. But it would appear that they are not able to do this
11 anymore, probably because there is not enough Niagaran or PdC gas available
12 to dilute the Antrim gas in combination with Antrim gas treated to 0.75% CO₂.
13 Therefore, they need to get a greater volume of Antrim gas treated to something
14 less than 2% CO₂. Rather than contract with CMS to increase the volume of gas
15 treated to 0.75%, or to provide sufficient volumes of gas treated to a content of
16 less than 0.75%, it appears to me that they have decided to change the terms
17 and conditions of transporting gas on the AEP and shift the burden to shippers
18 who want to transport gas on the AEP but not pay MichCon for treating.~~

~~19 Q. Is this process discriminatory to Terra and Quicksilver?~~

~~20 A. Yes, Terra and Quicksilver contracted with MichCon to have their gas treated to
21 2% CO₂ under their ASATTs, which is the specification required at the AEP
22 delivery points. Now Terra and Quicksilver desire to have their gas treated to the
23 same 2% CO₂ specification by CMS. Terra and Quicksilver will achieve an~~

1 additional benefit of redundant treating capacity so that their gas will not be as
2 susceptible to curtailment. MichCon is insisting that Terra and Quicksilver
3 contract for treatment to a 0.75% CO₂ content. By doing this, Terra and
4 Quicksilver are being required to provide additional blending volumes for the
5 downstream producers, for the benefit of MichCon, who is collecting the revenue
6 from the downstream producers. This is clearly discriminatory to Terra and
7 Quicksilver.

8 Q. What is your opinion regarding MichCon's position that it can change the
9 standard set for carbon dioxide level for Antrim gas transportation contracts
10 without MPSC approval?

11 A. I do not believe MichCon Gathering should not be allowed to unilaterally change
12 CO₂ specifications on the AEP without the approval of the MPSC. MichCon
13 Gathering asked for and was granted approval of the AEP pipeline system by the
14 MPSC. The MPSC approved terms and conditions on the AEP between
15 MichCon and the shippers. I believe that all the producers who supported
16 MichCon's application for construction of the AEP understood that one of those
17 conditions was that in order to transport Antrim gas on the AEP their gas had to
18 either contain, or be treated to, or blended with other gas to, a carbon dioxide
19 level of no more than two percent. After several meetings between many Antrim
20 producers and MichCon, in which I participated, I believe everyone understood
21 that the producers would be responsible for the cost of treating their gas so that it
22 did not exceed the 2% CO₂ quality specification. I believe the producers and
23 MichCon agreed that they could contract with MichCon through an ASATT

1 contract for treating and transportation, or they could contract with MichCon for
2 transportation only with an ASAT, and some other party for treatment. It is
3 discriminating and unfair to unilaterally change an important condition of the
4 transportation contract without the approval of the shippers and without the
5 approval of the MPSC.

6 Q. Does this conclude your testimony at this time?

7 A. Yes.



Gregory A. Fogle

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1 **Rebuttal Testimony Of Gregory A. Fogle**
2 **On Behalf Of**
3 **Quicksilver Resources, Inc. and Terra Energy, LTD.**
4

5 Q. What is the purpose of your rebuttal testimony?

6 A. I will respond to the testimony of Todd F. Persells and Arthur Lyle, III.

~~7 Q. Were there any typographical errors in the direct testimony you filed in this case?~~

8 A. Yes. On page 7, line 11, the seventh word ("not") should be stricken. The
9 sentence starting on page 7, line 11 should read: "I do not believe MichCon
10 Gathering should be allowed to unilaterally change CO2 specifications on the
~~11 AEP without the approval of the MPSC."~~

12 Q. Do you agree with Mr. Persells' statements on page 17, lines 11-17 regarding the
13 service provided under the Terra and Quicksilver ASATTs?

14 A. No. Mr. Persells states that my characterization of the service provided under
15 the Terra and Quicksilver ASATTs being equivalent to the service provided by
16 CMS is inaccurate. This is ridiculous. Both the ASATTs for Terra and
17 Quicksilver and the CMS agreements for Terra and Quicksilver have identical 2%
18 outlet CO2 specifications. A requirement for 2% when it is stated in both
19 agreements is clearly equivalent. Mr. Persells' reference to the MGAT contract
20 with CMS is a smokescreen. Terra and Quicksilver are not parties to the
21 MGAT/CMS contract. Mr. Persells appears to be trying to confuse the
22 Commission. ~~I believe the 0.75% outlet specification in the MGAT/CMS contract~~
23 ~~was needed by MGAT to provide low CO2 gas to blend with high CO2 gas~~
24 ~~downstream of the CMS plants. There is nothing in the Terra and Quicksilver~~
25 ~~agreements with CMS that would prevent MGAT from continuing to contract with~~
~~26 CMS to provide further treatment of this gas to the 0.75% specification, just as~~

~~MGAT did when the gas was transported and treated under the expired ASATTs.~~

In fact, a review of the Capacity Agreement, dated as of the 18th day of April, 1995 by and between Michigan Consolidated Gas Company and Antrim Limited Partnership, later amended and assigned to affiliates of the two original parties, which I believe is the applicable agreement, reveals that the parties were aware of, and dealt with CMS contracts with third parties who had treating agreements that specified a 2% outlet CO2 requirement. The gas treated under those contracts was proportionally factored into the South Chester plants combined CO2 outlet, such that the South Chester plants were not treating all gas to a 0.75% CO2 outlet specification. If MGAT still requires a 0.75% CO2 outlet

specification for the Terra and Quicksilver gas contracted to CMS to provide capacity for blending untreated gas downstream of the South Chester plants in order to meet the mandated maximum of 2% CO2 at the outlets of the AEP, there is no obvious reason why MGAT could not simply request another amendment to its Capacity Agreement with CMS to exclude this gas from the third party volumes in the calculation.

Q. Do you have any comments about Mr. Persells' testimony on page 17, lines 22 and 23, and on page 18, lines 1-8?

A. Yes. Mr. Persells' statements are confusing at best, and misleading at least. I did not state in my direct testimony, or even imply, that the AEP order requires MGAT to construct additional facilities. I was simply stating the obvious, that MGAT's new requirement of Terra and Quicksilver to *contract and pay for* treatment to a 0.75% CO2 outlet specification in their agreements with CMS benefits MichCon. Terra and Quicksilver were before, and should be now,

1 obligated to deliver gas into the AEP with a CO2 concentration of no more than
2 2%. MichCon (or an affiliate) receives the revenue for treatment of gas
3 downstream of the CMS plants. Blending that is clearly allowed by the AEP
4 order provides this treatment. If MGAT needs volumes of gas with a CO2
5 concentration significantly less than 2% to blend with the high CO2 gas, it should
6 continue to contract with CMS to provide the additional treating, as it has done
7 for years.

8 Q. Do you have any comments about Mr. Persells' testimony, on page 18, lines 11-
9 17?

10 A. Mr. Persells again misrepresents my direct testimony. ~~The AEP order has~~
11 ~~language that says gas at the outlets of the AEP must contain 2% or less CO2.~~
12 ~~Terra and Quicksilver were therefore required to deliver gas into the AEP with *no*~~
13 ~~*more than 2% CO2.* Terra and Quicksilver still plan to deliver gas into the AEP~~
14 ~~with *no more than 2% CO2.* MGAT now wants Terra and Quicksilver to deliver~~
15 ~~gas with *no more than 0.75% CO2.* Mr. Persells tries, repeatedly, to make "2%~~
16 ~~or less" mean that producers can be required to deliver gas with *no more than*~~
17 ~~0.75% CO2. It is a clever misuse of language in the various contracts to imply~~
18 ~~that requiring Terra and Quicksilver to contract for treating to 0.75% is the same~~
19 ~~as treating to 2%. ~~I do not believe MGAT needs gas in the AEP with a CO2~~~~
20 ~~content of 0.75% for any reason other than to blend with gas with more than 2%~~
21 ~~CO2 so as to achieve an overall CO2 content of 2% or less.~~

22 Q. Do you have any comments about Mr. Lyle's testimony on page 13, lines 14-19?

23 A. Mr. Lyle, who I do not believe I have ever met, implies that he can read my mind,
24 and that I wanted to say something that I didn't say, or meant to say, or should

1 have said. ~~What is actually missing from my direct testimony is that the ASATTs~~
2 provided that at any Receipt Point the CO2 content could not exceed 2% unless
3 the Shipper could demonstrate that it had downstream processing agreements
4 satisfactory to MichCon Gathering that the gas would not exceed 2% CO2 at the
5 outlet of the processing plant, in which case the carbon dioxide content may not
6 exceed 25 mole percent, provided, however that Shipper's aggregate Receipt
7 ~~Point Gas may not exceed 14 mole percent.~~ So, while there was something
8 missing from my testimony, i.e. I only referred to the aggregate 14% limitation, Mr.
9 Lyle completely misrepresented what he thought I wanted to say.

10 Q. Do you have any comments about Mr. Lyle's testimony on page 13, lines 23-25?

11 A. Mr. Lyle implies that my answer is misleading because all the Niagaran gas that
12 is received for transport on the AEP is located upstream of the CMS treating
13 plant, and thus does not provide a safety net. First, I only referred to Niagaran
14 gas as an example. ~~Secondly, this was not the only Niagaran gas that eventually~~
15 joined with Antrim gas for distribution throughout the MichCon system. Niagaran
16 wet gas was treated at the Shell plant, then commingled with AEP gas at the
17 Kalkaska outlet that consisted of gas treated at the CMS plants plus Antrim gas
18 that was injected into the AEP downstream of the CMS plants. Gas from the
19 Saginaw Bay pipeline was also commingled with AEP gas at Kalkaska. These
20 two sources of low or no CO2 gas provided some potential dilution of higher CO2
21 gas on the AEP at Kalkaska to insure the gas at Kalkaska was below 2% CO2
22 content.

23 Q. Do you have any comments about Mr. Lyle's testimony on page 14, lines 4-12?

1 A. Once again, Mr. Lyle seems to think I need assistance in answering questions.
2 In my experience, CO2 treating plant operators treat only a portion of the gas
3 stream. That portion is usually a significant percentage of the available gas
4 stream, which Mr. Lyle correctly states, but seems to imply that I misstated. The
5 plant operator treats only as much of the available gas as necessary. The
6 blended gas I referred to is in fact the gas that bypasses the plant, not the
7 downstream gas he refers to. Mr. Lyle is correct that a plant operator would
8 insure that the blended outlet stream is less than 2%, but the margin would
9 normally be closer to a few tenths of a percent. A plant operator would not give
10 himself a margin of 1.25%, i.e. treat to a combined 0.75%, just to insure he hits
11 his target of 2%. That is a gross misuse of expensive fuel, chemicals and
12 dehydration capacity.

13 Q. Do you have any comments about Mr. Lyle's testimony on page 14, lines 16-18?

~~14 A. Once again, Mr. Lyle seems to think I cannot express myself adequately.~~

15 MichCon required that Shippers transport gas that was less than 2% CO2 or
16 have treating agreements such that their gas was treated so that the CO2
17 content did not exceed 2% at the outlet of the treatment plant. Certainly,
18 MichCon (or a subsidiary) contracted with CMS to further treat the gas stream so
~~19 that a portion of it was at a 0.75% CO2 content.~~ But MichCon clearly recognized
20 that some of the gas CMS was treating would only be treated to 2%, and there
21 were amendments to the Capacity Agreement that demonstrated that fact. If Mr.
22 Lyle believes that I believe that MichCon earmarked funds, he is entitled to his
23 opinion. In my cited testimony I mean that MichCon somehow found the money
24 to pay for their extra treating, and I think a reasonable person would conclude

1 that the funds they collected for treating gas that was not in fact actually treated,
2 were used to pay for the cost of treating sufficient volumes of treated gas to
3 some specification (i.e. 0.75%) considerably less than 2% CO2 to allow for
4 blending.

5 Q. Do you have any comments about Mr. Lyle's testimony on page 14, lines 21-22?

6 A. I do not "infer" anything in my cited testimony. ~~CMS promised to refurbish, and~~
7 ~~did so, one of the plants that was no longer needed on a routine basis to reduce~~
8 ~~curtailments if Terra and Quicksilver (and others, I believe) contracted directly~~
9 ~~with CMS for treatment.~~

10 Q. Do you have any comments about Mr. Lyle's testimony on page 15, lines 1-14?

~~11 A. Mr. Lyle finally does now try to read my mind. He just misstates the facts. Terra~~
12 ~~and Quicksilver have previously contracted with MichCon, under ASATTs, to~~
13 ~~acquire treatment of their gas to achieve a CO2 concentration of no more than~~
14 ~~2% at the outlet of the CMS plants. Terra and Quicksilver want to now contract~~
15 ~~with CMS to acquire treatment of their gas to achieve a CO2 concentration of no~~
16 ~~more than 2% at the outlet of the CMS plants. They are meeting their "ultimate~~
17 ~~responsibility" to remove sufficient quantities of CO2 to make their gas pipeline~~
18 ~~quality (i.e. not more than 2% CO2). Analysis of the Capacity Agreement leads~~
19 ~~me to conclude that MichCon (or a subsidiary) pays to CMS \$0.11 per mcf,~~
20 ~~\$0.075 per mcf, and \$0.09 per mcf for various volumes of gas in a month to be~~
21 ~~treated to the 0.75% specification. They collect, or collected in the case of~~
22 ~~expired ASATTs, I believe, an amount of approximately \$0.11 per mcf for more~~
23 ~~gas than was treated at the CMS plants. Depending on the relative amounts of~~
24 ~~treated and untreated gas this could have been a profit center for them. At worst,~~

1 ~~they should have broken even. Clearly the Shippers have clearly met their~~
2 ultimate responsibility to remove CO₂ from their gas to make it pipeline quality
3 (as to CO₂ content). MGAT most certainly did choose blending for production
4 downstream of the treating facilities when it contracted to provide treating and
5 transportation of gas above 2% CO₂, and instead of building treating facilities,
6 contracted with CMS to further treat sufficient volumes of gas at the CMS treating
7 facilities to a CO₂ concentration of 0.75% so as to insure the gas at the delivery
8 points of the AEP did not exceed 2% CO₂. Mr. Lyle's last sentence at lines 11-
9 14 on Page 15 is grossly misleading. When Terra and Quicksilver contracted
10 with MichCon to have their gas treated to an outlet specification of no more than
11 2% CO₂, they paid MichCon a fee. MichCon could have contracted with CMS to
12 have the Terra and Quicksilver gas treated to a 2% CO₂ concentration, then
13 transported that gas to any Delivery Point and met the requirements of the AEP
14 order. Instead, MichCon contracted with other Shippers to treat their gas, but
15 didn't actually do so. MichCon contracted with CMS to treat some or all of the
16 Terra and Quicksilver gas (along with many others' gas) to a CO₂ concentration
17 of 0.75%. They then commingled that "super-treated" gas with the untreated
18 gas, and in some cases with Wet Header and Saginaw Bay pipeline gas, to
19 achieve a CO₂ concentration of no more than 2% at each of the Delivery Points.
20 I just cannot understand why they refuse to acknowledge what they did. As they
21 repeat over and over, the AEP didn't specify how they were to achieve the
22 maximum 2% specification, only that they had to do it. Nothing Terra and
23 ~~Quicksilver want to do now is preventing MichCon from continuing that practice.~~

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

QUICKSILVER RESOURCES, INC. and
TERRA ENERGY, LTD.

Complainants,

vs.

Case No. U-14821

MICHCON GATHERING COMPANY and
MICHIGAN CONSOLIDATED GAS
COMPANY,

Respondents.

**MOTION TO STRIKE PREFILED DIRECT TESTIMONY AND REBUTTAL
TESTIMONY OF FRANK M. MURRAY**

Michigan Consolidated Gas Company (“MichCon”) and MichCon Gathering Company (“MGAT”) move to strike and exclude from the record the following portions of the prefiled direct testimony and related exhibits saying:

PREFILED DIRECT TESTIMONY OF FRANK M. MURRAY

1. Page 5, lines 22-27.

The testimony attempts to interject an explanation as to why CMS Antrim entered into contract with third parties. MRE defines relevant evidence to mean: evidence having a tendency to make the existence of any fact that is of consequence to the determination more or less probable than it would be without the evidence. MRE 402 makes irrelevant evidence inadmissible. The reasons for CMS Antrim’s actions are irrelevant to the issues in this proceeding.

2. Page 7, lines 24 through Page 8, line 4.

The identified testimony attempts to interject Mr. Murray's speculation as to the financial impact the "Dominion" agreement has on MichCon. The impact of the Dominion agreement has no bearing on the issues in this case and is therefore irrelevant.

3. Page 8, lines 27-30.

The identified testimony attempts to interject testimony concerning portions of documents which violate the best evidence rule.

4. Page 9, lines 16-17.

The identified testimony attempts to interject Mr. Murray's unqualified legal opinion as to whether discrimination is contemplated or permitted by Act 9 or the Commission's Orders.

5. Page 9, line 24 through Page 10, line 2.

The identified testimony attempts to interject facts not based on the witness' personal knowledge concerning MichCon's actions with respect to a transporter on the Wet Header. As such, the testimony is irrelevant, speculative and lacks a foundation for admission.

REBUTTAL TESTIMONY OF FRANK M. MURRAY

6. Page 2, line 25 through Page 3, line 2.

The identified testimony attempts to interject Mr. Murray's unqualified opinion as to whether MichCon appears to be attempting to breach a contract with CMS. As such, the testimony is improper opinion testimony, speculation and irrelevant - as it interjects issues between CMS and MichCon unrelated to this proceeding.

7. Page 3, line 27 through Page 4, line 10.

The identified testimony attempts to interject Mr. Murray's description of services and facts related to the "Turtle Lake Plant." Mr. Murray's testimony lacks foundation as he is not personally acquainted with the facts, not having been employed by the owners of the Turtle Lake

Plant or involved in the Turtle Lake operations. As such, the testimony lacks foundation and is speculative.

8. Page 4, lines 18-20.

The identified testimony attempts to interject Mr. Murray's unqualified opinion as to whether MichCon has given others preferential and discriminatory treatment. As such, it is an improper legal opinion and speculation of Mr. Murray's part.

9. Page 5, lines 1-4.

The identified testimony attempts to interject Mr. Murray's speculation as to the motive for Mr. Pursell's and Mr. Lyle's testimony so as to justify MichCon's and MGAT's actions. As such it offers his inappropriate legal conclusion as to whether MGAT's and MichCon's actions are discriminatory.

10. Page 5, line 31 through Page 6, line 2.

The identified testimony attempts to interject Mr. Murray's interpretation of what the MPSC Staff requested from MichCon. As such, it is improper speculative testimony and violates the Best Evidence Rule. The parties are free to argue what the document referenced means.

11. Page 7, lines 28-29.

The identified testimony attempts to interject Mr. Murray's improper legal opinion as to whether a 2 percent requirement satisfies the Commission Order or not.

12. Page 8, lines 1-7.

The identified testimony attempts to interject hearsay as facts, lacks foundation and as such is speculation on Mr. Murray's part. Mr. Murray is not a party to any of the contracts identified. Whether Wet Header Shippers had contracted long term agreements is not within the personal knowledge of Mr. Murray, nor does he know personally whether a MichCon affiliate is or was collecting fees, or relied upon a Capacity Agreement.

13. Page 8, lines 20-28.

The identified testimony attempts to interject Mr. Murray's speculation and opinion as to why MichCon is acting, and offers reasons concerning matters about which he has no personal knowledge. As such the testimony is improper and presents argument the parties would be able to represent and brief if supported by facts.

14. Page 9, lines 13-27.

The identified testimony attempts to interject as facts information about shippers on the Wet Header and MichCon's interactions with them. Mr. Murray lacks personal knowledge to testify on matters over which he has no personal involvement. Therefore there is lack of sufficient foundation for him to interject the statements of fact.

15. Page 10, lines 12-19.

The identified testimony attempts to interject Mr. Murray's view over matters to which he is not personally acquainted. As such, the testimony lacks foundation and Mr. Murray lacks personal knowledge to testify as to the facts. Further, Mr. Murray speculates as to the reasons for MichCon's actions and he is not qualified to address MichCon's motives.

RELIEF

WHEREFORE, Michigan Consolidated Gas Company and MichCon Gathering Company respectfully request that the Administrative Law Judge grant this Motion to Strike and exclude from the record the above identified testimony and related exhibits.

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

**Richard
Aaron**

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Dated: July 12, 2006

LANSING.272156.1

1 Q. Please describe the nature of CMS Antrim's contracts with Third Parties.

2 A. CMS Antrim has several Third Party contracts for treating Antrim gas. The rates
3 charged by CMS Antrim for these contracts vary from \$0.10 per Mcf to \$0.11 per
4 Mcf. These contracts all contain an outlet CO2 specification of 2%.

5 Q. Describe the contracts which CMS Antrim entered with Third Parties around the
6 same time as the Quicksilver Contract(s).

7 A. CMS Antrim entered into the following Third Party agreements:

8 i) Quicksilver Resources effective November 1, 2005 with a 2% CO2
9 outlet specification.

10 ii) Paxton Resources effective December 1, 2005 with a 2% CO2
11 outlet specification.

12 iii) Dominion Resources effective December 1, 2005 with a 2% CO2
13 outlet specification ("Dominion Agreement"). Since February 1,
14 2006, CMS Antrim has temporarily amended the Dominion
15 Resources contract to an outlet specification of 0.75% CO2 in order
16 to allow Dominion Resources to continue producing gas rather than
17 be shut in by MichCon.

18 iv) CMS Antrim amended its contract with Chevron Production
19 effective January 1, 2006 to include Chevron's new Ess Lake
20 project. All the gas under the Chevron contract is treated to a 2%
21 CO2 outlet specification.

~~22 Q. Why did CMS Antrim enter into contracts with an outlet CO2 specification of 2%?~~

~~23 A. The Commission order in Case U-10547 which stated that the gas must contain
24 2% or less, means that treating gas to a 2% specification meets the requirements
25 of the Commission Order. Based upon the Commission Order in U-10547, it is
26 clear to CMS Antrim that 2% meets the standard for CO2 content for
27 transportation on the AEP.~~

28 Q. Based upon your knowledge of the natural gas industry, is the 2% standard to
29 which you treat Third Party gas typical.

30 A. Yes. In my experience and in looking at several of the published FERC gas

1 Header and the Saginaw Bay Pipeline are then blended with the low CO2 gas on
2 the AEP to meet the 2% or less specification. MichCon or its affiliate(s) receives
3 treating revenues for blending the high CO2 gas with the low CO2 gas without
4 incurring additional costs for treating or the construction of additional lateral lines.

5 Q. With the aforementioned blending, do you believe that MichCon has sufficient
6 blending capacity to meet its obligation pursuant to the Commission Order in
7 Case U-10547 to maintain 2% or less at Kalkaska?

8 A. No, I do not believe MichCon has sufficient firm blending capacity. The basis for
9 this belief is best demonstrated by example. During the first week of February
10 2006, CMS Antrim was providing service under the Dominion Agreement to an
11 outlet specification of 0.75%, which removes in excess of 300 Mcf per day of
12 CO2 beyond the 2% CO2 content required by the Commission Order in U-10547.
13 In spite of Dominion providing additional CO2 removal, MichCon reported to the
14 MPSC that 2% was not maintained at Kalkaska on several occasions, (see
15 Exhibits FMM 4 and FMM 5), stating the cause of the CO2 problem was the CMS
16 Antrim Plant 1 being down for repairs. Plant 1 had been down for repairs in order
17 to satisfy CMS Antrim's obligations under the Dominion Agreement since early
18 December 2005, and continued down until the end of February 2006. Based
19 upon the fact that MichCon was able to maintain 2% or less during the other
20 periods during which Plant 1 was down, it is logical that the 2% specification at
21 Kalkaska was not met because MichCon does not have sufficient installed
22 treating capacity or firm treating contracts to meet its blending obligations, even
23 with the forced incremental CO2 removal under the Dominion Agreement.

~~24 Q. What financial impact do you believe the Dominion Agreement has on MichCon?~~

25 A. MichCon, or its affiliate(s), has historically received treating fees for blending gas.
26 In utilizing the Antrim gas treated below 2% and the low CO2 Niagaran and PDC
27 production, there were no incremental costs which offset the blending revenues.
28 The difference between the 2% CO2 outlet specification under the Dominion
29 Agreement and the 0.75% outlet specification asserted by MichCon in its Answer
~~30 results in reduced blending opportunities for MichCon. In order to regain those~~

~~1 blending opportunities, MichCon would need to extract over 300 Mcf per day of~~
~~2 additional CO2. Furthermore, MichCon is attempting to impose a 0.75%~~
~~3 standard on the Quicksilver gas, which had been treated at the Bagley Plant, so~~
~~4 it can gain blending opportunities, without cost, for a MichCon DTE affiliate. Q.~~

5 Quicksilver has stated that by contracting with CMS service will be more
6 reliable. Please explain how this is true.

7 A. CMS Antrim rehabilitated Plant 1. The cost of refurbishing Plant 1 exceeded
8 \$700,000. Under normal operations, CMS Antrim has been able to process all
9 gas delivered to the CMS Antrim facility with its four other treating plants, Plant 1
10 is not required. In the event of required maintenance to one of the four other
11 plants, the stand by capacity made available by Plant 1 is to be utilized to avoid
12 the curtailment of approximately 30 million cubic feet per day of production. CMS
13 Antrim has curtailed service, when necessary, by first curtailing interruptible
14 services and overrun. If additional quantities of gas needed to be curtailed, CMS
15 Antrim would prorate the additional required quantities to its firm contracts based
16 upon the lesser of MDQ or flowing volumes. The last such curtailment occurred
17 in January 2006. A copy of the curtailment notice sent out by CMS Antrim is
18 Exhibit 6, which required the curtailment of 48,000 Mcf per day. As a result of
19 the curtailment notice, the CMS' 3rd party contracts, including Quicksilver's, were
20 curtailed by 8.8%. Since Plant 1 has been refurbished, a similar curtailment
21 scenario occurred in April 2006 (see Exhibit FMM-7), which resulted in a required
22 curtailment of only 15,000 Mcf per day, with none of the CMS' 3rd party contracts
23 being curtailed. This would have included the additional gas Quicksilver wanted
24 to add to its treating agreement with CMS.

25 Q. MichCon has asserted that it has treated Quicksilver's and Terra's gas to a
26 specification of 0.75%. Do you agree with this assertion?

~~27 A. No. Per the typical terms of the ASATTs, Exhibit D Section VI(e), the gas: "At~~
~~28 each Delivery Point the carbon dioxide content of the Gas shall not exceed two~~
~~29 (2%) mole percent." No where in the ASATT does it specify that the production~~
~~30 would be treated to 0.75%. Gas may have, at times, been physically treated to~~

1 0.75% but MichCon blended other high CO2 gas with the Quicksilver and Terra
2 gas, thereby treating the Quicksilver and Terra gas to the 2% specification of the
3 ASATT agreement. Furthermore, the receipt points which CMS and Quicksilver
4 wanted to add to the November 1, 2005 treating agreement were not treated
5 pursuant to an ASATT. This is gas that had been treated at the Bagley CO2
6 treating facility, which MichCon and its partners in the plant shut down. This gas
7 had not been treated to a specification of 0.75%, but rather to a contractual CO2
8 specification of 2%. The information from the TIPS report for February 2006, the
9 last month of operation for the Bagley Plant indicated that the entire gas stream
10 through the Bagley Plant was only treated to a CO2 content of 1.52%.

11 Q. Do you agree with MichCon's position that it can impose a "different standard" on
12 Quicksilver or Terra for transporting and treating than other shippers?

13 A. No. MichCon does not have the unilateral right to impose a "different standard"
14 upon Quicksilver or Terra than that applied to other transporters on the AEP.
15 MichCon has claimed that it has the right to impose a different standard.

~~16 However, I do not believe that such discrimination is contemplated or permitted~~
~~17 by Act 9 or the Commission's orders relative to the AEP. MichCon has also~~
18 alleged that it is requiring the 0.75% standard for all ASAT agreements, which is
19 not the case. Paxton and Chevron both have a 2% standard in their ASAT
20 agreements and these agreements were amended by MichCon after December
21 1, 2005 in order to add additional receipt point(s), without changing the 2%
22 standard. Thus, it appears that as recently as January 2006, MichCon was
23 willing to allow other shippers to maintain their more lenient specification, while
24 demanding that Quicksilver comply with a much more restrictive one. ~~While~~
25 MichCon is insisting upon a new and different standard of 0.75% CO2 for gas on
26 the AEP, MichCon has recently contracted for transportation of gas for Aurora on
27 the Wet Header and set up a new receipt point in May 2006, with treating
28 services contracted to a MichCon DTE affiliate, with a CO2 specification in
29 excess of 2%. As demonstrated in Exhibits FMM 1, FMM 2 and FMM 3, this
~~30 new Aurora production with a CO2 specification in excess of 2% will be~~

1 ~~combined with low CO2 gas from the AEP to attempt to maintain 2% or less at~~
2 ~~Kalkaska, downstream of the AEP.~~

3 Q. Does this conclude your testimony?

4 A. Yes.

5

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**Rebuttal Testimony Of Frank M. Murray
On Behalf Of
Quicksilver Resources, Inc. and Terra Energy, LTD.**

1 Q. Please state your name and address for the record.

2 A. My name is Frank M. Murray. My business address is One Energy Plaza,
3 Jackson, MI 49201.

4 Q. Are you the same Frank M. Murray who presented direct testimony in this case?

5 A. Yes, I am.

6 Q. What is the purpose of your rebuttal testimony in this case?

7 A. The purpose of my rebuttal testimony is to rebut certain aspects of Mr. Persells'
8 and Mr. Lyle's testimony.

9 Q. Mr. Lyle is supporting an Exhibit MGAT-3 (ARL-1) which purports to be the
10 Capacity Agreement between MichCon and CMS along with Executed
11 Amendments, whether the provisions of those Executed Amendments expires or
12 not. Is this an accurate and complete record of the Capacity Agreement and
13 executed amendments.

14 A. No it is not. Mr. Lyle failed to include the Residual Capacity Agreement dated
15 November 23, 1998 between CMS and MichCon Gathering, which provisions are
16 expired, but amended the Capacity Agreement. This agreement is attached as
17 Exhibit FMM-8. The Residual Capacity Agreement treated ASATT gas for
18 MichCon Gathering at the CMS treating facility to an outlet CO2 specification of
19 2%.

20 Q. Mr. Lyle states that MGAT was the sole CMS treating customer at that the time
21 the Capacity Agreement was executed, Page 2, Line 23. Is there anything
22 misleading about that statement?

23 A. Yes. Although MichCon was the sole customer at the time of execution of the
24 Capacity Agreement, it was contemplated in the Capacity Agreement that there
25 would be third party contracts, Capacity Agreement Page 3, Section 2.02, and
26 MichCon appears to be attempting to breach the provisions of Section 2.02 of the
27 ~~Capacity Agreement and Section 3 of Amendment #3 through this Case No. U~~

~~1 14821, by imposing terms and conditions of treating services provided by CMS to~~
~~2 parties other than MichCon.~~

3 Q. Does the Residual Capacity Agreement conflict with the testimony of Mr.
4 Persells?

5 A. Yes. Mr. Persells testified in his direct testimony on Page 13 Lines 9-11 that
6 "This is the same treating service provided under the ASATT agreements, for all
7 gas delivered to the South Chester Facility". The Residual Capacity Agreement
8 also contradicts Mr. Persells testimony on Page 17, line 3, Page 17, lines 13-14,
9 and Page 18 lines 6-7. MichCon and MichCon Gathering have testified under
10 cross examination in Case No. U-14754, gas is a fungible commodity and
11 MichCon Gathering does not track individual molecules of gas, yet this is what
12 Mr. Persells is now claiming MichCon Gathering is in fact doing.

13 Q. Does Mr. Lyle's testimony accurately portray the treating services which have
14 been provided to MichCon Gathering by CMS under the Capacity Agreement and
15 executed amendments for ASATT agreements?

16 A. No. Mr. Lyle, at Page 10 line 16-20, asserts that the only standard for treating
17 services is based on the Capacity Agreement for treating ASATT gas to a level of
18 0.75% at the treating facility. Based on the terms of the Residual Capacity
19 Agreement, a 2% standard for gas treated by MichCon Gathering under an
20 ASATT is acceptable, thereby making Mr. Lyle's testimony false. The Residual
21 Capacity Agreement also directly contradicts Mr. Lyle's testimony at Page 11,
22 Lines 21-25. Mr. Lyle's assertion on Page 13, Lines 16-17 that MGAT signed the
23 Capacity Agreement with CMS is also incorrect. Mr. Lyle also makes reference
24 to the 0.75% treating level on Page 15, Line 12-14, Page 19 lines 15-16, Page
25 19, line 25 through Page 20, Line 1, Page 20 lines 5-8, Page 22, Lines 2-4, and
26 Page 22 Lines 23-25.

~~27 Q. Mr. Lyle talks about treating services provided by the Turtle Lake CO2~~
~~28 processing plant owned by an affiliate of MichCon Gathering on Pages 16 and 17~~
~~29 of his testimony. Is this an accurate description of the services which have been~~
~~30 provided by the Turtle Lake Plant?~~

1 A. ~~No it is not. Mr. Lyle asserts that this plant is only used for out of spec ("OOS")~~
2 ~~treating services. This plant has historically been used to treat ASATT gas for~~
3 ~~MichCon Gathering and deliver the treated gas directly into the AEP. It is only in~~
4 ~~the recent history of the operation of the Turtle Lake Plant that it has been~~
5 ~~switched to a pre-treating service. Gas that had been treating at the Turtle Lake~~
6 ~~Plant for ASATT shippers, and put directly into the AEP was not treated to a~~
7 ~~0.75% standard. It is only since the Turtle Lake Plant has been switched from a~~
8 ~~treating service provider putting gas into the AEP at CO2 contents in excess of~~
9 ~~0.75%, but less than 2% to a strictly pre-treat service that MichCon Gathering is~~
10 ~~asserting the ASATT gas had always been treated to a level of 0.75%.~~

11 Q. On Page 16, Line 11 through Page 17, Line 20, Mr. Lyle is attempting to explain
12 why directing gas from the Turtle Lake Plant directly into the AEP would not
13 benefit MichCon Gathering's blending. Is this accurate?

14 A. No it is not accurate. Mr. Lyle on Page 17, Line 16-17, contradicts his own
15 testimony and that of Mr. Persells that all gas treated at South Chester, which
16 would include the Turtle Lake Plant since it has a common fence line with the
17 CMS plants is and has been treated to 0.75% by stating "if the Turtle Lake outlet
18 is greater than 0.75%". ~~This statement reflects the fact that MichCon has given~~
19 ~~preferential and discriminatory treating requirements to the owner/operator of the~~
20 ~~Turtle Lake Plant, an affiliate of MichCon, vis-à-vis CMS.~~ If Mr. Lyle were to
21 perform the calculations as required by the Capacity Agreement, as amended,
22 and required the affiliate of MichCon Gathering to perform to the 0.75% standard
23 which Mr. Persells and Mr. Lyle have asserted, there would be a net reduction in
24 the volume of CO2 being transported on the AEP from South Chester.

25 Q. Please summarize the impact of these apparent misrepresentations of fact by Mr.
26 Persells and Mr. Lyle.

27 A. Mr. Persells and Mr. Lyle's inaccurate statements and representations about the
28 treating services provided by CMS and by the affiliate of MichCon Gathering at
29 the Turtle Lake Plant demonstrate their lack of knowledge with respect to the
30 current and historical operations of AEP. MichCon and MichCon Gathering are
31 attempting to give a false representation of their historical actions with regards to

1 CO2 content of the gas physically treated and transported on the AEP in order to
2 justify their current discriminatory practice of requiring treatment to a 0.75% CO2
3 standard for ASAT agreements while allowing gas being treated under an ASATT
4 agreement to maintain a 2% standard.

5 Q. Mr. Lyle asserts on Page 5, lines 1-2, that the Commission Order in Case U-
6 10547 does not specify that treating gas upstream at a location upstream of a
7 delivery point to a 2% specification meets the requirements of the Order in Case
8 No. U-10547. Is this accurate?

9 A. No. The Commission Order in Case No. U-10547 explicitly states 2% or less.
10 To state the Commission Order in U-10547 as a mathematical equivalent, it
11 would be less than or equal to 2%. It is unambiguous and simple math that 2
12 equals 2. Given that 2% is less than or equal to 2%, it is impossible that 2%
13 does not meet the requirements of the Commission Order.

14 Q. Mr. Lyle disagrees with your statement that "2% CO2 content is a standard",
15 Page 7, line 16. Is this a valid disagreement?

16 A. No it is not. Mr. Lyle's testimony contradicts that of the MichCon Gathering's own
17 witness Mr. Persells, Page 6 line 8, whereby Mr. Persells testifies to the "**2%**
18 **standard**" (emphasis added), and again at Page 12, line 13, "the **2% standard**
19 at the delivery point", (emphasis added).

20 Q. Mr. Lyle has throughout several portions of his testimony asserted that CMS is
21 not able to provide better service to producers than that offered by MichCon
22 Gathering through an ASATT agreement. Is this correct?

23 A. No it is not correct. When a curtailment of treating has been required at the CMS
24 plants for routine maintenance or force majeure, CMS has historically curtailed
25 interruptible and overrun services first, then prorated firm services based upon
26 the lesser of MDQ or flowing volume. This is clearly demonstrated on Exhibits
27 FMM-6 and FMM-7. Furthermore, and more importantly, CMS has a contract
28 with Dominion which is the subject of Case No. U-14754, which is before the
29 Commission. As part of the agreement between CMS and Dominion, if CMS
30 achieves certain levels of firm service obligations, CMS will maintain
31 operationally redundant capacity, which will benefit all producers. ~~This redundant~~

~~1 capacity is exactly what the MPSC Staff requested of MichCon, but did not~~
~~2 receive, in Mr. Persells Exhibit TFP-2.~~ CMS invested over \$700,000 to make
3 improvements to Plant 1 to meet the obligations under the Dominion agreement.
4 Without sufficient firm obligations to meet the requirements specified in the
5 Dominion contract, CMS may remove and sell a treating plant providing the
6 redundant capacity in order to recover its investment.

7 Q. On Page 6, lines 13-25 and Page 7, Lines 1-4, Mr. Lyle talks about the difficulties
8 in maintaining 2% or less at the delivery points. Does this testimony address
9 only the CO2 content at the delivery points of the AEP?

10 A. No it does not. Mr. Lyle specifically refers to gas entering Kalkaska from the Wet
11 Header, via the Merit Hydrocarbon Plant, owned and operated by an affiliate of
12 MichCon, and the Saginaw Bay Pipeline, which is also owned and operated by
13 an affiliate of MichCon.

14 Q. Referring to Mr. Lyle's testimony at Page 8, lines 16-25 and lines 1-7 on Page 9,
15 is Mr. Lyle providing complete information?

16 A. No he is not. Mr. Lyle specifically refers to an interruptible treating agreement
17 which MichCon Gathering and CMS have entered into. Mr. Lyle fails to state that
18 service under this agreement was suspended by CMS in the first week of
19 February 2006 due to MichCon Gathering's failure to pay for the services
20 provided under this agreement.

21 Q. Mr. Lyle states on Page 9, lines 18-19 that "MGAT has nominated additional
22 services for treating under the Interruptible Agreement, when CMS is able to
23 provide such service." Mr. Lyle also asserts that MichCon Gathering has
24 sufficient blending capacity. Are these accurate?

25 A. No. MichCon Gathering has not nominated any service under this agreement
26 since April 2006, while CMS has had capacity available. Furthermore, CMS had
27 offered to make this a firm service for MichCon Gathering, but MichCon
28 Gathering failed to respond to the offer, Exhibit FMM-9. Additionally, if you refer
29 to the output of the gas chromatograph for the AEP delivery point at the
30 Consumers Energy system at Goose Creek for March 18, 2006, the CO2 content
31 of the AEP at Goose Creek was in excess of 2% (Exhibit FMM-10). Mr. Lyle

1 implies in his testimony at Page 8, lines 16-22, that upsets at the delivery points
2 on the AEP are a result of CMS treating plant operations, this allegation is not
3 supported by any facts. During the period of time shown on Exhibit FMM-10,
4 there were upsets or abnormal operations at the CMS plants and CMS was
5 providing the interruptible treating service for MichCon Gathering, yet MichCon
6 Gathering exceeded 2% at Goose Creek. Another example of this occurred on
7 February 18, 2006, Exhibit FMM-11. CMS was treating gas to its contractual
8 specifications and the CO2 content of the gas on the AEP at Goose Creek was in
9 excess of 2%. During this time period, CMS had restricted the amount of gas
10 that was entering the treating facility due to high oxygen content of gas being
11 delivered to CMS by MichCon Gathering under the Capacity Agreement via the
12 North Chester Pipeline system, which part of the AEP. These examples clearly
13 show that MichCon does not have sufficient blending capacity.

14 Q. On Page 15, Lines 4-5, Mr. Lyle states "MGAT did not choose blending for
15 production downstream of the treating facilities." Is this accurate?

16 A. No. The Commission Order in U-10547 authorized the blending of gas in order
17 to minimize the infrastructure costs, it did not require blending. MichCon chose
18 to collect treating revenues for the production downstream of treating facilities
19 without contracting for sufficient CO2 removal to accommodate such blending
20 while maintaining 2% or less at the downstream take away points. This was an
21 economic choice by MichCon in order to maximize revenue while minimizing their
22 costs.

23 Q. Are the CMS treating contracts with parties other than MichCon exacerbating the
24 problems with maintaining 2% or less at the delivery points from the AEP as
25 asserted by Mr. Lyle on Page 15, Lines 13-14?

26 A. No. CMS treats gas to a 2% specification for parties other than MichCon, and
27 has per the terms of the Residual Capacity Agreement, treated some of the
28 MichCon gas to a specification of 2%. ~~This 2% meets the requirements of 2% or~~
~~29 less ordered by the Commission in U-10547.~~ It is the choice made by MichCon
30 and its affiliate to collect treating fees for production downstream of treating
31 facilities which is not physically treated that is the cause of MichCon's problems.

~~1 Furthermore, and contrary to Mr. Lyle's testimony on page 17, lines 24-25, the~~
~~2 Wet Header shippers had, up until April 2006, long term agreements with an~~
~~3 affiliate of MichCon for treating. It is only since April 2006, that these are month~~
~~4 to month agreements. The affiliate of MichCon collected treating fees from the~~
~~5 Wet Header shippers without facilities or contracts to provide the service. The~~
~~6 affiliate of MichCon relied upon the Capacity Agreement between MichCon and~~
~~7 CMS to provide the services, without cost.~~

8 Q. Would you please expand upon Mr. Lyle's assertion that MichCon is merely
9 attempting to revert to the originally approved ASAT agreements requiring 2% or
10 less at the receipt and delivery points on the AEP, Page 18, Lines 11-13?

11 A. Yes. The outlet of the CMS treating facility is a receipt point into the AEP.
12 Therefore, any party that contracts with CMS for treating services would be
13 putting gas into the AEP at the contractually specified CO2 content, which is
14 typically 2% CO2.

15 Q. Do you agree with Mr. Lyle's assertion that treating to a 0.75% standard is
16 consistent with the treating services provided under ASATT agreements on
17 Pages 19-20?

18 A. No. MichCon has testified in Case No. U-10547 that gas is a fungible commodity
19 and it does not differentiate between gas that is upstream or downstream of a
20 treating facility. ~~MichCon is now attempting to force this distinction upon AEP~~
21 ~~shippers for one or both of the following economic reasons:~~

22 1) Shippers will have their gas treated to a specification of 0.75%, in
23 order to maintain the Wet Header treating revenues to the affiliate of MichCon
24 without cost; or

25 2) Shippers will contract with MichCon under an ASATT agreement in
26 order to maintain the \$0.02 per Mcf subsidy gained by MichCon treating gas as
27 overrun with CMS at \$0.09 per Mcf while collecting \$0.11 per Mcf for a firm
28 ~~service from those same AEP shippers.~~

29 Q. Do you agree with Mr. Lyle's assertion on Page 22, line 7 that CMS is
30 discriminating in its treating services being offered?

1 A. No, CMS is not discriminating. First, CMS offered a similar, but more reliable
2 service to Quicksilver, which is to treat its gas to a standard of 2%, the same
3 specification as contained in the ASATT agreement offered by MichCon.
4 Second, the service offered to Quicksilver is similar to the services provided
5 under the Residual Capacity Agreement between MichCon and CMS, a firm
6 service paying a commodity charge of \$0.11 per Mcf with an outlet specification
7 of 2% CO2. Third, MichCon currently receives treating to a level of 0.75% CO2
8 because it pays a demand charge, which producers are not typically inclined to
9 contract for. This new standard or this supposed "reversion" to the original
10 standard of an ASAT is simply a means by which MichCon is attempting to divert
11 revenue to its affiliate or capture a \$0.02 per Mcf margin by selling a firm service
12 under an ASATT backed up by an overrun service purchased from CMS.

~~13 Q. With regards to Mr. Persells testimony that 'All deliveries into MichCon's system~~
14 ~~must be made in accordance with the gas quality standards set forth in its MPSC~~
15 ~~Tariff, Section F3.1, Quality. The specific standard for deliveries is a CO2~~
16 ~~content of no more than 2%" Page 5, Lines 14-16, does MichCon enforce this~~
17 ~~provision on those shippers from the Merit Hydrocarbon plant referenced by Mr.~~
18 ~~Lyle in his testimony?~~

19 A. No. Shippers on the Wet Header, which enters the MichCon transmission
20 system from the Merit Hydrocarbon Plant, have been required to sign treating
21 agreements with an affiliate of MichCon before they are allowed to transport gas.
22 The affiliate of MichCon simply collects treating revenues from these shippers,
23 but does not provide a physical treating service. The affiliate of MichCon does
24 not have treating contracts with any other party capable of removing the requisite
25 quantity of CO2 from the gas either. MichCon knowingly accepts untreated gas
26 from its affiliate in excess of the 2% standard in its tariff, while trying to impose a
~~27 0.75% standard on unaffiliated companies.~~

28 Q. Does MichCon turn back any gas streams, which would include the affiliated
29 MichCon pipelines Mr. Lyle talks about in his testimony, that contain more than
30 2% CO2 as alleged by Mr. Persells on Page 9, lines 17-18?

1 A. No. As evidenced by Exhibits FMM-1, FMM-3, FMM-10 and FMM-11, MichCon
2 accepts into the MichCon system, downstream of the AEP, gas in excess of 2%
3 CO2 content from the AEP, the MichCon affiliated Wet Header and Saginaw Bay
4 Pipeline systems.

5 Q. Mr. Persells testifies on Page 12, lines 11-14, that gas will be accepted by
6 MichCon Gathering for transportation on the AEP if a producer/shipper can
7 demonstrate a contractual relationship with a treater to physically remove CO2
8 so that the 2% standard is not compromised. Is this a complete and accurate
9 description?

10 A. No it is not. First, although Mr. Persells limits his answer to the AEP, MichCon
11 allows gas to enter the AEP downstream of any physical treatment facilities and
12 collects treating fees for doing so. ~~Second, MichCon has refused to allow~~
13 ~~Dominion, with an executed treating agreement with CMS to an outlet CO2~~
14 ~~specification of 2%, which by its very terms cannot itself compromise the 2%~~
15 ~~standard at the delivery points, to utilize its contract as executed. It is MichCon's~~
16 ~~actions to allow untreated high CO2 gas into the AEP and other systems, without~~
17 ~~facilities or sufficient contracted CO2 removal capacity, in order to maximize~~
18 ~~revenues for itself and the affiliate of MichCon that compromises the 2% delivery~~
19 ~~point standard.~~

20 Q. Mr. Persells states MichCon Gathering is merely attempting to minimize installed
21 facilities as originally envisioned by the MPSC, Page 17, Lines 22-23. Is this an
22 accurate statement?

23 A. No. Mr Fogle was correct that the new standard is for the benefit of MichCon.
24 MichCon Gathering is collecting treating fees for gas downstream of processing
25 facilities. MichCon Gathering could simply utilize the interruptible treating
26 agreement referred to by Mr. Lyle in his testimony to ensure gas at the delivery
27 points meets a 2% or less standard. If MichCon Gathering were to utilize the
28 revenue received for treating gas which does not have access to physical
29 treatment facilities, to actually provide for CO2 removal from other gas streams,
30 no incremental facilities would be required. If, as Mr. Persells states, MichCon
31 Gathering is simply attempting to avoid the construction of facilities and not

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

QUICKSILVER RESOURCES, INC. and
TERRA ENERGY, LTD.

Complainants,

vs.

Case No. U-14821

MICHCON GATHERING COMPANY and
MICHIGAN CONSOLIDATED GAS
COMPANY,

Respondents.

**MOTION TO STRIKE PREFILED DIRECT TESTIMONY AND REBUTTAL
TESTIMONY OF THAD SHUMWAY**

Michigan Consolidated Gas Company (“MichCon”) and MichCon Gathering Company (“MGAT”) move to strike and exclude from the record the following portions of the prefiled direct testimony and related exhibits saying:

PREFILED DIRECT TESTIMONY OF THAD SHUMWAY

1. Page 4, line 20 through Page 5, line 9.

- **Best Evidence**

The identified testimony attempts to have Mr. Shumway describe the contents of ASATTs. Mr. Shumway’s testimony violates the best evidence rule as ASATTs are available and speak for themselves.

2. Page 6, line 7 through Page 7, line 17.

- **Lack of Personal Knowledge**
- **Based on Hearsay**
- **Speculation**

The identified testimony attempts to interject Mr. Shumway's personal opinions with respect to testimony of MichCon and MGAT witnesses in Case No. U-14754. Case No. U-14754 is a separate record, not a part of this case and therefore cannot be fairly used as the strawman in the complainant's direct case here. Further, Mr. Shumway's personal belief is based on speculation and hearsay because Mr. Shumway does not own, operate nor is he responsible for the facilities described his testimony. Furthermore, Mr. Shumway has no personal knowledge as to what MichCon may have been collecting.

3. Page 7, line 18 through Page 8, line 9.

- **Lack of Foundation**
- **Lack of Personal Knowledge**

Mr. Shumway's testimony attempts to interject, as fact, details concerning what MichCon has done. These are matters about which Mr. Shumway has no personal knowledge. As such is lacks foundation for admission in this case.

- **Irrelevant**

Further, the testimony is irrelevant as it does not involve actions with respect to the AEP.

4. Page 9, lines 13-18.

- **Best Evidence**

The identified testimony is Mr. Shumway's improper characterization of the contents of a document. As such, it violates the best evidence rule.

5. Page 9, lines 19-23.

- **Lack of Foundation**
- **Lack of Personal Knowledge**
- **Based on Hearsay or Speculation**

The identified testimony expresses Mr. Shumway's belief as to MichCon's actions but lacks a foundation for its admission. The testimony is based on either hearsay or Mr. Shumway's speculation as he lacks personal knowledge as to whether MichCon has entered into contract with parties other than those he identified above.

6. Page 10, lines 9-10.

- **Improper Opinion Testimony**

The identified testimony presents Mr. Shumway's improper legal conclusion as to whether discrimination and preferences exist. The parties are fully capable of briefing such questions and the record should not be burdened with such improper testimony.

7. Page 11, line 7 through Page 12, line 12.

The identified testimony presents Mr. Shumway's opinion as to whether or not MichCon violated Act 9.

- **Improper Opinion Testimony**

The identified testimony is improper legal opinion testimony and argument. The parties are free to brief the matters raised but the record should not be burdened with such improper testimony.

8. Page 13, lines 3-7 and Page 13, line 16 “unlawful”.

- **Improper Opinion Testimony**

The identified testimony is improper legal opinion testimony and argument. The parties are free to brief the matters raised but the record should not be burdened with such improper testimony.

REBUTTAL TESTIMONY OF THAD SHUMWAY

9. Page 3, lines 15-16.

The identified testimony attempts to interject Mr. Shumway’s improper legal opinion as to the obligations of MGAT under Act 9.

RELIEF

WHEREFORE, Michigan Consolidated Gas Company and MichCon Gathering Company respectfully request that the Administrative Law Judge grant this Motion to Strike and exclude from the record the above identified testimony and related exhibits.

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

**Richard
Aaron**

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Dated: July 12, 2006
LANSING.272157.1

1 Opinion and Order required that MichCon operate the AEP in a manner that
2 maintained carbon dioxide content of gas delivered at downstream Delivery
3 Points at or below 2.0%. The March 29, 1995 Opinion and Order required that
4 MichCon not discriminate as between producers for transportation on the AEP.
5 The in-service date of the AEP was November 8, 1995.

6 Q. Have Quicksilver and Terra entered into Antrim Gas and Treating Agreements
7 with MichCon?

8 A. Yes. MichCon entered into a number of Antrim Gas Treating and Transportation
9 Agreements ("ASATTS") with producers, including Quicksilver, Mercury
10 Exploration Company, Inc. (since purchased by Quicksilver) and Terra. The
11 practice of pipeline operators has been to file with the Commission copies of
12 Transportation Agreements and Transportation and Treating Agreements in
13 compliance with MCLA 483.110 (Section 10 of Act 9 of 1929).

14 Q. What is the difference between an ASAT and an ASATT?

15 A. An ASAT is a transportation only agreement. An ASATT is a treating and
16 transportation agreement.

17 Q. Has MichCon filed tariffs with the Commission for the AEP?

18 A. It is my understanding that MichCon has not filed tariffs with the Commission
19 governing transportation and/or treating services for the AEP.

20 ~~Q. Are you familiar with the terms of the ASATTS?~~

21 A. Yes. Each of the ASATTS required, as a condition of firm transportation service,
22 that the producer execute a dedication of reserves, committing those reserves to
23 the pipeline for the term of the contract. Each of the ASATTS provided for both
24 ~~transportation services and for carbon dioxide removal services. The carbon~~

~~dioxide removal services contemplated that MichCon would assure that the carbon dioxide content of the Antrim gas would be 2.0% or less at all downstream Delivery Points on the AEP.~~

Q. Do the ASATTs limit the CO₂ content of the gas that can be delivered to the AEP?

A. Yes, the quality provision of the ASATT agreements says "at any Receipt Point the carbon dioxide content of the Gas shall not exceed 25 mole percent, provided, however, that Shipper's aggregate Receipt Point gas hereunder shall not exceed 14 mole percent..."

Q. Where those quality provisions ever amended?

A. Yes, there were amendments made to some ASATT agreements whereby the Quality Provisions were changed from 25 mole percent to 35 mole percent for the carbon dioxide content of shipper's gas at recent points. Also, revisions were made so that the 14 mole percent was "as determined through the use of MichCon Gathering's TIPS (The Intelligent Pipeline System) allocation program at the Receipt Points and/or at the outlet of the pre-treatment facilities."

Q. Were these amendments done without the consent of the Shippers?

A. No, the Shippers were involved with the changes and requirements to either amend the ASAT, ASATT or provide additional means to treat the shipper's aggregate Receipt Point Gas. Also the MPSC Gas Division had oversight and involvement during the process to acquire additional treating facilities necessary to meet the Quality specifications in the ASATT and ASAT agreements.

Q. At any time during the period when additional CO₂ removal treating facilities were necessary to treat Receipt Point Gas in excess of 14% did MichCon claim it had

1 the unilateral right to amend the Quality specifications of the ASATT and ASAT
2 agreements?

3 A. No. MichCon did claim it could require additional treating at the expense of
4 Producers because the Producers were not within the Quality specifications of
5 the ASATT and ASAT agreements. But MichCon did not take the position that it
6 had the right to unilaterally alter such quality provisions.

~~7 Q. Are you familiar with the testimony of Mr. Todd F. Persells and Mr. Arthur
8 Raymond Lyle II for MPSC case U-14754?~~

9 A. Yes, both Mr. Persells and Mr. Lyle provided testimony about the complicated
10 and delicate nature of balancing the blending of unprocessed antrim gas with that
11 of antrim gas after the removal of CO₂ and managing the CO₂ levels to be at 2%
12 or less at the Delivery Points on the AEP. I believe that characterization has been
13 greatly exaggerated and MichCon has failed to disclose the actions it has
14 employed over the past 6 years that have caused MichCon to be in a situation
15 whereby it must now try to restrict the producers receipt point gas qualities.

16 Q. Can you explain that belief further?

17 A. Yes, MichCon, or its affiliates, own the Vienna Treating facility which removes
18 CO₂ from Antrim gas and then directs that "clean" pipeline quality gas back into
19 an unprocessed high CO₂ commingled gas stream to blend the high CO₂ gas
20 down to a level sufficient to avoid an "Out-of-Spec" service fee pursuant to a
21 treating agreement between Michigan Consolidated Gas Company and CMS
22 Antrim Gas ("CMS"). This is similar in nature to fees paid by Quicksilver and
23 Terra to Wilderness Chester for gas with an aggregate CO₂ content in excess of
24 14%. MichCon, or its affiliates, employ the same practice from the outlet of its

~~1 Turtle Creek Plant site which also treats Antrim Gas down to pipeline Quality, yet~~

2 the gas is delivered back into an unprocessed high CO₂ commingled gas stream
3 as a means to avoid the same "Out-of-Spec" service fee. If MichCon used these
4 "clean gas streams" as a means to blend gas at the Delivery Points it might not
5 be such a challenge to manage the Delivery Point CO₂ content levels on the
6 AEP.

7 Q. But wouldn't MichCon have to pay a charge to CMS?

8 A. That may be true, but since 1999, MichCon has been collecting an "Out-of-Spec"
9 fee from shippers (dedicated to MichCon for Out-of Spec service) that have
10 delivered their gas to the AEP, and such fees were intended to offset the
11 amendment to the Quality provisions of the ASATT agreements. If the charges of
12 CMS exceed those charged and collected by MichCon, that is a result of
13 Michcon's actions, not the Shippers on the AEP. It is not appropriate, however,
14 for MichCon to require Producers not affected by the contractual relationship of
15 MichCon and CMS to submit gas of lower CO₂ treatment levels just to offset
16 Michcon's failure to have the capacity to blend gas streams at the Delivery
17 Point(s).

~~18 Q. Is there anything else that MichCon has done that has put the Quality~~
19 specifications of the gas at risk at the Delivery Points?

20 A. Yes, MichCon has allowed Antrim Gas (containing a CO₂ content greater than
21 2%) west of Kalkaska into the Wet Header pipeline system with the intent of
22 blending this high CO₂ gas with lower CO₂ content gas from either the AEP or
23 other pipeline systems. MichCon collected a treating fee from the producers for
24 the waiver of the CO₂ content yet never arranged for any means to treat or blend

1 the gas to meet downstream pipeline quality specifications. MichCon did the
2 same with Antrim gas on the Lovells lateral pipeline by directing that untreated
3 gas to the Saginaw Bay Pipeline for blending at Kalkaska. All of these blending
4 arrangements have diminished Michcon's blending capacity on the AEP and they
5 have all been done at the sole direction of MichCon. The shippers on the AEP
6 have no control over the physical flow or delivery of gas and now that MichCon
7 has "changed its policy" and is requiring a lower CO₂ content standard at the
8 outlet of the treating plants the AEP Shippers are penalized for Michcon's lack of
9 blending capacity.

10 Q. What is the relationship of MichCon to CMS Antrim Gas, LLC ("CMS") on the
11 AEP?

12 A. MichCon has entered into a treating agreement with CMS for carbon dioxide
13 removal on the AEP. CMS owns and operates carbon dioxide removal plants
14 that are interconnected with the AEP and other pipelines. Quicksilver and Terra
15 have entered into ASATTs with MichCon under which MichCon treats gas for
16 CO₂ removal on the AEP under the treating agreement between MichCon and
17 CMS and Quicksilver and Terra have entered into treating agreements directly
18 with CMS under which CMS treats gas for CO₂ removal on the AEP.

19 Q. Is that the only way gas is treated for CO₂ Removal on the AEP?

20 A. No, MichCon owns and operates a CO₂ Removal facility in the general area of
21 the CMS plant sites, which is known as the Turtle Lake facility, and the
22 Wilderness-Chester Limited Partnership also owns and operates a CO₂ removal
23 facility in the general area of the CMS Plant site, which is known as the

1 Wilderness-Chester plant. These plants also remove Co2 from the commingled
2 gas stream on the AEP.

3 Q. Has MichCon entered into ASATTs with other producers?

4 A. Yes. MichCon has entered into a number of other ASATT agreements with
5 Antrim producers other than Quicksilver and Terra, including Wolverine Gas and
6 Oil Company (now Dominion Midwest Energy) and Dominion Reserves, Inc., all
7 with substantially similar terms.

8 Q. Has Quicksilver or Terra entered into any Antrim Gas Transportation Agreements
9 with MichCon?

10 A. Yes. On January 1, 1998, Mercury Exploration Company, Inc. (predecessor to
11 Quicksilver) entered into a contract (entitled Antrim Gas Transportation
12 Agreement) with MichCon for transportation services on the AEP ("January 1,
13 1998 ASAT"). ~~The January 1, 1998 ASAT provides in Section VI (c) that at "any~~
14 ~~Receipt Point, the carbon dioxide content of Gas may not exceed two mole~~
15 ~~percent (2%) unless Shipper can demonstrate that it has downstream processing~~
16 ~~satisfactory to MichCon Gathering which provide that the carbon dioxide content~~
17 ~~of the gas will not exceed two mole percent (2%) at the outlet of the processing~~
18 ~~plant."~~

19 ~~Q. Has MichCon entered into similar contracts with other Producers?~~

20 A. Yes. I believe that MichCon has entered into the same type contracts with DTE
21 Gas & Oil Co., HRF Exploration and Production, J-5 Inc., Jordan Development
22 Co., Merit Energy Co., NuEnergy Operating Co., Paxton Resources, Inc. and
23 Ward Lake Energy.

24 Q. Why is it significant that MichCon has ASAT contracts with other Producers?

1 A. Because MichCon allows these other Producers to deliver gas to the AEP with a
2 requirement that the CO₂ will not exceed two mole percent (2%) at the outlet of
3 the processing plant, yet it does not allow Quicksilver/Terra the same opportunity
4 for its gas from three properties also on the AEP. As mentioned later in this
5 testimony, Quicksilver sought to add the Bagley East, Bagley Livingston and
6 Bagley 15 NW to its ASAT Agreement. These properties, which have been
7 producing for years were being transported and treated by a different pipeline
8 and CO₂ treating facility that was shut-down. MichCon would not allow for the
9 properties to be added to our existing ASAT Agreement. ~~This amounts to~~
~~10 discrimination, preference and economic harm to Quicksilver/Terra.~~

11 Q. Has the ASAT between MichCon and Quicksilver been amended?

12 A. Yes, it has been amended a few times either to add Receipt Points or for an
13 Oxygen Quality provision amendment. Most recently on October 26, 2005 New
14 Receipt Points were added to the Agreement. (See Exhibit TRS-5).

15 Q. What has happened recently between MichCon and Terra and Quicksilver
16 relative to the ASAT?

17 A. On or about February 14, 2006, Quicksilver requested to add certain Receipt
18 Points (the before mentioned Bagley East, Bagley Livingston, and Bagley 15
19 NW) to its January 1, 1998 ASAT agreement with MichCon. MichCon would not
20 authorize such additions unless Quicksilver provided evidence of a treating
21 agreement sufficient to treat the CO₂ content of the subject properties down to
22 .75%. MichCon stated that the reason for the requirement was a "new policy"
23 and it had the legal right to impose such a requirement. As an alternative to
24 Quicksilver, however, MichCon indicated that Quicksilver could enter into an

1 ASATT (Treating and Transportation Agreement) with MichCon, which would not
2 contain such a requirement.

3 Q. Was this described by MichCon as a "New Policy"?

4 A. Yes, Mr. Todd Persells said it was in fact a new policy and when questioned as
5 to it being discriminatory he said that Michcon's legal council had determined that
6 they had the legal right to impose such a requirement.

~~7 Q. Do you have an opinion on whether or not MichCon violated Act 9?~~

8 A. Yes, MichCon has violated MCLA 483.110 (Section 10 of Public Act 9 of 1929)
9 by altering the terms and conditions of service for transportation services on the
10 AEP (MPSC U-10547) without Commission approval. The demand for a lower
11 carbon dioxide content standard is contrary to the provisions of the Commission's
12 March 29, 1995 Opinion and Order, and constitutes illegal preference, in violation
13 of MCLA 483.106 (Section 6 of Public Act of 1929), by imposing terms different
14 and more onerous on Quicksilver than are imposed on other producers. MichCon
15 has violated MCLA 483.104 (Section 4 of Public Act 9 of 1929) by discriminating
16 against Quicksilver and Terra by transporting gas of certain producers with a
17 requirement that CO₂ be treated down to a 2% CO₂ level, while at the same time
18 prohibiting Quicksilver and Terra from transporting their additional gas on the
19 same terms due to a purported "new policy" whereby gas must be treated down
20 to a level of .75%.

21 Q. What about MichCon's offer to transport and treat the gas under the terms of an
22 ASATT agreement?

23 A. I believe MichCon has also violated MCLA 483.104 and MCLA 483.106 (Sections
24 4 and 6 of Public Act 9 of 1929) by providing a direct preference to the gas that

1 ~~MichCon transports and treats under the ASATTs as opposed to other CO₂~~

2 treating providers providing the treating services and utilizing an ASAT for

3 transportation services just like other Producers are allowed on the AEP.

4 Q. Do you have an opinion as to whether Michcon's actions violate the ASATs?

5 A. Yes, MichCon's actions violate the past practice and standards of the AEP

6 pipeline system that have been in effect since the certification of the AEP in Case

7 No. U-10547. Michcon's actions directly contradict the January 1, 1998 ASAT

8 which requires that at "any Receipt Point, the carbon dioxide content of Gas may

9 not exceed two mole percent (2%) unless Shipper can demonstrate that it has

10 downstream processing satisfactory to MichCon Gathering which provide that the

11 carbon dioxide content of the gas will not exceed two mole percent (2%) at the

12 ~~outlet of the processing plant."~~

13 Q. What, if any damages, will Quicksilver and Terra suffer as a result of Michcon's

14 actions?

15 A. Quicksilver and Terra will suffer from higher costs to meet the treating

16 requirements to transport gas on the AEP pipeline system if MichCon is able to

17 unilaterally alter the terms and conditions of the service of the AEP without

18 Commission approval. Quicksilver and Terra will not be able to predict or plan

19 for future requirements or restrictions if MichCon can unilaterally dictate "policy

20 changes" to the terms and conditions of service on the AEP without first obtaining

21 Commission approval. The AEP is a monopoly system, regulated by the MPSC,

22 built for the purpose of transporting gas of certain quality restrictions to Delivery

23 Points where it can be sold or transported to other pipelines or markets. If

24 MichCon can act in a unilateral fashion to amend, alter or adjust the terms of

1 service in a fashion that directly affects Quicksilver and Terra's operations, either
2 in the present situation or future events, Quicksilver's investments are subject to
3 the potential of unfair business practices. ~~Section 10 of Public Act 9 of 1929 says~~
4 ~~that a common carrier may alter or amend its condition service by application to~~
5 ~~and approval by the commission. MichCon has acted in a manner that~~
6 ~~circumvents such process by claiming a unilateral right to alter the quality~~
7 ~~provisions of the ASAT agreements.~~ Quicksilver and Terra are damaged by the
8 preference given to MichCon transportation and treating services which limits the
9 access Quicksilver and Terra have to more reliable service from other CO₂
10 treaters on the AEP system. There have been several occasions when MichCon
11 has curtailed CO₂ treating capacity and other CO₂ treater(s) on the AEP system
12 have not curtailed treating capacity. Michcon's "new policy" restricts access to
13 the more reliable CO₂ treating service. Quicksilver and Terra have incurred, and
14 will continue to incur, additional expenses to transport gas on the AEP as a result
15 of Michcon's "new policy". Quicksilver and Terra are and will continue to suffer
16 damages as a result of Michcon's ~~unlawful~~ actions. Michcon's unilateral actions
17 in attempting to impose a 0.75% carbon dioxide removal standard on Quicksilver
18 and Terra has caused Quicksilver and Terra to incur additional and higher
19 charges for treatment than Quicksilver and Terra would incur under the
20 conditions of service established for the AEP under Case No. U-10547.

21 Q. What are you asking the Michigan Public Service Commission to do?

22 A. Determine that MichCon may not condition future transportation services on the
23 AEP to require that Quicksilver and Terra either sign a treating agreement with
24 MichCon, or reduce the carbon dioxide content of Quicksilver's and Terra's gas

1 ASATT agreements has caused MGAT to attempt to change its conditions of
2 service on the AEP without the approval of the Shippers or the Michigan Public
3 Service Commission. Mr. Lyle's statement that it was "the original intent of the
4 contracts on the AEP. If a producer wants to supply its own treating agreements,
5 it needs to make them at the same level provided to MGAT at the CMS plant. . ."
6 was certainly not the original intent of the Shippers on the AEP. Furthermore, to
7 claim as Mr. Lyle has that "an ASATT agreement asks MGAT to treat on the
8 shippers' behalf and MGAT receives treating to a level of .75% at the CMS plant.
9 The requirement is inherently contained in the ASATT based on service provided
10 under the Capacity Agreement" imposes similar conditions on the shippers is
11 unfounded. The ASATT shippers were not a party to the Capacity Agreement nor
12 were they aware of the Quality Provisions contained therein. MGAT's attempt to
13 now require the different quality provisions is nothing more that MGAT's failure to
14 properly manage its system, given the level of obligations to existing ASATT
15 parties, ~~and its obligation to provide non-discriminatory transportation services~~
~~16 under the provision of Act 9.~~ MGAT's claim that the order in Case No. U-10547
17 allowing them to blend gas to meet the quality specifications at the Delivery Point
18 gives them the authority to alter the quality specifications on the shippers on the
19 AEP is unsupported by the language of Case No. U-10547. Pages 40 thru 50 of
20 the order for Case No. U-10547 discusses the location of CO2 treating facilities
21 and blending of gas to optimize CO2 processing operations. Nowhere does it
22 reflect the authority sought by MGAT or granted by the commission to lower the
23 quality specifications on the producers in order for MGAT to achieve its delivery
24 point obligations. Also, MGAT is now taking the position that it may use the AEP

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

QUICKSILVER RESOURCES, INC. and
TERRA ENERGY, LTD.

Complainants,

vs.

Case No. U-14821

MICHCON GATHERING COMPANY and
MICHIGAN CONSOLIDATED GAS
COMPANY,

Respondents.

PROOF OF SERVICE

Lori Smith, being first duly sworn, deposes and says that on July 12, 2006, Michigan Consolidated Gas Company's and MichCon Gathering Company's Motion to Strike Prefiled Direct Testimony and Rebuttal Testimony of Gregory A. Fogle, Motion to Strike Prefiled Direct Testimony and Rebuttal Testimony of Frank M. Murray and Motion to Strike Prefiled Direct Testimony and Rebuttal Testimony of Thad Shumway were served upon the attached list via e-mail and U.S. First Class Mail:

Lori Smith

Digitally signed by Lori Smith
DN: CN = Lori Smith, C = US
Date: 2006.07.12 14:37:25 -
04'00'

Lori Smith

Subscribed and sworn to before me
this 12th day of July, 2006.

Cynthia Lenneman

Digitally signed by Cynthia Lenneman
DN: CN = Cynthia Lenneman, C = US
Date: 2006.07.12 14:37:37 -04'00'

Cynthia M. Lenneman, Notary Public
Clinton County, Acting in Ingham County, Michigan
My commission expires: 02/20/07
LANSING.263171.1

SERVICE LIST
MPSC CASE NO. U-14821

MPSC

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ADMINISTRATIVE LAW JUDGE

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