

June 13, 2006

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

Re: *Dominion Midwest Energy and Dominion Reserves vs MichCon Gathering Co and Michigan Consolidated Gas Co, MPSC Case No. U-14754 (paperless)*

Dear Secretary Kunkle:

Enclosed for filing are the following:

- Motion to Strike Prefiled Direct Testimony of Ray Barnhart;
- Motion to Strike Prefiled Direct Testimony of Bryan Bilderback;
- Motion to Strike Prefiled Direct Testimony of Sidney Jansma, Jr.;
- Motion to Strike Prefiled Direct Testimony of Donald Mazuchowski;
- Motion to Strike Prefiled Amended Direct Testimony and Rebuttal Testimony of Frank Murray; and
- Motion to Strike Prefiled Direct Testimony of James Weyland.

A Proof of Service is also enclosed.

Very truly yours,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

Richard Aaron

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Richard J. Aaron

Enclosures

LANSING.268804.1

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

DOMINION MIDWEST ENERGY, INC. and
DOMINION RESERVES, INC.,
Complainants,

vs.

MICHCON GATHERING COMPANY and
MICHIGAN CONSOLIDATED GAS COMPANY,
Respondents.

Case No. U-14754

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MOTION TO STRIKE PREFILED DIRECT TESTIMONY OF RAY A. BARNHART

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 RAY A. BARNHART

1. Page 4, lines 10-17.

The testimony identified above attempts to interject prejudicial and inadmissible hearsay concerning other ASATT agreements allegedly entered into by MichCon for the AEP. Such testimony lacks a foundation to establish the witnesses knowledge or basis of his “familiarity” with agreements between MichCon and other parties. Such testimony is not apparently based on Mr. Barnhart’s direct personal knowledge but appears to be second hand and attempts to convey information obtained from others, not Mr. Barnhart. The basis for his extra record statements are being offered for their own truth, yet MichCon and MGAT are prejudice because they may not cross examine non-present declarant.

Additionally, there is no evidence introduced to establish a foundation or authenticity of proposed Exhibit DOM-5. Mr. Barnhart’s testimony lacks any basis to determine whether Exhibit DOM-5 is an true and accurate copy of the alleged agreement between MichCon Mercury Exploration Corporation. It offers no explanation as to how the document was obtained by Mr. Barnhart.

2. Page 5, lines 15-16.

The testimony identified above attempts to interject prejudicial and inadmissible hearsay concerning whether MichCon made money on volumes of gas that were being processed above the MDEQ. Such testimony is not based on Mr. Barnhart’s knowledge but is second hand and it attempts to convey information obtained from third party sources. The extra record statements are being offered for their own truth, yet MichCon and MGAT are prejudice because they may not cross-examine the source of the information.

Additionally, the testimony lacks any foundation for its admission and from which it may be determined that the information is authentic and reliable.

3. Page 11, lines 6-7.

The testimony identified above attempts to interject prejudicial, inadmissible and irrelevant statements concerning payment of legal fees. As such, the evidence has no bearing on the ultimate conclusion in this case as to whether MichCon and MGAT have acted in a manner as alleged in the original complaint. MRE 401 defines relevant evidence to mean:

Evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.

MRE 402 makes irrelevant evidence inadmissible.

This case concerns Dominion's allegations that: (i) respondents unlawfully maintain that the dedication for transportation and treatment of reserve was for the life of the reserves, (ii) that respondents are unlawfully discriminating against Dominion by maintaining that complainants must have their gas treating to a 0.75% CO₂ content and (iii) that respondent MGAT unlawfully failed to file tariffs with the Michigan Public Service Commission ("Commission"). Whether Mr. Persells, in fact, said "Dominion would be paying MichCon for treating along with the legal bills" is, in fact, true or not is of no consequence to the determination of this action.

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

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Dated: June 13, 2006

LANSING.268748.1

1 transportation and treating on the AEP. A copy of ASATT #16 is attached to Dominion's
2 Complaint as Attachment B, and is Exhibit DOM-3 to my testimony. As with ASATT
3 #1, ASATT #16 required, as a condition of firm transportation service, that the shipper
4 execute a dedication of reserves to the pipeline. Simultaneous with the execution of
5 ASATT #16, Dominion Reserves executed a Dedication, attached to the Complaint as
6 Attachment D, and is Exhibit DOM-4 to my testimony.

7 Q. ARE YOU FAMILIAR WITH OTHER ASATT AGREEMENTS FOR THE AEP
8 EXECUTED IN THE SAME LATE 1994-EARLY 1995 TIME FRAME AS ASATT #1
9 AND ASATT #16.

~~10 A. Yes, I am. MichCon entered into a number of ASATT agreements with other producers
11 for transportation and treating on the AEP during late 1994 and early 1995. MichCon
12 also entered into a number of additional ASATT agreements for treating and
13 transportation on the AEP and some ASAT agreements for transportation only in 1998.
14 While these agreements are not identical, they are substantially similar. Among the
15 ASAT agreements that MichCon entered into in this time frame was ASAT #62500
16 between MichCon and Mercury Exploration Corporation dated January 1, 1998 (Exhibit
17 DOM-5).~~

18 Q. WHAT DO ASATT #1 AND ASATT #16 PROVIDE WITH RESPECT TO
19 TERMINATION?

20 A. Generally, these agreements provide that they will terminate ten (10) years after the in-
21 service date of the AEP pipeline. As the in-service date of the AEP was November 8,
22 1995.

1 Q. DESCRIBE THE DISCUSSIONS THAT DOMINION HAD WITH MICHCON
2 REGARDING THE TERMINATION OF ASATT #1 AND ASATT #16 IN LATE 2004
3 AND EARLY 2005

4 A. In November 2004, I received a telephone call from Mr. Rowling of MichCon regarding
5 our expiring ASATTs. Mr. Rowling told me that MichCon would like to discuss
6 extending the contracts, and acknowledged that they would be expiring in November
7 2005. He stated that MichCon would be willing to offer a five (5) year extension at the
8 same treating costs of \$0.11/mcf.

9 In January 2005, I received a follow-up call from Mr. Rowling. He asked if Dominion
10 was ready to sign an extension of ASATT #1 and #16. He advised that MichCon's
11 management would not hold open the offer much longer because when MichCon had
12 enough gas under contract to meet its Minimum Daily Quantity requirements with CMS
13 Antrim for CO₂ processing, it probably would not offer to sign up anyone else. I
14 responded that I believed that MichCon would continue to sign up customers even after it

~~15 had met its MDQ requirements, because I was aware that MichCon made money on the~~
~~16 volumes of gas that were being processed above the MDQ.~~

17 In March 2005, I received a third call from Mr. Rowling. I advised him at that time that
18 Dominion would be willing to meet with MichCon, but that the driving consideration in
19 Dominion's decision would be reliability of service.

20 Q. WHY WAS RELIABILITY OF SERVICE THE DRIVING CONSIDERATION TO
21 DOMINION'S DECISION ON RENEWAL OF THE ASATTS FOR THE AEP?

22 A. During 2003 and 2004, Dominion and other producers had experienced millions of
23 dollars of lost revenue due to plant downtime at the CO₂ processing plant. I informed

1 MichCon tendered an offer of \$0.085/mcfd with no plant move, or in the alternative,
2 \$0.11 with moving the Vienna plant. The offer was conditioned on "management
3 approval" and they would not commit to a firm offer.

4 Dominion concluded it was not in our best interest to enter into a deal with MichCon
5 under these circumstances, and we signed a contract with CMS. (Exhibit DOM-6). We

~~6 informed MichCon of our decision, and we were told by Todd Persells that we would be~~
~~7 paying MichCon for treating along with their legal bills of \$250,000.~~

8 Q. WHEN DOMINION DECLINED TO SIGN AN ASAT AT TREATING AT .75%,
9 WHAT DID MICHCON DO?

10 A. Mr. Rowling sent a letter to Dominion stating that they will treat our gas as trespass gas if
11 we do not execute an ASAT containing a 0.75% CO₂ treating commitment by January 1.
12 (Exhibit DOM-9). Mr. Rowling called, and informed Dominion that we will be shut off
13 from the ConQuest electronic bulletin board (EBB) if we do not execute a 0.75% ASAT.
14 In late December, MichCon shut Dominion off of the ConQuest EBB. We attempted to
15 access the ConQuest EBB, and were denied access, leaving Dominion unable to
16 nominate January volumes. We immediately advised the MPSC Staff of this
17 development and the MPSC instructed MichCon to open Dominion to ConQuest and
18 allow Dominion to nominate and flow gas. MichCon then opened the EBB to permit
19 January nominations on ConQuest.

20 Q. WHAT ARRANGEMENTS WERE MADE TO FLOW GAS AFTER THE FILING OF
21 THE COMPLAINT IN THIS CASE?

22 A. In January Mr. Rowling called to ask how we intend to flow gas for February. He told us
23 that we would need a legal contract and would have to sign the 0.75% ASAT. We asked

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**MOTION TO STRIKE PREFILED DIRECT TESTIMONY OF BRYAN R.
BILDERBACK**

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

PREFILED DIRECT TESTIMONY OF BRYAN R. BILDERBACK

1. The entire direct testimony.

The testimony identified above attempts to interject irrelevant and immaterial testimony concerning “why it is in the public interest for MichCon Gathering Company to file a tariff with the Michigan Public Service Commission (“Commission”). Such testimony is irrelevant and immaterial because it is policy oriented, more in the nature of legislative opinion, and not offered as a specific remedy to correct alleged discrimination in this case. This testimony represents an improper collateral attack on the Commission order granting a certificate to construct the Antrim Expansion Pipeline, which order did not require the filing of the tariffs. Nothing this testimony offers is materially distinct from conditions that existed at the time of the original certificate.

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

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Dated: June 13, 2006

LANSING.270819.1

1 **DIRECT TESTIMONY OF BRYAN R. BILDERBACK**

2 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

3 A. My name is Bryan R. Bilderback. My business address is Four Greenspoint Plaza,
4 16945 Northchase Drive, Suite 1750, Houston, Texas 77060.

5 Q. BY WHOM ARE YOU EMPLOYED, AND IN WHAT CAPACITY?

6 A. I am employed by Dominion Exploration and Production Company ("Dominion
7 E&P") as Director, Marketing - East.

8 Q. WHAT IS YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL
9 EXPERIENCE?

10 A. I hold a Bachelor of Business Administration in Petroleum Land Management
11 from Texas Tech University, and I have extensive experience in the energy
12 industry:

13 **A) Gas Supply Representative** (various titles) - I entered the energy business
14 when I was hired by Texas Eastern Transmission Corporation in Houston,
15 Texas. I negotiated long-term take-or-pay contracts and purchased significant
16 volumes of gas. I also resolved natural gas transportation and exchange
17 imbalances and produced and analyzed financial reports for inter-company
18 departments. I worked for Texas Eastern from 1985 to 1988.

19 **B) Senior Gas Supply Representative** - in 1988, Tejas Gas Corporation hired
20 me. I was responsible for short and long term purchase, sale and
21 transportation of significant volumes of gas on Tejas' systems.

22 **C) Manager, Gas Supply and Sales** - In 1991, I was promoted and became
23 responsible for acquiring and selling gas supplies and setting transportation

1 rates on Tejas' Gulf Coast System and for purchasing, selling and wheeling
2 gas at the Katy Hub, as well as marketing directly to end-users on the Texas
3 Gulf Coast. In 1992, I left the energy industry to work as an account
4 executive marketing financial products and services for Dean Witter.

5 **D) Manager, Business Development** – I returned to the energy industry in 1995,
6 when I was hired by Coastal Field Services Company. I was responsible for
7 optimizing and increasing existing mid-stream business, initiating “grass
8 roots” gathering or processing projects and identifying and evaluating
9 potential mid-stream acquisitions. I worked on a significant expansion of
10 Coastal's Pelican Processing Plant and closed capital projects that provided
11 for the installation of offshore facilities.

12 **E) Marketing Manager** – I held this position with El Paso Production
13 Company/Coastal Oil & Gas Company from 1997 to March, 2004, when I
14 joined Dominion E & P. At El Paso/Coastal, I supervised a marketing staff of
15 three and a gas control staff of three. My responsibilities included marketing
16 significant volumes of onshore and offshore domestic production, optimizing
17 marketing arrangements (sales, transportation, processing and treating), and
18 directing business to eliminate or minimize any production curtailment.
19 While in this position, I negotiated gathering and processing agreements for a
20 deepwater discovery in the Gulf of Mexico requiring installation of twenty
21 miles of pipeline and production facilities for 200,000 Mcf per day of gas. I
22 coordinated marketing efforts in Brazil, meeting with representatives of
23 potential markets and a director of the ANP (Brazil's FERC).

1 Q. HAVE YOU PREVIOUSLY TESTIFIED AS AN EXPERT WITNESS IN A
2 REGULATORY PROCEEDING?

3 A. No.

4 Q. WHAT ARE YOUR CURRENT JOB FUNCTIONS AS DIRECTOR,
5 MARKETING (E&P) AT DOMINION E&P?

6 A. I am responsible for marketing onshore and offshore domestic production of
7 approximately 600,000 Mcf of gas per day, including Dominion's owned and
8 controlled gas production in Michigan, optimizing marketing arrangements (sales,
9 transportation, processing and treating), and directing business to eliminate or
10 minimize any production curtailment. At Dominion E&P, I directly supervise a
11 staff of five marketing professionals and one administrator.

12 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

13 A. The purpose of my testimony in this proceeding is to set forth reasons why it is in
14 the public interest for MichCon Gathering Company to file a tariff with the
15 Michigan Public Service Commission (the "Commission").

16 Q. WHAT EXHIBITS ARE YOU SPONSORING IN THIS PROCEEDING?

17 A. I am not sponsoring any exhibits.

18 Q. PLEASE EXPLAIN THE CONTEXT OF YOUR TESTIMONY.

19 A. In this testimony, I do not purport to offer a legal opinion on the question of
20 whether or not any statute or regulation requires MichCon Gathering to file a
21 tariff. I am also not offering a legal opinion regarding the Commission's legal
22 authority to require MichCon Gathering and other pipelines, subject to its
23 jurisdiction, to file tariffs. In this testimony, I am, therefore, explaining from a

1 policy, rather than a legal standpoint, why it is in the public interest for the
2 Commission to require MichCon Gathering to do so.

3 Q. PLEASE EXPLAIN WHY DISCRIMINATION IS A PROBLEM THAT THE
4 COMMISSION SHOULD ADDRESS.

5 A. MichCon Gathering performs an essential function in providing transportation
6 service that links significant volumes of gas produced in the State of Michigan
7 with the network of pipelines serving Michigan and out-of-state markets. For
8 many production fields in upper Michigan there are no flow alternatives to
9 MichCon Gathering's system. Consequently, MichCon Gathering is frequently
10 the sole provider in the first critical link in the gas flow chain. Gas production is a
11 very competitive business. To illustrate this point, producers may operate
12 production fields, which may be subject to drainage from adjoining wells operated
13 by other producers. Gas production is also a very capital-intensive business
14 requiring the investment of substantial funds before production occurs. Producers
15 recover that investment only after fields are discovered and developed and
16 production commences. Consequently, producers in one field engage in vigorous
17 competition with producers in other fields to have their production connected to
18 the pipeline network. Under these circumstances, producers are extremely
19 vulnerable to discrimination by pipelines, especially sole providers like MichCon
20 Gathering to which they are "captive."

21 Q. TO WHAT TYPES OF PIPELINE DISCRIMINATION CAN PRODUCERS BE
22 EXPOSED?

1 A. Producers can face discrimination that includes not only differences in the
2 transportation rates charged by the pipeline, but also differences in operating
3 terms and conditions.

4 Q. PLEASE DISCUSS DISCRIMINATION CONCERNS RELATING TO A
5 PIPELINE'S OPERATING TERMS AND CONDITIONS.

6 A. Left unchecked, a pipeline has an incentive to impose more onerous terms and
7 conditions on one producer than another, even though there is no significant
8 difference in the cost of providing the transportation service to these parties. A
9 simple example is where one producer is a part of the same business enterprise as
10 the pipeline, i.e. the pipeline and producer are affiliated, and the other producer is
11 a non-affiliate of the pipeline. Assume the affiliated producer and the non-
12 affiliated producer produce gas with the same component of carbon dioxide and
13 that a portion of that carbon dioxide must be removed from the pipeline's gas at
14 significant expense before the gas can be delivered to a downstream pipeline in
15 the network. In this case, unless constrained, the pipeline has a strong incentive
16 to impose a disproportionate burden of the carbon dioxide removal costs on the
17 non-affiliated producer, thereby subsidizing its affiliated producer at the expense
18 of its affiliate's competitor. Moreover, the pipeline can accomplish improper
19 discrimination by a variety of other means, including imposing very stringent
20 quality specifications on some or all of the non-affiliated producer's gas with an
21 "excess" carbon dioxide component, while exempting the affiliated producer from
22 these requirements. Similarly, operational discrimination can also occur if the
23 pipeline is free to impose on its customers and/or the gas received into its system

1 differing standards respecting (i) connections to its system, including cost
2 contributions for lateral supply lines, (ii) required measurement facilities, (iii)
3 procedures to settle pipeline imbalances, (iv) pipeline capacity allocations during
4 facility outages, (v) scheduling of gas for transaction movement on the pipeline,
5 (vi) customer credit requirements, and (vii) payment terms.

6 Q. WHAT MEASURES DO YOU RECOMMEND THE COMMISSION ADOPT
7 TO MINIMIZE THE POSSIBILITY OF OPERATIONAL DISCRIMINATION
8 BY MICHCON GATHERING?

9 A. The Commission should require MichCon Gathering to file a tariff with the
10 Commission. That tariff should set forth comprehensively and in plain English the
11 operational terms and conditions that govern the service provided by MichCon
12 Gathering to all its customers and all gas received into its system, including
13 ancillary service provided by the pipeline, e.g. treating that is tied to
14 transportation service. Before the tariff is adopted, interested parties should be
15 given full opportunity to review and comment on the proposed language so that
16 the Commission can be assured that the tariff comprehensively covers pipeline
17 operations and incorporates non-discriminatory business practices.

18 By comprehensively setting forth the operating terms and conditions governing
19 the pipeline's service in a public document subject to public comment and the
20 Commission's review, the pipeline's business practice will become more
21 transparent and its opportunity to discriminate without detection will be
22 constrained significantly. This transparency will provide significant benefits not
23 only to the producers who are captive to the pipeline, but also to gas consumers.

1 who will have access to more accurate and detailed information regarding the
2 operating factors that impact their gas supply. Such improved information will
3 also allow suppliers and purchasers more flexibility in structuring gas supply
4 contracts.

5 Q. ARE YOU PROPOSING THAT MICHCON GATHERING OPERATE AS A
6 PURE TARIFF CARRIER?

7 A. No. I am suggesting, instead, that the pipeline be authorized in its approved tariff
8 to execute individual service agreements with its customers. But, the terms of the
9 service agreements must conform to the provisions of the tariff as to rates and the
10 terms and conditions of service. That is consistent with the terms of Michigan
11 Consolidated Gas Company's tariff for gas transportation services.

12 Q. WOULD NOT MERELY FILING A COPY OF EACH CONTRACT WITH THE
13 COMMISSION SERVE THE SAME PURPOSE?

14 A. No. Not unless every contract was identical. It is impractical, and unduly
15 burdensome on producers to require that they comb through the various contracts,
16 each of which are extremely voluminous, to determine what differences there are
17 from contract to contract, and equally burdensome on the Commission Staff to do
18 so to assure that the pipeline is not discriminating between shippers.

19 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

20 A. Yes.

21

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**MOTION TO STRIKE PREFILED DIRECT TESTIMONY OF
SIDNEY J. JANSMA, JR.**

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

PREFILED DIRECT TESTIMONY OF SIDNEY J. JANSMA, JR.

1. Entire direct testimony.

The testimony identified above attempts to interject prejudicial, irrelevant and immaterial testimony concerning “the parties’ intent” as to the term of the dedication of reserves. Such testimony lacks any necessary foundation to show that the dedication of reserves is incomplete or ambiguous and that there is a need for resort to extraneous facts to aid in its interpretation or construction. See, *Quisel v Brezner*, 212 Mich 254 (1920). Parole evidence is also inadmissible to either show or change the character of a written instrument or to change, contradict or vary the legal effect, obligation, purport or tenor of an instrument, if the instrument is complete and unambiguous. *Paul v University Motor Sales Co*, 283 Mich 587 (1938) and *Smith v Mathis*, 174 Mich 262 (1913). See also, *Porter v Landis*, 329 Mich 76 (1950). Here the instrument unequivocally states:

Producer hereby dedicates to the transportation and treating services provided by MichCon on the Antrim Header System all of the natural gas produced from the Antrim shale formation which it owns or controls and is produced from the unitized acreage set forth on Exhibit A (“Dedicated Reserves”).

The instrument itself precludes parole evidence or other interpretation:

This Agreement constitutes the entire agreement between MichCon and Producer concerning the subject matter hereof. Any prior understandings, representations, promises, undertakings, agreement or inducements, whether written or oral, concerning the subject matter hereof not contained herein shall have no force and effect.

Mr. Jansma’s testimony is inadmissible and should be stricken.

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
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Dated: June 13, 2006

LANSING.268843.1

1 DIRECT TESTIMONY OF SIDNEY J. JANSMA, JR.

2
3 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS

4 A. My name is Sid Jansma, Jr., and my business address is One Riverfront Plaza, 55
5 Campau NW, Grand Rapids, MI 49503-2616

6 Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

7 A. I am 100% owner of Wolverine Gas and Oil Corporation located in Grand Rapids,
8 Michigan, and I am its President, CEO, and Chairman of the Board.

9 Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK
10 EXPERIENCE.

11 A. In 1965 I received an A.B. degree from Calvin College in economics and philosophy.
12 In 1966 I received an M.B.A. degree in finance and accounting from the University of
13 Michigan.

14 I began working in the oilfield in 1959 doing maintenance work, and in 1966 I began
15 full-time work in the oil and gas industry. My work in the oil and gas industry has
16 included supervising the exploration for oil and gas, the drilling thereof, and the
17 production and sale of that oil and gas. Over the past 40 years of business I have
18 discovered the equivalent of approximately 1 trillion cubic feet of natural gas in the
19 United States.

20 Q. WERE YOU INVOLVED IN THE NEGOTIATION OF ASATT #1 BETWEEN
21 WOLVERINE GAS & OIL COMPANY AND MICHIGAN CONSOLIDATED GAS
22 COMPANY, DATED SEPTEMBER 12, 1994?

23 A. Yes, I was.

24 Q. ARE YOU FAMILIAR WITH THE DEDICATION OF RESERVES EXECUTED
25 SIMULTANEOUSLY WITH ASATT#1.

26 A. Yes, I am. The Dedication of Reserves was executed in the form requested by MichCon
27 as required by Section 2.1 of ASATT #1.

1 Q. DO YOU HAVE ANY UNDERSTANDING OF WHAT THE PARTIES INTENDED
2 WITH RESPECT TO THE TERM OF THE DEDICATION AND WHEN IT WAS TO
3 EXPIRE?

4 A. Yes. The intention at the time was that the Dedication would expire after ten years,
5 simultaneously with the expiration of the term of ASATT #1. That would be standard
6 industry practice in connection with gas transportation agreements. It would be extremely
7 unusual to have a dedication to a pipeline for transportation for the life of the reserves,
8 and in such instances, the dedication would explicitly state that it was for the life of the
9 reserves. And, I am not aware of any circumstance in which a producer has agreed to a
10 dedication of reserves for treatment for the life of the reserves. At no time during the
11 negotiation of ASATT #1 did MichCon request or propose to Wolverine that the
12 dedication for either transportation or for treatment extend longer than ten years - the life
13 of ASATT #1. Wolverine did not agree to a dedication for the life of the reserves, and I
14 am surprised to learn that MichCon is now contending that the dedication extends beyond
15 the term of ASATT #1

16 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

17 A. Yes.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

DOMINION MIDWEST ENERGY, INC. and
DOMINION RESERVES, INC.,
Complainants,

vs.

MICHCON GATHERING COMPANY and
MICHIGAN CONSOLIDATED GAS COMPANY,
Respondents.

Case No. U-14754

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**MOTION TO STRIKE PREFILED DIRECT TESTIMONY OF DONALD J.
MAZUCHOWSKI**

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 DONALD J. MAZUCHOWSKI

1. Page 5, lines 10-16.

The testimony identified above attempts to interject prejudicial and inadmissible hearsay concerning what shippers desired in Case No. U-10547. Mr. Mazuchowski is a long-time member of the MPSC Staff. He is not a shipper and never has been. Mr. Mazuchowski bases his testimony not on his personal knowledge but on second hand knowledge. He attempts to convey information obtained from sources other than himself. While he may be familiar with the records and the positions parties took in that case, it remains inadmissible hearsay for him to describe extra-record statements being offered for their own truth. MichCon and MGAT are prejudiced because they cannot cross-examine the declarants, “the shippers” as to their desires.

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

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Dated: June 13, 2006

LANSING.268768.1

DIRECT TESTIMONY OF DONALD J. MAZUCHOWSKI
CASE NUMBER U-14754
PART II

1 Q. Did the Order in U-10547 have a carbon dioxide limit for gas transported on the
2 AEP pipeline?

3 A. Yes. The Commission ordered that the carbon dioxide level for gas transported
4 on the AEP to be 2% or less at all delivery points or take-away locations.
5

6 Q. Why is there a concern with carbon dioxide concentration in pipeline systems?

7 A. In the presence of water, carbon dioxide can form carbonic acid which can cause
8 corrosion that damage pipelines, storage field wells and storage field piping.
9

~~10 Q. In the initial AEP pipeline case (Case No. U-10547), what type of transportation~~
~~11 did the Antrim shippers desire?~~

~~12 A. The shippers wanted a pipeline system that minimized the potential for~~
~~13 curtailments, removed the carbon dioxide content to below 2% and the ability to~~
~~14 ship to four different delivery points or take-away locations for marketing their~~
~~15 gas. For the most part, the Commission order in U-10547 gave the shippers what~~
~~16 they desired.~~

17
18 Q. Initially, what type of transportation contracts did Mich Con Gathering offer on
19 the AEP pipeline?

20 A. Mich Con Gathering offered Antrim gas shippers transportation on the AEP with
21 two basic types of contracts; An ASATT contract for gas with a carbon dioxide
22 content over 2% which provides contract treating service and transportation. And

STATE OF MICHIGAN
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**MOTION TO STRIKE PREFILED AMENDED 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 AMENDED DIRECT TESTIMONY OF FRANK M. MURRAY

1. Page 1, lines 1, through Page 7, line 30.

In general, the prefiled amended direct testimony attempts to interject inadmissible, irrelevant and immaterial evidence which has no bearing on the ultimate conclusion in this case as to whether MichCon and MGAT have been discriminating in a manner as alleged in the original complaint. MRE 401 defines relevant evidence to mean:

Evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.

MRE 402 makes irrelevant evidence inadmissible.

This case concerns Dominion's allegations that: (i) respondents unlawfully maintain that the dedication for transportation and treatment of reserves is for the life of the reserves, (ii) that respondents are unlawfully discriminating against Dominion by maintaining that complainants must have their gas treated to a 0.75% CO₂ content, and (iii) that respondent MGAT unlawfully failed to file tariffs with the Michigan Public Service Commission ("Commission"). Mr. Murray's testimony concerning information about the CO₂ treating services provided by CMS Antrim ("CMS") to various producers, addressing gas quality standards established by intrastate and interstate natural gas pipeline and providing information regarding the blending of high CO₂ gas with low CO₂ gas does not bear in any material respect on a fact or evidence that is of consequence to the determination of Dominion's allegations.

Mr. Murray's discussion of what treating is and why it is necessary offers no fact in evidence that is in dispute and has not been addressed by the Commission's order in Case No. U-10547. Equally, Mr. Murray's discussion of the natural gas industry standards or his experience in looking at published FERC or interstate pipeline standards does not bear on any fact of consequence. This case is about CO₂ content, blending on the AEP and treating services for gas

flowing on the AEP. Mr. Murray's discussion of what takes place after the gas leaves the AEP is again irrelevant and immaterial to the allegations Dominion has made.

Mr. Murray's proposed testimony as to whether MichCon has sufficient blending capacity to meet its obligation is based on speculation and no personal knowledge. Additionally, Mr. Murray's speculation as to the financial impact the Dominion agreement has on MichCon is again based on his own speculation.

Consequently, the entire prefiled testimony of Mr. Murray should be stricken.

REBUTTAL TESTIMONY OF FRANK M. MURRAY

1. Page 1, lines 15 through Page 3, line 17.

The testimony identified above attempts to interject justifications for Mr. Murray withdrawing his initial testimony and substituting new prefiled testimony. The justifications are irrelevant and immaterial to any fact at issue in this case. Furthermore, Mr. Murray's justifications are specious. For example, the ALJ's ruling preventing CMS from intervening in this case occurred well before Mr. Murray's original testimony is prefiled. Yet, Mr. Murray now offers the ruling as a reason for withdrawing the testimony. It is sufficient for Dominion to simply withdraw the testimony. Mr. Murray need not testify on the matter.

2. Page 4, lines 1-22.

The testimony identified above attempts to interject prejudicial and irrelevant testimony concerning gas outlet CO₂ content on another pipeline, not the AEP. Dominion's complaint concerns discrimination with respect to the AEP, and how the AEP is operated. The CO₂ content on other pipelines does not have any bearing on the ultimate conclusion in this case.

3. Page 4, lines 23-30 and Page 5, lines 1-6.

The testimony identified above attempts to interject prejudicial and irrelevant testimony concerning gas outlet CO₂ content on another pipeline, not the AEP. Dominion's complaint

concerns discrimination with respect to the AEP and how the AEP is operated. The CO₂ content on other pipelines does not have any bearing on the ultimate conclusion in this case.

4. Page 5, lines 7-18.

The testimony identified above attempts to interject prejudicial and irrelevant testimony concerning gas outlet CO₂ content on another pipeline, not the AEP. Dominion's complaint concerns discrimination with respect to the AEP and how the AEP is operated. The CO₂ content on other pipelines does not have any bearing on the ultimate conclusion in this case.

5. Page 5, lines 19-28.

The testimony identified above attempts to interject prejudicial and inadmissible hearsay concerning whether MichCon has ever released any reserves dedicated to the AEP for transportation and treating at the CMS treating facility. Mr. Murray's characterization is offered as a substitute for the contents of a document and therefore violates the best evidence rule which excludes secondary evidence of a document's contents. The testimony lacks any foundation for offering Mr. Murray's oral description of a purported transaction. There is no justification for not providing an original copy of the purported document and no evidence as to any effort to obtain such a document.

The testimony identified above attempts to interject prejudicial and inadmissible hearsay concerning the document because the document is not available for cross-examination.

Additionally, the testimony is not proper rebuttal testimony. The referenced testimony of Mr. Persells concerns the risks and the need for dedications. Whether, in fact, MichCon released the dedication described by Mr. Murray does not undermine or refute Mr. Persells' statements.

6. Page 6, lines 1-7.

The testimony identified above attempts to interject Mr. Murray's view that agrees with the testimony of Mr. Lyle. As such, it is not proper rebuttal testimony.

7. Page 6, lines 8-18.

The testimony identified above attempts to interject a characterization of Mr. Lyle's testimony but does not contradict or rebut his statements. As such is it improper rebuttal testimony.

8. Page 8, lines 5-16.

The testimony identified above attempts to interject argumentative and improper opinion evidence concerning the lawfulness of MichCon's position. The testimony contains Mr. Murray's opinion as to whether such conduct involves unlawful discrimination unpermitted by Act 9 or the Commission's orders. Further, Mr. Murray's testimony is improper violating the best evidence rule because he characterizes the contents of a document, without offering a foundation as to why a copy or an original were unavailable and makes no evidence of any effort to obtain such copies.

9. Page 8, line 20 "in practice".

The testimony identified above attempts to mischaracterize its own testimony. Mr. Murray offers inadmissible hearsay testimony concerning a release of dedicated gas allegedly made by MichCon. He characterizes it as "in practice" but he offers as evidence only one hearsay example, as "in fact".

10. Page 8, lines 19-30 and Page 9, lines 1-4.

The testimony identified above attempts to interject prejudicial and inadmissible hearsay concerning MichCon's purported release which should have been contained in a document not admitted or offered in this case. There is no foundation for secondary evidence as to the document's contents and no offering of a reason why an original copy of the release of dedication was unavailable and no evidence of any effort to obtain it.

Additionally, lines 26-30 on page 8 and lines 1-4 present argument and neither fact nor opinion rebutting MichCon's case.

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

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Dated: June 13, 2006

LANSING.268760.1

**DIRECT TESTIMONY OF
FRANK M. MURRAY
MPSC CASE NO. U-14754**

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
3 Plaza, Jackson, MI 49201.

4 Q. Mr. Murray, where are you currently employed and in what capacity?

5 A. I am employed by CMS Enterprises Company ("CMS Enterprises"),
6 Jackson Michigan, the indirect parent company of CMS Antrim Gas
7 LLC. I hold the position of Commercial Director.

8 Q. What are your current duties and responsibilities in your position?

9 A. I am responsible for the operations and commercial arrangements of
10 various CMS Enterprises' natural gas businesses in Michigan, including
11 CMS Antrim Gas LLC, a carbon dioxide treating service provider which
12 provides the majority of the carbon dioxide treating for natural gas
13 flowing on the Michigan Consolidated Gas Company ("MichCon")
14 Antrim Expansion Project ("AEP"). CMS Antrim Gas LLC owns and
15 operates a complex of five gas treating plants located in Chester
16 Township, Otsego County Michigan ("CMS Antrim Facilities").

17 Q. Would you please summarize your educational background and work
18 experience?

19 A. I have a Bachelors of Science in Electrical Engineering from Lawrence
20 Technological University in Southfield, Michigan. I worked for ANR
21 Pipeline Company, Detroit, Michigan, from 1985 to 1994. While with
22 ANR Pipeline, I held various positions in the Facility Planning, Gas
23 Control and Operations Management Departments. My responsibilities
24 in those various departments included; the design of natural gas
25 facilities, nominations, scheduling and allocation of natural gas,
26 development and implementation of Federal Energy Regulatory

~~Commission ("FERC") tariff provisions and analyzing other interstate~~
and intrastate pipeline operations and tariffs. From 1994-1995 I was
employed as a Plant Engineer for US Gypsum Company, River Rouge
Michigan. From 1995 to present I have been employed by CMS
Enterprises, either directly or indirectly through wholly owned
subsidiaries. I have held various positions of increasing responsibility
with CMS. These responsibilities include pipeline design work,
Michigan Public Service Commission ("MPSC") filings for Act 9
pipelines, development of FERC Gas Tariffs for interstate natural gas
transportation, analysis of the design and operation of various
interstate and intrastate pipeline systems, including those of MichCon,
construction and repair of pipeline and plant facilities, design of
intrastate and interstate pipeline facilities, analysis of pipeline and
plant operations in conjunction with optimizing performance, mergers
and acquisitions, economic evaluation of businesses in association with
optimization of performance, mergers and acquisitions, state and
federal regulatory compliance issues, local, state and federal
environmental permitting/compliance, negotiation of transportation
contracts and negotiations of treating contracts.

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

A. The purpose of my testimony in this case is

- 1) Provide information about the CO2 treating services provided to MichCon by CMS Antrim.
- 2) Provide information about the CO2 treating services provided by CMS Antrim to various producers.
- 3) Address the gas quality standards established by intrastate and interstate natural gas pipelines.
- 4) Provide information regarding the blending of high CO2 gas with low CO2 gas.

1 ~~5) Address the flows of gas on the AEP and other pipelines in~~
2 Northern Michigan, specifically in regards to the CO2 content of
3 the gas at Kalkaska and other take away points.

4 6) Address the difference in reliability of service when
5 producers contract directly with CMS Antrim rather than
6 MichCon.

7 Q. Please tell us what treating is and why it is necessary.

8 A. Treating, as used in the context of this case, is the removal of carbon
9 dioxide ("CO2") from natural gas in order to meet the gas quality
10 specification of 2% or less as specified in the Michigan Public Service
11 Commission ("Commission") Order in Case U-10547. Typical natural
12 gas entering the CMS Antrim Facilities contains about 84% methane,
13 2% ethane and 14% CO2. CMS Antrim treats the gas by removing
14 CO2 from the inlet natural gas stream such that the outlet natural gas
15 stream is approximately 97% methane, 2% ethane and 1% CO2. The
16 amount of CO2 removed in the treating process is typically specified as
17 removed CO2 and stated in thousand cubic feet ("Mcf").

18 Q. Please tell us what blending is.

19 A. Blending is the reduction in aggregate levels of CO2 by commingling
20 gas with high CO2 content, greater than 2% CO2, with gas that
21 contains low CO2, less than 2%, such that the entire gas stream
22 contains 2% or less CO2.

23 Q. Please explain what CO2 treating services CMS provides to MichCon.

24 A. CMS Antrim provides service to MichCon pursuant to a Capacity
25 Agreement dated April 18, 1995 ("Capacity Agreement"). That
26 Capacity Agreement is Exhibit FMM-1. The Capacity Agreement has
27 had several Amendments and Letter Agreements since its execution.
28 The pertinent Amendments relating to the Capacity Agreements are
29 Amendment #3 dated July 1, 1997 ("Amendment #3") (Exhibit FMM-

30 2) and an unsigned Amendment ("Unsigned Amendment") (Exhibit

~~1 FMM-3) which CMS Antrim and MichCon have been operating under~~
2 since 1999. In addition to the Capacity Agreement, CMS Antrim and
3 MichCon Gathering are parties to an Interruptible Supplemental
4 Treating Agreement dated March 29, 2006 effective December 1, 2005
5 ("Interruptible Agreement") ("Exhibit FMM-4).

6 Q. Please describe the CO2 treatment requirements under the Capacity
7 Agreement, associated Amendments and Letter Agreements.

8 A. Pursuant to the terms of the Capacity Agreement, CMS Antrim has the
9 obligation to treat the Antrim formation gas tendered by MichCon to an
10 outlet specification of 0.75%. Under the Capacity Agreement, MichCon
11 has a specified maximum daily quantity ("MDQ"). MichCon pays a
12 demand and commodity charge totaling \$0.11 per Mcf for inlet
13 volumes within MDQ and \$0.09 per Mcf for inlet volumes in excess of
14 MDQ ("Overrun"). Amendment 3 to the Capacity Agreement states
15 CMS shall treat gas for parties other than MichCon ("Third Parties") to
16 the actual specification contained in the applicable contract, but in no
17 event greater than a 2% CO2 content. The unsigned Amendment
18 regarding gas tendered by MichCon in excess of 14%, specifies that
19 "the obligation by CMS to provide the Demand Volume capacity on
20 Exhibit B is reduced 7% for every 1% increase in CO2 above the limit
21 specified on Exhibit C" or 14%, Unsigned Amendment page 1,
22 paragraph 11.02.

23 Q. Please describe the nature of the Interruptible Agreement.

24 A. The Interruptible Agreement is a supplemental treating agreement
25 wherein CMS Antrim removes additional quantities of CO2 for MichCon
26 Gathering. MichCon Gathering pays \$1.40 per Mcf of CO2 removed
27 under this agreement.

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

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

5 Q. Describe the contracts which CMS Antrim entered with Third Parties
6 around the same time as the Dominion Contract.

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

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

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

12 iii) Dominion effective December 1, 2005 with a 2% CO2
13 outlet specification ("Dominion Agreement"). Since
14 February 1, 2006, CMS Antrim has temporarily amended
15 the Dominion contract to an outlet specification of 0.75%
16 CO2 in order to allow Dominion to continue producing gas
17 rather than 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
20 Lake project. All the gas under the Chevron contract is
21 treated to a 2% CO2 outlet specification.

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

24 A. The Commission order in Case U-10547 which stated that the gas
25 must contain 2% or less, means that treating gas to a 2% specification
26 meets the requirements of the Commission Order. Furthermore,
27 Amendment #3 to the Capacity Agreement clearly states that CMS
28 must treat Third Party gas to the specification in the contract, "but, not
29 to exceed a concentration of two percent (2%) carbon dioxide
30 content", Amendment #3, page 1, paragraph 3. Based upon the

~~Commission Order in U-10547 and Amendment #3, it is clear to CMS~~
Antrim that 2% meets the standard for CO2 content for transportation on the AEP.

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

A. Yes. In my experience and in looking at several of the published FERC gas tariffs for interstate pipelines operating in the State of Michigan, 2% CO2 content is the standard. This standard holds true for the ANR Pipeline, Great Lakes Gas Transmission, Panhandle Eastern Pipeline, Trunkline Pipeline and Vector Pipeline tariffs. The standard exists in of the published tariffs for Consumers Energy, MichCon and MGU, intrastate pipelines subject to MPSC jurisdiction.

Q. Please describe the flows of natural gas on the pipelines flowing into Kalkaska.

A. Please refer to Exhibit FMM-5, which represents a flow diagram of the pipelines flowing into Kalkaska. This flow diagram was derived from the MichCon TIPS report for November. As you can see on Exhibit FMM-5, the natural gas enters the AEP from the CMS Antrim Facilities at 0.95% CO2. Between the CMS Antrim Facilities and the Goose Creek delivery point, untreated gas is commingled or blended with the low CO2 gas from the CMS Antrim Facilities, raising the CO2 content of the combined stream of gas on AEP from 0.95% to 1.68% CO2. This low CO2 gas on the AEP is then transported to Kalkaska where MichCon blends the low CO2 gas on the AEP with high CO2 gas from the other MichCon pipelines entering Kalkaska, the Wet Header at 2.74% CO2 and the Saginaw Bay Pipeline at 2.01% CO2. Once the three MichCon pipelines have been blended together, the CO2 content of the gas leaving Kalkaska is 1.94% CO2.

Q. The Commission order in Case U-10547, states "Maintaining the flexibility built into the system permits MichCon to take advantage of

1 ~~blending opportunities and to avoid the unnecessary construction of~~
2 additional lateral pipelines." Order at Page 43. Please describe how
3 this is reflected in Exhibit FMM-5.

4 A. With respect to the Saginaw Bay Pipeline, untreated high CO2 gas
5 (4.61% CO2) is allowed to enter the pipeline from the MichCon Lovells
6 Lateral. This high CO2 gas is blended with low CO2 gas produced from
7 the Niagaran or Prarie du Chien formations and with low CO2 gas from
8 the MichCon Alpena system, creating an aggregate flow of 2.01% CO2
9 gas. A similar process occurs on the Wet Header, wherein high CO2
10 gas (10.76% CO2), is blended with low CO2 gas production resulting
11 in 2.74% CO2 gas entering Kalkaska. The natural gas from the Wet
12 Header and the Saginaw Bay Pipeline are then blended with the low
13 CO2 gas on the AEP to meet the 2% or less specification. MichCon or
14 its affiliate(s) receives treating revenues for blending the high CO2 gas
15 with the low CO2 gas without incurring additional costs for treating or
16 the construction of additional lateral lines.

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

21 A. No, I do not believe MichCon has sufficient firm blending capacity. The
22 basis for this belief is best demonstrated by example. During the first
23 week of February 2006, CMS Antrim did not provide service under the
24 Interruptible Agreement. During this time, CMS Antrim was providing
25 service under the Dominion Agreement to an outlet specification of
26 0.75%, which removes in excess of 300 Mcf per day of CO2 beyond
27 the 2% CO2 content required by the Commission Order in U-10547.
28 In spite of Dominion providing additional CO2 removal, MichCon
29 reported to the MPSC that 2% was not maintained at Kalkaska on
30 several occasions, (see Exhibit FMM-6), stating the cause of the CO2

**REBUTTAL TESTIMONY OF
FRANK M. MURRAY
MPSC CASE NO. U-14754**

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
3 Plaza, Jackson, MI 49201.

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

6 A. Yes, I am.

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

8 A. The purpose of my rebuttal testimony is amend my originally filed
9 direct testimony and to rebut certain aspects of Mr. Persells' and Mr.
10 Lyle's testimony.

11 Q. Mr. Murray, in your direct testimony, you had discussed, and
12 sponsored as an Exhibit the Capacity Agreement and other
13 agreements between MichCon and CMS. Do you wish to withdraw that
14 testimony and exhibits?

~~15 A. Yes. It is clear that MichCon and CMS have a significant disagreement
16 over the terms of the Capacity Agreement. While that disagreement
17 may be of importance to the parties to it, that disagreement is outside
18 the scope of, and a distraction from, the issues in this case. At the
19 outset of this case, MichCon successfully argued that CMS should not
20 be granted leave to intervene in this case by asserting that CMS was
21 not within the zone of protected interest, and was not asserting any
22 injury, within the scope of the Complaint filed by Dominion. The ALJ
23 agreed.~~

~~24 Per MichCon, the treating contracts between MichCon and CMS are
25 only tangential to the issues at hand under this case filed by Dominion.~~

~~26 Thus, it is both unnecessary, and inappropriate to address in this case~~

~~1 interpretation of the language and meaning of the Capacity~~
2 Agreement. CMS is not a party to this case. Although CMS strongly
3 disagrees with the characterization of the Capacity Agreement by
4 MichCon, that dispute is not properly addressed here for the reasons
5 stated above. Therefore, to properly focus on the real issues in this
6 case, it is necessary for me to remove any reference to the Capacity
7 Agreement from my testimony so as to eliminate the issue of
8 interpretation of the language of the Capacity Agreement from
9 contention in this case. Accordingly, I am amending my previously
10 submitted direct testimony:

- 11 1) Strike Page FMM-2, lines 22-23.
- 12 2) Strike Page FMM-3, Lines 23-30.
- 13 3) Strike Page FMM-4, Lines 1-27.
- 14 4) Strike Page FMM-5, Beginning with "Furthermore," on line
15 26 and ending with "paragraph 3." On line 30.
- 16 5) Strike Page FMM-6, Line 1 "and Amendment #3"
- 17 6) Strike Page FMM-7, Beginning with "CMS Antrim" on line
18 23 ending with "During this time," on Line 24.
- 19 7) Strike Page FMM-8, Line 13.
- 20 8) Strike Page FMM-8, Line 14, the words "Agreement. First
21 is blending".
- 22 9) Replace Page FMM-8, Line 16, "aforementioned Capacity
23 Agreement specification of 0.75% CO2" with "Antrim gas treated
24 below 2%".
- 25 10) Replace Page FMM-8, Line 20, "under the Capacity
26 Agreement" with "asserted by MichCon in its Revised Answer to this
27 complaint dated February 23, 2006".
- 28 11) Strike Page FMM-8, Line 23, beginning with "Pursuant to
29 the terms" through line 30.
- 30 12) Strike Page FMM-9, Lines 1-3.

1 ~~13) Strike Page FMM-9, Line 6, strike "This is a true statement~~
2 for two reasons. First,".

3 14) Strike Page FMM-9 Line 15, strike "No such provision exists
4 in the Capacity Agreement".

5 15) Strike Page FMM-9, Line 16 strike "Second, ".

6 16) Strike Page FMM-9, Line 24, strike "while the Capacity
7 Agreement was curtailed by"

8 17) Strike Page FMM-9, Line 25, strike "23.6%".

9 18) Strike Page FMM-9, Line 28, strike "and the Capacity
10 Agreement being curtailed".

11 19) Strike Page FMM-9, Line 29, "by 10.2%".

12 20) Strike Exhibit FMM-1

13 21) Strike Exhibit FMM-2

14 22) Strike Exhibit FMM-3

15 23) Strike Exhibit FMM-4

16 Attached as Rebuttal Exhibit FMM-1 is my Amended Direct Testimony
17 reflecting the changes specified above.

18

19 Q. What portions of Mr. Persells' Testimony will you be addressing
20 through your rebuttal testimony?

21 A. Although there are several points to which rebuttal testimony may be
22 provided to clarify the record regarding Mr. Persells' Testimony, I will
23 address those matters which are significant to the issues of CO2
24 standards and dedications.

25 Q. What portions of Mr. Lyle's testimony will you be addressing through
26 rebuttal testimony?

27 A. Mr. Lyle's testimony provides several representations which are
28 inaccurate and introduces many subjects, which are not germane to
29 the two basic issues at question under this case, 1) CO2 content of
30 Gas at Kalkaska and 2) Dedication of reserves.

1 Q. With regards to Mr. Persells' testimony, does any historical information
2 exist which contradicts Mr. Persells' testimony that "All deliveries into
3 MichCon's system must be made in accordance with the gas quality
4 standards set forth in its MPSC Tariff, Section F3.1, Quality." TFP page
5 5, Lines 15-16.

6 A. Please see attached Rebuttal Exhibit FMM-2. This Rebuttal Exhibit
7 FMM-2 is a historical summary of the volumes and CO2 content
8 reported by the MichCon TIPS report for the outlet of the Merit
9 hydrocarbon treating plant ("Merit Plant"). The outlet of this plant
10 flows into the MichCon transmission system at Kalkaska. As the
11 historical MichCon data shows, there is a clear trend of increasing CO2
12 content into the MichCon transmission system from the Merit Plant,
13 which primarily receives gas from the Wet Header system.

14 Q. Does this gas require a treating agreement or some type of assurance
15 that it will be less than 2% when it enters the MichCon transmission
16 system?

17 A. Yes, pursuant to MichCon's response to the MPSC Staff's First
18 Discovery Request, number 5, (Rebuttal Exhibit FMM-3) MichCon has
19 stated that "The Wet Header specifications are that shippers must
20 demonstrate either that the volumes transported are at 2% or less
21 CO2 into the system or that they have treating agreements to provide
22 service to those levels."

23 Q. With regards to Mr. Persells' assertion that there are only three
24 alternatives to blending, TFP Page 13, Line 18-24, is there another
25 option available?

26 A. Yes. The other option is for MichCon to ensure that those parties
27 contracted to provide treating services, like the DTE affiliate of
28 MichCon, are in fact providing them. The gas entering the MichCon
29 transmission system from the Wet Header has had a rising CO2
30 content from a simple average of 2.5% in 2003 to 2.9% for 2006. The

~~1 DTE affiliate of MichCon is receiving treating fees to reduce the content
2 of the CO2 to 2% or below; however, the DTE affiliate does not have
3 any treating facilities on the Wet Header, nor does it appear that the
4 MichCon DTE affiliate has any contracts with third party providers to
5 provide this service and remove sufficient CO2 from a gas stream to
6 meet a 2% or less standard into the MichCon transmission system.~~

~~7 Q. Based upon available information, has the AEP in recent years
8 exceeded 2%?~~

~~9 A. Based upon information since January 2003 from the MichCon TIPS
10 report summarized in Rebuttal Exhibit FMM-4, the AEP, on average,
11 has not exceeded 2%. Although this information is a monthly average
12 of the CO2 content, there are daily, even hourly, fluctuations, which
13 may cause the CO2 content to be above or below the average. Based
14 upon the data averaged from the MichCon TIPS report, the AEP has
15 been consistently below 2%, while the Wet Header for the same time
16 period has been consistently above 2%. The blended stream
17 downstream of the AEP and the Wet Header has, for the most part,
18 been below 2%.~~

~~19 Q. Mr. Persells testifies about the risks to MichCon and the requirement
20 for dedications on Page 8, Lines 6-23 and Page 9 line 1-4. Has
21 MichCon ever released any reserves dedicated to the AEP for
22 transportation and associated treating at the CMS treating facility?~~

~~23 A. Yes. In December 1997, two years after the AEP was placed in
24 service, MichCon released from dedication to transportation on the AEP
25 and treating at the CMS treating facility seven (7) production facilities
26 referred to as the Hillman 7, so that the Hillman 7 could be dedicated
27 to and treated at the Caledonia 13 plant owned and operated by an
28 affiliate of MichCon.~~

~~1 Q. Mr. Lyle states in his testimony that "MGAT owned the treating plant at~~
~~2 South Chester in partnership with CMS" Page 6, lines 6-7. Is this~~
~~3 correct?~~

~~4 A. Yes, CMS and MichCon jointly owned the treating facilities at South~~
~~5 Chester. Subsequent to the dedication made by Wolverine, CMS~~
~~6 purchased MichCon's interest in the treating facilities, just as~~
~~7 Dominion, acquired its underlying reserves from Wolverine.~~

~~8 Q. Mr. Lyle addresses the issue of blending in detail in his testimony on~~
~~9 Pages 10 and 11, lines 13-25 and lines 1-23 respectively. Is this~~
~~10 testimony exclusive to the AEP?~~

~~11 A. No. As Mr. Lyle indicates in this testimony, in order to maintain 2% or~~
~~12 less into the MichCon transmission system, MichCon "...tracks the~~
~~13 requirements at Kalkaska to maintain the required delivery~~
~~14 specification, which includes the volume and CO2 content from the~~
~~15 Merit hydrocarbon treating plant" Page 11, lines 2-6. The Merit~~
~~16 hydrocarbon treating plant is a reference to gas received into the~~
~~17 MichCon transmission system from the Wet Header, owned and~~
~~18 operated by an affiliate of MichCon.~~

19 Q. Mr. Lyle asserts that MichCon has sufficient blending capacity on Page
20 15, lines 19-25 of his testimony. Do you believe he has accurately
21 portrayed MichCon's blending capability?

22 A. No. First, Mr. Lyle refers to an extended outage, which CMS took to
23 rehabilitate Plant 1. Plant 1 is used as standby treating capacity and is
24 not required for daily operations. Second, Mr. Lyle refers to the fact
25 that MichCon is subject to "...operational issues that MGAT does not
26 currently have the authority to control" Page 15, Lines 21-22. Mr. Lyle
27 goes on to talk about deliveries at Goose Creek and how those
28 deliveries to Goose Creek adversely impact Kalkaska. The Goose
29 Creek delivery point was required as part of the Commission Order in
30 Case No. U-10547. If MichCon were to evaluate the CO2 content of

1 Q. Do you agree with Mr. Lyle that MichCon can impose a "different
2 standard" on Dominion for treating than other shippers?

3 A. No MichCon does not have the unilateral right to impose a "different
4 standard" (Mr. Lyle's testimony at Page 9 line 4), upon Dominion than
5 that applied to other transporters on the AEP. ~~MichCon has claimed~~
6 ~~that it has the right to impose a different standard. However, I do not~~
7 ~~believe that such discrimination is contemplated or permitted by Act 9~~
8 ~~or the Commission's orders relative to the AEP. MichCon has also~~
9 ~~alleged that it is requiring the 0.75% standard for all ASAT~~
10 ~~agreements, which is not the case. Paxton and Chevron both have a~~
11 ~~2% standard in their ASAT agreements and these agreements were~~
12 ~~amended by MichCon after December 1, 2005 in order to add~~
13 ~~additional receipt point(s), without changing the 2% standard. Thus, it~~
14 ~~appears that as recently as January 2006, MichCon was willing to allow~~
15 ~~other shippers to maintain their more lenient specification, while~~
16 ~~demanding that Dominion comply with a much more restrictive one.~~

17 Q. Do you have any comment on MichCon's position relative to the
18 dedication under ASATT 1?

19 ~~A. Yes, contrary to discovery responses which MichCon submitted in this~~
20 ~~case, MichCon has in practice released other gas, specifically the~~
21 ~~Hillman 7, on the AEP from dedication in the past. It has also, in~~
22 ~~instances where it desired to have the terms of the dedication letter~~
23 ~~agreement extend past the term of an ASATT, specifically amended~~
24 ~~the terms of the ASATT agreement to ensure the dedication letter~~
25 ~~agreement survived termination of the ASATT agreement (Shell ASATT~~
26 ~~5 dated September 12, 1994, Page 21, Section 19.7). Finally, to the~~
27 ~~extent that the dedication is for treating as well as transportation, I~~
28 ~~would point out that MichCon sold its interest in the treating facilities~~
29 ~~at South Chester after it received the dedication for treating, just as~~
30 ~~Wolverine sold its reserves to Dominion after Wolverine made the~~

~~1 dedication for treating. Accordingly, if in fact, the terms of the~~
~~2 dedication agreement extend past the term of the Dominion ASATT 1~~
~~3 agreement, such a dedication would be specific to the South Chester~~
~~4 Plant and would inure to the benefit of the current plant owner, CMS.~~

5 Q. Does this conclude your rebuttal testimony?

6 A. Yes.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

DOMINION MIDWEST ENERGY, INC. and
DOMINION RESERVES, INC.,
Complainants,

vs.

MICHCON GATHERING COMPANY and
MICHIGAN CONSOLIDATED GAS COMPANY,
Respondents.

Case No. U-14754

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MOTION TO STRIKE PREFILED DIRECT TESTIMONY OF JAMES M. WEYLAND

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 JAMES M. WEYLAND

1. Page 9, lines 8-9.

The testimony identified above attempts to interject prejudicial, inadmissible and irrelevant statements concerning payment of legal fees. As such, the evidence has no bearing on the ultimate conclusion in this case as to whether MichCon and MGAT have acted in a manner as alleged in the original complaint. MRE 401 defines relevant evidence to mean:

Evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.

MRE 402 makes irrelevant testimony inadmissible.

This case concerns Dominion's allegations that: (i) respondents unlawfully maintain that the dedication for transportation and treatment of reserve is for the life of the reserves, (ii) that respondents are unlawfully discriminating against Dominion by maintaining that complainants must have their gas treating to a 0.75% CO₂ content and (iii) that respondent MGAT unlawfully failed to file tariffs with the Michigan Public Service Commission ("Commission"). Whether Mr. Persells, in fact, said "Dominion would be paying MichCon for treating along with the legal bills" is, in fact, true or not is of no consequence to the determination of this action.

2. Page 11, lines 4-22 and Page 12, lines 1-2.

The testimony identified above attempts to interject prejudicial, irrelevant and immaterial testimony concerning an industry standard for the term of the dedication in this case. Such testimony lacks any necessary foundation to show that the dedication in question is incomplete or ambiguous, and that there is a need for resort to extraneous facts to aid in its interpretation or construction. See, *Quisel v Brezner*, 212 Mich 254 (1920). Parole evidence is also inadmissible to either show or change the character of a written instrument or to change, contradict or vary the legal effect, obligation, purport or tenor of an instrument, if the instrument is complete and

unambiguous. *Paul v University Motor Sales Co*, 283 Mich 587 (1938) and *Smith v Mathis*, 174 Mich 262 (1913). See also, *Porter v Landis*, 329 Mich 76 (1950). Here the instrument unequivocally states:

Producer hereby dedicates to the transportation and treating services provided by MichCon on the Antrim Header System all of the natural gas produced from the Antrim shale formation which it owns or controls and is produced from the unitized acreage set forth on Exhibit A (“Dedicated Reserves”).

The instrument itself precludes parole evidence or other interpretation:

This Agreement constitutes the entire agreement between MichCon and Producer concerning the subject matter hereof. Any prior understandings, representations, promises, undertakings, agreement or inducements, whether written or oral, concerning the subject matter hereof not contained herein shall have no force and effect.

3. Page 12, lines 3-17.

The testimony identified above attempts to interject prejudicial, irrelevant and immaterial evidence as to the “industry standard” for CO₂ processing. Such testimony is irrelevant and immaterial when the standard has been established by the Commission order in this case.

Additionally, the testimony identified above attempts to interject prejudicial, inadmissible, immaterial and incompetent argument as to the meaning of the Commission standards established by order.

4. Page 12, lines 18-22 and Page 13, lines 1-2.

The testimony identified above attempts to interject irrelevant and immaterial testimony concerning a phrase “trespass gas”. Additionally, the testimony contains a characterization concerning the current agreement as “discriminatory” which is argumentative and a legal conclusion. As such, the evidence has no bearing on the ultimate conclusion in this case. Such testimony inadmissible.

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: June 13, 2006

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1 later following up with an email. He informed us that MichCon had a
2 confidential proposal, which was essentially the same offer they made to us in the
3 summer (the proposal that was later pulled off the table because it was not
4 economical).

5 Q. WHAT WAS DOMINION'S RESPONSE?

6 A. A letter was sent to Mr. Rowling on November 29, stating Dominion would flow
7 effective December 1, under the auspices of Act 9. Additionally, I called Mr.

~~8 Persells to tell him that Dominion would not accept their proposal. He replied,~~

~~9 that we're going to end up paying their \$250k legal bills as well as ours.~~

10 Q. WHAT HAPPENED NEXT?

11 A. Mr. Rowling sent a letter dated December 1, 2005, indicating they will release us
12 from the dedication provided that we executed the enclosed .75% ASAT by
13 January 1, 2006. (Exhibit DOM-8) Otherwise, they would consider our gas
14 flowing as "trespass gas." On December 12, Mr. Jacquet sent a letter to MichCon
15 counsel responding to the December 1 Mr. Rowling letter. In mid December, Mr.
16 Rowling called to ensure that I understood that we will not be able to nominate
17 gas for January if we don't sign the .75% ASAT, i.e. we won't be able to access
18 ConQuest.

19 Q. WAS THERE OTHER COMMUNICATIONS IN DECEMBER OF 2005?

20 A. Yes, during the week of December 19, our gas scheduling representative informed
21 me that we will not be able to make our nominations for January 2006 on
22 ConQuest. I contacted Mr. Rowling who confirmed that they terminated our
23 ability to nominate gas on ConQuest. At that point, we contacted our lawyer.

1 A. No, DEPI informed MichCon via letter dated February 3, 2006 that it will be
2 withholding payment for December 05 charges relating to CO₂ removal and the
3 O₂ surcharge. (Exhibit DOM-11).

~~4 Q. FROM YOUR EXPERIENCE, WHAT IS THE "INDUSTRY STANDARD"~~
5 FOR DEDICATION PROVISIONS?

6 A. In my years of gas industry experience with all types of gas contracts, the duration
7 of the dedication is always explicitly expressed, common forms are: fixed/stated
8 term of contract or term or life of lease or reserves, again, in all instances
9 dedication is always clearly stated/defined.
10 Prior to MichCon's claim that reserves were "perpetual" under ASATT #1, I'd
11 never before experienced a party's claim that a document, in this case, the reserve
12 dedication letter, which was clearly referenced and part of the associated gas
13 service contract, over-rode the contract's stated primary term.
14 In my experience, it's inconceivable that a producer would dedicate its reserves in
15 perpetuity, yet, only agree to having the security of a contract for some portion of
16 'perpetuity' in so doing the producer would be leaving itself open for a nasty
17 surprise when the contract expired and the new one was proposed, the words
18 'arms-length' negotiations would hardly apply with the contract expired; clearly,
19 such an arrangement would favor one party over the other. In the industry, say
20 the word "captive" to any producer, and every producer knows, if not from his/her
21 own experience, then from hearing about the experiences of others, that being
22 "captive" to the pipeline and especially with reserves partially depleted, the lack

1 ~~of the security of a well drafted contract is, for the producer, a very low up-side~~
2 ~~sort of predicament.~~

3 ~~Q. FROM YOUR EXPERIENCE, WHAT IS "INDUSTRY STANDARD" FOR CO₂~~
4 ~~PROCESSING?~~

5 In my experience, acquired over 25 years marketing/transporting gas throughout
6 all areas of the country, as to those pipelines with a tariff specification relating to
7 CO₂, substantially all pipelines have a "no more than" 2% CO₂ specification.
8 Although there are a few pipelines having a less restrictive requirement of "no
9 more than" 3% specification.

10 What's novel here is that MichCon is trying to twist by 180 degrees the industry
11 standard meaning of a "maximum CO₂ specification." By MichCon's
12 interpretation of the MPSC 2% cap on CO₂, logically, it is arguing that the MPSC
13 specification for the AEP is really a 0% CO₂ specification that the AEP producers
14 have to meet, unless MichCon, in its sole discretion decides to otherwise waive it,
15 ratably or otherwise, up to 2%. I reviewed the FERC tariffs of all pipelines
16 tendering gas into or through MI (PEPL, ANR, GLGT & Vector); all adhere to a
17 "no more than" 2% specification.

18 ~~Q. PLEASE DESCRIBE THE TERM "TRESPASS GAS".~~

19 A. Per the statement on Michcon's EBB, ConQuest, MichCon "implemented new
20 procedures effective September 1, 1999," defining trespass gas as "gas received
21 by MichCon at a wellhead/receipt point for which there is no formal nomination."

22 ~~There is no "trespass gas" provision in our expired ASATFs or in the~~

~~1 discriminatory .75% ASAT that we're currently operating under, nor is the~~
~~2 concept addressed in the MPSC order allowing construction of the AEP.~~

3 Q. WHAT IS THE POTENTIAL INCREASE IN TREATING COST UNDER THE
4 MICHCON PROPOSED SERVICE AGREEMENT?

5 A. An estimate of extra costs to treat from 2% down to .75% CO₂ for a period of five
6 years, based upon five years of gas computed at Dominion's 2006 average
7 monthly deliverability using the treating rate CMS offered DEPI (\$1.40/Mcf of
8 CO₂ removed) the undiscounted extra cost of treating for five years is
9 approximately \$879K.

10

11

12 I:\MGO\Dominion\U-14754\Exhibits Testimony\DIRECT TESTIMONY OF JAMES M WEYLAND 042106.doc

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

DOMINION MIDWEST ENERGY, INC. and
DOMINION RESERVES, INC.,

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Case No. U-14754

vs.

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PROOF OF SERVICE

Lori Smith, being first duly sworn, deposes and says that on June 13, 2006, Michigan Consolidated Gas Company's and MichCon Gathering Company's Motion to Strike Prefiled Direct Testimony of Ray Barnhart; Motion to Strike Prefiled Direct Testimony of Bryan Bilderback; Motion to Strike Prefiled Direct Testimony of Sidney Jansma, Jr.; Motion to Strike Prefiled Direct Testimony of Donald Mazuchowski; Motion to Strike Prefiled Amended Direct

Testimony and Rebuttal Testimony of Frank Murray; and Motion to Strike Prefiled Direct Testimony of James Weyland were served upon the attached list via e-mail and U.S. First Class Mail:

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Lori Smith

Subscribed and sworn to before me
this 13th day of June, 2006.

**Cynthia
Lenneman** Digitally signed by Cynthia
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Cynthia M. Lenneman, Notary Public
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Administrative Law Judge

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