

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

QUICKSILVER RESOURCES, INC., and
TERRA ENERGY, LTD.,

Complainants,

Case No. U-14821

v

Hon. Mark D. Eyster

MICHCON GATHERING COMPANY and
MICHIGAN CONSOLIDATED GAS COMPANY

Respondents.

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REBUTTAL TESTIMONY OF GREGORY A. FOGLE

ON BEHALF OF

**QUICKSILVER RESOURCES, INC. and
TERRA ENERGY, LTD.**

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

Q. What is the purpose of your rebuttal testimony?

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

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

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

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

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

1 MGAT did when the gas was transported and treated under the expired ASATTs.
2 In fact, a review of the Capacity Agreement, dated as of the 18th day of April, 1995 by
3 and between Michigan Consolidated Gas Company and Antrim Limited
4 Partnership, later amended and assigned to affiliates of the two original parties,
5 which I believe is the applicable agreement, reveals that the parties were aware
6 of, and dealt with CMS contracts with third parties who had treating agreements
7 that specified a 2% outlet CO2 requirement. The gas treated under those
8 contracts was proportionally factored into the South Chester plants combined
9 CO2 outlet, such that the South Chester plants were not treating all gas to a
10 0.75% CO2 outlet specification. If MGAT still requires a 0.75% CO2 outlet
11 specification for the Terra and Quicksilver gas contracted to CMS to provide
12 capacity for blending untreated gas downstream of the South Chester plants in
13 order to meet the mandated maximum of 2% CO2 at the outlets of the AEP,
14 there is no obvious reason why MGAT could not simply request another
15 amendment to its Capacity Agreement with CMS to exclude this gas from the
16 third party volumes in the calculation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Q. Does this complete your rebuttal testimony?

2 A. Yes, it does.

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A digital signature block for Gregory A. Fogle. It features a yellow question mark icon with the text "Signature Not Verified" below it. To the right of the icon is the name "Gregory A. Fogle" in a large, bold, black font. Further to the right, in a smaller font, is the text "Digitally signed by Gregory A. Fogle DN: cn=Gregory A. Fogle, c=US Date: 2006.07.06 15:34:35 -04'00'". A large, stylized red "X" is drawn over the entire signature block.

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