

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.

James A. Christopherson (P31585)
DINGEMAN, DANCER &
CHRISTOPHERSON, PLC
Attorneys for Complainants
100 Park Street
Traverse City, MI 49684
(231) 929-0500

Richard P. Middleton (P41278)
Attorney for Respondents
Michigan Consolidated Gas Company
2000 2nd Ave., #688WCB
Detroit, MI 48226
(313) 235-3647

Richard J. Aaron (P35605)
HONIGMAN, MILLER, SCHWARTZ, AND
COHN, LLC
Attorney for Respondents
Michigan Consolidated Gas Company and
MichCon Gathering Company
222 North Washington Square, Suite 400
Lansing, MI 48933-1800
(517) 377 -0701

Emmanuel B. Odunlami (P66255)
Attorney for the Michigan Public Service
Commission Staff
6545 Mercantile Way, Suite 15
Lansing, MI 48911
(517) 241-6680

TESTIMONY OF GREGORY A. FOGLE

ON BEHALF OF

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

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

Q. Please state your full name and business address.

A. Gregory A. Fogle, P.O. Box 5428, Traverse City, MI 49686-5428.

Q. Please state your educational background.

A. I graduated from the Michigan Technological University in 1968 with a Bachelor of Science Degree in Applied Geophysics.

Q. Please summarize your employment and professional experience.

A. I started out with Schulmberger Well Services in 1969 as an Engineer Trainee. After a two-year stint as a Legal Clerk in the U.S. Army, I rejoined Schlumberger Well Services, advancing through the training program to General Field Engineer and later Sales Engineer. From 1978 to 1982, I worked as a Petroleum engineer for Reef Petroleum Corp., working primarily in operations and reservoir engineering. I subsequently took a position as Operations Manager at Schmude & Pangborn, where I worked primarily in operations and reservoir engineering. At that time I also began to work with gas contracts, from the producers perspective, insuring that we met the quality standards and volume requirements of the contracts. In 1983, I joined STAR, Inc. as Vice President and Consulting Engineer, again overseeing primarily operations and reservoir engineering. From 1984 until 1988, I was employed by Petrostar Energy Corp. I initially held the position of Operations Manager, and later Senior Administrative Engineer. My duties related primarily to operations and petroleum and reservoir engineering as well as a number of hearings before the Supervisor of Wells. I also participated

1 in the negotiation of and compliance with gas contracts. From 1988 to 2001, I
2 was Vice President, and later President, of Oilfield Investments, Ltd. (n/k/a O.I.L.
3 Energy Corp.), an exploration and production company for which I oversaw all
4 phases of operations, including the negotiation of and compliance with gas sales
5 contracts, transportation contracts and treating agreements.

6 From 1993 to 2001 I was also President of Antrim Processing Company, which
7 constructed and operated a CO₂ extraction plants in Warner and Chestonia
8 Townships, Antrim County. The Warner Plant processed up to 37,000 mcf/d of
9 Antrim gas with increasing inlet CO₂ content. I was in charge of all phases of
10 operating the plant. For most of that time I had to insure the plant operated in a
11 manner that allowed downstream blending with high CO₂ gas to achieve a
12 combined CO₂ concentration not to exceed 2% CO₂. We also operated several
13 Antrim gas gathering pipelines.

14 During that same time period I served on the Michigan Oil and Gas Association
15 Antrim Committee which was involved in the negotiations that resulted in the
16 Antrim Expansion Pipeline and the development of the ASATT and ASAT
17 contracts with MichCon and CMS from the producers position. I also was
18 involved in numerous industry meetings regarding CO₂ concentrations in
19 gathering and AEP pipelines.

20 Since 2001, I have been a member of Old Mission Energy, LLC doing consulting
21 in various areas.. For the period 2002-2003, I was Chairman of the Michigan Oil
22 and Gas Association. I also presently serve as an Industry Representative on
23 the Advisory Committee to the Supervisor of Wells.

1 Q. Have you previously testified before the Michigan Public Service Commission
2 (“MPSC”)?

3 A. Yes, I have given testimony in proration matters and Act 9 pipeline certifications.

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

5 A. The purpose of my testimony is to present the findings of a review I conducted of
6 various document files related to this proceeding.

7 Q. What have you reviewed?

8 A. I have reviewed Antrim Gas Transportation and Treating Service Agreements
9 (ASATTs), Antrim Gas Transportation Agreements (ASATs) and I have reviewed
10 the exhibits and testimonies presented in this proceeding and in the proceeding
11 brought by Dominion Resources, U-14754.

12 Q. What is your understanding of the reason for this MPSC proceeding?

13 A. It is my understanding that MichCon has taken the position that it can impose a
14 new carbon dioxide content on shippers on the Antrim Expansion Pipeline
15 (“AEP”) (1) without getting MPSC approval; and (2) without getting the consent or
16 approval of the shippers.

17 Q. Please describe the relationship of shippers and MichCon as it pertains to the
18 AEP.

19 A. Shippers, who are producers of natural gas in Michigan, enter into ASATTs with
20 MichCon. Pursuant to the ASATTs, shippers transport their gas to receipt points.
21 MichCon then transports the gas to facilities located on the AEP which remove a
22 portion of the CO₂ from the gas. MichCon then delivers the gas back to shippers
23 at delivery points.

1 Q. Describe how MichCon contracted with shippers for inlet gas.

2 A. MichCon contracted through the ASATT's for producer inlet gas with up to 14%
3 CO₂, with the treating service priced to remove enough CO₂ such that the final
4 product would be 2% CO₂ gas. This met the AEP outlet order specification of 2%
5 or less. The AEP order only specified what MichCon could deliver, not what it
6 could accept.

7 Q. Describe the flexibility MichCon had to blend non-Antrim gas.

8 A. MichCon had the flexibility to blend non-Antrim gas (i.e. Niagaran wet gas) at
9 some places to reduce the outlet stream below 2% CO₂ for a safety net.

10 Q. Describe how MichCon joined with CMS to build CO₂ processing plants.

11 A. It is my understanding from my former relationships with MichCon entities that
12 MichCon joined with CMS to build CO₂ processing plants. As with most plants,
13 only a portion of the stream is actually treated, with a plant outlet usually less
14 than 1% CO₂; that gas is blended with untreated gas to achieve a 2% CO₂
15 combined stream. At a later date MichCon sold its interests in the Plants to CMS
16 for its own business purposes.

17 Q. How did MichCon contract with non-AEP producers?

18 A. MichCon contracted with other Antrim producers with ASATT's to take gas up to
19 14% CO₂ at receipt points that were downstream of the CMS plants. The
20 ASATT's for the downstream receipt points were identical to the ASATT's for
21 upstream receipt points. This treating could only be accomplished by blending
22 with the gas that was already at 2% CO₂ or below. So in order to meet the
23 requirements of the AEP order, MichCon contracted with CMS to remove

1 additional CO₂ such that the delivery points CO₂ content would be at the
2 mandated 2% or below. CMS accomplished this by treating more of the
3 commingled inlet gas stream they were receiving to an outlet specification of
4 0.75% CO₂. MichCon most likely paid for that service out of the funds they
5 received from the downstream producers for treating.

6 Q. What has happened now that some of the ASATTs have expired?

7 A. Producers like Terra and Quicksilver want to contract directly with CMS for
8 treating, based on CMS's promise to provide sufficient capacity to eliminate
9 curtailments due to processing plant outages. However, it is my opinion that
10 MichCon now wants producers like Terra and Quicksilver to assume the
11 additional burden of processing their gas to a 0.75% CO₂ content so that
12 MichCon can continue to blend other gas at or above 2% CO₂ content. This is
13 the burden MichCon was carrying before, with their processing agreement with
14 CMS. This is not a burden the producers should bear. MichCon should bear this
15 burden because MichCon chose to use blending rather than treating to meet the
16 CO₂ requirements.

17 Q. Is this discrimination?

18 A. In my opinion, yes. This is clearly discrimination between producers. Whether or
19 not Mich Con signed (or will sign in the future) transportation agreements (ASAT)
20 with other producers with a 2% or a .75% is irrelevant to this first discrimination.

21 Q. Could there be other examples of discrimination?

22 A. Yes. A second case of discrimination would occur if MichCon signs ASAT's with
23 other producers at any CO₂ specification other than .75%.

1 Q. Have you reviewed the testimony of Todd Percells in the MPSC proceeding
2 brought by Dominion Resources?

3 A. Yes.

4 Q. What are your observations of Mr. Percells' testimony?

5 A. I agree that MichCon collects funds from producers on gas delivered downstream
6 of the CMS plants to provide the service of reducing the CO₂ content of their gas
7 to 2% or less at the four outlet (delivery) points from the AEP. But, rather than
8 treat this gas they have chosen to accomplish the goal by dilution via blending
9 with Niagaran, PdC and Antrim gas treated to 0.75% CO₂. There is no question
10 that they have this right. But it would appear that they are not able to do this
11 anymore, probably because there is not enough Niagaran or PdC gas available
12 to dilute the Antrim gas in combination with Antrim gas treated to 0.75% CO₂.
13 Therefore, they need to get a greater volume of Antrim gas treated to something
14 less than 2% CO₂. Rather than contract with CMS to increase the volume of gas
15 treated to 0.75%, or to provide sufficient volumes of gas treated to a content of
16 less than 0.75%, it appears to me that they have decided to change the terms
17 and conditions of transporting gas on the AEP and shift the burden to shippers
18 who want to transport gas on the AEP but not pay MichCon for treating.

19 Q. Is this process discriminatory to Terra and Quicksilver?

20 A. Yes, Terra and Quicksilver contracted with MichCon to have their gas treated to
21 2% CO₂ under their ASATTs, which is the specification required at the AEP
22 delivery points. Now Terra and Quicksilver desire to have their gas treated to the
23 same 2% CO₂ specification by CMS. Terra and Quicksilver will achieve an

1 additional benefit of redundant treating capacity so that their gas will not be as
2 susceptible to curtailment. MichCon is insisting that Terra and Quicksilver
3 contract for treatment to a 0.75% CO₂ content. By doing this, Terra and
4 Quicksilver are being required to provide additional blending volumes for the
5 downstream producers, for the benefit of MichCon, who is collecting the revenue
6 from the downstream producers. This is clearly discriminatory to Terra and
7 Quicksilver.

8 Q. What is your opinion regarding MichCon's position that it can change the
9 standard set for carbon dioxide level for Antrim gas transportation contracts
10 without MPSC approval?

11 A. I do not believe MichCon Gathering should not be allowed to unilaterally change
12 CO₂ specifications on the AEP without the approval of the MPSC. MichCon
13 Gathering asked for and was granted approval of the AEP pipeline system by the
14 MPSC. The MPSC approved terms and conditions on the AEP between
15 MichCon and the shippers. I believe that all the producers who supported
16 MichCon's application for construction of the AEP understood that one of those
17 conditions was that in order to transport Antrim gas on the AEP their gas had to
18 either contain, or be treated to, or blended with other gas to, a carbon dioxide
19 level of no more than two percent. After several meetings between many Antrim
20 producers and MichCon, in which I participated, I believe everyone understood
21 that the producers would be responsible for the cost of treating their gas so that it
22 did not exceed the 2% CO₂ quality specification. I believe the producers and
23 MichCon agreed that they could contract with MichCon through an ASATT

1 contract for treating and transportation, or they could contract with MichCon for
2 transportation only with an ASAT, and some other party for treatment. It is
3 discriminating and unfair to unilaterally change an important condition of the
4 transportation contract without the approval of the shippers and without the
5 approval of the MPSC.

6 Q. Does this conclude your testimony at this time?

7 A. Yes.



Gregory A. Fogle

Digitally signed by
Gregory A. Fogle
DN: cn=Gregory A. Fogle,
c=US
Date: 2006.06.02
08:01:39 -0400

8 S:\JAC\Quicksilver1867\2006 Dominion Lawsuit\pleadings\Fogletestimony.doc