

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of)
Dominion Midwest Energy, Inc. and) Case No. U-14754
Dominion Reserves, Inc. against MichCon) Cross Examination
Gathering Company and Michigan)
Consolidated Gas Company.)
_____)

VOLUME 3

Proceedings held in the above-entitled matter
before Mark D. Eyster, Administrative Law Judge, at the
Michigan Public Service Commission, 6545 Mercantile Way,
Lansing, Michigan on Tuesday, June 20, 2006 at 9:00 a.m.

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1 Lansing, Michigan

2 Tuesday, June 20, 2006

3 At approximately 9:10 a.m.

4 - - -

5 JUDGE EYSTER: We're on the record in Case No.
6 U-14754. This is a Complaint by Dominion Midwest Energy, and
7 Dominion Reserves, Inc. against MichCon Gathering Company and
8 Michigan Consolidated Gas Company.

9 This is the date and time set for the Evidentiary
10 Hearing in this matter in front of Administrative Law Judge,
11 Mark D. Eyster. Could I have counsel place their appearances
12 on the record please.

13 MR. OLIVA: Michael Oliva and Anna Rose Stearn of
14 Loomis, Ewert, Parsley, Davis & Gotting, PC on behalf of the
15 Complainant, Dominion Midwest Energy and Dominion Reserves.

16 MR. AARON: Good morning, your Honor, Richard J.
17 Aaron, of Honigman, Miller, Schwartz & Cohn, appearing on behalf
18 of MichCon Gathering and Michigan Consolidated Gas Company.

19 MR. ODUNLAMI: Good morning, your Honor, Emmanuel
20 Odunlami, Assistant Attorney General on, behalf of Staff.

21 JUDGE EYSTER: Any matters that the parties want to
22 address before we get to -- well, Mr. Oliva you attempt to call
23 Mr. Jansma first?

24 MR. OLIVA: That's correct.

25 JUDGE EYSTER: We've got a motion to strike on his

1 testimony, but prior to that any other issues the parties felt
2 we needed to discuss?

3 MR. AARON: Nothing from the company here.

4 JUDGE EYSTER: And Mr. Aaron, you've had a motion with
5 regard to Mr. Jansma's testimony?

6 MR. AARON: Yes, your Honor, we move to strike his
7 entire testimony. Do you want to take additional oral argument
8 at this point?

9 JUDGE EYSTER: Please?

10 MR. AARON: Our motion to strike Mr. Jansma's
11 testimony is predicated on the simple lack of any foundation to
12 admit parole evidence to interpret a document called Dedication
13 of Reserves. The document itself has an entireties clause that
14 would issue any kind of external parole interpretation.

15 There's no evidence offered in it's foundation
16 establishing a need for parole evidence. The one comment that I
17 would have is that in response to the written response of
18 Dominion, where they discuss a Court of Appeals and Supreme
19 Court decision asserting that the dedications were inherently
20 ambiguous, is an argument as before, I pointed out the case does
21 not expressively involve this particular dedication, but makes
22 reference specifically to a commitment letter that we, in this
23 case, admitted expired by it's own terms. But, the Court of
24 Appeals decision and Supreme Court decision don't, on their
25 face, involve the interpretation or application of this

1 document, the Dedication of Reserves, because there's no
2 foundation for establishing the necessary predicate for taking
3 parole evidence. And, Mr. Jansma offers testimony interpreting
4 the document. Your Honor, the testimony is inadmissible,
5 inappropriate parole evidence.

6 JUDGE EYSTER: Mr. Oliva?

7 MR. OLIVA: Thank you, your Honor. As we set forth in
8 our response, first of all, we believe that Respondent's
9 position with regard to Mr. Jansma's testimony is a
10 misinterpretation of the parole evidence rule as set forth in
11 our brief. The purpose of the parole evidence is to preclude
12 the introduction of evidence that would vary or contradict the
13 contract's unambiguous term. Here, the testimony goes to the
14 term of the dedication. On the face of the dedication it is
15 silent as to what the term is. Therefore, it is automatically
16 ambiguous as to what term was intended.

17 Now, we contend that because there is a specific
18 reference in Article 2 of ASATT #1, 2, there being a dedication
19 being executed as part of the parcel of ASATT #1, and also
20 because of the dedication itself says that it is for the purpose
21 of confirming the transportation and treatment of gas which can
22 only have reference to ASATT #1.

23 Those are terms that are not defined on the face of
24 the dedication agreement, that the intent of the party was
25 clearly that the term be ten years, the same as that of ASATT

1 #1. Obviously, the other side is contending that the silence
2 means it's a permanent dedication. We think that there's
3 automatically an unambiguity there.

4 As we also pointed out, MichCon has taken the position
5 before the Court of Appeals and the Supreme Court that the ASATT
6 contract and the dedications are inherently ambiguous and have
7 to be interpreted in light of one another and other evidence.
8 With respect to the provision of the integration clause, the
9 integration clause, as we pointed out in the argument we had
10 before your Honor, with respect to MichCon's motion to dismiss,
11 the integration clause talks about prior agreements between the
12 parties, not contemporaneous agreements between the parties.
13 And, the contemporaneous agreement is of course ASATT #1 and
14 it's terms.

15 And then finally there is this mantra on the part of
16 the MichCon, that well, the dedication is an interest in real
17 estate and somehow that makes it special. There's just
18 absolutely no support in any principle of the law cited by them
19 to support that proposition.

20 We think the testimony is absolutely proper. It also
21 goes to, not only the intent of the parties to the agreement,
22 but also practice in the industry at the time. We think it is
23 entirely proper testimony to be heard and received in this case.

24 JUDGE EYSTER: Okay, I'm going to deny the motion. I
25 think that there are some ambiguities in the contract in the

1 length of that dedication. I think the testimony is
2 appropriate for Mr. Jansma to help explain the terms of that
3 contract. Mr. Oliva?

4 MR. OLIVA: Thank you. Then I would call Mr. Sidney
5 J. Jansma, Jr. As a witness.

6 S-I-D-N-E-Y J-A-N-S-M-A, after first being called as a
7 witness. Was duly sworn and examined under his oath:

8 DIRECT EXAMINATION

9 BY MR. OLIVA

10 Q. Good morning, Mr. Jansma.

11 A. Good morning.

12 Q. Would you state your name and business address for the
13 record?

14 A. My name is Sidney J. Jansma, Jr. My business address is One
15 Riverfront Plaza, 55 Campau NW, Grand Rapids, Michigan,
16 49503.

17 Q. Mr. Jansma, I'm handing you a copy of a document entitled
18 Direct Testimony of Sidney J. Jansma, Jr. consisting of two
19 pages of questions and answers. Would you take a look at
20 that. Is that the prefilled direct testimony which you
21 caused to be prepared in this case and previously filed
22 with the Commission?

23 A. Yes.

24 Q. If I were to ask you those questions this morning live
25 would you answer them in the same way?

1 A. I would answer them in the same way.

2 Q. I'm also handing you a document which has a cover sheet
3 here MPSC Case No. U-14754, Exhibit DOM-1, entitled Antrim
4 Gas Service Agreement ASATT #1. Could you take a look at
5 that. Is this the agreement referred to in your testimony
6 as Exhibit DOM-1?

7 A. I recognize it is.

8 MR. AARON: Your Honor, at this point I want to
9 object. This witness is not sponsoring any exhibits. He makes
10 reference to documents. I don't know that we need to have him
11 start identifying documents that are marked as exhibits and
12 sponsored by other witnesses.

13 JUDGE EYSTER: Mr. Oliva?

14 MR. OLIVA: It's an exhibit given the way the order of
15 the witness is to accommodate witness schedule. I thought it
16 would be appropriate to have the two exhibits; this one and one
17 more, identified because they are specifically in reference to
18 Mr. Jansma's testimony. And, your Honor can defer the ruling on
19 the exhibits until such time as Mr. Barnhart and/or Mr. Weyland
20 sponsors them. But, it seems to be appropriate given the order
21 of cross to have these marked at this time and identified by
22 this witness, who is the person who executed the two documents
23 in question.

24 JUDGE EYSTER: I was going to say, Mr. Jansma you
25 signed this contract back in 1995, correct?

1 THE WITNESS: September 12, 1994.

2 MR. AARON: Your Honor, the point is that if Dominion
3 wanted him to sponsor these exhibits because he had signed them,
4 they could have done so in their prefiled testimony. They had
5 time to deliberate, and now we are having the witnesses add
6 supplemental direct testimony. This is just a camel's nose
7 intent.

8 JUDGE EYSTER: Do you have other objections to this
9 document being admitted into evidence?

10 MR. AARON: No.

11 JUDGE EYSTER: I mean we had to reschedule this
12 hearing. Originally we were scheduled two weeks ago to
13 accommodate everybody's schedules. We rescheduled this to this
14 date, and part of the consequence was that everybody was having
15 difficulty scheduling their witnesses. I'm assuming that part
16 of the reason some of this is out of order is because you had to
17 change the order of the witnesses, is that fair enough?

18 MR. OLIVA: Yes. Mr. Jansma has a very tight
19 schedule. He has a meeting this afternoon in Grand Rapids, so
20 we wanted to have him first so he would be on and off the stand
21 first. In a perfect world where people wouldn't have conflicts
22 with schedules we would have had the witnesses in a slightly
23 different order. Given, I didn't think there's going to be any
24 objection to the admission of these exhibits. I'm a little
25 puzzled by the objection.

1 MR. AARON: We're spending time with the witness.
2 Your Honor, I'm just going to withdraw my objection. My point
3 was we were spending too much time with a witness who wasn't
4 sponsoring any exhibits. If that's how he wants to use our
5 limited time, that's fine.

6 JUDGE EYSTER: Mr. Oliva, what's the purpose of
7 getting the exhibit in at this time?

8 MR. OLIVA: In case there's any questions with respect
9 to the witness about the exhibits, he will have them in front of
10 him, that's all.

11 JUDGE EYSTER: Mr. Aaron, is that an acceptable reason
12 to have it identified and admitted into evidence?

13 MR. AARON: Your Honor, I withdraw my objection.
14 That's fine.

15 JUDGE EYSTER: Mr. Odunlami, any comment?

16 MR. ODUNLAMI: No, your Honor.

17 JUDGE EYSTER: Mr. Oliva?

18 BY MR. OLIVA CONTINUING:

19 Q. Mr. Jansma, I'm handing you another identity document,
20 which is -- there's a cover page in Case No. U-14754,
21 Exhibit DOM-2, entitled Dedication of Antrim Reserves.
22 This document itself consists of three pages. Is this the
23 document referred to in your prefiled direct testimony as
24 Exhibit DOM-2?

25 A. Yes, it is.

1 MR. OLIVA: Your Honor, I'll move that Mr. Jansma's
2 prefiled direct testimony be bound into the record, and that
3 Exhibits DOM-1, and DOM-2 be admitted into evidence?

4 JUDGE EYSTER: Any objection to his testimony being
5 bound into the record?

6 MR. ODUNLAMI: No, your Honor.

7 MR. AARON: No.

8 JUDGE EYSTER: It will be bound in.

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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.

1 JUDGE EYSTER: Any objections to admitting DOM-1 and
2 DOM-2 into evidence?

3 MR. AARON: Your Honor, I thought the understanding
4 was that Mr. Oliva was going to postpone it, but no I don't.

5 JUDGE EYSTER: No objections?

6 MR. ODUNLAMI: No, Your Honor.

7 JUDGE EYSTER: They are admitted.

8 MR. OLIVA: Thank you. I tender Mr. Jansma for cross
9 examination.

10 JUDGE EYSTER: Mr. Aaron?

11 CROSS EXAMINATION

12 BY MR. AARON

13 Q. Mr. Jansma, you were asked in discovery to provide copies
14 of all notes, memorandums, journals, calendars, reports
15 prepared by you or under your direction in control that
16 were kept or maintained in connection with your involvement
17 in negotiating ASATT #1; do you recall that discovery
18 question posed to you?

19 A. I believe I do.

20 Q. And ultimately your response was that there are no
21 documents in response to that request, is that correct?

22 A. In my office.

23 Q. Well, the discovery response doesn't qualify it by, in your
24 office, it just says there are no documents in response to
25 this request?

1 A. Okay.

2 Q. You were also asked in discovery to provide copies of all
3 notes, memorandums, journals, calendars, reports prepared
4 by you or under your direction in control created, kept or
5 maintained in connection with your involvement in
6 negotiations of the dedication that you just identified.
7 Do you remember that discovery request?

8 A. Yes.

9 Q. And you indicated that there were no documents in response
10 to that request?

11 A. I have no documents.

12 Q. You were also asked to identify in connections with the
13 negotiation for either the ASATT #1 or the related
14 dedication to identify the parties who participated, places
15 in which negotiations take place, and the dates and time in
16 which those negotiations took place. Do you recall that
17 question?

18 A. Yes.

19 Q. And you responded that negotiations were held between
20 various representatives of Wolverine, and various
21 representatives of MichCon at various places, sometimes in
22 person, sometimes by telephone and over the course of a
23 significant period of time, correct?

24 A. Yes.

25 Q. So, in other words, your memory as to specific parties,

1 places or times was just generalized. You didn't have any
2 specific individuals to identify, no particular times
3 identified, correct?

4 A. No particular times.

5 Q. In no places, specifically?

6 A. Not specifically.

7 Q. Right. You were also asked to provide copies of all
8 dedications in which you were involved in negotiating for
9 natural gas located in Michigan, were you not?

10 A. I believe that's true.

11 Q. And you provided no copies of those dedications, is that
12 correct?

13 A. That's because when I merged Wolverine Gas and Oil
14 Corporation into Dominion in December 30, 1996, and then
15 after working with them for four years, they merged the
16 entire company into themselves. Every document that we
17 had in Grand Rapids, Michigan was sent to various offices
18 of Dominion in Michigan and around the United States. And,
19 therefore I have no documents in Grand Rapids, Michigan.
20 Dominion itself has all the documents that you would
21 require.

22 Q. Mr. Jansma, I just handed you a document marked for
23 identification purposes as MGAT-4, is this the question
24 asking for copies of the dedications?

25 A. You're asking me if this is the question providing for --

1 Q. (Interposing) Is this the question that we were just
2 referring to? Do you recognize this as being asking for a
3 copy of all dedications in which Mr. Jansma was involved in
4 negotiations for natural gas located in Michigan?

5 A. I believe it says that.

6 Q. Okay, and in your response to my earlier question, your
7 answer was that you didn't have a copy of the dedications
8 because they were all given to Dominion, is that right?

9 A. That's right.

10 Q. Thank you.

11 MR. AARON: That's all I have, your Honor.

12 MR. OLIVA: I have no redirect.

13 JUDGE EYSTER: What do you want me to do with the
14 exhibits?

15 MR. AARON: I thought Staff would have cross and I
16 would move for the admission of the exhibits.

17 JUDGE EYSTER: Mr. Odunlami?

18 MR. ODUNLAMI: Yes, your Honor. Thank you.

19 CROSS EXAMINATION

20 BY MR. ODUNLAMI

21 Q. Good morning, Mr. Jansma.

22 A. Good morning.

23 Q. Do you have a copy of your testimony in front of you?

24 A. Yes, I do. The direct testimony?

25 Q. Yes.

1 A. Yes, I do.

2 Q. Could you go to, I think it's the second page line 6, lines
3 6 and 7, where you stated in your testimony that it would
4 be extremely unusual to ask a dedication to a pipeline for
5 transportation for the life of the reserve. Are you saying
6 this is possible? Is that what you are saying in that
7 statement?

8 A. I am saying that if you dedicate the life -- your reserves
9 for the life of the reserves, you would then have a
10 contract for treating, or perhaps even for purchase for the
11 life of those reserves. You would not dedicate your
12 reserves to a contract for the life without having all of
13 the factors that you needed to produce and sell that gas.

14 Q. What factors are you referring to?

15 A. I would be referring to not only transportation of the gas
16 in a pipeline, but also treating of the gas. And that if I
17 dedicate the gas to the pipeline I am expecting, for
18 whatever period I dedicate the gas to the pipeline, I would
19 be expecting to receive the services for which that
20 dedication was given.

21 Q. So, is it possible to dedicate your gas reserve for the
22 life of a pipeline, assuming you get those services?

23 A. Yes, and specifically this contract that I signed in
24 September, was an agreement to dedicate the reserves to a
25 contract that provided transportation and treating for a

1 certain period of time. And, it was one agreement in my
2 mind, not two pieces of paper.

3 Q. And again, you just stated that in your mind you were
4 thinking of one agreement. Do you recollect why in Section
5 2.1 of the ASATT #1 the line statement that says, we are
6 going to refer to another document that we specifically
7 call the dedication. Do you remember that statement?

8 A. Yes.

9 Q. Why would that be necessary?

10 A. Because Michigan Consolidated Gas Company prepared the
11 documents and said that's how they wanted to do it, and
12 presented to me the documents as one agreement. That
13 was agreed as one meeting of the minds.

14 Q. But you had your lawyers review this document, right?

15 A. I don't know if I had my lawyers review this document.
16 Many times I did this without counseling being involved.

17 Q. You did sign the dedication, didn't you?

18 A. Yes, I signed both the dedication and the transportation
19 agreement at the same time on the same day.

20 Q. Okay, and you read the dedication?

21 A. Yes, and I have a copy of it right here.

22 Q. Do you know why in paragraph 3 of the dedication a
23 statement would be referenced in that dedication that
24 says that Dominion Reserves or Wolverine Gas Reserve
25 is dedicated for transportation and treating services, and

1 they are going to label the agreement as a transfer of
2 interest and also the agreement would bind subsequent
3 owners to the dedication. Do you know why that phrase
4 would be used?

5 A. I think so.

6 Q. Could you tell me please?

7 A. Yes. Wolverine was the operator of the wells for which the
8 gas was being committed to the transportation agreement.
9 As the operator, Wolverine had other non-operators who it
10 was -- who were involved and owning of the wells and
11 particularly, sir, Wolverine had royalty owners, people who
12 owned the land themselves, whether it was private
13 landowners or state landowners. This was our way of
14 putting them on notice that this gas was dedicated for a
15 certain length of time to a certain contract.

16 And it was my experience in other contracts that this
17 was treated as a property right for a certain period of
18 time.

19 Q. Could you go to paragraph five of the dedication?

20 A. Of the dedication letter?

21 Q. Yes.

22 A. I'm there.

23 Q. And the agreement was conditioned on Case U-10547 that was
24 before the Commission, right?

25 A. Yes.

1 Q. So, the Commission did not approve MichCon's public company
2 of necessity in that case if agreement would have been null
3 and void, right?

4 A. That's right.

5 MR. ODUNLAMI: No further questions, your Honor.

6 JUDGE EYSTER: Any redirect?

7 MR. OLIVA: No redirect, your Honor.

8 JUDGE EYSTER: Mr. Aaron, you had exhibits that you
9 handed out?

10 MR. AARON: Yes, I move for admission of Exhibit
11 MGAT-1.

12 JUDGE EYSTER: For what purpose?

13 MR. AARON: Your Honor, it shows that the question
14 asked of Dominion was to provide copies of all dedications which
15 Mr. Jansma was involved in negotiations, and we didn't get any.
16 And, Mr. Jansma said he didn't have any to produce, but Dominion
17 has them. Dominion could have produced them.

18 The fact of the matter is he's talking about these
19 dedications, as Mr. Oliva argued today, a matter of practice at
20 the time when Mr. Jansma signed them. We were denied
21 information in this discovery response; and, your Honor, I'm
22 prepared to argue that the fact that they denied us information
23 that Mr. Jansma said Dominion has, can lead to an interest of
24 the information we were denied as adverse to his position.

25 JUDGE EYSTER: Mr. Oliva?

1 MR. OLIVA: Yes, your Honor. His response is an
2 objection to the question. Mr. Aaron had an opportunity to
3 bring a motion to compel. In fact, we had, as you recall
4 discussions over scheduling motions to compel with respect to
5 discovery, as to which we objected and the Respondent did not
6 bring the motion.

7 JUDGE EYSTER: Was this part of the discussions we had
8 last week with regards to the motion to compel?

9 MR. AARON: Your Honor, this was a factor that came
10 into play. But, today I asked Mr. Jansma -- I asked him on the
11 stand without objection, I asked him the same question without
12 objection. There wasn't any objection by Mr. Oliva as to
13 relevance. So, in this hearing that objection has been waived.
14 The fact of the matter is this is proof we didn't get any
15 documents.

16 JUDGE EYSTER: With regards to the motion of having
17 this admitted into evidence, Mr. Oliva, any objection?

18 MR. OLIVA: No, I have no objection.

19 JUDGE EYSTER: Mr. Odunlami, any objection to this
20 document? What was it marked as, MGA?

21 MR. AARON: MGAT-4.

22 MR. ODUNLAMI: No objection.

23 JUDGE EYSTER: I'll admit it into evidence, but Mr.
24 Aaron I'm not sure I'm going to give it quite the
25 interpretation. I think it's an objection to a discovery

1 request. So, I mean I can take it for what it is, which is an
2 objection. If you felt you needed to bring me material, you
3 should have had that motion here. But other than that, I'm not
4 sure I can give it the broad evidentiary value that you're
5 seeking.

6 MR. AARON: I understand that. You don't have to rule
7 on this at this time, your Honor, other than either you admit it
8 or not.

9 JUDGE EYSTER: Seeing there's no objection I guess
10 it's admitted into evidence. We're done with this witness?

11 MR. OLIVA: Yes, your Honor.

12 JUDGE EYSTER: Sir, you may step down. Thank you very
13 much for being here. Who is going to be your next witness?

14 MR. OLIVA: Mr. Barnhart will be next.

15 R-A-Y B-A-R-H-N-A-R-T, after first being duly sworn,
16 was examined under his oath and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. OLIVA

19 Q. Good morning Mr. Barnhart, could you state your name and
20 business address for the record?

21 A. Ray A. Barnhart with Dominion, 226 East 16th Street,
22 Traverse City, Michigan, 49684.

23 Q. Mr. Barnhart, I'm handing you a document entitled Direct
24 Testimony of Ray A. Barnhart, consisting of 12 pages of
25 questions and answers, and then there's another page 13.

1 Could you take a look at that and tell me is this the
2 prefiled direct testimony that you caused to be prepared
3 and filed in this case?

4 A. Yes, this is the testimony submitted.

5 Q. And, if I were to ask you these questions this morning
6 would you answer them in the same way?

7 A. Yes.

8 MR. OLIVA: I'll move that Mr. Barnhart's prefiled
9 testimony be bound into the record.

10 JUDGE EYSTER: There's a motion to strike on some of
11 his testimony.

12 MR. OLIVA: That's true. Shouldn't we have taken that
13 up first?

14 JUDGE EYSTER: Let's take that up now.

15 MR. OLIVA: We'll excuse Mr. Barnhart from the stand
16 for a moment.

17 JUDGE EYSTER: He can stay here, that's fine.

18 MR. AARON: Your Honor, we move to strike portions
19 that we have identified in our written motions of Mr. Barnhart's
20 testimony. And, in response to the written response of Dominion
21 I want to add a few comments. With respect to the first item,
22 page 4, lines 10 through 17 our objection goes to the lack of
23 foundation to establish his testimony. There's no indication in
24 his testimony, and I'm talking about foundational evidence that
25 is an evidentiary effort on Dominion's part to establish that

1 the document he described was produced in discovery or obtained
2 from a source that Mr. Barnhart is personally familiar with.
3 Instead, we have counsel offering that representation or
4 testifying to that effect. That's not an evidentiary basis for
5 admitting this testimony or the exhibits. No where does he say
6 where he got the document. With respect to page 5 --

7 JUDGE EYSTER: (Interposing) Is this the document that
8 was provided in discovery by you?

9 MR. AARON: Your Honor, we provided a copy of the
10 document in response to discovery. This witness doesn't
11 indicate that was the document we provided. This witness is
12 talking about MichCon entering into a number of agreements and
13 he doesn't say this is a copy of the document MichCon provided.

14 JUDGE EYSTER: Well, he identifies ASAT #62500. Is
15 that what you're referring to?

16 MR. AARON: Correct.

17 JUDGE EYSTER: Did you provide that document in
18 discovery?

19 MR. AARON: Your Honor, it's entirely possible we did,
20 but I don't know if it's this document.

21 JUDGE EYSTER: What do you mean you don't know if it's
22 this document?

23 MR. AARON: He's sponsoring the exhibit. They has an
24 evidentiary obligation to establish that this is an authentic
25 document. I don't have to authenticate it. If they want it

1 authenticated, your Honor, a simple question, "Did you get this
2 document from MichCon?", then the answer is yes, would have been
3 sufficient. They didn't do that. They have to at least
4 establish a foundation for admission of this evidence.

5 JUDGE EYSTER: Mr. Oliva?

6 MR. OLIVA: Well, the objection here seems to be
7 focusing on ASAT #62500, which is our Proposed exhibit DOM-5.
8 The Proposed Exhibit DOM-5, that is attached to Mr. Barnhart's
9 testimony, is in fact, not the identical document to the one
10 that MichCon produced on discovery. As it turns out, as we
11 discovered when we obtained the document on discovery, this
12 isn't a copy of this ASATT on discovery, is the copy that is
13 attached to Mr. Barnhart's testimony, which is the same document
14 that was filed by Quick Silver, the party to that document in
15 the basically parallel case to this one. It turns out to be a
16 partially executed copy. MichCon provided to us a fully
17 executed copy of that agreement on discovery, which other than
18 it's got a couple other initials on it and another signature
19 line, is the same document.

20 JUDGE EYSTER: Are these documents filed with the
21 Commission?

22 MR. OLIVA: No, and that's part of the problem. They
23 were supposed to have been filed with the Commission Technical
24 Rules and they have not been. They were supposed to be filed
25 within 30 days of being entered into, but they were not. This

1 is why we had to ask for them on discovery as opposed to getting
2 them from the Commission. Now, I'm certainly prepared to, if --
3 frankly, I would contemplate if there were some question over
4 the terms of the not fully executed copy of Exhibit DOM-5. If
5 that's not the fully executed one, I would be prepared to
6 request that we admit into evidence the copy of the same
7 agreement fully executed by all the parties executed by MichCon.
8 But, until I received this motion to strike we had no inkling
9 there was any possibility of any legitimate serious dispute over
10 the authenticity of the document, or it's terms.

11 JUDGE EYSTER: Mr. Odunlami?

12 MR. ODUNLAMI: Nothing from Staff, your Honor.

13 JUDGE EYSTER: I just want to make sure the exhibit
14 that you have -- I guess this is part of what the objection is,
15 no one knows where it came from.

16 MR.. OLIVA: The witness was cross examined about
17 that.

18 MR. AARON: Your Honor, I don't have to cross examine
19 a witness about an exhibit, that, on it's face doesn't have an
20 admissible purpose. I don't have to prove their case. They
21 have to prove their case. They have to establish the
22 evidentiary foundation for admission of the exhibit.

23 Mr. Oliva has given you information that isn't
24 testimony as to the source of the document.

25 JUDGE EYSTER: Right now we have a motion to strike

1 his testimony. We haven't had the motion to admit the exhibit
2 at this point.

3 MR. AARON: Well, his testimony is based on that, and
4 we're moving to striking the testimony as well.

5 MR. OLIVA: I guess I should add one other thing. Mr.
6 Barnhart is testifying here as an expert. He has not -- given
7 the rules on expert witness, he can state his conclusion. He is
8 not required in his prefiled testimony to state the basis for
9 his conclusion, and it's a proper subject for cross examination.
10 He's clearly an expert.

11 JUDGE EYSTER: Mr. Aaron, do you have any objection to
12 him being qualified as an expert witness? Are you going to
13 object to that?

14 MR. AARON: I didn't raise an objection as to his
15 qualifications to testify in the matter. We didn't seek to
16 strike.

17 JUDGE EYSTER: If he's an expert on this type of
18 material then Mr. Oliva has got a good argument, you can cross
19 examine him. He's really making conclusions about the type of
20 contracts that were entered into. I'm going to overrule the
21 objection -- or, excuse me, deny the motion.

22 MR. AARON: Your Honor, we have two other areas of his
23 testimony?

24 JUDGE EYSTER: Page 5, 15 and 16, is that right?

25 MR. AARON: That's correct, your Honor.

1 JUDGE EYSTER: Did you want to make any comments?

2 MR. AARON: Your Honor, again this goes to Mr.
3 Barnhart is asserting that MichCon made money on volumes of gas.
4 But, there's no basis in his testimony for which to include he
5 has personal knowledge. On it's face, it's hearsay.

6 Dominion argues that it relates to his personal
7 knowledge, but there's nothing to establish he has personal
8 knowledge about what MichCon's business activities are. Mr.
9 Barnhart isn't employed by MichCon. It doesn't say in here that
10 the source of this information was an admission by MichCon, or
11 that MichCon gave him information anywhere. It just simply
12 says, I was aware.

13 They have to establish a foundation for admission. If
14 it's going to be a party admission they are to establish a
15 foundation for it, they didn't. On it's face it's hearsay. Not
16 withstanding the representation --

17 JUDGE EYSTER: (Interposing) You're looking to knock
18 out all of or just a portion of Page 6, line 16?

19 MR. AARON: Frankly your Honor, I believe our lineout
20 was overlybroad. What I'm moving to strike are the words,
21 "because I was aware..".

22 JUDGE EYSTER: So, you say the sentence that says I
23 responded that -- he's testifying to what his response was; "I
24 responded that I believe that MichCon would continue to sign up
25 customers even after it had met its MDQ requirements, because I

1 was aware that MichCon made money on the volume of gas that were
2 being processed above the MDQ." It doesn't sound like hearsay
3 statements. Mr. Oliva?

4 MR. OLIVA: Yes, your Honor. As your Honor points
5 out, Mr. Barnhart's testimony here is he is testifying as to
6 what he told Mr. Rowling. Now, again, if Mr. Aaron wants to
7 cross examine him as to what the basis was for his belief that
8 he communicated to Mr. Rowling, he's free to do so. And, again,
9 as I say, he's testifying as an expert witness, as an expert in
10 Michigan in the operation of Michigan Oil and Gas. There is
11 absolutely -- if cross examined, we would find that the basis
12 for his statements as set forth in our discovery response is it
13 actually falls within the hearsay exception.

14 JUDGE EYSTER: Mr. Odunlami?

15 MR. ODUNLAMI: No response from Staff.

16 JUDGE EYSTER: The way I read this testimony I don't
17 see it being hearsay. I don't think it's being admitted for the
18 truth of the matter asserted. I see it as explaining a response
19 that he made during some telephone calls back in January of
20 2005. So, the motion is denied on that. And, you had page 11,
21 lines 6 and 7. Mr. Aaron?

22 MR. AARON: Your Honor, the objection here really goes
23 to relevance of the statement. It has no bearing on the three
24 allegations that are made in the complaint, and those
25 allegations go to whether my clients have taken an unlawful

1 position with respect to the dedication? Whether they are
2 unlawfully imposing a CO2 content requirement on Dominion is
3 discriminatory or whether we unlawfully failed to provide.
4 Those are the basic allegations in this complaint? This
5 statement which they are offering here, has no relevance because
6 it doesn't bear -- it has the tendency to make the existence of
7 a fact a consequence in this case. It's irrelevant.

8 JUDGE EYSTER: Mr. Oliva?

9 MR. OLIVA: I'll stand on my response, my written
10 response, your Honor.

11 JUDGE EYSTER: I don't know what that statement's
12 really worth, but honestly -- I mean, I'll deny the motion and
13 Mr. Aaron I wouldn't worry about it a whole lot. I think it
14 kind of conveys what the discussions were and that. That was it
15 for the motions to strike for Mr. Barnhart, correct?

16 MR. OLIVA: Yes. May I approach the witness?

17 JUDGE EYSTER: Please.

18 BY MR. OLIVA CONTINUING

19 Q. Mr. Barnhart, I'm going to hand you a number of
20 documents. The first is the document that has previously
21 been admitted into evidence as Exhibit DOM-1. This is the
22 Exhibit DOM-1 identified in your testimony, is that
23 correct?

24 A. I believe it is, yes.

25 Q. And the second document is the document that's previously

1 been admitted into evidence as Exhibit DOM-2, that's the
2 document identified in your direct testimony as DOM-2, is
3 that correct?

4 A. Yes, it is.

5 Q. The next document is a cover page, Exhibit DOM-3, and then
6 it has a title page Antrim Gas Transportation and Treating
7 Service Agreement then a notation in the upper right-hand
8 corner which says ASATT #16. Is this the document
9 identified in your direct testimony as Exhibit DOM-3?

10 A. Yes, it is.

11 Q. The next document is a cover page, Exhibit DOM-4, and then
12 it's on the first page it's in the form of a letter dated
13 February 6, 1995. Is this the document referred to in your
14 direct testimony as Proposed Exhibit DOM-4, is that
15 correct?

16 A. Yes, it is.

17 Q. The next document is marked Exhibit DOM-5, and is this the
18 document identified in your exhibit as -- excuse me, in
19 your testimony as Exhibit DOM-5?

20 A. Yes, it is.

21 Q. The next document is an exhibit with a cover sheet, Exhibit
22 DOM-6, entitled Firm Gas Treating Agreement, dated November
23 29, 2005, is that the document referred to in your prefiled
24 direct testimony as Exhibit DOM-6?

25 A. Yes, it is.

1 Q. Then, the next document is marked Exhibit DOM-7, and that
2 again is in the form of a letter dated October 12, 2005.
3 Is this the document referred to in your direct testimony
4 as Exhibit DOM-7?

5 A. Yes.

6 Q. Then, the document with a cover sheet, Exhibit DOM-8, on
7 the first page of that is a letter dated December 1, 2005.
8 Is that the document referred to in your direct testimony
9 as Exhibit DOM-8?

10 A. Yes.

11 Q. And then the next document is a cover sheet Exhibit DOM-9,
12 and the first page of that is a letter dated December 22,
13 2005. Is that the exhibit referred to in your direct
14 testimony as Exhibit DOM-9?

15 A. Yes.

16 Q. And then the next document is a cover sheet Exhibit DOM-10,
17 and the first page of that is a letter dated January 30,
18 2006. Is that the document identified in your prefiled
19 direct testimony as Exhibit DOM-10?

20 A. Yes.

21 Q. And then finally, there's a document consisting of a cover
22 sheet and one page cover sheet is Exhibit DOM-11 and the
23 single page is a letter dated February 23, 2006. Is that
24 the document referred to in your prefiled testimony as
25 Exhibit DOM-11?

1 A. Yes.

2 MR. OLIVA: I move that Exhibits -- DOM-1 and 2
3 previously were admitted. I move that DOM-3 through DOM-11 be
4 admitted into evidence.

5 JUDGE EYSTER: Do you want to make a motion on his
6 testimony?

7 MR. OLIVA: I move that his testimony be bound into
8 the record.

9 MR. AARON: No objection.

10 JUDGE EYSTER: Mr. Odunlami?

11 MR. ODUNLAMI: No objection, your Honor.

12 JUDGE EYSTER: The testimony will be bound into the
13 record.

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DIRECT TESTIMONY OF RAY A. BARNHART

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Ray A. Barnhart. My business address is 226 East 16th Street, Traverse City, Michigan 49684

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

A. I am employed by Dominion Exploration and Production Company ("Dominion E&P") as Operations Manager.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE?

A. I attended Michigan Technological University and Northwestern Michigan College, from which I hold an Associates Degree in Applied Science, Petroleum Engineering Technologies. Since 1982, I have worked in the oil and gas industry, first for Superior Supply Co. In 1984 I joined Grewe/Star in production operations and consulting. In 1993 I joined Wolverine Gas and Oil, which was subsequently acquired by Dominion in 1997, and became Dominion Midwest Energy, Inc. ("Dominion Midwest"). At that time, I became employed by Dominion E&P. I am currently a Director of the Michigan Oil and Gas Association ("MOGA") and a member of the Oil and Gas Advisory Committee of the Michigan Department of Environmental Quality. ("DEQ").

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

A. Yes. I testified as an expert witness in petroleum engineering before the DEQ, Supervisor of Wells in the proceedings which led to the issuance of Supervisor of Wells Order No. (A) 24 8 05, dated February 23, 2006, which granted the application of MOGA

1 permitting the drilling of twin Antrim Gas wells in Otsego and Montmorency Counties,
2 Michigan.

3 Q. WHAT ARE YOUR CURRENT JOB FUNCTIONS AS OPERATIONS MANAGER
4 FOR DOMINION EXPLORATION AND PRODUCTION COMPANY?

5 A. As Operations Manager, I am responsible for all aspects of Dominion's Michigan
6 operations. This includes our annual capital spending program comprised of the drilling
7 program, reworks of existing wells, pipeline and facility enhancements. Also included is
8 the daily operation of almost 1200 wells. I review the monthly revenue and lease
9 operating costs reports. I work with our legal department to address any litigation and
10 other legal and land issues. I am responsible for 49 employees and various contractors
11 utilized on a daily basis.

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

13 A. The purpose of my testimony in this proceeding is to describe the events which occurred
14 over the course of the past 18 months relating to the expiration of ASATT#1 and ASATT
15 #16 between Dominion and MichCon Gathering Company, the negotiation of a new
16 Treating Agreement between Dominion and CMS Antrim, and the attempts to negotiate a
17 new transportation agreement with MichCon.

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

19 A. I am jointly sponsoring, with James M. Weyland, the following exhibits:

20 DOM-1 ASATT #1 dated September 12, 1994

21 DOM-2 Dedication of reserves under ASATT #1, dated September
22 12, 1994

23 DOM-3 ASATT #16 dated February 6, 1995

1 DOM-4 Dedication of reserves under ASATT #16, dated

2 February 6, 1995

3 DOM-5 ASAT #62500 dated January 1, 1998

4 DOM-6 Firm Gas Treating Agreement, dated

5 November 29, 2005

6 DOM-7 Letter dated October 12, 2005 and draft ASAT

7 DOM-8 Letter Dated December 1, 2005 and draft ASAT

8 DOM-9 Letter dated December 22, 2005

9 DOM-10 ASAT #62501, dated January 2006

10 DOM-11 Letter dated February 3, 2004

11
12 Q. PLEASE DESCRIBE ASATT #1.

13 A. ASATT #1 is a transportation and treating agreement between Wolverine Gas and Oil
14 Company and Michigan Consolidated Gas Company, dated as of September 12, 1994, for
15 transportation and CO₂ treating services on the Antrim Expansion Pipeline (“AEP”). A
16 copy of ASATT #1 is attached to Dominion’s Complaint as Attachment A, and is Exhibit
17 DOM-1. ASATT #1 required, as a condition of firm transportation service, that the
18 shipper execute a dedication of reserves to the pipeline. Simultaneously with the
19 execution of ASATT #1, Wolverine executed a Dedication of Reserves, attached to the
20 Complaint as Attachment C, and is Exhibit DOM-2.

21 Q. PLEASE DESCRIBE ASATT #16.

22 A. ASATT #16 is a transportation and treating agreement between Dominion Reserves, Inc.
23 and Michigan Consolidated Gas Company, dated as of February 6, 1995 for

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 Mr. Rowling of that fact, and also informed him that Dominion would be discussing its
2 future treating needs with CMS Antrim directly, and that it would also evaluate building
3 our own CO₂ treatment plant if we felt it would provide the best possible solution.

4 Q. PLEASE DESCRIBE THE ACTION WHICH DOMINION TOOK WITH RESPECT TO
5 EVALUATING ALTERNATIVES FOR CO₂ PROCESSING ON THE AEP IN 2004
6 AND 2005.

7 A. During 2002 and 2003, Dominion and Quicksilver, who were co-owners of the
8 Wilderness Chester plant, had studied the feasibility of expanding that plant to
9 accommodate all of Dominion's gas that was then under contract to MichCon. In
10 anticipation of this contingency, and realizing that interconnections to the Spartan, South
11 Chester and North Chester pipelines would be necessary, applications had been filed with
12 the Commission seeking authority to build these interconnects by Quicksilver and by
13 Wilderness Chester as the "Half Moon" pipeline. These applications were docketed as
14 MPSC Cases Nos. U-13787 and U-13874, respectively, and they were actively opposed
15 by MichCon, contending that construction of the Half Moon Pipeline would interfere
16 with its contractual and other arrangements for CO₂ treatment and blending. Over time,
17 the excessive cost estimates for interconnect fees proposed by CMS, and difficulty of
18 reaching agreement on a formal contract, this plan was deemed to be too difficult to
19 pursue, and Quicksilver's application was withdrawn. See *Re Quicksilver Resources*,
20 MPSC Case No. U-13787 (September 30, 2003). The Commission did, however,
21 approve Wilderness-Chester's application for authority to construct the Half Moon
22 Pipeline. See *Re Wilderness Chester Limited Partnership*, MPSC Case No. U-13874
23 (November 25, 2003), *rehearing denied* (February 12, 2004).

1 Quicksilver also had a contract with MichCon that expired November 2005, for a
2 property in which Dominion owns a working interest. Dominion and Quicksilver joined
3 together to negotiate a deal with either CMS or MichCon that would provide more
4 reliable service to not only Dominion and Quicksilver, but all producers currently
5 sending gas to the CMS plants.

6 We met with MichCon on numerous occasions to discuss various options including: i)
7 expanding the Wilderness Chester to provide additional pre-treatment of gas, and ii)
8 Wilderness Chester buying MichCon's Vienna plant and moving it to the site of the
9 Wilderness-Chester membrane plant and connecting it to the AEP or flow to CMS as a
10 pre-treater. During these discussions MichCon continually referenced our ASATT
11 agreements as expiring in November, 2005 and distributed a worksheet describing such
12 position.

13 During a meeting in Traverse City attended by Jim Weyland, Ed Rowling, Fred Metzger
14 and myself, in June 2005, MichCon offered to move the Vienna Plant to its Turtle Lake
15 facility to expand its capacity to almost 70,000 mcf per day. This would allow for that
16 gas to be diverted directly to AEP during a outage of a CMS plant. This proposal would
17 have provided enough redundant capacity to allow for 1 of CMS's 70,000/day plants to
18 be taken off line without any curtailment for the producers. This proposal was received
19 very favorably by Dominion and Quicksilver.

20 At a meeting August 4 in Mt Pleasant with Mr. Weyland of Dominion and Mr. Shumway
21 of Quicksilver; however, MichCon rescinded this offer, citing the costs to move the plant,
22 estimated at \$2,000,000 to \$3,000,000, as too high to be justified. We continued to
23 discuss alternatives with MichCon, however these alternatives were at the expense of the

1 producers or did not, in Dominion's opinion, provide for improved reliability or
2 redundancy

3 Q. PLEASE DESCRIBE THE DISCUSSIONS WHICH DOMINION HAD WITH CMS
4 ANTRIM FOR TREATMENT OF GAS ON THE AEP.

5 A. Concurrent to our discussions with MichCon, we discussed several proposals with CMS
6 to treat the Dominion gas.

7 In August of 2005, CMS offered to refurbish Plant No 1 and to maintain one larger plant
8 (75,000 capacity) of redundant capacity for 5 years. We believed that this proposal
9 should eliminate all curtailments related to the shut down of one large plant. The rate for
10 treating was \$0.11/mcf. Dominion decided to enter into a 5 year treating contract with
11 CMS, as this option gave us the best opportunity for redundant capacity and better
12 service without interruption. A copy of the Firm Gas Treating Agreement, dated
13 November 29, 2005, is Attachment E to Dominion's Complaint (Exhibit DOM-6).

14 Q. PLEASE DESCRIBE YOUR ACTIONS IN ATTEMPTING TO NEGOCIATE A
15 TRANSPORTATION-ONLY AGREEMENT ("ASAT") WITH MichCon.

16 A. I called Mr. Rowling in late September to inform him of our decision and asked that he
17 send an ASAT (transportation only) for our review and execution, and he said he would.
18 I sent an e-mail to Mr. Rowling on September 28, 2005, again asking that he send an
19 ASAT. Mr. Rowling called me September 30, and told me that their legal department
20 had reviewed our contracts and had taken the position that our reserves under ASATT 1
21 were perpetually dedicated, because the dedication letter did not have a termination
22 clause. He said that ASATT #16 would expire due to the different language in the
23 dedication letter.

1 On October 3, 2005, Mr. Rowling sent new draft ASATT's for our consideration.
2 Dominion requested that MichCon instead send Dominion draft ASAT agreements for
3 transportation only. On October 12, Mr. Rowling sent Dominion correspondence stating
4 he will send us an ASAT when we tell him what acreage or properties we want to include
5 pertaining to our ASATT #16. He states that all acreage identically described in both
6 ASATT #1 and #16, was dedicated under ASATT #1 and is therefore dedicated in
7 perpetuity. (Exhibit DOM-7). In response, our legal department sent a letter to MichCon
8 on Oct. 28, stating Dominion's position that the dedication of reserves executed in
9 connection with ASATT #1 expires when ASATT #1 expires, and MichCon was being
10 unreasonable and discriminatory.

11 MichCon responded by sending a draft ASAT as replacement for ASATT #16 only.
12 (Exhibit DOM-8)

13 Mr. Rowling then sent us an e-mail stating that MichCon will allow Dominion to
14 nominate month to month on the expiring contracts. Mr. Weyland responded by e-mail
15 dated November 10 advising that we will let them know how we will nominate gas by
16 November 29.

17 Q. AT WHAT POINT DID MICHCON FIRST RAISE THE ISSUE OF CONDITIONING
18 A NEW ASAT ON DOMINION'S AGREEING TO A PROCESSING SPECIFICATION
19 OF .75% CO₂ CONTENT?

20 A. In late November, Mr. Rowling called to offer an ASAT for all of Dominion's gas if we
21 agree to the .75% CO₂ specification.

22 Q. WHAT DID DOMINION DO IN RESPONSE TO THIS REQUEST?

1 A. Jim Weyland and I called Frank Murray at CMS to ask if CMS would amend our contract
2 to reduce the CO₂ from 2% to .75% and he said no. He told us that MichCon was already
3 paying him to do this.

4 Q. HAD MICHCON ENTERED INTO OTHER TRANSPORTATION ONLY
5 AGREEMENTS WITH PRODUCERS ON AEP WHICH DID NOT REQUIRE THAT
6 CO₂ LEVELS BE REDUCED BELOW 2%?

7 A. MichCon Gathering had filed with the Commission its ASAT #62500 with Mercury
8 Exploration Corporation dated January 1, 1998 (Ex DOM-5) for transportation only.
9 Under paragraph I (e) on page 21 of Exhibit C, it only requires treatment to 2% CO₂
10 content.

11 Q. WHAT FURTHER DISCUSSIONS DID YOU HAVE WITH MICHCON REGARDING
12 TRANSPORTATION AND TREATING?

13 A. On November 9, 2005 Dominion and its counsel met with MPSC staff and discuss the
14 dispute. The Commission Staff expressed a desire that the parties negotiate a resolution
15 among themselves. On November 21, 2005, we meet with MichCon to discuss the
16 dispute. We again stated our position that we are looking for the best possible treating
17 service to provide redundancy and reliability. I stated that when MichCon offered to
18 move Vienna to Turtle Lake that Dominion was favorable to signing with MichCon until
19 they rescinded the offer. MichCon asked for the ability to make another proposal, and we
20 told them we would look at an offer; however, at that point we had already verbally
21 committed to CMS.

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

1 about an ASAT for our gas under ASATT 16 and were advised that MichCon had
2 adopted a new policy that had 0.75% as the new CO₂ spec instead of the 2.0% that other
3 producers have. He stated we should sign the 0.75% ASAT and then sue MichCon.
4 Dominion executed a new ASAT to cover deliveries of gas while the dispute was
5 pending in this case (Exhibit DOM-10) Dominion informed MichCon that we would be
6 paying only the normal ASAT fees and would withhold the "treating" portion of the
7 invoices.

8 Q. HOW IS DOMINION HAVING ITS GAS TREATED TO ACHIEVE THE .75% CO₂?

9 A. Dominion contracted with Wilderness Chester for the additional treating needed to
10 achieve 0.75% CO₂ contact at the tailgate of CMS during the pendency of this
11 proceeding.

12 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

13 A. Yes.
14

1 JUDGE EYSTER: Exhibits DOM-3 through DOM-11 will be
2 admitted into evidence.

3 MR. OLIVA: I tender Mr. Barnhart for cross
4 examination.

5 JUDGE EYSTER: Mr. Aaron?

6 MR. AARON: Thank you, your Honor.

7 CROSS EXAMINATION

8 BY MR. AARON

9 Q. Good morning, Mr. Barnhart.

10 A. Good morning.

11 Q. Dominion decided to enter into a firm gas treating
12 agreement with CMS Antrim, is that correct?

13 A. Yes, it is.

14 Q. Is it true that one of the primary determinants for
15 entering into that agreement was that Dominion believes it
16 will get a more reliable CO2 treating service than what
17 MichCon Gathering can provide?

18 A. Yes.

19 Q. And, you were involved in negotiations with CMS Antrim were
20 you not?

21 A. Yes.

22 Q. And, you had discussions with Mr. Murray, who represented
23 CMS Antrim?

24 A. Yes.

25 Q. Did Mr. Murray promise you more reliable CO2 treating

1 service than provided by MichCon Gathering?

2 A. Mr. Murray agreed to refurbish Plant 1, which was in need
3 of repairs. It was only operating at about half capacity
4 and also agreed to maintain one large plant or the
5 equivalence of approximately 70 million a day in excess
6 to be down to treating capacity for the term of the
7 contract.

8 Q. So, did he promise you more reliable treating services than
9 what MichCon Gathering was offering?

10 A. He stated just their intent of how they were going to
11 provide treating that would reduce or eliminate curtailment
12 that we had experienced.

13 Q. When you were engaged in these negotiations was it your
14 understanding that MichCon Gathering would provide treating
15 services to Dominion, or was offered to provide service to
16 Dominion using an agreement for treating with CMS Antrim?

17 A. I'm sorry, could you restate that question please?

18 Q. Is it your understanding that MichCon Gathering, when it
19 was offering to provide you treating service that it would
20 be doing so utilizing an agreement that it had with CMS
21 Antrim?

22 A. Yes.

23 Q. Did Mr. Murray tell you that MichCon Gathering's agreement
24 with CMS Antrim had an interruptible component?

25 A. I believe the term was referred to as an overrun which

1 would be interruptible. It would be first off the system.

2 Q. And that interpretation factor was your decision to go with
3 CMS Antrim?

4 A. It was a portion of that, yes.

5 JUDGE EYSTER: Would you repeat your last answer. I
6 think the question was whether it was interruptible.

7 MR. AARON: Correct, and I believe the witness
8 indicated he would refer to it as overrun.

9 JUDGE EYSTER: I think you said it would be first off,
10 what was it?

11 THE WITNESS: The volume of gas that would be
12 considered to be overrun or would be first gas taken off the
13 system.

14 JUDGE EYSTER: Okay. Go ahead, Mr. Aaron.

15 BY MR. AARON CONTINUING

16 Q. Did Mr. Murray tell you that if you signed for the treating
17 services CO2 removal with MichCon Gathering, it would be
18 more likely that you would experience curtailments?

19 A. I don't recall Mr. Murray making that statement.

20 Q. Mr. Barnhart, does Dominion have an ownership interest in
21 the Wilderness Chester, LLC Treating facility?

22 A. Yes, we do.

23 Q. Where is that located?

24 A. It's located immediately north of the CMS treating
25 facility.

1 Q. And could the Wilderness Chester, LLC Treating Plant
2 be used for treating Antrim gas that would flow on the AEP?

3 A. In it's present condition no. It would have to have some
4 modifications to it. Let me ask this question, are your
5 referring to treating at 2% or less specification?

6 Q. If it's 2% or less concentration can it be used to treat
7 gas to some level, removing CO2 that would flow on the AEP?

8 A. I believe it could.

9 MR. AARON: That's all I have your Honor.

10 JUDGE EYSTER: Mr. Odunlami?

11 MR. ODUNLAMI: Yes. Thank you, your Honor.

12 CROSS EXAMINATION

13 BY MR. ODUNLAMI

14 Q. Good morning, Mr. Barnhart.

15 A. Good morning.

16 Q. Just to follow up on Mr. Aaron's questions, the Wilderness
17 Chester Plant is being used for carbon dioxide treatment
18 at this time?

19 A. Yes, it is a pre-treatment plant.

20 Q. So, you treat the gas at that plant to what level?

21 A. That plant was built for the purpose of treating, removing
22 CO2 to bring your aggregate CO2 level to a level below 14%
23 to meet our contract.

24 Q. And you are currently doing that with that plant right now?

25 A. Yes, we are.

1 Q. Do you have your prefiled testimony in front of you?

2 A. Yes.

3 Q. Could you please turn to page 4 of your testimony?

4 I'm interested in lines 1 through 6 and lines 18 through 22
5 where you discuss two different ASATT contracts, #1 and
6 #16?

7 A. Yes.

8 Q. Could you please explain why you have two different
9 contracts, and I think they were made between six months of
10 each other? Could you tell me why two different contracts
11 were executed within six months time frame?

12 A. ASATT #1 was signed by Mr. Jansma, who, at the time was the
13 owner and president of Wolverine Gas and Oil, and they were
14 the operator of record of these wells.

15 Dominion Energy and Dominion Reserves was an investor
16 with Wolverine Gas and Oil in most of their projects they
17 were operating up in the Antrim. ASATT #16 was a contract
18 signed about six months later between Dominion Reserves and
19 MichCon. The exact purpose of that I'm not sure. I was
20 not a party to that.

21 Q. So, ASATT #16 was signed after Dominion Reserves got a
22 interest in those reserves owned by Wolverine?

23 A. Dominion had interest in most of their projects, with the
24 exception of when they drilled them. For whatever reasons
25 Dominion executed a contract directly with MichCon and

1 described their reserve position as far as the acreage.

2 JUDGE EYSTER: Wait a minute. Just a minute.

3 Dominion took ownership of Wolverine's reserves that were part
4 of ASATT #1 prior to ASATT #16 being signed?

5 THE WITNESS: No, that was after ASATT #16 was signed
6 in 1995. Dominion acquired Wolverine effective 1-1-97.

7 JUDGE EYSTER: Because I think you through that into
8 your question. I'm not sure that you answered that directly.

9 MR. ODUNLAMI: Thank you, your Honor.

10 JUDGE EYSTER: I think you said yes. I just wanted to
11 clarify that.

12 MR. ODUNLAMI: Thank you, your Honor.

13 BY MR. ODUNLAMI CONTINUING

14 Q. And the acreage described in ASATT #1 and ASATT #16, are
15 they 100% the same acreage?

16 A. Almost all the same acreage. There are descriptions of
17 land in ASATT #16 that were not included in ASATT #1; but,
18 Dominion no longer has any interest and has not for a while
19 in those lands described in #16 that are not in ASATT #1.

20 Q. I have a question that's kind of puzzling me in your
21 testimony. You did reference, I'm still on page 4 of your
22 testimony where you discuss the dedication of reserves
23 relating to ASATT #1. Then you label what I think is a
24 commitment letter that was signed in conjunction with
25 ASATT #16. You labeled that as a dedication. Is there a

1 distinction between those two words?

2 A. In my opinion those documents intend to function as the
3 same type document.

4 Q. Do you think ASATT #16 nullified ASATT #1?

5 MR. OLIVA: I'm going to object to the extent that's
6 calling for a legal conclusion.

7 MR. ODUNLAMI: Not really your Honor. His testimony
8 is talking about what those contracts meant. I think all the
9 witness described in his testimony he's confident that those
10 arguments are made in ten years. He discusses ASATT #1 and also
11 ASATT #16. He discusses ASATT #16 in conjunction with a
12 commitment letter. He discusses ASATT #1 in conjunction with
13 the dedication, and concluded those contracts were entered and
14 they were supposed to terminate in ten years. Your Honor, I'm
15 asking the witness -- we talked about two contracts, one
16 dedication letter, a commitment letter. I'm asking is there
17 anything in those documents that would tell him that ASATT #16
18 nullified ASATT #1 when it was signed?

19 JUDGE EYSTER: First of all, I'm a little confused. I
20 thought this ASATT #1 was signed by Wolverine, is that correct,
21 sir?

22 THE WITNESS: Yes.

23 JUDGE EYSTER: ASATT #16 was signed by Dominion?

24 THE WITNESS: Yes.

25 MR. AARON: I saw the witness shaking his head, yes,

1 but I didn't hear him

2 THE WITNESS: Yes.

3 JUDGE EYSTER: And, your saying that those covered the
4 same acreage?

5 THE WITNESS: Yes. The acreage descriptions are
6 almost identical with the exception of lands I believe in Oscoda
7 County that are no longer relevant to this case. They have been
8 sold.

9 JUDGE EYSTER: You did not acquire Wolverine until two
10 years after ASATT #16 was signed?

11 THE WITNESS: Correct.

12 JUDGE EYSTER: They have wells the same location that
13 you have wells?

14 THE WITNESS: Dominion has ownership or working
15 interest in the projects that Wolverine had developed. Dominion
16 was an investor with Wolverine in essentially all of these
17 projects that were covered under ASATT #1 executed by Wolverine.

18 JUDGE EYSTER: So, when ASATT #1 was signed Dominion
19 had an interest in that acreage?

20 THE WITNESS: Yes.

21 JUDGE EYSTER: Okay. And, you're asking -- what was
22 your question again?

23 MR. ODUNLAMI: My question is simple your Honor. I'm
24 asking, because this witness has testified as to his knowledge
25 of the ASATT #1 and the dedication of reserves at ASATT #16, and

1 what is labeled a commitment letter. Also this witness
2 prefiled testimony saying those agreements provided to terminate
3 in ten years. I'm asking --

4 JUDGE EYSTER: Okay, you're asking?

5 MR. ODUNLAMI: I'm asking the witness the question,
6 from what is read in those two documents whether ASATT #16
7 nullifies ASATT #1? Staff is puzzled why we have two different
8 agreements. That's why he said one was executed while Dominion
9 had a working interest and the second was executed when Dominion
10 took the entire interest.

11 JUDGE EYSTER: And your response to Mr. Oliva's
12 comment that you're calling for legal conclusion?

13 MR. ODUNLAMI: It's not legal conclusion because it's
14 within the witnesses' knowledge he's talking about contracts.
15 He actually stated to his own knowledge those contracts
16 terminate in ten years. I'm asking him does he think those two
17 contracts are separate or they are one contract, ASATT #16 and
18 ASATT #1?

19 JUDGE EYSTER: Mr. Oliva?

20 MR. OLIVA: I'll withdraw the objection, but I'm
21 puzzled given the witness's testimony that the contracts were
22 executed by separate companies at the time they were separate
23 companies. I don't understand with respect to separate owners
24 of interest, where is the source of Staff's confusion. But,
25 I'll withdraw my objection.

1 JUDGE EYSTER: Okay. Answer the question.

2 THE WITNESS: It's my opinion when ASATT #16 was
3 executed, that Dominion's portion, or Dominion's interest in the
4 acreages that were described in ASATT #1, now fall under the
5 jurisdiction of ASATT #16. Dominion signed the contract to
6 represent that ASATT. This is my opinion.

7 MR. ODUNLAMI: That ASATT #1 contract was never taken
8 out of the discussion, was it in your opinion?

9 THE WITNESS: No, at the time ASATT #16 was executed,
10 Wolverine still had ownership and a need for a contract.

11 BY MR. ODUNLAMI CONTINUING

12 Q. Do you have a copy of the commitment letter? I think it's
13 marked DOM-4.

14 MR. OLIVA: That would be under tab 16.

15 A. This is a commitment for ASATT #16?

16 Q. Yes.

17 A. Yes.

18 Q. Does the commitment letter state or not that reference is
19 specifically made for Antrim Gas transportation and
20 treating service at ASATT #16 dated, right. That's the
21 first two lines?

22 A. Yes.

23 Q. So, this commitment letter specifically refers to ASATT
24 #16, yes or no?

25 A. Yes.

1 Q. Again, go to page 3 of the commitment letter. I think
2 it's paragraph 6. Does it state or not that the letter as
3 executed in connection with the service agreement, which is
4 ASATT #16, if there is any conflict between the service
5 agreement, the provisions of that service agreement shall
6 prevail?

7 A. Yes.

8 Q. So, there's no reference in this commitment letter to
9 ASATT #1 at all, yes or no?

10 A. None, that I am aware of.

11 JUDGE EYSTER: How much interest did Dominion have at
12 the time ASATT #16 was signed? Were the two companies
13 essentially partners?

14 THE WITNESS: Yes, Dominion had somewhere from
15 approximately, I would say 35% to 95%.

16 JUDGE EYSTER: 35 to 95% in?

17 THE WITNESS: Working interest.

18 MR. AARON: Your Honor, I think the witness means
19 individual wells. You have 35% in one and 95% in another one.

20 THE WITNESS: Yes, in various projects, of 15 to 30
21 wells.

22 JUDGE EYSTER: Do you have any way at this point today
23 of segregating the gas that would have been covered by ASATT #1
24 that's covered by ASATT #16?

25 THE WITNESS: I've looked at that, and I'm recalling

1 it's approximately 85% of the gas in question here would be
2 covered under ASATT #16 as Dominion ownership gas.

3 JUDGE EYSTER: Would that change on a day-to-day basis
4 depending on how much gas is coming up?

5 THE WITNESS: No, the only changes would have occurred
6 in possible deal terms that allow for inversions of interest to
7 pay out, or at the time ASATT #16 was signed it would been about
8 85%. Now, all the gas is owned by Dominion, in question.

9 JUDGE EYSTER: These contracts don't identify how much
10 of that -- it just calls for all of the gas as dedicated to
11 MichCon Gathering?

12 THE WITNESS: It's my understanding the agreement
13 calls for all of the gas that you are technically able to
14 commit, without some other, an agreement between a royalty owner
15 or a working interest owner may prohibit a dedication. But, all
16 the gas that the party to the contract, it is legally able to
17 dedicate, or that you can produce.

18 JUDGE EYSTER: Legally?

19 THE WITNESS: Right.

20 JUDGE EYSTER: So that applied to both Wolverine and
21 Dominion, and for whatever portion they were actually producing,
22 correct?

23 THE WITNESS: Yes.

24 JUDGE EYSTER: But those particular agreements
25 covering the same acreage didn't designate how much of that was

1 allocated to each of these companies?

2 THE WITNESS: No, it does not allocate.

3 JUDGE EYSTER: I forgot who was conducting cross, Mr.
4 Odunlami?

5 BY MR. ODUNLAMI CONTINUING:

6 Q. Just to follow up a little bit on the Judge's question.

7 Before ASATT #16 was executed, did Wolverine or Dominion
8 transfer gas under ASATT #1? Is there any treatment under
9 ASATT #1?

10 A. Did Dominion or Wolverine --

11 MR. OLIVA: I'm going to ask that counsel rephrase the
12 question. I can't follow it.

13 JUDGE EYSTER: Please, if you can start over.

14 BY MR. ODUNLAMI CONTINUING:

15 Q. Before ASATT #16 was signed by the parties, did Dominion
16 transport any gas under the ASATT #1 agreement?

17 A. I can't answer that question. I was not involved in the
18 gas marketing. I was limited to the field operations at
19 that time.

20 Q. Do you have the dedication of reserves copy in front of
21 you? I think it's DOM-2?

22 A. Yes, I do.

23 JUDGE EYSTER: Excuse me, which exhibit are you on?

24 MR. ODUNLAMI: Dedication of Antrim Reserves, DOM-2,
25 your Honor.

1 Q. Do you see any reference in that dedication to ASATT #1?

2 MR. OLIVA: Is counsel's question whether the document
3 specifically references the word ASATT #1?

4 MR. ODUNLAMI: Yes.

5 THE WITNESS: I do not see that specifically in here.

6 JUDGE EYSTER: Mr. Odunlami, I'm going to back up. If
7 I can get that last question. The ASATT #16 was signed prior to
8 the AEP becoming operational wasn't it?

9 THE WITNESS: Yes.

10 MR. ODUNLAMI: Your Honor, could you repeat that
11 question?

12 JUDGE EYSTER: I think you were asking some questions
13 about gas being transported under ASATT #16?

14 MR. ODUNLAMI: ASATT #1 was the first executed
15 agreement between Wolverine, Dominion and MichCon. ASATT #16
16 was a subsequent agreement.

17 JUDGE EYSTER: Both of those were signed before the
18 pipeline was operational? That's not what I asked him. I asked
19 him if ASATT #16 was signed?

20 THE WITNESS: Yes, it was signed November 8, 2005.

21 JUDGE EYSTER: I was trying to understand what your
22 question was.

23 MR. ODUNLAMI: I'm trying to separate the commitment
24 letter and the dedication of reserves. From what we've
25 understood so far, the parties -- I don't think there's any

1 dispute as to the fact that the dedication of reserve was
2 actually executed along with ASATT #1. That's what I'm trying
3 to establish your Honor, separate documents.

4 JUDGE EYSTER: Continue then.

5 MR. ODUNLAMI: Thank you.

6 BY MR. ODUNLAMI CONTINUING:

7 Q. Could you please go to page 5 of your testimony?

8 A. Yes.

9 Q. I'm interested in line 20?

10 A. Yes.

11 Q. It's my opinion that you are talking about issues with
12 carbon dioxide processing plants, right?

13 A. Yes.

14 MR. OLIVA: I guess I didn't have time to object to
15 the question. I'm not sure the witness can testify to what Mr.
16 Odunlami's opinion is.

17 JUDGE EYSTER: Wait just a moment. What page are you
18 on?

19 MR. ODUNLAMI: Page 5.

20 JUDGE EYSTER: What line?

21 MR. ODUNLAMI: Line twenty. I'll rephrase the
22 question, your Honor.

23 JUDGE EYSTER: No, line 20 is a question?

24 MR. ODUNLAMI: Line 20 through 22.

25 JUDGE EYSTER: What was your question again?

1 MR. ODUNLAMI: I'll rephrase the question.

2 BY MR. ODUNLAMI CONTINUING:

3 Q. Did you state in your testimony issues about lost revenue
4 due to plant down-time for carbon dioxide processing
5 plants?

6 A. Yes.

7 Q. And, you are referring to what?

8 A. During that time period there was a significant amount of
9 down-time occurrences relating to the CO2 processing with
10 plants being taken off line for repairs and breakdowns.

11 Q. And that would be -- whose plant is that?

12 A. Primarily, CMS plants.

13 Q. Do you think, in your opinion, MichCon has control over
14 that?

15 A. No.

16 Q. Thank you. Again, I'm interested in page 7 of your
17 testimony?

18 A. Yes.

19 Q. I think I'm interested in lines 14 through 23. I believe
20 on that page you discuss issues with MichCon constructing a
21 carbon dioxide process plant in order to reserve the
22 curtailment issue, right?

23 A. Yes.

24 Q. And based on what I'm reading, from your testimony and what
25 you stated in your testimony the cost is about \$2 million

1 to \$3 million?

2 A. Yes, those were the numbers provided to myself and others
3 at these meetings by MichCon.

4 Q. Would you know, in your own opinion, whether those numbers
5 are reasonable or not, the \$2 million to construct a plant?

6 A. My opinion is that was too high of a cost estimate.

7 Q. What would be your own personal estimate?

8 A. Between \$1 and \$1.2 million.

9 Q. Again, in your own opinion do you expect somebody to put
10 money up front to construct that kind of a plant to be
11 able to recoup the cost of putting the plant down, wouldn't
12 you?

13 A. We felt that the fees that we were paying should have
14 provided for this service already.

15 Q. Again, I'm interested in your testimony on page 9?

16 A. Okay.

17 Q. I think I'm going to paraphrase. If I'm wrong correct me.
18 There was a discussion that led to MichCon stating that
19 they would be willing to release Dominion from the
20 dedication dispute if you guys can come up with a way to
21 treat your gas to 0.75 carbon dioxide specification. Am I
22 paraphrasing that correctly?

23 A. No. The proposal was from MichCon that they would release
24 us from dedication if we signed a transportation contract
25 with MichCon with a 0.75% specification.

1 Q. So, in other words, I think in your testimony that they
2 said if you guys could come up with a treating -- if you
3 could treat your gas with CMS, even though you've already
4 discussed it with CMS, if we could treat your gas to 0.75%
5 specification they would release you from the dedication.
6 Was that discussion to that effect?

7 A. Yes. And I would state that it was not a matter of if you
8 could, it was you must treat to 0.75%.

9 Q. I believe Dominion then went back to CMS and said this is
10 the new proposal, what do you think, right?

11 A. Correct.

12 Q. What did CMS say?

13 A. They said, no.

14 Q. Did they give you reasons?

15 A. They stated that they were already treating.

16 JUDGE EYSTER: Who is they?

17 THE WITNESS: Frank Murray told us that he was already
18 providing the service to MichCon of treating the incremental
19 reading from 2% to 0.75% for this gas in question.

20 BY MR. ODUNLAMI CONTINUING:

21 Q. So in other words, to the best of your understanding
22 Mr. Frank Murray of CMS was saying they were getting money
23 from MichCon to treat your gas to 0.75%?

24 A. I'm not sure I understand that question completely.

25 Q. You stated in your prefiled testimony that when you took

1 MichCon's proposal back to CMS, Frank Murray stated they
2 would not amend your contract because they were already
3 being paid to treat that gas down to 0.75% carbon
4 dioxide composition by MichCon.

5 A. Correct. While we are under contract with MichCon for
6 treating and transportation, CMS was treating this gas to
7 0.75%.

8 Q. So right now is Dominion paying to treat the gas down to
9 0.75%?

10 A. Yes.

11 MR. ODUNLAMI: Your Honor, no further questions.

12 JUDGE EYSTER: Redirect?

13 MR. OLIVA: No, your Honor.

14 JUDGE EYSTER: Okay. Thank you, very much sir. You
15 may step down. We'll take a quick break.

16 ***

17 (Off the record at 10:50 a.m.)

18 (Back on the record at 11:00 a.m.)

19 ***

20 JUDGE EYSTER: We're back on the record in U-14754.
21 While we were off the record we had some brief conversations
22 about what witnesses would be testifying today. Mr. Oliva,
23 you're up.

24 MR. OLIVA: Our next witness would be Mr. Weyland. We
25 would address the motion to strike. Your Honor, I'm going to

1 rest on the written motion.

2 JUDGE EYSTER: You had Mr. Weyland's testimony on page
3 9 lines 7 and 8, I guess. Any response Mr. Oliva?

4 MR. OLIVA: Yes, your Honor. Apparently, I neglected
5 in my response to motions to strike to address Mr. Weyland's
6 testimony with respect to page 9 lines 7 and 8. I think it is
7 basically the same issue your rulings have been with respect to
8 Mr. Barnhart's testimony, on the basis this pretty much shows
9 the negotiations. It's the same objection and I make the same
10 response with respect to page 11.

11 JUDGE EYSTER: Just a moment. Let's go through them
12 one at a time. I'm going to deny the motion for the same
13 reasons before.

14 MR. OLIVA: With respect to page 11, again the
15 objection here relates to relevance. I mean again, it is
16 basically the same argument with respect to your Honor's
17 earlier ruling with respect to strike all of Mr. Jansma's
18 testimony. The basic objection here is that it's parole
19 evidence. We think it is the same reason your Honor admitted
20 Mr. Jansma's testimony that this testimony should be admitted.

21 JUDGE EYSTER: What's Mr. Weyland's relationship to
22 these ASATT's?

23 MR. OLIVA: Mr. Weyland here is testifying about the
24 industry standards with respect to the dedication provisions in
25 connection with transportation agreements at the time these

1 agreements were entered into.

2 JUDGE EYSTER: Is there going to be any objection to
3 his status as an expert witness?

4 MR. AARON: We don't challenge his qualifications,
5 your Honor.

6 JUDGE EYSTER: So he'd be testifying as to what
7 industry standards were at the time, right?

8 MR. OLIVA: Yes, your Honor.

9 JUDGE EYSTER: Well, given his qualifications as an
10 expert and given the fact I've already decided there's some
11 contracts that needs to be explained that motion is also denied.

12 MR. OLIVA: With respect to page 12, lines 3 through
13 7, again he's an expert on industry standards with respect to
14 quality specification for the transportation of gas. And, again
15 with respect to the issue of MichCon's interpretation of what
16 they think the specification is as to CO2. Again, it's clearly
17 relevant and within the scope of his expertise.

18 JUDGE EYSTER: Is there anything you wanted to add to
19 that, Mr. Aaron?

20 MR. AARON: No, your Honor.

21 JUDGE EYSTER: Okay, I'm going to deny the motion for
22 this testimony also.

23 MR. OLIVA: Then finally, item four with respect to
24 page 12, lines 8 through 22 and over to page 13, Mr. Weyland's
25 testimony here is with respect to the definition of trespass gas

1 as described in MichCon's own electronic bulletin board and the
2 consequences to Dominion as described in the testimony to treat
3 Dominion's gas as trespass gas is clearly relevant.

4 JUDGE EYSTER: Mr. Aaron, what was your objection to
5 that?

6 MR. AARON: That it wasn't relevant to any of these
7 issues in the complaint. The complaint goes to whether there's
8 an unlawful position of the CO2 content, or whether we've been
9 unlawful with respect to the terms of the dedication and
10 tariffs.

11 JUDGE EYSTER: And this has to go to -- let me make
12 sure I recall all the testimony. There were discussions about
13 threats, or whatever you may want to call it that Dominion's gas
14 would be considered so called "trespass" gas, is that correct,
15 if it wasn't treated to .75 standard?

16 MR. OLIVA: Well, to be more precise the communication
17 from MichCon is set forth in the exhibits you've already
18 admitted was that if Dominion did not enter into a new
19 transportation and/or transportation or treating agreement at
20 .75% will lie another determination of ASATT #1 and ASATT #2
21 that MichCon Gathering -- excuse me, MichCon Gathering and
22 MichCon would treat Dominion's gas as trespass gas.

23 JUDGE EYSTER: I'm going to deny the motion then. I
24 think it's relevant in as much as it helps to explain what the
25 term trespass gas means.

1 MR. OLIVA: Then, I'll call Mr. Weyland to the stand
2 please.

3 DIRECT EXAMINATION

4 BY MR. OLIVA

5 Q. Would you state your full name and business address
6 for the record?

7 A. James M. Weyland, 16945 Northchase Drive, Suite 1750,
8 Houston, Texas, 77060.

9 Q. Mr. Weyland, I'm handing you a document entitled Direct
10 Testimony of James M. Weyland consisting of 13 pages of
11 questions and answers. Would you take a look at that and
12 tell me is this the prefilled testimony that you caused to
13 be prepared and filed in this case?

14 A. It is sir.

15 Q. If I were to ask you the questions set forth here this
16 morning would you answer them in the same way?

17 A. I would.

18 Q. And just for completeness, you have also before you a
19 series of documents that have been previously admitted
20 exhibits, DOM-1 through DOM-11. These are the same
21 documents referred to as DOM-1 through 11, your direct
22 testimony, is that right?

23 A. Yes, I believe they are sir.

24 MR. OLIVA: I would move that Mr. Weyland's prefilled
25 direct testimony be bound into the record.

1 JUDGE EYSTER: Any objections?

2 MR. AARON: No, your Honor.

3 JUDGE EYSTER: The testimony of Mr. Weyland will be
4 bound into the record.

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DIRECT TESTIMONY OF JAMES M. WEYLAND

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Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is James M. Weyland. My business address is 16945 Northchase Drive,
Suite 1750, Houston, TX 77060

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

A. I am a Senior Gas Marketer for Dominion Exploration & Production Inc.
Houston, TX.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND
PROFESSIONAL EXPERIENCE.

A. I hold a Bachelor of Science in Marine Sciences from Texas A&M University,
and I possess 25 years of experience in the gas business:

A) **Gas Buyer** (*various titles*) – Upon graduation, I entered the industry as
gas buyer for Natural Gas Pipe Line Company of America (NGPL). My work
began in Oklahoma in 1981, then I transferred to Colorado. In both locations, I
negotiated jurisdictional type gas purchase agreements and coordinated associated
well hookups. I transferred to Houston and bought and sold spot gas for an
affiliated marketing company, Midcon Services Corporation, in Houston, Texas
as a Gas Buyer/Marketer from 1986 to 1990.

B) **Manager Gas Supply** – In 1990, I opened the Houston, Texas office for
O&R Energy, the retail gas marketing affiliate of Orange & Rockland Utilities,
where I bought and sold gas, both in the field zone and at the city-gate. I
negotiated gas transportation agreements (for delivered, i.e. city-gate,

1 transactions), again generally on the spot market, although doing some long-term
2 transactions, mostly transportation. I worked for O&R Energy Services, in
3 Houston, Texas from 1991 to 1993.

4 C) **Director Gas Supply** – I worked for Torch Energy Marketing, Inc. in
5 Houston, Texas from 1993 to 1995. In 1993, I moved to Torch Energy Marketing
6 where in addition to selling the company's equity gas, I performed responsibilities
7 similar to those described above for O&R.

8 D) **Director Gas Marketing** - Norstar Energy Limited, LLC, Houston, TX
9 1995-1997. In 1995, I returned to O&R, by then renamed Norstar Energy
10 Marketing LP, due to Shell E&P's having bought an equity interest in the
11 organization. I left Norstar when it was shut down by the partners in late 1997.

12 E) **Principal Capacity Trader** – In 1998, I joined Tennessee Gas Pipeline
13 (TGP) located in Houston, Texas where I sold short term, one year or less, firm
14 and interruptible pipeline and storage capacity on TGP.

15 F) **Senior Gas Marketer** - Later in 1998 to the present, I have held the
16 position of Senior Gas Marketer, CNG Producing Company/Dominion
17 Exploration & Production, Inc. ("DEPI"), Houston, Texas. As part of my
18 responsibilities at DEPI, I marketed equity gas throughout the company's range of
19 production basins to include Gulf Coast onshore Texas, Louisiana, offshore
20 GOM, Black Warrior, Rockies, and Michigan basins. I performed well connection
21 duties, including pre-requisite economic analysis, in most of these basins. In all
22 basins, I negotiated gas processing/treating contracts, performed related gas
23 processing activities, and NGL marketing activities. I also negotiated gas

1 transportation and production handling agreements, other commercial type
2 agreements, and monitored regulatory developments.

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

4 A. To provide an accounting of the negotiation of the Dominion transportation and
5 treatment agreement that is currently at issue with MichCon.

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

7 A. I am jointly sponsoring, with Mr. Barnhart, the following exhibits:

8 DOM-1 ASATT #1 dated September 12, 1994

9 DOM-2 Dedication of reserves under ASATT #1, dated
10 September 12, 1994

11 DOM-3 ASATT #16 dated February 6, 1995

12 DOM-4 Dedication of reserves under ASATT #16, dated
13 February 6, 1995

14 DOM-5 ASAT #62500 dated January 1, 1998

15 DOM-6 Firm Gas Treating Agreement, dated
16 November 29, 2005

17 DOM-7 Letter dated October 12, 2005 and draft ASAT

18 DOM-8 Letter Dated December 1, 2005 and draft ASAT

19 DOM-9 Letter dated December 22, 2005

20 DOM-10 ASAT #62501, dated January 2006

21 DOM-11 Letter dated February 3, 2004

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1 Q. PLEASE DESCRIBE THE CIRCUMSTANCES OF THE NEGOTIATION
2 PROCESS.

3 A. In late June, 2005, Mr. Barnhart and I met with MichCon representatives Mr.
4 Rowling and Mr. Metzger in Dominion's Traverse City office. We told MichCon
5 that in order to win our "rollover" treating business, which was due to expire in
6 early November 2005, they would need to provide redundant plant capacity.
7 MichCon told us they could relocate their somewhat unutilized Vienna plant to
8 the South Chester area where it would serve to provide redundant treating
9 capacity in instances of CMS plant force majeure. At the meeting, MichCon was
10 told that they were competing for our rollover business with CMS. We told them
11 why CMS was potentially attractive to us. We would have our own minimum
12 daily quantity ("MDQ"). Because, by definition, we would never be outside of
13 our MDQ, we would be much less likely to be impacted by CMS plant
14 outages/upsets. We had been impacted many times in the past while contracted
15 with MichCon because "overrun" gas was the first curtailed. Also a part of the
16 day's discussion was MichCon's proposed treating rate of .11/mcf and the
17 contract term of five years. After this meeting, I believed we had the makings of a
18 deal. The only question was, could MichCon get their relocated plant in service
19 by late 2005, when our ASATTs were due to expire.

20 Q. WERE THERE ADDITIONAL NEGOTIATIONS?

21 A. In early August, Mr. Barnhart, Mr. Shumway of Quicksilver and I met with
22 MichCon representatives at Mt. Pleasant where Dominion was told by MichCon
23 that it "wouldn't be economic" for them to relocate the Vienna treating plant to

1 South Chester. Instead, we were provided with an alternate proposal that was
2 unacceptable to us because it didn't serve to provide the redundant South Chester
3 area treating capacity. Securing redundant treating capacity was our primary
4 motivation in any rollover deal. I believe as a result of our meeting with
5 MichCon in Traverse City in June 2005, they had presented us with a workable
6 deal, but they then "pulled it off the table" in our Mt. Pleasant meeting in early
7 August.

8 Q. WHAT DID YOU DO AFTER MICHCON RESCINDED THEIR JUNE OFFER?

9 A. After the MichCon meeting at Mount Pleasant, I requested and received a draft
10 treating agreement from CMS, which DEPI revised and returned to CMS on
11 September 26. We received CMS comments to our draft on September 28. The
12 CMS agreement, while at the same treating "rate" as MichCon charged under that
13 expiring ASATs, had two advantages: a) we would be under our MDQ at all
14 times, minimizing the chance of curtailments during plant outages, and b) CMS
15 committed to rehabilitate plant #1 and keep all five plants operational for a five-
16 year period, or until there was redundant treating capacity equivalent to at least
17 one "large" plant, whichever came first.

18 Q. DID DOMINION REQUEST A PROPOSAL FOR TREATMENT AND OR
19 TRANSPORTATION SERVICES FROM MICHCON?

20 A. Mr. Barnhart asked Mr. Rowling for an ASAT proposal via voicemail, getting no
21 response. The next day, September 28, he sent an e-mail to MichCon requesting
22 one. Mr. Rowling phoned back saying that they would not be offering Dominion
23 an ASAT because we were already dedicated to both transport and treating

1 service via the Reserves Dedication letter to the ASATT #1. This was the first
2 time MichCon ever put forth its 'perpetual' dedication notion.

3 Q. DID MICHCON PROVIDE ANY PROPOSAL FOR TREATMENT AND OR
4 TRANSPORTATION SERVICES?

5 A. Under cover letter dated October 3, Mr. Rowling sent me proposed five-year
6 amendments to ASATTs #1 and #16 which were received in DEPI's Houston
7 office some days later. These would have extended the contracts at a 2% CO₂
8 specification level.

9 Q. WHAT HAPPENED NEXT?

10 A. In early October, I had conversations with Mr. Rowling to try to understand their
11 new position, in particular, their interpretation of our being dedicated via the
12 Reserve Dedication letter and to comprehend what their understanding was of
13 "controlled" gas. Both of these concepts were perplexing in light of the parties'
14 discussions prior to MichCon's reneging its offer to relocate Vienna off the table.

15 Q. WAS THERE ANY CORESPONDENCE DURING THIS TIME?

16 A. On October 11, a letter was sent under my signature to Mr. Rowling requesting a
17 draft ASAT proposal to cover our expiring contracts. On October 12, Mr.
18 Rowling sent a letter in reply indicating that he did not send a draft ASAT for #16
19 because we did not identify the covered properties to MichCon. (Exhibit DOM-7)
20 He disputed having represented that MichCon would release 'controlled' gas. The
21 letter also stated that it was MichCon's position that Dominion was under
22 dedication for treating and transport as to the reserves covered under ASATT #1,
23 which I understand from Mr. Barnhart, is substantially all of our gas.

1 Q. WHAT WAS DOMINION'S RESPONSE?

2 A. Our legal department sent a letter to Mr. Rowling on October 28 setting out
3 Dominion's belief that MichCon's actions are unreasonable and discriminatory.

4 Q. WERE THERE ANY OTHER DISCUSSIONS?

5 A. In late October, Mr. Rowling and I spoke, and MichCon contended that the
6 contracts expired on October 31, because their ConQuest system isn't set up to
7 recognize midmonth changes. Dominion took the position that we're nominating
8 under the ASATTs for November 1 through 8, later in the month.

9 Q. DESCRIBE WHAT HAPPENED NEXT.

10 A. By letter dated November 2, MichCon's counsel responded to Mr. Jacquet's letter,
11 indicating that it would provide us with an ASAT for our reserves covered under
12 ASATT #16

13 Q. AT ANY TIME WAS THE MPSC NOTIFIED OF THE STATUS OF THE
14 NEGOTIATION?

15 A. On November 9, we met with MPSC staff to apprise them of our expiring
16 ASATTs and to explain that we tried to work with MichCon on a treating
17 arrangement, only to have the "rug yanked out from underneath us" by MichCon.
18 We explained that we would likely sign with CMS for treating services, and we
19 made the point that reliability of service was our main 'driver.'

20 Q. WHAT HAPPENED AT THE END OF 2005?

21 A. Mr. Rowling sent an e-mail dated November 9, explaining that MichCon agreed
22 to let us nominate under the expired contracts on a month to month basis.

23 Q. DID YOU RESPOND?

1 A. I responded via e-mail to Mr. Rowling dated November 10, and I told him that on
2 or before November 29, Dominion would inform MichCon whether it would
3 nominate for December 2005, under auspices of the expired ASATTs.

4 Q. WHAT HAPPENED NEXT?

5 A. On November 21, Mr. Barnhart, Mr. Jacquet and I traveled to Detroit to visit
6 MichCon to see if there was any basis for putting a deal together at this late date.
7 Our meeting led to nothing positive or new. After that Mr. Rowling called me to
8 explain that MichCon would offer us ASATs for both #1 & #16 if CMS would
9 agree to amend our contract to treat to CO₂ to .75%. After all, Mr. Rowling
10 explained, CMS is already treating all gas to that spec.

11 Q. DID YOU FOLLOW UP WITH CMS?

12 A. I contacted CMS to ask, "Since you're apparently already treating gas at South
13 Chester to .75%, would CMS consider amending our contract to that spec?" CMS
14 told me, "No, we won't" and explained that MichCon is paying CMS for that
15 service.

16 Q. WERE THERE ANY OTHER COMMUNICATIONS IN NOVEMBER OF
17 2005?

18 A. Late November, I called Mr. Rowling, and he asked me if we want to continue
19 service on month to month ASATTs for December. I told him that we want
20 MichCon to provide us with ASATs. He replied that we would be billed twice for
21 treating for December if we sign with CMS. Then, on November 28, CMS
22 overnighted partially executed treating agreements to Dominion which we then
23 executed and returned. On November 29, 2005, Mr. Persells contacted Dominion,

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 Q. WAS THERE COMMUNICATION WITH MPSC?

2 A. Our legal counsel contacted the MPSC, and after that we received a letter from
3 Mr. Rowling dated December 22, indicating we can again nominate for January
4 2006 under the expired ASATTs. (Exhibit DOM-9).

5 Q. WHAT HAPPENED IN JANUARY 2006?

6 A. In mid January, Mr. Rowling called to ask "How are we going to flow for
7 February?" He went on to say that we would need a "legal contract" to flow for
8 February and that MichCon would not let the current arrangement continue for
9 February. He told me we should sign the .75% CO₂ month to month contract and
10 then "sue MichCon," it was during this conversation that I asked what about the
11 gas deliverability (if any) previously under ASATT #16, would he send a 2%
12 ASAT for it? He paused and told me "I think we have a new policy," he then put
13 me on hold and when he returned to the phone he said, "yes, we have a new
14 policy, all new ASATs will be at .75% CO₂."

15 Q. WHAT HAPPENED NEXT?

16 A. On January 27, Mr. Rowling e-mailed the .75% CO₂ ASAT to DEPI.

17 Q. WAS THE ASAT EVER EXECUTED?

18 A. With no alternative to flowing our gas for February 2006 without it being deemed
19 'trespass' gas by MichCon, DEPI executed, faxed execution page, then sent
20 multiple copies of partially executed .75% CO₂ ASAT to Mr. Rowling under
21 cover letter dated January 30, 2006. (Exhibit DOM-10).

22 Q. WAS THAT THE LAST COMMUNICATION?

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 ASATTs 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.

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1 MR. OLIVA: I tender Mr. Weyland for cross.

2 JUDGE EYSTER: Mr. Aaron?

3 MR. AARON: Thank you, your Honor.

4 CROSS EXAMINATION

5 BY MR. AARON

6 Q. Good morning, Mr. Weyland?

7 A. Good morning.

8 Q. You testified as to -- is it true that you didn't
9 negotiate the dedication, which is an exhibit in this case
10 DOM-2?

11 MR. OLIVA: That would be tab 14 for you?

12 A. That is correct, sir.

13 Q. Is it also true you were involved in the negotiations that
14 resulted in the document now identified as DOM-4, which
15 is a commitment of Antrim gas for transportation services?

16 A. Yes, sir. That's correct.

17 Q. In fact, you've been personally involved in the dedication
18 of gas in Michigan with respect to the dedication for
19 treating services for CO2 treating services to CMS Antrim,
20 right?

21 A. Yes, sir.

22 Q. Would that be with respect to the current agreement for
23 treating?

24 A. Yes, sir.

25 Q. Then you were also personally involved in the dedications

1 of CMS's treating to Wilderness Chester, LLC?

2 A. Yes, sir that's correct.

3 Q. When was that dedication?

4 A. That was effective of 1-1-06.

5 Q. So, when you're talking about the industry experience and
6 the dedications that were being negotiated in 1994 and 1995
7 you're industry experience isn't related to what was taking
8 place in Michigan during 1994, 1995, is it?

9 A. I certainly was not involved in the two agreements we just
10 spoke to.

11 Q. Were you involved in the negotiation of ASATT #1?

12 A. No, sir. I believe I spoke to that one reserve
13 dedication, that I believe was part of ASATT #1.

14 Q. But, as a separate document you were not involved in the
15 negotiations of that document?

16 A. No, sir.

17 Q. And ASATT #16, you weren't involved in that one either?

18 A. No, sir. Again, I might have answered that previously.
19 That dedication letter was part of ASATT #16?

20 Q. So you have no knowledge as to whether the CO2
21 specification with respect to either of those agreements
22 was negotiated or not, do you?

23 JUDGE EYSTER: What was the question?

24 MR. AARON: He has no personal knowledge with respect
25 to the CO2 specifications of ASATT #1 or ASATT #16, whether it

1 was negotiated?

2 THE WITNESS: I really wasn't aware that pipeline gas
3 specification were negotiable items.

4 MR. AARON: That's all I have.

5 JUDGE EYSTER: Mr. Odunlami?

6 MR. ODUNLAMI: Yes, thank you, your Honor.

7 CROSS EXAMINATION

8 BY MR. ODUNLAMI

9 Q. Good morning, Mr. Weyland?

10 A. Good morning, sir.

11 Q. Let me start with page 8 of your testimony.

12 A. Yes, sir.

13 Q. I'm interested in lines 4 through 16. It seems in your
14 testimony, as of November 21, I think it's 2005, you guys
15 -- Dominion got a proposal from MichCon Gathering that even
16 though your ASATT #1 and ASATT #16 was about to expire,
17 but, if you could get CMS treating service treating plant
18 to treat your gas down to 0.75% they would release you from
19 the dedication?

20 A. Yes, sir.

21 Q. And when you guys went to CMS they said no?

22 A. We spoke with CMS, yes, sir.

23 Q. I'm still a little bit confused. Do you know the reason
24 the contract was about to expire? I understand that maybe
25 MichCon was treating the gas to 0.75% as of November 26,

1 which is the contract termination date. But, now you are
2 talking about a November 21 and 22nd discussion -- and
3 subsequently you entered into a contract with CMS
4 where you asked if they would consider amending your
5 contract --

6 JUDGE EYSTER: Where are you reading from?

7 MR. ODUNLAMI: I'm reading from page 8, line 12.

8 JUDGE EYSTER: Thank you. Sorry, are you waiting for
9 me. Was there an objection?

10 MR. ODUNLAMI: I don't know if you wanted to ask a
11 question or not?

12 JUDGE EYSTER: Sorry, I was thinking about something
13 else. I was trying to figure out what some of his answers were.

14 BY MR. ODUNLAMI CONTINUING:

15 Q. So, November 21, 2005 you guys already established a
16 contract with CMS then you were discussing with CMS based
17 on MichCon's proposal if they could treat your gas down to
18 0.75% and CMS said no?

19 A. That's correct.

20 JUDGE EYSTER: That was under the existing contract,
21 correct?

22 THE WITNESS: I'm not certain to answer the question.
23 I believe CMS's treating agreement was dated the 29th of
24 November to expire of 2005. If we were having discussions -- on
25 the 21st we flew to Detroit and spoke to MichCon. I can't tell

1 you when the date was that I called CMS, whether it was a pre or
2 post Dominion execution of CMS documents that we did execute.
3 So, I guess I have some confusion as to the timing. We
4 certainly did place that call to CMS.

5 JUDGE EYSTER: To ask if they would treat at 0.75%,
6 and they said, no?

7 THE WITNESS: Under auspices of all other treating.

8 JUDGE EYSTER: So you wanted to change it from 2 to
9 0.75% and leave the rest of the contract the same?

10 THE WITNESS: Yes, that's what MichCon proposed, that
11 we speak to CMS about this term they would drop the content we
12 were dedicated.

13 JUDGE EYSTER: I want to go back to a question that
14 was asked earlier of you. Mr. Aaron asked you -- I think it had
15 something to do with your knowledge of the industry in Michigan
16 in 1995, 1994. I'm not sure you actually answered it? You
17 answered you weren't involved in that particular ASATT. Is that
18 what your answer was?

19 THE WITNESS: To be directly responsive, I was not
20 engaged in any Michigan type dedication agreements in that time
21 frame.

22 JUDGE EYSTER: None?

23 THE WITNESS: None.

24 JUDGE EYSTER: Were you involved in them some place
25 else?

1 THE WITNESS: Oh, yes sir.

2 JUDGE EYSTER: Where would that have been?

3 THE WITNESS: In that time frame Illinois, Northeast,
4 in terms of dedication of supplies to a market, gas sales or
5 transportation.

6 JUDGE EYSTER: Okay.

7 BY MR. ODUNLAMI CONTINUING:

8 Q. Mr. Weyland, just to get some clarification on that
9 question I was asking earlier, CMS said no, even though
10 you guys were willing to treat your gas down to 0.75% on
11 your upcoming contract that you entered into with CMS?

12 A. Yes, sir.

13 Q. Do you know -- I know they said no, do you know the real
14 reason of saying that, because no seems to be very abrupt.
15 Do you know the real reason of saying that?

16 MR. OLIVA: Objection to the extent that you're asking
17 the witness to testify as to what CMS Antrim's reason was for a
18 position CMS Antrim took in a negotiation; what it's real reason
19 was.

20 JUDGE EYSTER: I don't know, it sounds to me like your
21 question is asking for speculation.

22 MR. ODUNLAMI: Not really.

23 JUDGE EYSTER: Well then, rephrase it. I'm going to
24 sustain the objection.

25 BY MR. ODUNLAMI CONTINUING:

1 Q. You did discuss with CMS about entering into a new contract
2 after the expiration of Dominion and MichCon's contract?

3 A. Yes, sir.

4 Q. Then, if you entered into that contract that would have
5 been a new contract that would have gone for five or six
6 years?

7 A. Yes sir, five.

8 Q. In that discussion you asked CMS if they would be willing
9 to treat your gas down to 0.75%?

10 A. That's correct.

11 Q. What reason did they give you why they wouldn't be able to
12 do that?

13 JUDGE EYSTER: Who did you ask this question?

14 THE WITNESS: Mr. Murray. I believe the answer was
15 they were already being paid for the service.

16 JUDGE EYSTER: That's what Mr. Murray told you?

17 THE WITNESS: That's my recollection.

18 JUDGE EYSTER: That was what Mr. Murray said?

19 THE WITNESS: That's my recollection.

20 BY MR. ODUNLAMI CONTINUING:

21 Q. I'm interested in page 11 of your testimony. Based on your
22 experience, do you know or do you have an opinion as to
23 whether -- I'm not talking about this case, real life
24 experience. Do you know whether a gas producer can
25 actually dedicate their reserve for transportation on a

1 pipelines?

2 A. Is that contractually possible?

3 Q. Yes?

4 A. Yes, sir.

5 Q. For the life of the reserve or life of the pipe?

6 A. Yes, sir.

7 Q. Thank you.

8 MR. ODUNLAMI: No further questions, your Honor.

9 JUDGE EYSTER: Redirect, Mr. Oliva?

10 MR. OLIVA: No, your Honor.

11 JUDGE EYSTER: Thank you, very much sir. Okay, we've
12 got Mr. Bilderback's testimony, is that correct?

13 MR. OLIVA: Yes, your Honor. And, I guess we have
14 previously filed -- we have a motion to strike, but why don't I
15 -- Mr. Bilderback's testimony consists of 8 pages of questions
16 and answers, actually 7 pages of questions and answers. The
17 last page, page 8 is actually blank and we understand the
18 parties are willing, subject of course to your Honor's first
19 ruling on the motions to strike that if the motion to strike is
20 denied, that it simply be bound into the record without cross.

21 JUDGE EYSTER: Mr. Aaron?

22 MR. AARON: Thank you, your Honor. We object to the
23 admission of Mr. Bilderback's testimony because it's policy in
24 nature and it's not specific to the complaint. Under Rule 501
25 of the Commission's Rules and Practices the complaint should be

1 limited to matters involving alleged unjust acts or /HRAPBing
2 501, or unlawful act of a utility.

3 In this case, the allegation is that we have
4 unlawfully failed to file a tariff. Mr. Bilderback testimony
5 talks about policy wide the Commission should require utilities
6 to file a tariff. It goes directly to that. In fact,
7 Dominion's response talks about being policy oriented. This
8 isn't a case about the Commission adopting a policy, this is a
9 case about the question raised in the complaint, whether in fact
10 MichCon or MichCon Gathering acted unlawfully in failing to file
11 a tariff. This policy adds no relevant material to this case.
12 It shouldn't be admitted.

13 JUDGE EYSTER: Mr. Oliva?

14 MR. OLIVA: Yes, your Honor. As we set forth in our
15 response, this is a policy component to the testimony, whether
16 it is policy oriented is not a ground for exclusion of evidence.
17 The question is whether it's relevant material to the issues in
18 the case. And, one of the issues in the case is our allegations
19 that one: MichCon is discriminating against Dominion by
20 treating it in a different and more unfavorable manner than it
21 is treating other producers, with represent to, among other
22 things, the CO2 quality specifications. And, secondly: That
23 MichCon has acted unlawfully in failing to file tariffs as
24 required by the Commission's rules for production and transition
25 of natural gas. Rule 25 R 460.875. It is clear from the

1 testimony that MichCon has filed in this case that it intends to
2 take the position that Gee, there are other Act 9 pipelines
3 that haven't filed tariffs either.

4 Mr. Bilderback testimony goes directly to the
5 question of why the Commission should enforce, from a policy
6 stand point, the provisions of it's own Rule 25 R460.875, and
7 why the failure in having to enforce that rule permits and give
8 rise to, and permits, is the wrong word, but let's MichCon
9 Gathering and MichCon hide or attempt to hide it's
10 discrimination. And, so this testimony is directly relevant to
11 the issues in the case.

12 JUDGE EYSTER: Mr. Odunlami, any comment?

13 MR. ODUNLAMI: Yes, your Honor. Staff supports
14 Dominion's position as to the admissibility of Mr. Bilderback
15 recommendation to the Commission.

16 It's just a recommendation to the Commission about
17 what the Commission should look into in terms of not having this
18 kind of case repeat itself in the future. I think it doesn't
19 really go to the extent of proving that MichCon and MichCon
20 Gathering is discriminating against Dominion. It's just stating
21 what could happen in case the Commission does not require gas
22 transporters in Michigan to at least have some kind of a
23 document to detail what kind of gas transportation service they
24 provide. So, I think everything should come in.

25 In the alternative, I think Dominion should brief the

1 Commission on it if this is not admitted.

2 JUDGE EYSTER: Anything else, Mr. Aaron? Any other
3 comments?

4 MR. AARON: No, your Honor.

5 JUDGE EYSTER: Mr. Aaron, I'm going to grant it. It's
6 seems, even by it's own admission a policy statement. And I
7 guess I'll just ask you guys to save it for your briefs, that
8 would be the appropriate place for it. If you want to argue
9 that there's policy components of this matter well, I think to a
10 degree this probably is. I'm not sure how much of that is
11 initially -- I'm going to be addressing it in a PFD. Certainly,
12 the Commission can admit policy issues and considering they want
13 to take into consideration.

14 But, I think that this thing of policy argument is
15 better contained in your briefs. I'm just not sure why
16 honestly, what value it is to me from the standpoint of a
17 decision I have to make. I don't think there's any portion of
18 this testimony -- it's really all the policy argument. Mr.
19 Oliva, is there any portion of this testimony that really isn't
20 an argue with regard to policy, but addresses the facts that
21 relate to this matter?

22 MR. OLIVA: Well, I believe that certainly the
23 discussion with respect to page 4, page 5, pages 4 and 5 with
24 respect to why it's discriminatory to impose different CO2
25 standards on one producer versus another is not purely a policy

1 argument.

2 JUDGE EYSTER: Which pages?

3 MR. OLIVA: Both pages 4 and 5 explain why there are
4 incentives for pipelines to discriminate, why that is actually
5 discrimination.

6 JUDGE EYSTER: Well, see here's the problem I have.
7 The trouble I'm having with this is likely it's a policy
8 statement. You point to page 4 and it reads, page 4 it goes on
9 and talks about how MichCon Gathering, frequently being the sole
10 provider in the first critical link in a gas flow chain. It's
11 sort of bordering on the fact, I guess it's sort of describing
12 to a degree the work of pipelines, but then the second half of
13 that is, "to illustrate this point producers may operate
14 production fields which may be subject to drainage from
15 adjoining wells operated by other producers. Under these
16 circumstances, producers are extremely vulnerable to
17 discrimination by pipelines to pipelines. I mean, I don't even
18 know what this statement is supposed to tell me. I'm not sure
19 that your point in that statement is providing facts. Is it
20 just that first portion?

21 MR. OLIVA: I mean it describes the context in which
22 discrimination is a problem, and that in is on page 4, and the
23 extent to which producers are subject of being victimized by
24 discrimination by a pipeline company. And, then over on page 5
25 it talks to why things such as imposing different standards on

1 one producer versus another for CO2 actually discriminates.

2 JUDGE EYSTER: Doesn't this just go back to what
3 essentially started the whole regulatory fields of utilities,
4 where did it start with tape tag common carriers. That's the
5 same argument that was from the very beginning.

6 MR. OLIVA: I would agree with that.

7 JUDGE EYSTER: You got a monopoly. It's the only
8 train in the town and they needed to treat the passengers or
9 whatever they were carrying fairly without discrimination.

10 MR. OLIVA: Absolutely.

11 JUDGE EYSTER: Apparently they weren't doing it and I
12 we ended up with the Public Service Commission. That's what we
13 have. Anything else you want to point to that. I think you
14 should save it.

15 MR. OLIVA: None.

16 JUDGE EYSTER: Okay, I guess I'll stick with what I
17 said earlier. I'm going to grant the motion. Put it in your
18 briefs. I would like to hear an argument. I'm not sure it's
19 appropriate as testimony.

20 MR. OLIVA: We will take exception to your ruling, but
21 we will save it for our brief.

22 JUDGE EYSTER: All right. Mr. Oliva, that was your
23 last witness?

24 MR. OLIVA: Mr. Murray will be our last witness. He
25 will be available first thing tomorrow morning.

1 JUDGE EYSTER: And Staff will provide it's witness's
2 testimony?

3 MR. AARON: We have four witnesses tomorrow, including
4 Staff, your Honor. Actually, five.

5 JUDGE EYSTER: Okay, we're adjourned until tomorrow
6 morning.

7 (Proceedings concluded at 11:40 a.m.)
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CERTIFICATE

STATE OF MICHIGAN)

COUNTY OF INGHAM)

I certify that this transcript, consisting of 71 pages, is a complete, true and correct transcript of the proceedings and testimony taken in this case on June 20, 2006.

July 6, 2006

Date



Signature
Not
Verified

Lorea A.
Spicer

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