

June 16, 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 is Michigan Consolidated Gas Company's and MichCon Gathering Company's Response to Motion to Strike and Proof of Service.

Very truly yours,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

**Richard
Aaron**

Richard J. Aaron

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Enclosures

LANSING.270662.1

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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

Complainants,

Case No. U-14754

vs.

MICHCON GATHERING COMPANY and
MICHIGAN CONSOLIDATED GAS COMPANY,

Respondents.

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RESPONSE TO MOTION TO STRIKE

Michigan Consolidated Gas Company (“MichCon”) and MichCon Gathering Company (“MGAT”), “Respondents”, answer to the motion to strike filed by Complainants’ as follows:

I. MOTION TO STRIKE TESTIMONY OF TODD PERSELLS

Complainants move to strike page 7, line 13 through page 9, line 14 of Mr. Persells’ testimony asserting that he lacks personal knowledge¹ and that the testimony involves speculation. Complainants assert that Mr. Persells was not an employee of MichCon or MGAT until this year, hence they claim he must lack personal knowledge.

The subject testimony is properly admissible because it is based on knowledge Mr. Persells acquired in the course of his duties. That Mr. Persells obtain the knowledge reflected in his testimony from his business activities and business records which makes admission of his testimony proper under the business records exception of MRE 803(6).

Mr. Persells’ testimony provides necessary and essential information concerning the AEP, its method of operation and interaction with shippers which formed the basis of the business relationships reflected in the documents which are offered as Exhibits in this case. There is no basis for Complainants’ claim that Mr. Persells, in his current employment position, has not acquired the knowledge necessary to present this information authoritatively. Furthermore, it is reasonable for a man in Mr. Persells’ position to rely upon business information readily available to him in order to speak authoritatively with respect to the subject matter. Rule 325 of the Commission’s Rules of Practice and Procedures, R 460.17325

¹ Other than their bald assertion and Mr. Persells has no personal knowledge of the facts, Complainants offer no discovery to support the case. Taking such a claim to an extreme would suggest that Mr. Persells would have to have actually been directly involved in physically constructing the pipeline as well.

recognizes this practical tenet and permits the Commission to admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Complainants' characterization of Mr. Persells' testimony as speculation does not make so.

II. MOTION TO STRIKE TESTIMONY OF ARTHUR RAYMOND LYLE II

Complainants' move to strike Mr. Lyle's testimony at page 2, line 17 through page 5, line 3 and page 7, lines 6 through 23. Mr. Lyles' testimony concerns the dedication of reserves. Complainants' characterize it as legal opinion and challenge Mr. Lyles' expertise to render legal opinions. Complainant's objection is unfounded. Nowhere does Mr. Lyle purport to offer a legal opinion with respect to the dedication. Mr. Lyle's background, technical and specialized knowledge, and work experience, using for business the documents he discusses, qualify him as an expert under MRE 702. Mr. Lyle is responsible for pipeline operations and he must read, understand and apply the dedication and Capacity Agreement. Furthermore, he must understand CO₂ treating and the related agreements. Mr. Lyle presents MichCon's and MGAT's position that the dedication of reserves is valid and binding. He presents facts and cogent reasons to support that position. These are matters which go directly to Complainants' position that the dedication has expired. In particular, Mr. Lyle offers reasons why Mr. Jansma's testimony concerning the dedication is incorrect. As such, the testimony is properly admissible and should not be stricken.

Complainants move to strike page 6, line 1 through page 7, line 23 of Mr. Lyle's testimony. Complainants attempt to exclude from the record Mr. Lyle's testimony concerning the method by which MGAT treats gas and the Capacity Agreement used to do so. It is necessary for Mr. Lyle to understand and apply the Capacity Agreement and to assure that there

is CO₂ treating in conformance with various agreements including the Capacity Agreement. Therefore, for business purposes he must have an understanding of the status of Complainants' gas being treated as part of his business practice.

Moreover, Mr. Lyle's testimony concerning the Capacity Agreement is both relevant and material. This is particularly true with respect to claims by Complainants' witnesses that Complainants will obtain a higher degree of reliability purchasing treating service from CMS Antrim, than they would obtain from MGAT under the Capacity Agreement. If it is relevant for Complainants to compare its CMS Antrim treating service to service under the Capacity Agreement, then Mr. Lyle's testimony on such matters is equally relevant.

Complainants also move to strike Mr. Lyle's testimony beginning on page 13, line 1 through page 19. Complainants move to strike this portion of his testimony by characterizing it as testimony concerning the current status of the treatment of Complainants' gas by CMS Antrim. Complainants' assert such testimony is irrelevant. Again, the current treatment status of Complainants' gas is central to the issues in this case. Mr. Lyle's understanding is gained based on his review of the treating agreements and representations made by Complainants. This testimony is proper. Mr. Lyle's knowledge of other shipper pre-treating gas goes hand in glove with his duties relative to pipeline operations and CO₂ treating requirements.

Complainants also move to strike testimony which directly rebuts prefiled direct testimony of Mr. Barnhart and Mr. Weyland concerning contract negotiations. Without question, Mr. Lyle participated in those discussions. Furthermore, the testimony on page 15, 16 and 17 is proper testimony rebutting statements made by Mr. Murray.

Mr. Lyle's testimony concerning the Capacity Agreement between the Respondents and CMS Antrim is proper and relevant to this case. Simply because Complainants have attempted to withdraw portions of Mr. Murray's testimony concerning that agreement, does not make the testimony of Mr. Lyle irrelevant. As noted above, Complainants have made a point in the testimony of their witnesses and proposed exhibits that compared to the service provided under the Capacity Agreement, Complainants will obtain higher level of service from CMS Antrim.

III. MOTION TO STRIKE THE PREFILED TESTIMONY OF KARL WITTBOLD

Complainants move to strike the entire testimony of Mr. Wittbold. Complainants describe this testimony as being entirely related to the Capacity Agreement between CMS Antrim and respondent MichCon. Complainants assert none of this testimony is relevant to any issue in the case.

Mr. Wittbold's testimony is properly relevant and material to issues in this case. The testimony explains Respondents' position that service under the capacity agreement provided by CMS Antrim to Respondents is equal to the service CMS Antrim provides to Complainants. Clearly, this refutes Complainants' assertions that they will obtain more reliable service from CMS Antrim when compared to the service offered by Respondents using the Capacity Agreement to treat the gas. Accordingly, Mr. Wittbold's testimony is relevant to an issue in this case raised by Complainants.

IV. RELIEF

Michigan Consolidated Gas Company and MichCon Gathering Company respectfully request Complainants' Motion to Strike be denied.

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

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Aaron**

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Dated: June 16, 2006
LANSING.270916.1

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PROOF OF SERVICE

Lori Smith, being first duly sworn, deposes and says that on June 16, 2006, Michigan Consolidated Gas Company's and MichCon Gathering Company's Response to Motion to Strike was served upon the attached list via e-mail and U.S. First Class Mail:

Lori Smith

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Lori Smith

Subscribed and sworn to before me
this 16th day of June, 2006.

Cynthia
Lenneman

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

Administrative Law Judge

Hon. Mark D. Eyster
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