

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Complaint against:

MICHIGAN CONSOLIDATED GAS
COMPANY, a Michigan Corporation,
and MICHCON GATHERING COMPANY,
a Michigan Corporation.

Case No. U - 14821
Hon. Mark D. Eyster
Administrative Law Judge

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COMPLAINANTS' MOTION TO STRIKE TESTIMONY OF TODD F. PERSELLS

NOW COME Complainants, Quicksilver Resources, Inc. and Terra Energy Ltd. by their attorneys, Dingeman, Dancer & Christopherson, PLC, and for their Motion to Strike Testimony, brought by their counsel, and pursuant to the Michigan Rules of Evidence and Rule 335 of the Commission's Rules of Practice and Procedure, R 460.17335, move to strike portions of the direct testimony of Respondents' witness Todd F. Persells. The testimony of this witness violates the Commission's Rules of Practice and Procedure, R 460.17103, 17325, and the Michigan Rules of Evidence, including 401, 402, 403, and 702, and the testimony should therefore be stricken:

1. Complainants are engaged in the business of exploration, production, and sale of natural gas in the State of Michigan, including Antrim gas produced in Otsego County, Michigan.

2. Respondents own and operate the Antrim Expansion Pipeline ("AEP"), and they receive and transport Antrim gas to downstream delivery points designated by shippers on the AEP. Respondents are common carriers and the AEP is a common carrier pipeline subject to the provisions of 1929 PA 9, as amended, MCL 483.101 et seq.

3. The issues in dispute are described in the Complaint; however, in summary Complainants primarily contend that Respondents: (1) may not unilaterally set CO₂ treatment rates without Commission approval, especially where such rates are less than 2%; (2) may not discriminate against certain producers by requiring CO₂ treatment rates that are less than those required of other similarly situated producers; and (3) failed to file tariffs.

4. On or about June 21, 2006, Respondents filed Direct Testimony of Todd F. Percells along with related exhibits.

5. Todd Percells has only held his current position with MichCon since April 17, 2006. Prior to that, Mr. Percells worked in marketing for DTE. Mr. Percells does not have sufficient background, knowledge or experience to testify as to the issues in this proceeding. Other than Case No. U-14754 (the case filed by Dominion Reserves in 2006), Mr. Percells has not testified before the Michigan Public Service Commission.

6. The Direct Testimony of Todd Percells contained at Page 7, Line 13 through Page 9, Line 4 should be stricken. Relevant evidence is admissible and irrelevant evidence is inadmissible. (MRE 401, 402; Wolff v Automobile Club, 194 Mich

App 6, 14; 486 NW2d 75 (1992)). Under MRE 602, a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. In this case, Mr. Percells' Direct Testimony beginning on Page 7 Line 13 and continuing through Page 9, Line 4 should be stricken in its entirety. The history of the AEP pipeline and the Commission authorized CO2 content of 2% are not in dispute. This testimony is therefore wholly irrelevant and generally inadmissible. There is no basis to show that Mr. Percells has any personal knowledge of the facts and circumstances that he attempts to describe and testify to. Mr. Percells only became an employee of Respondents a few months ago. At the time of the events he purports to describe, he was an employee of ANIR Pipeline, not an employee of Respondents. When testimony is mere speculation, it should be stricken. McDonald v Stroh Brewery Co, 191 Mich App 601, 607; 478 NW2d 669 (1991); In re Hulbert, 186 Mich App 600; 465 NW2d 36 (1990). The testimony at Page 7 Line 13 through Page 9, Line 4 contains mere speculation on the part of Mr. Persells regarding the potential intent of the business entity, MichCon Gathering Company concerning the original construction of the AEP of which he has no personal knowledge. This speculation is well beyond the scope of relevant testimony in this case, and it is therefore inadmissible and must be excluded.

7. The Direct Testimony of Todd Percells from Page 10, Line 8 through Page 11, Line 12 should be stricken. Mr. Percells is attempting to testify regarding the order in Case No. U-10547. Mr. Percells was not employed with MichCon at the time the order in Case No. U-10547 was issued. That order speaks for itself. Mr. Percells' testimony regarding the meaning of that order is not competent and should be stricken.

Relief:

WHEREFORE, for the foregoing reasons, Complainants respectfully move that this honorable Commission strike the testimony of Todd Percells described above, along with all related exhibits.

**DINGEMAN, DANCER &
CHRISTOPHERSON, P.L.C.**

Dated: July 12, 2006

By:

 **James A.
Christopherson** 

Signature Not
Verified

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