

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 4

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
Wednesday, June 21, 2006 at 9:00 a.m.

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Certified Shorthand Reporter

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Lansing, Michigan

Wednesday, June 21, 2006

At approximately 9:00 a.m.

JUDGE EYSTER: We're back on the record in Case No. U-14754. Mr. Oliva, I believe you've got one more witness today?

MR. OLIVA: Yes, your Honor. We would call Mr. Frank Murray.

JUDGE EYSTER: And Mr. Aaron, do you want to address the motion first?

MR. AARON: Yes, your Honor. Just as a matter, before this hearing started this morning, Mr. Oliva indicated to me that he would not be requesting that the originally filed direct testimony of Mr. Murray be bound into the record, but he would be proposing to bind into the record the amended direct testimony of Mr. Murray which has been marked as Rebuttal Exhibit FMM-1 and also the rebuttal testimony that is filed. So, I'm going to address my motion under that understanding. Your Honor, we move to strike the amended direct testimony of Mr. Murray because it raises issues that are totally unrelated to the AEP, and allegations contained in this case.

If you look at the descriptions contained in his testimony as to the purpose of his testimony, he wants to provide information about the CO₂ treating services provided by

1 CMS to various producers. It's not limited to the parties in
2 this case, but other producers as well. Certainly that goes way
3 beyond the scope of any kind of evidence that would be relevant
4 to issues of facts in this case.

5 This is a complaint case, that raises issues of fact.
6 This is not a case about the overall system in northern
7 Michigan. Likewise, he wants to provide information regarding
8 the blending of any gas, CO2 gas and low filtered and address
9 the flows of gas on the AEP, and other pipelines in northern
10 Michigan. And again, the flows don't have a direct relationship
11 to the allegations in this case that we're acting unlawfully
12 with respect to the dedications. That we are acting unlawfully
13 with regard to requiring a 0.75% content of Dominion and whether
14 we failed to file tariff, as Dominion alleges we are required to
15 do.

16 So, in a broad sense, and we have addressed in our
17 written motions the scope that Mr. Murray's testimony goes way
18 beyond what would be relevant to any fact at issue in this case.

19 Likewise, the portions of his rebuttal testimony we
20 move to strike --

21 JUDGE EYSTER: (Interposing) Just a moment. Mr. Oliva
22 I'll let you respond to that. Mr. Odunlami do you have any
23 comments?

24 MR. ODUNLAMI: Yes, your Honor. First of all the
25 parties made an agreement that I wasn't aware of that Mr. Murray

1 is pulling out his direct testimony, that was kind of amended.

2 I wasn't a part of that agreement anyway. Secondly, the
3 response to Mr. Aaron's argument I think it's kind of unfounded,
4 because if you look at this case, this case is presented on the
5 fact that CMS's carbon dioxide treatment plant or facility, and
6 also CMS takes gas off the AEP pipeline, so CMS and MichCon were
7 operating the plant jointly. So, I think Mr. Murray 's
8 testimony is very relevant in this case in terms of how the
9 pipeline is managed.

10 JUDGE EYSTER: I'm not going to grant the motion. The
11 motion is denied. I wouldn't know how I can make a decision
12 without the background information. It's relevant because of
13 the fact it provides the context in much of these other
14 discussions were contained within and provides background
15 information for me to help in making a decision.

16 Okay, now you had specific sections that you were --
17 you had page 1, line 15, through page 3, lines 17 and -- Mr.
18 Oliva, do I need to have all this information in there, or is it
19 just kind of cluttering up the record? You're moving for an
20 amended. We've got an entirely new packet of direct testimony,
21 right?

22 MR. OLIVA: Yes. I will stipulate to strike pages --
23 excuse me, page 1, line 15, beginning with the word, "it",
24 through page 3, line 15. How's that?

25 JUDGE EYSTER: Okay. So we've got line 15 beginning

1 at "it" through where?

2 MR. OLIVA: Page 3 line 15.

3 JUDGE EYSTER: That portion is granted.

4 MR. ODUNLAMI: Your Honor, I missed where it was just
5 granted. I missed that part. Are you referring to the direct
6 testimony?

7 JUDGE EYSTER: Rebuttal testimony. There was a motion
8 to strike page 1, lines 15 through page 3, line 17. Mr. Oliva
9 stipulated to removing page 1, line 15 beginning at the word
10 "it" and I denied the motion to strike the word "yes".

11 MR. ODUNLAMI: Okay.

12 JUDGE EYSTER: Through line -- page 3, line 16.

13 MR. OLIVA: And I'll stipulate to strike line 17 on
14 page 3, but not line 16.

15 JUDGE EYSTER: Okay, line 17 is out.

16 MR. AARON: If you're going to be moving to --

17 MR. OLIVA: (Interposing) You're right. I'll strike
18 line 16 as well.

19 JUDGE EYSTER: Okay. Then we have -- Mr. Odunlami,
20 that's okay with you?

21 MR. ODUNLAMI: Yes. Your Honor, if you don't mind if
22 I can ask a question. I'm not sure if Mr. Oliva stated he's not
23 going to offer the direct testimony of Mr. Frank Murray?

24 MR. OLIVA: What I'm going to offer is the document
25 which I marked here as the Amended Direct Testimony, to have

1 that bound in, instead of being marked as an exhibit. So, it
2 will be Mr. Murray's direct testimony with the changes that were
3 set forth in this portion that's just been stricken. It would
4 be the remaining portions of it.

5 MR. ODUNLAMI: Okay.

6 JUDGE EYSTER: Page 4, lines-22. Mr. Aaron?

7 MR. AARON: Your Honor, this testimony is clearly
8 irrelevant. It doesn't talk about the AEP pipeline, this isn't
9 gas flowing on the AEP pipeline. It's talking about the Wet
10 Header system, and it's certainly not intrical to the facts in
11 this case. This isn't talking about something that's extraneous
12 to the AEP, and we shouldn't have to cross examine a witness or
13 have this testimony come in.

14 JUDGE EYSTER: Mr. Oliva?

15 MR. OLIVA: I'll just supplement my written response
16 by saying this is direct rebuttal to Mr. Persells, who made a
17 statement with respect to how deliveries have to be made on the
18 MichCon system. And, Mr. Murray 's testimony goes directly to
19 the inaccuracies of Mr. Persell's statements, and again is part
20 of the overall flow of gas of which this is a part and the
21 circumstances which give rise to the dispute here over the
22 treating standard.

23 JUDGE EYSTER: The motion is denied. Mr. Aaron?

24 MR. AARON: Your Honor, the next subject testimony,
25 page 4 lines 23-30 and page 5, lines 1-6, again interjects

1 completely irrelevant material. I mean they are not talking
2 about all alternatives on the AEP. They are talking about
3 something on the Wet Header system, and CO₂ contents some place
4 else. This case isn't about the Wet Header. This case isn't
5 about CO₂ elsewhere. This case is about how Dominion is being
6 treated by MichCon Gathering on the AEP. It just continues to
7 stretch the idea that this case has bearing anywhere else. This
8 case is about the AEP, and here, again, Mr. Murray is talking
9 about CO₂ gas on the Wet Header.

10 JUDGE EYSTER: It appears to me it's a legitimate
11 rebuttal. The motion is denied. Page 5, lines 7-18. Mr.
12 Aaron?

13 MR. AARON: The CO₂ content on the AEP has been
14 exceeded or not? There's no -- it has no bearing on the fact or
15 issue in this case. This case is about Dominion's complaint
16 that Dominion is not being treated fairly, how the overall
17 system is operated in the context of this question and answer
18 doesn't bear on whether Dominion is being discriminated against
19 or not. It's irrelevant.

20 JUDGE EYSTER: Mr. Oliva?

21 MR. OLIVA: I stand on my answer, my written response,
22 your Honor.

23 JUDGE EYSTER: Where is your written response. Maybe
24 you should tell me what it was.

25 MR. OLIVA: It's direct rebuttal to MichCon's case and

1 Mr. Persell's testimony. On the face of it it's about the AEP.
2 And again, it provides the context for the discrimination that's
3 going on and MichCon's claim as to why it thinks it needs to
4 impose the 0.75% treatment standard on Dominion in order to
5 ultimately get the entire blended flow of the gas into Kalkaska
6 at 2% or below. It's direct rebuttal.

7 JUDGE EYSTER: The motion is denied.

8 MR. AARON: Your Honor, the next set of testimony we
9 identify is page 8, lines 19-28. As we point out, Mr. Murray is
10 characterizing the document that is not being offered into
11 evidence. It violates the best evidence rule to have someone
12 characterize testimony when the document apparently is readily
13 available. This shouldn't discuss a hyper technical thing.
14 This is the burden on Dominion to put into evidence the document
15 themselves, because then it could speak for itself. It's
16 inappropriate otherwise to come into the case. Here this
17 testimony lacks any foundation for Mr. Murray to offer an oral
18 description.

19 JUDGE EYSTER: Okay, this is page 8, what lines?

20 MR. AARON: Page 5, lines 19-28.

21 JUDGE EYSTER: Mr. Oliva?

22 MR. OLIVA: Your Honor, first of all we filed a
23 written response, obviously it's appropriate. There were two
24 aspects to the objection, one of which is relevance; obviously,
25 it's a direct rebuttal. Secondly, Mr. Murray is obviously an

1 expert on the operation of the CO₂ treating facilities here.
2 He's stating here from his personal knowledge on the face of the
3 document here that there was a release of gas dedicated to the
4 AEP and to the CMS Antrim Treating facility so that gas could
5 flow on Thunder Bay and be treated at MichCon's Caledonia Plant
6 by MichCon.

7 Again, as an expert, he is not required to state the
8 basis for his conclusion, but he is free to be cross examined by
9 Mr. Aaron as to the basis therefore. If that get's into the
10 underlying documents he can be cross examined about them, but
11 this isn't a proper objection.

12 MR. AARON: Your Honor, this isn't opinion testimony,
13 this is fact testimony.

14 JUDGE EYSTER: Does it violate the evidence rule?
15 Doesn't the best evidence rule go to the context of the
16 document?

17 MR. OLIVA: We're not testifying about -- the
18 testimony is not about the contents of the document, but about
19 the facts that they weren't released.

20 JUDGE EYSTER: Well, I'm just trying to figure out --
21 does anybody know the number of that rule? Is it right at the
22 beginning or is that 1002 or something?

23 I'm going to deny the motion. Not only that, but
24 that's one of those things I had a question mark next to.
25 That's one of the things I was wondering.

1 MR. AARON: If you don't let it in you don't have to
2 question it.

3 JUDGE EYSTER: That's true. I can just ignore it.
4 Okay, page 6?

5 MR. AARON: Your Honor, page 6, lines 1-7 isn't
6 rebutting Mr. Lyle's testimony. Rebuttal testimony is to
7 contradict and defeat other testimony. When you say you agree,
8 that's not rebutting, and that's exactly what Mr. Murray is
9 doing in this portion of his testimony.

10 JUDGE EYSTER: Mr. Oliva?

11 MR. OLIVA: Well, as I pointed out in my response,
12 he's not really agreeing, he's clarifying the situation here
13 with respect to ownership and respect to the subsequent sell of
14 MichCon Gathering or MichCon's interest in the South Chester
15 Plant.

16 JUDGE EYSTER: I'm going to deny the motion. Okay,
17 8-10, same issue on this one, is that correct?

18 MR. OLIVA: Yes.

19 JUDGE EYSTER: I'm going to deny that portion of the
20 motion. Now, we're to page 8, 5-16, Mr. Aaron?

21 MR. AARON: Your Honor, Mr. Murray is engaging in
22 legal opinion. He's giving you his belief that discrimination,
23 as he sees it, is not permitted by Act 9. That's a matter for
24 the brief. That's a matter for Dominion's lawyer to make an
25 argument on. That's not a matter for Mr. Murray, who is not a

1 lawyer to start engaging in his views and beliefs as to what the
2 law does and does not allow.

3 JUDGE EYSTER: Mr. Oliva?

4 MR. OLIVA: This is directly responsive to Mr.
5 Lisle's testimony, where Mr. Lisle has asserted that MichCon
6 can impose two different standards on Dominion. We do not
7 purport to offer this as a legal opinion.

8 MR. AARON: Your Honor, however, I do not believe that
9 such discrimination is contemplated or permitted by Act 9 or the
10 Commission's Order relative to the AEP. I don't know how that
11 is anything but his opinion, which was a legal conclusion. If
12 we just go to that alone, there's a reason to strike.

13 MR. OLIVA: If that's Mr. Aaron's concern, I would
14 stipulate to strike that sentence, but I believe my response to
15 the objection is appropriate as to the balance.

16 JUDGE EYSTER: Mr. Odunlami, any comment?

17 MR. ODUNLAMI: No, your Honor.

18 JUDGE EYSTER: What's your stipulation you just made?

19 MR. OLIVA: I'll stipulate to strike the sentence
20 beginning on line 6, "However I do not believe such
21 discrimination is contemplated or permitted by Act 9 or the
22 Commission's Order relative to the AEP, if Mr. Aaron contends
23 that.

24 JUDGE EYSTER: I'll accept that stipulation.

25 MR. OLIVA: Okay.

1 JUDGE EYSTER: The objection goes through line 15, is
2 that right?

3 MR. AARON: Sixteen.

4 JUDGE EYSTER: Mr. Oliva do you want to respond to the
5 remainder?

6 MR. OLIVA: As to the remainder it clearly can be
7 characterized as a legal opinion.

8 JUDGE EYSTER: He's not characterizing it as such.
9 We're back to the best evidence rule. It sounds like it's
10 pretty close. He's trying to tell me what's contained in
11 certain agreements. Do we have these agreements as exhibits?

12 MR. OLIVA: They can be marked as exhibits. Yes, we
13 do.

14 MR. AARON: Now we are going to supplement his
15 testimony?

16 JUDGE EYSTER: I'm trying to find out if we have these
17 exhibits?

18 MR. OLIVA: They can be if there's a question about
19 their contents, and that would satisfy the best evidence rule.

20 MR. AARON: Dominion had a chance to put their case
21 together, they had a long time to do this. Now, we're in this
22 hearing today saying we're supplement the testimony. What's the
23 point of having prefilled testimony?

24 MR. OLIVA: These documents weren't produced on
25 discovery until after Dominion's testimony was filed.

1 MR. AARON: Our responses were timely.

2 JUDGE EYSTER: They are not proposing exhibits, is
3 that correct?

4 MR. OLIVA: Not at this point.

5 JUDGE EYSTER: Those documents are not on file with
6 the Commission, or have they been filed with the Commission?

7 MR. OLIVA: My understanding is that they were not
8 filed with the Commission other than they were served on the
9 Commission's Staff as part of the discovery in this case.

10 JUDGE EYSTER: Staff requested those documents?

11 MR. OLIVA: Staff requested them. Staff did request
12 those documents and also as part of being furnished to all the
13 parties all of the documents that Dominion had requested on
14 discovery.

15 JUDGE EYSTER: Mr. Odunlami, is Staff proposing those
16 as exhibits in this case?

17 MR. ODUNLAMI: No, your Honor.

18 JUDGE EYSTER: I don't mean to be telling the parties
19 how they should be doing their cases. It seems to me this kind
20 of goes to the whole heart that was at issue and nobody
21 presented those documents to me as an exhibit. The issue is
22 discrimination, one of them, the major one as I see it. And,
23 the contention is that Dominion had a 0.75% requirement and
24 other companies have a 2%. That's kind of the simplified
25 version of what we're dealing with, right?

1 MR. OLIVA: Yes.

2 JUDGE EYSTER: So, I've got a bunch of documents
3 that's different agreements that Dominion had made? Do I have
4 any documents, any of these contracts that have the 2% that have
5 been entered into evidence?

6 MR. OLIVA: Yes, your Honor. Exhibit -- I believe
7 it's Exhibit DOM-5.

8 JUDGE EYSTER: Okay. And what is the reason these
9 haven't been presented, does anybody have a reason? I mean I
10 don't want to get --

11 MR. OLIVA: All we needed to present is one. We
12 presented one at 2%.

13 JUDGE EYSTER: That may be true. When it comes to me
14 making a decision it's not complete.

15 MR. AARON: Your Honor, my objection goes to Mr.
16 Murray telling you in testimony what a document says, rather
17 than having the document.

18 JUDGE EYSTER: I understand what you're objection is.
19 It goes to the best evidence rule he's presenting testimony to
20 details of what the document says.

21 MR. AARON: That's really all you have to decide
22 today.

23 JUDGE EYSTER: Well, I'm a little troubled because
24 there's --

25 MR. OLIVA: Your Honor, the requirement of the best

1 evidence rule is if that's the objection then the document be
2 marked and admitted.

3 MR. AARON: Your Honor, I understand that you want to
4 be able to make a decision.

5 JUDGE EYSTER: You're right. I want to be able to
6 make a decision.

7 MR. AARON: It's incumbent on Dominion to put their
8 case in. It's not incumbent upon you to help them. If they
9 can't put their case together in prefiled testimony -- they've
10 got skilled lawyers here to do that, and if they don't do that
11 that's Dominion's problem and that's part of the lack of record
12 evidence that you have to take into account.

13 JUDGE EYSTER: Who had the documents? What happened
14 is this document was not filed. Whose possession was it in, and
15 until when?

16 MR. OLIVA: I'm a little puzzled by the question.

17 JUDGE EYSTER: Whose possession were they in? Who
18 had possession of those documents until what date?

19 MR. OLIVA: MichCon had possession of them then
20 they were produced. I mean frankly, your Honor, in
21 connection with the cross examination of MichCon's witness
22 it contemplated that we would -- because the witness is
23 testifying what they contend the practices to move to admit
24 all fifty-eight contracts were provided on discovery.

25 JUDGE EYSTER: That's on cross of Mr. Lisle?

1 MR. AARON: If counsel wants to do that or attempt
2 to do that that's his choice, but the fact of the matter is
3 we don't have to have Mr. Murray talking about the contents
4 of a document they feel shows a context for not
5 introducing.

6 JUDGE EYSTER: I'm understanding -- that's why I
7 am asking him why this was provided in discovery? Well,
8 when was the rebuttal testimony filed? Rebuttal testimony
9 was filed May 24th, is that right? Mr. Aaron, do you know
10 when?

11 MR. AARON: I'm attempting to look at my records.

12 JUDGE EYSTER: Mr. Odunlami, apparently this was
13 their response to one of your questions. Do you know when
14 it was provided?

15 MR. ODUNLAMI: I think the response was provided
16 -- let me see, on May 11, 2006.

17 JUDGE EYSTER: Okay, I'm to grant the motion for
18 that portion. That was -- well, I guess we were looking at
19 the word, however, on page 8, line 6 down to the end of line
20 16. Is that what you're requesting Mr. Aaron?

21 MR. AARON: Page 8, line 5 starting with MichCon
22 starting at however, lines 6-16 on page 8.

23 JUDGE EYSTER: Line 20, I'm going to deny that.

24 MR. AARON: This testimony presents the same
25 problem. He's referring to Shell ASATT number 5 and telling

1 you what it contains rather than giving you the document
2 itself. That's the violation of the best evidence rule.
3 There's no foundation for secondary evidence to come in.
4 Additionally, Mr. Murray engaged in argument on the second
5 part of the testimony with respect to the impact that the
6 dedication, and it really doesn't bear anything in terms of
7 whether CMS is entitled to the benefit of dedication or
8 not. It doesn't have any bearing on the facts of this
9 case, whether the dedication is for the life of the
10 reserves is discriminate to the pipeline or the term related
11 to the ASATT.

12 JUDGE EYSTER: Mr. Oliva?

13 MR. OLIVA: Well, first with respect to the Shell
14 contract is one distinction. Unlike most of the agreements, the
15 Shell agreement is on file with the Commission as a public
16 available document. Secondly, with respect to the import of the
17 dedication. Directly goes to the important issue in the case.
18 We think that it means MichCon is contending that there is a
19 perpetual dedication to them for both transportation and for
20 treating. This testimony goes directly to the circumstance of
21 what if they are correct in the assertions that there is a
22 dedication for life of the reserves for treating, to whom then
23 does that dedication run? And, our contention would be that it
24 cannot possibly run through MichCon or MichCon Gathering,
25 neither of which has any treating capacity.

1 MR. AARON: Your Honor, the point here is that
2 whether the document runs to the benefit of CMS or whether
3 CMS has explained when they brought the facility and failed to
4 get the dedication sent to them doesn't have any bearing on the
5 question. The fact question.

6 JUDGE EYSTER: I'm going to deny the motion. Mr.
7 Aaron feel free to cross examine on any of this stuff. I know
8 I have a couple of stars next ot it. It would suggest to me
9 that I didn't understand what they were talking about, or it
10 seems it might be important or both, probably both. Or maybe I
11 just didn't understand what he was talking about. Is that it
12 for that testimony?

13 MR. OLIVA: Yes. I'll call Mr. Murray to the stand
14 please?

15 F-R-A-N-K-M-U-R-R-A-Y, after first being called as
16 a witness, was examined under his oath and testified as
17 follows:

18 DIRECT EXAMINATION

19 BY MR. OLIVA

20 Q. Could you state your name and business name for the record
21 please?

22 A. My name is Frank M. Murray. My business address One Energy
23 Plaza, Jackson, Michigan, 49201.

24 Q. Mr. Murray I'm handing you a document which is entitled
25 Amended Direct Testimony of Frank M. Murray, Case Number

1 U-14754, which consists of 7 pages of questions and
2 answers. Would you explain that, is that the revised
3 direct testimony that you caused to be filed in this case?

4 A. Yes, it is.

5 Q. And if I were to ask you the questions as set forth in this
6 document would you answer them in the same way today?

7 A. Yes, I would.

8 Q. I'm also showing you a document entitled Rebuttal Testimony
9 of Frank M. Murray, MPSC Case No. U-14754, consisting of 9
10 pages of questions and answers. Could you take a look at
11 that. Is that the rebuttal testimony that you caused to be
12 filed in this case?

13 A. Yes, it is.

14 Q. If I were to ask you these questions would you answer
15 them the same way today?

16 A. Yes, I would.

17 Q. I'm handing you a document which has a cover page, Exhibit
18 FMM-5, which is after the cover page, a single page. It's
19 a map and a flow chart, I guess, entitled November 2005
20 Flow Meter Read Reads. Is this the document referred to in
21 your amended direct testimony as Exhibit FMM-5?

22 A. Yes, it is.

23 Q. This was prepared by you or under your direction
24 supervision?

25 A. Yes, it was.

1 Q. I'm handing you a document which starts with a cover page
2 Exhibit FMM-6, the first page of which it appears to be an
3 e-mail from you dated January 2, 2006, with another page
4 Calculations. Is this the document referred to in your
5 amended direct testimony as FMM-6?

6 A. Yes, it is.

7 Q. This was prepared by you or under your direction?

8 JUDGE EYSTER: Mr. Oliva, where would I find these?

9 MR. OLIVA: That would be under tabs 10 and 11 so far.

10 JUDGE EYSTER: Thank you.

11 BY MR. OLIVA CONTINUING

12 Q. And, then I'm handing you a document which consists of a
13 cover sheet and a single page of calculations captioned
14 Exhibit FMM-7. Is this the document referred to in your
15 amended testimony as Exhibit FMM-7?

16 A. Yes, it is.

17 Q. This was prepared by you under your direct supervision?

18 A. That was received by me from MichCon. That was actually
19 prepared by MichCon.

20 Q. I'm handing you a document consisting of a cover sheet, one
21 page of calculations. The caption is Rebuttal Exhibit
22 FMM-2, would you examine that document. Is this the
23 document referred to in your rebuttal testimony as Rebuttal
24 Exhibit FMM-2?

25 A. That's correct.

1 Q. And that was prepared by you or under your direct
2 supervision?

3 A. Yes, it was.

4 Q. And the next document is entitled Rebuttal Exhibit FMM-3,
5 which consists of a cover sheet. This was a discovery
6 response from MichCon, is that correct?

7 A. Yes, it is.

8 Q. And this is the document that you intended to refer to in
9 your rebuttal testimony as Exhibit FMM-3?

10 A. That's correct.

11 Q. Then I'm handing you a document consisting of a cover sheet
12 Rebuttal Exhibit FMM-4 and then one page of calculations.
13 Is this the document referred to in your rebuttal testimony
14 as Rebuttal Exhibit FMM-4?

15 A. That's correct.

16 Q. This document was prepared by you or under your direct
17 supervision?

18 A. Yes, it was.

19 MR. OLIVA: Your Honor, at this time I move that the
20 Amended Direct Testimony and Rebuttal Testimony be bound into
21 the record, and that Exhibits FMM-5, FMM-6, FMM-7, and Rebuttal
22 Exhibits FMM-2, FMM-3, and FMM-4 be admitted into evidence.

23 MR. AARON: Your Honor, I'm a little confused. I
24 don't have a Rebuttal Exhibit marked FMM-4.

25 JUDGE EYSTER: I don't either. I've got one which is

1 the direct testimony.

2 MR. AARON: Correct. I don't have a four.

3 JUDGE EYSTER: I have 2 and 3, just a moment. Any
4 objection to the direct testimony being bound into the record?

5 MR. AARON: Subject to motions to strike being
6 granted.

7 JUDGE EYSTER: Subject to the motions to strike?

8 MR. ODUNLAMI: Your Honor, I'm still a little bit
9 confused. If you can kind of indulge me. I thought I heard Mr.
10 Oliva state that he was only going to offer into evidence the
11 rebuttal testimony and the amended testimony of Mr. Frank
12 Murray. He wasn't going to offer into evidence his prefiled
13 direct testimony, is that what you're doing? Are you going to
14 offer the prefiled testimony?

15 MR. OLIVA: No.

16 MR. ODUNLAMI: That's where I have an objection, your
17 Honor.

18 JUDGE EYSTER: Well he's offering the amended direct
19 testimony.

20 MR. ODUNLAMI: Yes, because the prefiled testimony has
21 information that's not part of the amended testimony. I thought
22 when he did the rebuttal and motion to strike that was enough to
23 correct the initial prefiled testimony, but I've been trying to
24 go through the so-called new testimony, and I'm seeing a lot of
25 different substantial information, not included in that

1 testimony.

2 JUDGE EYSTER: Well, you're going to have a chance to
3 cross examine.

4 MR. ODUNLAMI: Because my cross is going to be based
5 on the initial direct testimony. I'm going to be referring to
6 some pages that are in the initial direct testimony. So if they
7 would like to stipulate that Staff can offer it into evidence,
8 that's fine.

9 JUDGE EYSTER: What's to stop you from asking those
10 questions?

11 MR. ODUNLAMI: When I'm asking thee questions related
12 to direct testimony I'm going to be referring to pages and lines
13 and it's not in evidence. So, when people go to look at the
14 record to make reference to that -- I know it's part of the
15 record, but it's not in evidence. There's a difference between
16 those two.

17 JUDGE EYSTER: So what would you like me to do?

18 MR. ODUNLAMI: Well, if they don't mind, stipulate
19 that Staff can offer it into evidence when I ask my questions, I
20 don't mind.

21 JUDGE EYSTER: I don't know if they need to be in
22 evidence. I suppose you can make it part of the record by
23 reading it.

24 MR. ODUNLAMI: Yes. But, it's not in evidence.
25 There's a difference.

1 JUDGE EYSTER: Well, it's going to be a part of
2 questions and answers from the witness.

3 MR. ODUNLAMI: Then when someone is going through the
4 transcript, this isn't going to be part of the transcript.

5 JUDGE EYSTER: Correct, but the question you ask will
6 be.

7 MR. ODUNLAMI: Then somebody has to go through the
8 Commission website to see where that was stated?

9 JUDGE EYSTER: I think it's just cleaner -- we've got
10 the amended testimony which has been composed and there's been
11 material withdrawn. I guess that was actually from rebuttal.

12 MR. ODUNLAMI: I mean part of the initial direct
13 testimony was stricken, it wasn't withdrawn?

14 MR. AARON: It was withdrawn. The Judge granted the
15 motion to strike on rebuttal. The original filed testimony was
16 withdrawn by Dominion.

17 JUDGE EYSTER: I'm going to grant the motion to have
18 the amended direct testimony entered or bound into the record.

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~~Rebuttal Exhibit FMM-1~~

**AMENDED DIRECT TESTIMONY OF
FRANK M. MURRAY
MPSC CASE NO. U-14754**

1 Q. Please state your name and address for the record.

2 A. My name is Frank M. Murray. My business address is One Energy
3 Plaza, Jackson, MI 49201.

4 Q. Mr. Murray, where are you currently employed and in what capacity?

5 A. I am employed by CMS Enterprises Company ("CMS Enterprises"),
6 Jackson Michigan, the indirect parent company of CMS Antrim Gas
7 LLC. I hold the position of Commercial Director.

8 Q. What are your current duties and responsibilities in your position?

9 A. I am responsible for the operations and commercial arrangements of
10 various CMS Enterprises' natural gas businesses in Michigan, including
11 CMS Antrim Gas LLC, a carbon dioxide treating service provider which
12 provides the majority of the carbon dioxide treating for natural gas
13 flowing on the Michigan Consolidated Gas Company ("MichCon")
14 Antrim Expansion Project ("AEP"). CMS Antrim Gas LLC owns and
15 operates a complex of five gas treating plants located in Chester
16 Township, Otsego County Michigan ("CMS Antrim Facilities").

17 Q. Would you please summarize your educational background and work
18 experience?

19 A. I have a Bachelors of Science in Electrical Engineering from Lawrence
20 Technological University in Southfield, Michigan. I worked for ANR
21 Pipeline Company, Detroit, Michigan, from 1985 to 1994. While with
22 ANR Pipeline, I held various positions in the Facility Planning, Gas
23 Control and Operations Management Departments. My responsibilities
24 in those various departments included; the design of natural gas
25 facilities, nominations, scheduling and allocation of natural gas,
26 development and implementation of Federal Energy Regulatory

~~Rebuttal Exhibit FMM-1~~

Commission ("FERC") tariff provisions and analyzing other interstate and intrastate pipeline operations and tariffs. From 1994-1995 I was employed as a Plant Engineer for US Gypsum Company, River Rouge Michigan. From 1995 to present I have been employed by CMS Enterprises, either directly or indirectly through wholly owned subsidiaries. I have held various positions of increasing responsibility with CMS. These responsibilities include pipeline design work, Michigan Public Service Commission ("MPSC") filings for Act 9 pipelines, development of FERC Gas Tariffs for interstate natural gas transportation, analysis of the design and operation of various interstate and intrastate pipeline systems, including those of MichCon, construction and repair of pipeline and plant facilities, design of intrastate and interstate pipeline facilities, analysis of pipeline and plant operations in conjunction with optimizing performance, mergers and acquisitions, economic evaluation of businesses in association with optimization of performance, mergers and acquisitions, state and federal regulatory compliance issues, local, state and federal environmental permitting/compliance, negotiation of transportation contracts and negotiations of treating contracts.

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

A. The purpose of my testimony in this case is

1) Provide information about the CO₂ treating services provided by CMS Antrim to various producers.

2) Address the gas quality standards established by intrastate and interstate natural gas pipelines.

3) Provide information regarding the blending of high CO₂ gas with low CO₂ gas.

4) Address the flows of gas on the AEP and other pipelines in Northern Michigan, specifically in regards to the CO₂ content of the gas at Kalkaska and other take away points.

~~Rebuttal Exhibit FMM-1~~

5) Address the difference in reliability of service when producers contract directly with CMS Antrim rather than MichCon.

Q. Please tell us what treating is and why it is necessary.

A. Treating, as used in the context of this case, is the removal of carbon dioxide ("CO2") from natural gas in order to meet the gas quality specification of 2% or less as specified in the Michigan Public Service Commission ("Commission") Order in Case U-10547. Typical natural gas entering the CMS Antrim Facilities contains about 84% methane, 2% ethane and 14% CO2. CMS Antrim treats the gas by removing CO2 from the inlet natural gas stream such that the outlet natural gas stream is approximately 97% methane, 2% ethane and 1% CO2. The amount of CO2 removed in the treating process is typically specified as removed CO2 and stated in thousand cubic feet ("Mcf").

Q. Please tell us what blending is.

A. Blending is the reduction in aggregate levels of CO2 by commingling gas with high CO2 content, greater than 2% CO2, with gas that contains low CO2, less than 2%, such that the entire gas stream contains 2% or less CO2.

Q. Please describe the nature of CMS Antrim's contracts with Third Parties.

A. CMS Antrim has several Third Party contracts for treating Antrim gas. The rates charged by CMS Antrim for these contracts vary from \$0.10 per Mcf to \$0.11 per Mcf. These contracts all contain an outlet CO2 specification of 2%.

Q. Describe the contracts which CMS Antrim entered with Third Parties around the same time as the Dominion Contract.

A. CMS Antrim entered into the following Third Party agreements:

- i) Quicksilver Resources effective November 1, 2005 with a 2% CO2 outlet specification.

~~Rebuttal Exhibit FMM-1~~

ii) Paxton Resources effective December 1, 2005 with a 2% CO2 outlet specification.

iii) Dominion effective December 1, 2005 with a 2% CO2 outlet specification ("Dominion Agreement"). Since February 1, 2006, CMS Antrim has temporarily amended the Dominion contract to an outlet specification of 0.75% CO2 in order to allow Dominion to continue producing gas rather than be shut in by MichCon.

iv) CMS Antrim amended its contract with Chevron Production effective January 1, 2006 to include Chevron's new Ess Lake project. All the gas under the Chevron contract is treated to a 2% CO2 outlet specification.

Q. Why did CMS Antrim enter into contracts with an outlet CO2 specification of 2%?

A. The Commission order in Case U-10547 which stated that the gas must contain 2% or less, means that treating gas to a 2% specification meets the requirements of the Commission Order. Based upon the Commission Order in U-10547, it is clear to CMS Antrim that 2% meets the standard for CO2 content for transportation on the AEP.

Q. Based upon your knowledge of the natural gas industry, is the 2% standard to which you treat Third Party gas typical.

A. Yes. In my experience and in looking at several of the published FERC gas tariffs for interstate pipelines operating in the State of Michigan, 2% CO2 content is the standard. This standard holds true for the ANR Pipeline, Great Lakes Gas Transmission, Panhandle Eastern Pipeline, Trunkline Pipeline and Vector Pipeline tariffs. The standard exists in of the published tariffs for Consumers Energy, MichCon and MGU, intrastate pipelines subject to MPSC jurisdiction.

Q. Please describe the flows of natural gas on the pipelines flowing into Kalkaska.

~~Rebuttal Exhibit FMM-1~~~~(DAM-12)~~

1 A. Please refer to Exhibit FMM-5, which represents a flow diagram of the
 2 pipelines flowing into Kalkaska. This flow diagram was derived from
 3 the MichCon TIPS report for November. As you can see on Exhibit
 4 ~~(DAM-12)~~ FMM-5, the natural gas enters the AEP from the CMS Antrim Facilities
 5 at 0.95% CO₂. Between the CMS Antrim Facilities and the Goose
 6 Creek delivery point, untreated gas is commingled or blended with the
 7 low CO₂ gas from the CMS Antrim Facilities, raising the CO₂ content of
 8 the combined stream of gas on AEP from 0.95% to 1.68% CO₂. This
 9 low CO₂ gas on the AEP is then transported to Kalkaska where
 10 MichCon blends the low CO₂ gas on the AEP with high CO₂ gas from
 11 the other MichCon pipelines entering Kalkaska, the Wet Header at
 12 2.74% CO₂ and the Saginaw Bay Pipeline at 2.01% CO₂. Once the
 13 three MichCon pipelines have been blended together, the CO₂ content
 14 of the gas leaving Kalkaska is 1.94% CO₂.

15 Q. The Commission order in Case U-10547, states "Maintaining the
 16 flexibility built into the system permits MichCon to take advantage of
 17 blending opportunities and to avoid the unnecessary construction of
 18 additional lateral pipelines." Order at Page 43. Please describe how
 19 this is reflected in Exhibit FMM-5. ~~(DAM-12)~~

20 A. With respect to the Saginaw Bay Pipeline, untreated high CO₂ gas
 21 (4.61% CO₂) is allowed to enter the pipeline from the MichCon Lovells
 22 Lateral. This high CO₂ gas is blended with low CO₂ gas produced from
 23 the Niagaran or Prarie du Chien formations and with low CO₂ gas from
 24 the MichCon Alpena system, creating an aggregate flow of 2.01% CO₂
 25 gas. A similar process occurs on the Wet Header, wherein high CO₂
 26 gas (10.76% CO₂), is blended with low CO₂ gas production resulting
 27 in 2.74% CO₂ gas entering Kalkaska. The natural gas from the Wet
 28 Header and the Saginaw Bay Pipeline are then blended with the low
 29 CO₂ gas on the AEP to meet the 2% or less specification. MichCon or
 30 its affiliate(s) receives treating revenues for blending the high CO₂ gas

~~Rebuttal Exhibit FMM-1~~

1 with the low CO2 gas without incurring additional costs for treating or
2 the construction of additional lateral lines.

3 Q. With the aforementioned blending, do you believe that MichCon has
4 sufficient blending capacity to meet its obligation pursuant to the
5 Commission Order in Case U-10547 to maintain 2% or less at
6 Kalkaska?

7 A. No, I do not believe MichCon has sufficient firm blending capacity. The
8 basis for this belief is best demonstrated by example. During the first
9 week of February 2006, CMS Antrim was providing service under the
10 Dominion Agreement to an outlet specification of 0.75%, which
11 removes in excess of 300 Mcf per day of CO2 beyond the 2% CO2
12 content required by the Commission Order in U-10547. In spite of
13 Dominion providing additional CO2 removal, MichCon reported to the
14 MPSC that 2% was not maintained at Kalkaska on several occasions,
15 (see Exhibit FMM-6),^(DOM-13) stating the cause of the CO2 problem was the
16 CMS Antrim Plant 1 being down for repairs. Plant 1 had been down for
17 repairs in order to satisfy CMS Antrim's obligations under the Dominion
18 Agreement since early December 2005, and continued down until the
19 end of February 2006. Based upon the fact that MichCon was able to
20 maintain 2% or less during the other periods during which Plant 1 was
21 down, it is logical that the 2% specification at Kalkaska was not met
22 because MichCon does not have sufficient installed treating capacity or
23 firm treating contracts to meet its blending obligations, even with the
24 forced incremental CO2 removal under the Dominion Agreement.

25 Q. What financial impact do you believe the Dominion Agreement has on
26 MichCon?

27 A. MichCon, or its affiliate(s), has historically received treating fees for
28 blending gas. In utilizing the Antrim gas treated below 2% and the
29 low CO2 Niagaran and PDC production, there were no incremental
30 costs which offset the blending revenues. The difference between the

~~Rebuttal Exhibit FMM-1~~

1 2% CO2 outlet specification under the Dominion Agreement and the
2 0.75% outlet specification asserted by MichCon in its Revised Answer
3 to this complaint dated February 23, 2006 results in reduced blending
4 opportunities for MichCon. In order to regain those blending
5 opportunities, MichCon would need to extract over 300 Mcf per day of
6 additional CO2.

7 Q. Dominion has stated that by contracting with CMS service will be more
8 reliable. Please explain how this is true.

9 A. Pursuant to the Dominion Agreement, CMS Antrim rehabilitated Plant
10 1. The cost of refurbishing Plant 1 exceeded \$700,000. Under normal
11 operations, CMS Antrim has been able to process all gas delivered to
12 the CMS Antrim facility with its four other treating plants, Plant 1 is not
13 required. In the event of required maintenance to one of the four
14 other plants, pursuant to the Dominion Agreement, the stand by
15 capacity made available by Plant 1 is to be utilized to avoid the
16 curtailment of approximately 30 million cubic feet per day of
17 production. CMS Antrim has curtailed service, when necessary, by
18 first curtailing interruptible services and overrun. If additional
19 quantities of gas needed to be curtailed, CMS Antrim would prorate the
20 additional required quantities to its firm contracts based upon the
21 lesser of MDQ or flowing volumes. The last such curtailment occurred
22 in January 2006. A copy of the curtailment notice sent out by CMS
23 Antrim is Exhibit FMM-7, ^(DOM-14) which required the curtailment of 48,000 Mcf
24 per day. As a result of the curtailment notice, the Dominion
25 Agreement was curtailed by 8.8%. Since Plant 1 has been refurbished
26 pursuant to the Dominion Agreement, a similar curtailment scenario
27 would result in a required curtailment of only 18,000 Mcf per day, with
28 the Dominion Agreement not being curtailed at all.

29 Q. Does this conclude your testimony?

30 A. Yes.

1 JUDGE EYSTER: Mr. Odunlami, you are free to ask
2 whatever questions on cross.

3 MR. ODUNLAMI: From the initial?

4 JUDGE EYSTER: You can get those questions from
5 anyplace you like.

6 MR. ODUNLAMI: Thank you.

7 JUDGE EYSTER: The rebuttal testimony, any objections
8 to rebuttal testimony being entered into evidence? I didn't
9 strike anything from that. Subject to whatever motions to
10 strike are granted, any objections? Seeing none, it's bound
11 into the record.

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**REBUTTAL TESTIMONY OF
FRANK M. MURRAY
MPSC CASE NO. U-14754**

1 Q. Please state your name and address for the record.

2 A. My name is Frank M. Murray. My business address is One Energy
3 Plaza, Jackson, MI 49201.

4 Q. Are you the same Frank M. Murray who presented direct testimony in
5 this case?

6 A. Yes, I am.

7 Q. What is the purpose of your rebuttal testimony in this case?

8 A. The purpose of my rebuttal testimony is amend my originally filed
9 direct testimony and to rebut certain aspects of Mr. Persells' and Mr.
10 Lyle's testimony.

11 Q. Mr. Murray, in your direct testimony, you had discussed, and
12 sponsored as an Exhibit the Capacity Agreement and other
13 agreements between MichCon and CMS. Do you wish to withdraw that
14 testimony and exhibits?

15 A. Yes. ~~It is clear that MichCon and CMS have a significant disagreement~~
16 ~~over the terms of the Capacity Agreement. While that disagreement~~
17 ~~may be of importance to the parties to it, that disagreement is outside~~
18 ~~the scope of, and a distraction from, the issues in this case. At the~~
19 ~~outset of this case, MichCon successfully argued that CMS should not~~
20 ~~be granted leave to intervene in this case by asserting that CMS was~~
21 ~~not within the zone of protected interest, and was not asserting any~~
22 ~~injury, within the scope of the Complaint filed by Dominion. The ALJ~~
23 ~~agreed.~~

24 Per MichCon, the treating contracts between MichCon and CMS are
25 only tangential to the issues at hand under this case filed by Dominion.

26 ~~Thus, it is both unnecessary, and inappropriate to address in this case~~

1 ~~interpretation of the language and meaning of the Capacity~~
2 Agreement. CMS is not a party to this case. Although CMS strongly
3 disagrees with the characterization of the Capacity Agreement by
4 MichCon, that dispute is not properly addressed here for the reasons
5 stated above. Therefore, to properly focus on the real issues in this
6 case, it is necessary for me to remove any reference to the Capacity
7 Agreement from my testimony so as to eliminate the issue of
8 interpretation of the language of the Capacity Agreement from
9 contention in this case. Accordingly, I am amending my previously
10 submitted direct testimony:

- 11 1) Strike Page FMM-2, lines 22-23.
- 12 2) Strike Page FMM-3, Lines 23-30.
- 13 3) Strike Page FMM-4, Lines 1-27.
- 14 4) Strike Page FMM-5, Beginning with "Furthermore," on line
15 26 and ending with "paragraph 3." On line 30.
- 16 5) Strike Page FMM-6, Line 1 "and Amendment #3"
- 17 6) Strike Page FMM-7, Beginning with "CMS Antrim" on line
18 23 ending with "During this time," on Line 24.
- 19 7) Strike Page FMM-8, Line 13.
- 20 8) Strike Page FMM-8, Line 14, the words "Agreement. First
21 is blending".
- 22 9) Replace Page FMM-8, Line 16, "aforementioned Capacity
23 Agreement specification of 0.75% CO2" with "Antrim gas treated
24 below 2%".
- 25 10) Replace Page FMM-8, Line 20, "under the Capacity
26 Agreement" with "asserted by MichCon in its Revised Answer to this
27 complaint dated February 23, 2006".
- 28 11) Strike Page FMM-8, Line 23, beginning with "Pursuant to
29 the terms" through line 30.
- 30 12) Strike Page FMM-9, Lines 1-3.

1 ~~13) Strike Page FMM-9, Line 6, strike "This is a true statement~~
2 for two reasons. First,".

3 14) Strike Page FMM-9 Line 15, strike "No such provision exists
4 in the Capacity Agreement".

5 15) Strike Page FMM-9, Line 16 strike "Second, ".

6 16) Strike Page FMM-9, Line 24, strike "while the Capacity
7 Agreement was curtailed by"

8 17) Strike Page FMM-9, Line 25, strike "23.6%".

9 18) Strike Page FMM-9, Line 28, strike "and the Capacity
10 Agreement being curtailed".

11 19) Strike Page FMM-9, Line 29, "by 10.2%".

12 20) Strike Exhibit FMM-1

13 21) Strike Exhibit FMM-2

14 22) Strike Exhibit FMM-3

15 23) Strike Exhibit FMM-4

16 Attached as Rebuttal Exhibit FMM-1 is my Amended Direct Testimony
17 ~~reflecting the changes specified above.~~

18
19 Q. What portions of Mr. Persells' Testimony will you be addressing
20 through your rebuttal testimony?

21 A. Although there are several points to which rebuttal testimony may be
22 provided to clarify the record regarding Mr. Persells' Testimony, I will
23 address those matters which are significant to the issues of CO2
24 standards and dedications.

25 Q. What portions of Mr. Lyle's testimony will you be addressing through
26 rebuttal testimony?

27 A. Mr. Lyle's testimony provides several representations which are
28 inaccurate and introduces many subjects, which are not germane to
29 the two basic issues at question under this case, 1) CO2 content of
30 Gas at Kalkaska and 2) Dedication of reserves.

1 Q. With regards to Mr. Persells' testimony, does any historical information
2 exist which contradicts Mr. Persells' testimony that "All deliveries into
3 MichCon's system must be made in accordance with the gas quality
4 standards set forth in its MPSC Tariff, Section F3.1, Quality." TFP page
5 5, Lines 15-16.

(DOM-15)

6 A. Please see attached Rebuttal Exhibit FMM-2. This Rebuttal Exhibit
7 (DOM-
FMM-2 is a historical summary of the volumes and CO2 content
8 reported by the MichCon TIPS report for the outlet of the Merit
9 hydrocarbon treating plant ("Merit Plant"). The outlet of this plant
10 flows into the MichCon transmission system at Kalkaska. As the
11 historical MichCon data shows, there is a clear trend of increasing CO2
12 content into the MichCon transmission system from the Merit Plant,
13 which primarily receives gas from the Wet Header system.

14 Q. Does this gas require a treating agreement or some type of assurance
15 that it will be less than 2% when it enters the MichCon transmission
16 system?

17 A. Yes, pursuant to MichCon's response to the MPSC Staff's First
18 Discovery Request, number 5, (Rebuttal Exhibit FMM-3) MichCon has
19 stated that "The Wet Header specifications are that shippers must
20 demonstrate either that the volumes transported are at 2% or less
21 CO2 into the system or that they have treating agreements to provide
22 service to those levels."

(DOM-16)

23 Q. With regards to Mr. Persells' assertion that there are only three
24 alternatives to blending, TFP Page 13, Line 18-24, is there another
25 option available?

26 A. Yes. The other option is for MichCon to ensure that those parties
27 contracted to provide treating services, like the DTE affiliate of
28 MichCon, are in fact providing them. The gas entering the MichCon
29 transmission system from the Wet Header has had a rising CO2
30 content from a simple average of 2.5% in 2003 to 2.9% for 2006. The

1 DTE affiliate of MichCon is receiving treating fees to reduce the content
2 of the CO₂ to 2% or below; however, the DTE affiliate does not have
3 any treating facilities on the Wet Header, nor does it appear that the
4 MichCon DTE affiliate has any contracts with third party providers to
5 provide this service and remove sufficient CO₂ from a gas stream to
6 meet a 2% or less standard into the MichCon transmission system.

7 Q. Based upon available information, has the AEP in recent years
8 exceeded 2%?

9 A. Based upon information since January 2003 from the MichCon TIPS
10 report summarized in Rebuttal Exhibit FMM-4, ^(DOM-17) the AEP, on average,
11 has not exceeded 2%. Although this information is a monthly average
12 of the CO₂ content, there are daily, even hourly, fluctuations, which
13 may cause the CO₂ content to be above or below the average. Based
14 upon the data averaged from the MichCon TIPS report, the AEP has
15 been consistently below 2%, while the Wet Header for the same time
16 period has been consistently above 2%. The blended stream
17 downstream of the AEP and the Wet Header has, for the most part,
18 been below 2%.

19 Q. Mr. Persells testifies about the risks to MichCon and the requirement
20 for dedications on Page 8, Lines 6-23 and Page 9 line 1-4. Has
21 MichCon ever released any reserves dedicated to the AEP for
22 transportation and associated treating at the CMS treating facility?

23 A. Yes. In December 1997, two years after the AEP was placed in
24 service, MichCon released from dedication to transportation on the AEP
25 and treating at the CMS treating facility seven (7) production facilities
26 referred to as the Hillman 7, so that the Hillman 7 could be dedicated
27 to and treated at the Caledonia 13 plant owned and operated by an
28 affiliate of MichCon.

1 Q. Mr. Lyle states in his testimony that "MGAT owned the treating plant at
2 South Chester in partnership with CMS" Page 6, lines 6-7. Is this
3 correct?

4 A. Yes, CMS and MichCon jointly owned the treating facilities at South
5 Chester. Subsequent to the dedication made by Wolverine, CMS
6 purchased MichCon's interest in the treating facilities, just as
7 Dominion, acquired its underlying reserves from Wolverine.

8 Q. Mr. Lyle addresses the issue of blending in detail in his testimony on
9 Pages 10 and 11, lines 13-25 and lines 1-23 respectively. Is this
10 testimony exclusive to the AEP?

11 A. No. As Mr. Lyle indicates in this testimony, in order to maintain 2% or
12 less into the MichCon transmission system, MichCon "...tracks the
13 requirements at Kalkaska to maintain the required delivery
14 specification, which includes the volume and CO2 content from the
15 Merit hydrocarbon treating plant" Page 11, lines 2-6. The Merit
16 hydrocarbon treating plant is a reference to gas received into the
17 MichCon transmission system from the Wet Header, owned and
18 operated by an affiliate of MichCon.

19 Q. Mr. Lyle asserts that MichCon has sufficient blending capacity on Page
20 15, lines 19-25 of his testimony. Do you believe he has accurately
21 portrayed MichCon's blending capability?

22 A. No. First, Mr. Lyle refers to an extended outage, which CMS took to
23 rehabilitate Plant 1. Plant 1 is used as standby treating capacity and is
24 not required for daily operations. Second, Mr. Lyle refers to the fact
25 that MichCon is subject to "...operational issues that MGAT does not
26 currently have the authority to control" Page 15, Lines 21-22. Mr. Lyle
27 goes on to talk about deliveries at Goose Creek and how those
28 deliveries to Goose Creek adversely impact Kalkaska. The Goose
29 Creek delivery point was required as part of the Commission Order in
30 Case No. U-10547. If MichCon were to evaluate the CO2 content of

1 only the AEP, it would appear that MichCon has sufficient blending
2 capacity, but MichCon has extended the blending authority granted in
3 the Commission Order in Case No. U-10547 to the Wet Header and is
4 attempting to require Dominion to strip more CO2 from the system
5 than should be required in order for the DTE affiliate of MichCon to
6 continue collecting treating fees on the Wet Header.

7 Q. Mr. Murray, is the treating service provided by CMS to Dominion more
8 reliable than the service Dominion had received from MichCon?

9 A. Yes it is more reliable than other available services. The agreement
10 between CMS and Dominion provides for redundant capacity, which
11 reduces curtailments. The agreement between CMS and Dominion
12 also provides for redundant treating capacity as requested of MichCon
13 by the MPSC staff pursuant to Mr. Persells' Exhibit TFP-2. A recent
14 example of the benefit of redundant capacity to all Antrim producers,
15 not just Dominion, is the avoided loss of 30,000 Mcf/d of production
16 while CMS' Plant 2 was down for maintenance. This outage lasted
17 approximately 10 days, and without the redundant capacity made
18 available by the Dominion agreement, approximately \$2.1 million
19 worth of production at an assumed value of \$7 / Mcf would have been
20 shut in.

21 Q. MichCon has repeatedly asserted that it has treated Dominion's gas to
22 a specification of 0.75%. Do you agree with this assertion?

23 A. No. Per the terms of the ASATT 1, Exhibit D Section VI(e), the gas:
24 "At each Delivery Point the carbon dioxide content of the Gas shall not
25 exceed two (2%) mole percent". No where in the ASATT does it specify
26 that the production would be treated to 0.75%. What Mr. Lyle fails to
27 state is that the gas may have, at times, been physically treated to
28 0.75% but MichCon blended other high CO2 gas with the Dominion
29 gas, thereby treating the Dominion gas to the 2% specification of the
30 ASATT agreement.

1 Q. Do you agree with Mr. Lyle that MichCon can impose a "different
2 standard" on Dominion for treating than other shippers?

3 A. No MichCon does not have the unilateral right to impose a "different
4 standard" (Mr. Lyle's testimony at Page 9 line 4), upon Dominion than
5 that applied to other transporters on the AEP. MichCon has claimed
6 that it has the right to impose a different standard. ~~However, I do not~~
7 ~~believe that such discrimination is contemplated or permitted by Act 9~~
8 ~~or the Commission's orders relative to the AEP. MichCon has also~~
9 ~~alleged that it is requiring the 0.75% standard for all ASAT~~
10 ~~agreements, which is not the case. Paxton and Chevron both have a~~
11 ~~2% standard in their ASAT agreements and these agreements were~~
12 ~~amended by MichCon after December 1, 2005 in order to add~~
13 ~~additional receipt point(s), without changing the 2% standard. Thus, it~~
14 ~~appears that as recently as January 2006, MichCon was willing to allow~~
15 ~~other shippers to maintain their more lenient specification, while~~
16 ~~demanding that Dominion comply with a much more restrictive one.~~

17 Q. Do you have any comment on MichCon's position relative to the
18 dedication under ASATT 1?

19 A. Yes, contrary to discovery responses which MichCon submitted in this
20 case, MichCon has in practice released other gas, specifically the
21 Hillman 7, on the AEP from dedication in the past. It has also, in
22 instances where it desired to have the terms of the dedication letter
23 agreement extend past the term of an ASATT, specifically amended
24 the terms of the ASATT agreement to ensure the dedication letter
25 agreement survived termination of the ASATT agreement (Shell ASATT
26 5 dated September 12, 1994, Page 21, Section 19.7). Finally, to the
27 extent that the dedication is for treating as well as transportation, I
28 would point out that MichCon sold its interest in the treating facilities
29 at South Chester after it received the dedication for treating, just as
30 Wolverine sold its reserves to Dominion after Wolverine made the

- 1 dedication for treating. Accordingly, if in fact, the terms of the
2 dedication agreement extend past the term of the Dominion ASATT 1
3 agreement, such a dedication would be specific to the South Chester
4 Plant and would inure to the benefit of the current plant owner, CMS.
- 5 Q. Does this conclude your rebuttal testimony?
- 6 A. Yes.

1 JUDGE EYSTER: Now, we've got exhibits.

2 MR. OLIVA: Your Honor, if I may, on the exhibits what
3 we discovered was that there was a mislabeling of the exhibits
4 relating to the rebuttal testimony. I thought I had copies for
5 everyone here. Ms. Stern is bringing down copies.

6 The documents that were filed, Rebuttal Exhibit FMM-2
7 is properly labeled. We had mislabeled the documents that was
8 intended to be marked as Exhibit FMM-4, and as Exhibit FMM-3,
9 and Proposed Rebuttal Exhibit FMM-3 should have been marked as
10 FMM-3, which was one of Mr. Lyle's discovery responses we didn't
11 file. So when I asked Mr. Murray to correct it on the stand,
12 and I thought it was clear, that the fact that that document is
13 what he intended to refer to in his direct testimony as FMM-3
14 and FMM-4 respectfully.

15 JUDGE EYSTER: The first exhibits we had were FMM
16 starting with 7, starting with 5, is that correct? Five through
17 seven?

18 MR. OLIVA: Five through seven.

19 JUDGE EYSTER: Any objection?

20 MR. AARON: Yes. I want to have a chance to cross
21 examine the witness before I --

22 JUDGE EYSTER: These are the ones, five through seven,
23 that were admitted with his direct. You wanted to cross prior
24 to?

25 MR. AARON: Before I take a position, otherwise I'm

1 going to have an objection because typically the exhibits are
2 admitted after cross is completed.

3 JUDGE EYSTER: I'll wait until after you complete the
4 cross. What's your objection.

5 MR. AARON: Objection to the exhibit. At this point,
6 your Honor, I want to ask the witness questions to demonstrate
7 that the information contained is perhaps irrelevant. The fact
8 of the matter is, your Honor, I'm still confused as to what
9 exhibits are being offered through which witness or not. We
10 have exhibits that are marked FMM-1 and FFM-1 Rebuttal, and you
11 know, just in a normal order proceeding the exhibits are
12 numbered sequentially, so that a rebuttal exhibit would be the
13 next subsequent number. So, when I ask the witness what FMM-1
14 is, I'm not sure which one we are talking about.

15 MR. OLIVA: In this case, your Honor, there is not an
16 overlapping number because Mr. Murray was not offering documents
17 that were originally marked as Exhibit FMM-1, 2, 3 and 4, and
18 Rebuttal Exhibits are 2, 3, and 4. So, there's no overlapping
19 of numbers.

20 MR. AARON: So, there's no Exhibit 1?

21 MR. OLIVA: No Exhibit FFM-1.

22 JUDGE EYSTER: All right, I'm going to allow Mr. Aaron
23 to question the witness on the exhibits prior to ruling on the
24 admissibility. So where are we on motions for exhibits? We
25 need to clean up the numbers. I'm not sure what you want to do

1 with the exhibits that have not been presented?

2 MR. OLIVA: I'm having extra copies made right now.
3 Can we just take a break?

4 JUDGE EYSTER: Yes. Off the record.

5 JUDGE EYSTER: Back on the record. Mr. Oliva, I think
6 it's back to you. We've admitted the rebuttal testimony
7 already. Mr. Aaron would like to cross examine on those prior
8 to stating his objection I'm going to allow him to do so.

9 MR. OLIVA: So I tender Mr. Murray for cross
10 examination.

11 JUDGE EYSTER: Thank you. Mr. Aaron?

12 MR. AARON: Thank you, your Honor.

13 CROSS EXAMINATION

14 BY MR. AARON

15 Q. Mr. Murray, on whose behalf are you testifying in
16 this case?

17 A. Dominion's.

18 Q. Are you being compensated for your time in this case?

19 A. No, I'm not.

20 Q. You're doing this for free?

21 A. Yes, I am. It's part of our customer service.

22 Q. Our customer service, who is our?

23 A. CMS.

24 Q. Is CMS paying your salary today?

25 A. Yes, they are.

1 Q. So, at the extent you put time in this case, you are at
2 least being paid by CMS?

3 A. Yes, I am.

4 Q. Is CMS paying any of Dominion's legal costs?

5 A. No, they are not.

6 Q. Now with respect to your compensation, are you paid a
7 salary and a bonus?

8 A. Yes, I am.

9 Q. Is your bonus based on performance standards?

10 A. Yes, it is.

11 Q. What are the performance standards?

12 A. Those are on file with the FERC, CMS Energy Corporation
13 performance based upon cash flow and energy per share.

14 Q. So the performance standards are what?

15 A. Cash flow for CMS Energy Corporation and energy per share
16 for CMS Energy Corporation.

17 Q. And cash flow, that's tied to revenue, correct?

18 A. I would assume so, yes.

19 Q. Is there any reason why not CMS -- is there any reason
20 why you could think of that CMS Antrim would not want to
21 make a profit on CO₂ profit?

22 A. There's no reason I could think of.

23 Q. And, you're increasing revenues for CMS when you enter into
24 treating agreements with shippers like Dominion, aren't
25 you?

1 A. In this case, yes we were.

2 Q. Now, CMS doesn't own or operate the AEP does it?

3 A. No, it does not.

4 Q. Mr. Murray, there appears to be a large blow up of what is
5 I believe Exhibit FMM-5, here on the easel, is that
6 correct?

7 A. That's correct.

8 Q. Is that an exact copy of what's been prefiled as Exhibit
9 FMM-5?

10 A. It appears to be.

11 Q. Does CMS or CMS Antrim produce the TIPS report?

12 A. No, it does not.

13 JUDGE EYSTER: TIPS stands for what?

14 THE WITNESS: The Intervention Pipeline System, I
15 believe it's a MichCon system. That's used for allocation of
16 gas.

17 BY MR. AARON CONTINUING

18 Q. And this shows a dotted line going into a box called
19 Shell Plant at arrows going from right to left generally.
20 What's that dotted line depict?

21 A. That reflects the Wet Headers that was owned an MichCon
22 affiliate.

23 Q. That's not part of the AEP, is it?

24 A. No, it is not.

25 Q. Then there's a line depicted from the Shell Plant going

1 down toward the bottom of the page to Kalkaska that enters
2 to the area, what does that depict?

3 A. The depicts the Wet Header being extended to the MichCon
4 system.

5 Q. And, again that's not part of the AEP is it?

6 A. No, it's not.

7 Q. The dotted line below Kalkaska, that's an arrow going
8 into Kalkaska then it goes diagonally from the lower right
9 hand corner, then parallel to the bottom of the page, what
10 does that dotted line represent?

11 A. That represents the Saginaw Bay Pipeline, which was owned
12 and operated by a MichCon affiliate.

13 Q. And again, that's not part of the AEP, is it?

14 A. No, it is not.

15 Q. The line that's a solid line on the right hand side of the
16 page going up from the Saginaw Bay Pipeline to CMS, what
17 does that depict?

18 A. That's the Lovells Lateral owned by an affiliate of MichCon
19 and feeds gas through the downtown market area through
20 Saginaw Bay.

21 Q. Is that part of the AEP?

22 A. No, it is not.

23 JUDGE EYSTER: Which portion of the diagram is that?

24 MR. AARON: It would be the solid line on the lower
25 right hand corner.

1 JUDGE EYSTER: I was asking the witness.

2 MR. AARON: I'm sorry.

3 THE WITNESS: It's the line which runs from the label
4 SP top to bottom on the right hand side of the page.

5 JUDGE EYSTER: And that again was?

6 THE WITNESS: The pipeline owned and operated by a
7 MichCon affiliate that feeds gas into Kalkaska.

8 JUDGE EYSTER: I'm not sure what you're saying. Is
9 MichCon an affiliate of the company that owns it, or is it a
10 MichCon affiliate?

11 THE WITNESS: It is an affiliate of MichCon.

12 JUDGE EYSTER: In your testimony when you make that
13 reference I think you make that reference in other places
14 without identifying a name of the company, you're indicating a
15 company affiliated with MichCon?

16 THE WITNESS: Yes.

17 JUDGE EYSTER: Okay, thanks. Mr. Aaron?

18 BY MR. AARON CONTINUING

19 Q. There's a two letter acronym appearing with an arrow
20 pointing towards CMS box SP, what does that stand for?

21 A. That stands for Spartan Pipeline.

22 Q. And again, that's not part of the AEP is it?

23 A. No, it's not.

24 Q. Who owns the Spartan Pipeline?

25 A. CMS Ground lobs.

- 1 Q. With respect to the two letters SC, with an arrow pointing
2 into the CMS box, what does that stand for?
- 3 A. That stands for South Chester Pipeline System.
- 4 Q. Who owns the South Chester?
- 5 A. CMS.
- 6 Q. And, that's not part of the AEP, is it?
- 7 A. No, it's not.
- 8 Q. Also, with the arrow pointing into the CMS box there's an
9 LB, what's that stand for?
- 10 A. That stands for Little Bear Pipeline System.
- 11 Q. And who owns the Little Bear Pipeline?
- 12 A. CMS Ground Locks.
- 13 Q. That's not part of the AEP, is it?
- 14 A. No, it is not.
- 15 Q. What does the box TL stand for?
- 16 A. The Turtle Lake Treating Facility.
- 17 Q. Who owns Turtle Lake?
- 18 A. An affiliate of MichCon.
- 19 Q. How about W, the box W, what does that stand for?
- 20 A. That stands for Wilderness Chester Plant.
- 21 Q. Do you know who owns Wilderness Plant?
- 22 A. I believe it's Wilderness Chester, Inc. Partnership.
- 23 Q. Finally, for the box V, what does that stand for?
- 24 A. That stands for the Vienna CO2 Treating Plant.
- 25 Q. Who owns that?

1 A. An affiliate of MichCon.

2 Q. Now, the relative locations of the various boxes -- let
3 me ask you this way, if I were to go to a map of Michigan
4 and look at the relative locations of these treating
5 facilities, the Wilderness Chester Plant, Turtle Plant and
6 others would they be in the same central physical location,
7 so that if I looked to the northeast I would say the
8 Wilderness Chester Facility that's northeast of CMS?

9 A. Physically the Wilderness Chester Plant is immediately
10 north of the CMS Treating Plant. It's adjacent, sharing a
11 fence line. Immediately west to the CMS Plant is the
12 Turtle Lake Plant. The Vienna Plant is, I would have to
13 guess about 20 miles away.

14 JUDGE EYSTER: The arrows reflect the flow of gas?

15 THE WITNESS: Yes they do, your Honor.

16 JUDGE EYSTER: So, the Wilderness Plant flows into the
17 Turtle Lake and CMS?

18 THE WITNESS: Yes, your Honor.

19 JUDGE EYSTER: Okay, Mr. Aaron?

20 BY MR. AARON CONTINUING

21 Q. Is the Shell Plant operational?

22 A. Yes, it is currently operated by Merit.

23 Q. I want to turn to Exhibit FMM-7.

24 JUDGE EYSTER: That's Proposed Exhibit.

25 Q. Can you tell me what this exhibit is?

1 A. This exhibit is a report that is file by MichCon with the
2 MPSC, sent to the MPSC Staff. It is supposed to represent
3 the weekly CO2 contents of gas going into MichCon
4 distribution system from Kalkaska.

5 Q. Did MichCon send this report to you?

6 A. Yes, they did.

7 Q. Did they do this on a regular course of business?

8 A. Yes, they did.

9 Q. Why is, if you know, John King's name on this fax cover if
10 it was sent to you?

11 A. It was sent to John King via e-mail, and I was copied on
12 the e-mail.

13 JUDGE EYSTER: This document was produced by MichCon
14 Gathering?

15 THE WITNESS: Yes, it was. This document your Honor,
16 is the Kalkaska CO2 percentage reflects the Saginaw Bay
17 Pipeline.

18 JUDGE EYSTER: I just wanted one question, you
19 answered it. Mr. Aaron just a moment as we work through your
20 direct, if you've completed your cross on a particular exhibit
21 it would be helpful to me if I could make a ruling on that
22 exhibit.

23 MR. AARON: Sure. I've completed my cross on Exhibit
24 FMM-5.

25 JUDGE EYSTER: Did you have any objections to that

1 being made an exhibit?

2 MR. AARON: Your Honor my objection is that that
3 exhibit includes information that goes beyond simply the AEP and
4 it's operations. It includes a lot of irrelevant evidence that
5 isn't germane to whether Dominion is being discriminated
6 against. So, because it's so really broad, I object to it being
7 entered into evidence.

8 JUDGE EYSTER: Mr. Oliva?

9 MR. OLIVA: I think your Honor has already ruled on
10 this objection with respect to the substantive party testimony
11 which relates to it. I'll stand on that.

12 JUDGE EYSTER: Mr. Odunlami, did you have any comments
13 to make?

14 MR. ODUNLAMI: Your Honor, I think this exhibit is
15 relevant to this case because I know we are not at MichCon's
16 witnesses at this time, but they talked about how they arrived
17 at the ultimate carbon dioxide content of gas that actually gets
18 to the market and that leaves Kalkaska. So this exhibit is
19 definitely relevant to answer how they do that.

20 JUDGE EYSTER: I agree. The objection is overruled
21 and the exhibit is admitted into evidence. Let's make sure we
22 get the exhibits right. That's FMM-5. Mr. Aaron?

23 MR. AARON: Your Honor, I have no objection to FFM-7.

24 JUDGE EYSTER: FFM-7 is admitted into evidence. Mr.
25 Odunlami, did you have any objections?

1 MR. ODUNLAMI: No, your Honor.

2 JUDGE EYSTER: Submitted into evidence.

3 MR. AARON: Your Honor, I also have no objection with
4 respect to FFM-6.

5 JUDGE EYSTER: Mr. Odunlami?

6 MR. ODUNLAMI: No objection, your Honor.

7 JUDGE EYSTER: Admitted into evidence.

8 BY MR. AARON CONTINUING

9 Q. Mr. Murray, on page 5 of your rebuttal testimony?

10 A. Yes, sir.

11 Q. You indicated that MichCon released from dedication gas, do
12 you see that generally?

13 A. Yes, I do.

14 JUDGE EYSTER: What lines?

15 MR. AARON: Generally, 23-28.

16 JUDGE EYSTER: Okay. Thank you.

17 Q. Mr. Murray, have you ever seen a document that operated to
18 release this gas as you describe it?

19 A. Yes, I have.

20 Q. What was it called?

21 A. It was called the Settlement Agreement.

22 Q. The Settlement Agreement?

23 A. Yes.

24 Q. And what does the Settlement Agreement do, in addition to
25 releasing the gas?

1 A. It settled the sales of a numbers of pipelines and CMS
2 treating plants to MichCon.

3 Q. Who was selling the plants?

4 A. I believe it was Wolverine and Terra.

5 Q. Terra was an affiliate of CMS?

6 A. Yes, it was.

7 Q. Other than that Settlement Agreement, did you see any
8 document that would release the dedication that would be
9 recorded in the Register of Deed's Office?

10 A. No, I have not.

11 Q. How did you happen to see this Settlement Agreement?

12 A. CMS had to sign a release of the gas in question from the
13 Spartan Pipeline. Gas was dedicated for transportation
14 on the CMS Spartan Pipeline two treating facilities was
15 treated by CMS on behalf of MichCon and transported across
16 the AEP.

17 JUDGE EYSTER: Excuse me, just a moment. I just want
18 to make sure I understand it. Spartan, you're talking about
19 what's listed SP?

20 THE WITNESS: Yes?

21 JUDGE EYSTER: It was gas that was dedicated to
22 transportation on the Spartan?

23 THE WITNESS: There was a dedication for
24 transportation on the Spartan, there was also a transportation
25 and treating contract, an ASATT contract with MichCon for

1 treatment at CMS facilities and transportation on the AEP.

2 JUDGE EYSTER: Okay, is that from a different
3 structure, is that Antrim?

4 THE WITNESS: That was Antrim formation gas.

5 JUDGE EYSTER: Where is that pipeline actually
6 running, locations, cities?

7 MR. AARON: Your Honor, I'm having a hard time
8 listening with the air-conditioning.

9 JUDGE EYSTER: I was asking him where the Spartan
10 Pipeline, what cities does that run between roughly?

11 THE WITNESS: It runs from the Alpena County Line to,
12 there's really no cities out there.

13 JUDGE EYSTER: Is that where the wells are?

14 THE WITNESS: Yes, and it extends 44 miles to the
15 west, to the CMS plants.

16 JUDGE EYSTER: And those CMS plants are located?

17 THE WITNESS: In Otsego County, just south of Gaylord
18 CMS.

19 JUDGE EYSTER: What's the Hillman 7?

20 THE WITNESS: Those are seven individual production
21 facilities that had been dedicated to the AEP, and in December
22 of 1997 they were released from dedication to the AEP so they
23 could be transported and treated on the Thunder Bay Pipeline
24 system and the CO₂ plant.

25 JUDGE EYSTER: Okay, so those would run physically --

1 what changed?

2 THE WITNESS: Physically what changed was instead of
3 flowing right to left to Kalkaska that gas is now flowing from
4 left to right on the Thunder Bay system, which is not depicted
5 on this flow diagram.

6 JUDGE EYSTER: So, that is gas that came into the CMS
7 plant?

8 THE WITNESS: Yes.

9 JUDGE EYSTER: On what line, the Spartan Pipeline?

10 THE WITNESS: On the Spartan Pipeline.

11 JUDGE EYSTER: Now instead it heads out and flows
12 somewhere else. Mr. Aaron?

13 BY MR. AARON CONTINUING

14 Q. In other words, following up on this line of questioning.

15 The gas that we're talking about from the Hillman 7 was
16 rededicated to the Thunder Bay Pipeline, is that correct?

17 A. That is correct.

18 Q. The Thunder Bay Pipeline is not depicted on this map, and
19 is not part of the AEP, is it?

20 A. No, it is not.

21 JUDGE EYSTER: And, it's not connected to it? It's
22 separate?

23 THE WITNESS: It's a separate pipeline. It still
24 feeds Kalkaska via Saginaw Bay Pipeline.

25 JUDGE EYSTER: Okay. Does anything flow into the

1 Spartan and CMS Plant as depicted on the chart?

2 THE WITNESS: Yes, approximately 85 million per
3 day of gas flows into our plant off the Spartan Pipeline.

4 JUDGE EYSTER: At some point in that line there's a
5 valve that flows and the gas flows there directly?

6 THE WITNESS: Yes.

7 JUDGE EYSTER: And that ends up flowing onto the
8 Saginaw Bay and coming on to the Kalkaska after being treated?

9 THE WITNESS: After being treated.

10 JUDGE EYSTER: On Thunder Bay?

11 THE WITNESS: On Thunder Bay.

12 BY MR. AARON CONTINUING:

13 Q. Mr. Murray, on page 8 of your rebuttal you used the phrase,
14 has in practice, with respect to releasing gas?

15 A. Which line are you referring to?

16 Q. Line 20.

17 A. That is true.

18 Q. And you specifically cite the Hillman example, correct?

19 A. Yes, I do.

20 Q. And you have no other examples?

21 A. No, I do not.

22 Q. So the sum total of in practice that you offer here to your
23 knowledge, is one example of what you claim to be a release
24 of gas, correct?

25 A. That is correct.

1 JUDGE EYSTER: Let me just make sure I understand,
2 you're saying that gas has been dedicated to MichCon for
3 transportation and treatment on the AEP?

4 THE WITNESS: That's correct.

5 JUDGE EYSTER: And it was rededicated to MichCon for
6 transportation and treatment on the Thunder Bay?

7 THE WITNESS: That is correct.

8 MR. AARON: In following up on that Mr. Murray, that
9 was all part of a settlement agreement of the parties?

10 THE WITNESS: Yes, it was.

11 JUDGE EYSTER: Specifically, what is the Hillman 7?

12 THE WITNESS: They were seven production points that
13 feed into the Hillman Pipeline system.

14 JUDGE EYSTER: Production points being?

15 THE WITNESS: Where the gas is gathered from the
16 individual well heads and dehydrated so that it can be
17 transported to a treating facility for CO2 removal.

18 JUDGE EYSTER: Okay. Mr. Aaron?

19 BY MR. AARON CONTINUING:

20 Q. Mr. Murray, I would like you to turn to Rebuttal Exhibit
21 FMM-2. Did you prepare this exhibit?

22 A. It was prepared under my direction.

23 Q. Why specifically prepared the exhibit?

24 A. Joseph Dewitt.

25 Q. And Joseph Dewitt reports to you?

1 A. Yes, he does.

2 Q. This appears to be information concerning the Merit Outlet
3 FOM Meter, is that correct?

4 A. That is correct.

5 Q. The Merit Outlet FOM Meter is depicted on your FMM-5 is
6 the Shell Plant?

7 A. Yes, it is.

8 Q. And what was your source for the information that's
9 depicted on this document?

10 A. MichCon TIPS Report.

11 Q. I would like to turn to Rebuttal FMM-4. This concerns
12 specific information concerning the Kalkaska to MichCon
13 FOM?

14 A. That's correct.

15 Q. Physically, where is the FOM meter located?

16 A. Physically on the AEP feeding into the box going into
17 Kalkaska.

18 JUDGE EYSTER: What's FOM stand for?

19 THE WITNESS: It's a MichCon acronym. I'm not sure
20 what it stands for.

21 JUDGE EYSTER: Okay.

22 BY MR. AARON CONTINUING

23 Q. Is it your source of this information, that MichCon TIPS
24 Report?

25 A. Yes, it was.

1 Q. Mr. Murray, I want to turn back to page 5 where you
2 indicate that, you're talking about the AEP not exceeding
3 2%, line 21?

4 A. Of the rebuttal?

5 Q. Yes, of the rebuttal testimony.

6 A. Okay.

7 Q. If the AEP has gas that exceeds on average 2%, do you know
8 who has to report it?

9 A. That would be MichCon.

10 Q. And CMS wouldn't have to do that, right?

11 A. That's correct.

12 Q. And, if the gas on average exceeds 2%, CMS would be
13 responsible for the consequences, is that right?

14 A. No, that is not correct.

15 Q. Who would be responsible for the consequences in your
16 opinion?

17 A. That would be MichCon.

18 MR. AARON: That completes my cross examination. I
19 don't have any objection to the Exhibits FMM-2, 3 and 4.

20 JUDGE EYSTER: That's Rebuttal Exhibits FMM-2, 3 and
21 4?

22 MR. AARON: Correct.

23 JUDGE EYSTER: Is that what you're referring to?

24 MR. AARON: The Rebuttal Exhibits 2, 3 and 4, I don't
25 have any objection.

1 JUDGE EYSTER: Would it be better if we renamed those
2 exhibits?

3 MR. OLIVA: It might be. Would it be better to have
4 us relabel the exhibits as DOM-11, 12, 13, 14, 15, 16 whatever
5 the next sequence would be?

6 MR. AARON: That would be consistent with what the
7 parties are doing your Honor.

8 JUDGE EYSTER: Your exhibits are all DOM's, right?

9 MR. OLIVA: Yes.

10 JUDGE EYSTER: What's the FMM here, what's that for?

11 MR. OLIVA: That's Mr. Murray's initials.

12 JUDGE EYSTER: Yes. So, we were at DOM what?

13 MR. OLIVA: DOM-11 was the last one. What we will do
14 is relabel FMM-5 as DOM-12. Relabel FMM-6 ad DOM-13. Relabel
15 FMM-7 as DOM-14.

16 JUDGE EYSTER: Mr. Aaron, are you listening to this?
17 We're relabeling exhibits.

18 MR. AARON: And, I'm following.

19 JUDGE EYSTER: I just wanted to make sure you were.

20 MR. OLIVA: We will relabel Rebuttal FMM-2 as DOM-15,
21 FMM-3 as DOM-16, and rename Rebuttal FMM-4 as DOM-17.

22 JUDGE EYSTER: Does that work for everybody?

23 MR. AARON: Yes, your Honor.

24 JUDGE EYSTER: Okay, DOM -- what was the last three
25 again?

1 MR. OLIVA: 15, 16, and 17.

2 JUDGE EYSTER: Mr. Odunlami, did you have any
3 objection to those being relabeled?

4 MR. ODUNLAMI: No, your Honor.

5 JUDGE EYSTER: I think that's all of them isn't it?

6 MR. OLIVA: Yes, that's all of them, your Honor.

7 JUDGE EYSTER: Mr. Aaron, you have completed your
8 cross examination?

9 MR. AARON: Yes, your Honor.

10 JUDGE EYSTER: Mr. Odunlami, before I move to you I
11 had a couple of questions I wanted to ask. I guess I'm not
12 quite sure if you could just go over which was Exhibit 15. I
13 think it is what has been marked as Rebuttal Exhibit FMM-2? I
14 just want to make sure if you could just explain a little bit on
15 that chart, so it explains what all off your numbers mean.
16 Where is the Merit Outlet?

17 THE WITNESS: Merit is the Shell Plant.

18 JUDGE EYSTER: That's the Shell Plant?

19 THE WITNESS: Correct.

20 JUDGE EYSTER: That's the Wet Header?

21 THE WITNESS: That is on the Wet Header.

22 JUDGE EYSTER: Taking the gas from where?

23 THE WITNESS: From the Antrim and the Niagaran.

24 JUDGE EYSTER: So, it mixes the two gases prior to
25 treating?

1 THE WITNESS: Yes.

2 JUDGE EYSTER: And the Niagaran has very little CO₂,
3 is that correct?

4 THE WITNESS: That's correct.

5 JUDGE EYSTER: And why don't you just go ahead and
6 describe quickly, if you could what the number represents?

7 THE WITNESS: The numbers represent the average
8 production, average daily production for each month flowing on
9 the Wet Header and the combined CO₂ contents of that gas.

10 JUDGE EYSTER: As it comes out the plant?

11 THE WITNESS: As it comes out of the plant.

12 JUDGE EYSTER: H and R stands for what?

13 THE WITNESS: 15.025 is the pressure base at which the
14 gas is measured. 14.65 is the contractual standard.

15 JUDGE EYSTER: So what is the difference then in
16 numbers between the two?

17 THE WITNESS: Approximately 2%.

18 JUDGE EYSTER: What does that represent? You've got
19 two through three and you've got 12 months of a year and 12
20 months a year? That's with different pressures?

21 THE WITNESS: Yes.

22 JUDGE EYSTER: The 15.205 is what, the gas is measured
23 to 14.65, so that is the contractual standard of gas? So,
24 what's the difference -- why is that different? I'm just trying
25 to understand what that statement means. I'm kind of confused

1 as to why you get different amounts, when you say contract. The
2 bottom one is based on the standard?

3 THE WITNESS: Yes.

4 JUDGE EYSTER: But the gas is supposed to be at that
5 pressure, correct?

6 THE WITNESS: Yes.

7 JUDGE EYSTER: And the AEP system actual measurement
8 is the pressure that it's measured at?

9 THE WITNESS: It's just a simple conversion where all
10 you're doing is multiplying the numbers.

11 JUDGE EYSTER: So all three were measured in volume?

12 THE WITNESS: Correct.

13 JUDGE EYSTER: So all you've done is converted it?

14 THE WITNESS: That's correct.

15 JUDGE EYSTER: Okay, so the CO₂ contents stays the
16 same?

17 THE WITNESS: Correct.

18 JUDGE EYSTER: And Exhibit DOM-17, could you tell me
19 what that represents?

20 THE WITNESS: DOM-17 represents the gas flowing on the
21 AEP into Kalkaska.

22 JUDGE EYSTER: Into Kalkaska?

23 THE WITNESS: That's correct.

24 JUDGE EYSTER: No treating takes place at Kalkaska?

25 THE WITNESS: No, your Honor.

1 JUDGE EYSTER: Gas is blended there?

2 THE WITNESS: Yes.

3 JUDGE EYSTER: Blending is actually considered
4 treatment by MichCon, is that your understanding?

5 THE WITNESS: That's correct. There's no physical
6 treating of the gas.

7 JUDGE EYSTER: So at Kalkaska you get a blending of
8 what's on the AEP and Saginaw Bay and coming into off the Wet
9 Header?

10 THE WITNESS: That's correct, your Honor.

11 JUDGE EYSTER: Okay, and that represents again the
12 same contractual pressures and the pressure measured in the
13 quantities and CO₂ contents of gas on the AEP as it comes into
14 Kalkaska?

15 THE WITNESS: That's correct, your Honor.

16 JUDGE EYSTER: Okay, what's GC?

17 THE WITNESS: That's Goose Creek, the delivery point
18 into the Consumers and Great Lakes System, the delivery point on
19 the AEP.

20 JUDGE EYSTER: Are there four delivery points?

21 THE WITNESS: Yes, there's one with ANR, which was not
22 depicted here. There's delivery points at Goose Creek, one to
23 Consumers and Great Lakes, the other one depicted here is to
24 Consumers, the one delivering to Goose Creek. The fourth one is
25 the MichCon at Kalkaska system.

1 JUDGE EYSTER: The first one that you mentioned, where
2 is that located?

3 THE WITNESS: The ANR pipeline it's immediately down
4 the street from the CMS treatment facilities.

5 JUDGE EYSTER: So, the gas that flows to that is not
6 blended with anything else?

7 THE WITNESS: No, it's not.

8 JUDGE EYSTER: So, it's coming right off of the
9 pipeline, you have depicted there at 0.95%. Mr. Odunlami?

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

11 CROSS EXAMINATION

12 BY MR. ODUNLAMI

13 Q. Good morning, Mr. Murray?

14 A. Good morning sir.

15 Q. I'm going to stand up a little bit. This Kalkaska point is
16 where the Commission said you have to maintain 2%, right?

17 MR. AARON: Objection, we don't have any contents on
18 what the Commission said or when. If you're talking about what
19 the Commission said, we can cite the order. This witness isn't
20 going to tell me what the Commission said.

21 BY MR. ODUNLAMI CONTINUING:

22 Q. Where is MichCon supposed to maintain a 2% carbon dioxide,
23 is it Kalkaska?

24 A. Yes, it is specified in the order at Kalkaska.

25 Q. Again, I think Mr. Aaron and the ALJ asked most of our

1 questions. I just want to clarify some of these questions
2 a little bit. Mr. Murray, you said the Shell Plant is
3 controlled by MichCon?

4 A. The Shell Plant is controlled by Merit, MichCon owns the
5 pipeline up the street and down the street.

6 Q. So the gas coming out of the Shell Plant is treated to what
7 level of carbon dioxide?

8 A. It's not treated for carbon dioxide.

9 Q. So you are saying when the gas issued state at 52.39 MMcf/d
10 flows to their plant that's not treated, it comes out at
11 2.74%?

12 A. That's correct.

13 Q. Also, we have the CMS box, you have a gas coming out of
14 this, this is the number of gas coming out of that plant?

15 A. Yes, that is the average daily outside of here lark.

16 Q. And it comes out at what?

17 A. At 0.95%.

18 JUDGE EYSTER: Just a minute Mr. Odunlami. At the
19 Shell Plant you've got two arrows pointing into that coming
20 up. What do the two arrows represent?

21 THE WITNESS: That's gas coming from the west side of
22 Kalkaska and the east side of Kalkaska.

23 JUDGE EYSTER: And what form is coming in from the
24 west?

25 THE WITNESS: It's both Niagara and Antrim west and

1 east of Kalkaska.

2 JUDGE EYSTER: Okay, because I've got in our diagram
3 you show 10.75 flows in from the east, then you indicate when it
4 comes off of the Shell Plant it's about 2.74%, but there's no
5 CO2 extract taking place.

6 THE WITNESS: No, what's happening is they reduce the
7 aggregate stream to 2.74.

8 JUDGE EYSTER: Okay. Mr. Odunlami?

9 MR. ODUNLAMI: Thank you, your Honor.

10 BY MR. ODUNLAMI CONTINUING

11 Q. So again, the CMS box shows a carbon dioxide treating
12 facility?

13 A. That's correct.

14 Q. Also the Turtle Lake box shows a carbon dioxide treating
15 facility, is that correct?

16 A. Yes.

17 Q. The Wilderness Chester Plant is also a carbon dioxide
18 treating facility?

19 MR. AARON: Excuse me, was that Wilderness?

20 MR. ODUNLAMI: That's the Vienna Treating Plant,
21 that's correct.

22 Q. Do you have the inlet total CMS Plants of carbon dioxide
23 concentration of that gas?

24 A. Typically that will be around 13.8 to 13.9 CO₂.

25 Q. Can you please tell us what happens at that point?

1 A. At that point gas is entered into the AEP. It does not
2 receive physical treatment of gas.

3 JUDGE EYSTER: Just for the record, there is an arrow
4 coming from the top of the page between GC and CMS. Let me just
5 repeat that. Your question is in reference to the arrow between
6 GC and CMS, the arrow which points down?

7 MR. ODUNLAMI: Yes.

8 JUDGE EYSTER: What was the answer to the question?

9 THE WITNESS: The answer is that it is untreated
10 Antrim gas. That gas does not receive physical treatment of gas
11 to remove CO₂.

12 JUDGE EYSTER: That's coming in at 18% almost 19?

13 THE WITNESS: Yes.

14 JUDGE EYSTER: Is that high for Antrim gas? Doesn't
15 it comes straight out the ground or is that about average?

16 THE WITNESS: Average is currently around 14%. The
17 older the ran tail production the higher CO₂ content of it.

18 JUDGE EYSTER: And do you know -- just if you don't
19 know that's fine, what are the concentrations going into the
20 Vienna? What is it Wilderness Chester or Turtle Lake?

21 THE WITNESS: I believe Vienna is around 16% CO₂ into
22 the Wilderness Plant is approximately 22 to 23 CO₂, then they
23 dip down to approximately 7% CO₂.

24 JUDGE EYSTER: Before it goes into Turtle Lake?

25 THE WITNESS: The inlets to Turtle Lake is, a guess on

1 my part --

2 JUDGE EYSTER: You don't need to guess. Do you know
3 what is coming out?

4 THE WITNESS: Coming out it averages to about --

5 JUDGE EYSTER: So, that's what it is when it comes to
6 CMS?

7 THE WITNESS: Yes.

8 JUDGE EYSTER: Mr. Odunlami?

9 BY MR. ODUNLAMI CONTINUING:

10 Q. Mr. Murray, you stated that there's an arrow between GC,
11 Goose Creek and CMS that's gas coming in between the AEP at
12 28.75% carbon dioxide, is that right?

13 A. That's correct.

14 Q. Who owns that gas?

15 A. I believe the majority of it is owned by Muskegon
16 Development.

17 Q. Who contracts for that gas to be injected into the AEP
18 Pipeline?

19 A. There's a contract between Muskegon Development and MichCon
20 for transportation and treating of that gas, I believe.

21 Q. And, you've heard a lot of planning of physical treatment,
22 so that would be considered gas on the AEP pipeline?

23 A. That is correct.

24 Q. And again the carbon dioxide average is 28.75%?

25 A. That's correct.

1 Q. Now, when CMS releases the gas, you've already stated that
2 CMS releases the gas as treated from the CMS Plant at
3 0.95%?

4 A. That's correct.

5 Q. Into the AEP.

6 A. That's correct.

7 Q. That gas mixes with that gas?

8 A. That's correct.

9 Q. Then you have, afterwards a concentration of, I guess
10 1.67%?

11 A. Yes.

12 Q. And, then CMS takes away some gas at Goose Creek?

13 A. At Goose Creek some gas is delivered to Consumers Energy.

14 Q. And then the rest of the gas flows down to Kalkaska, right?

15 A. That is right.

16 Q. And you have another blending?

17 A. There is no other blending on the AEP between Goose Creek
18 and Kalkaska.

19 Q. So the gas coming from the Shell Plant into Kalkaska and
20 the one coming from the AEP goes into, combines over and
21 mixed at Kalkaska?

22 A. That's correct.

23 Q. And then this gas from the AEP and the gas from the Shell
24 Plant comes out somewhere around 2%?

25 A. That's correct.

1 Q. And that's what I stated earlier that the Commission said
2 should be maintained at 2%?

3 A. Yes.

4 Q. Any gas on their pipeline should be maintained at 2%?

5 MR. AARON: Just for a point of clarification, counsel
6 is pointing toward the line between Goose Creek and CMS?

7 JUDGE EYSTER: Yes. Mr. Odunlami when you're asking
8 these questions you are going to have to make it clear for the
9 record, because otherwise I don't know what you're pointing at
10 when I read it.

11 MR. ODUNLAMI: Okay. On the AEP pipeline the
12 Commission does not state that the gas shall be maintained at
13 2%, yes or no?

14 THE WITNESS: No, it doesn't.

15 BY MR. ODUNLAMI CONTINUING:

16 Q. Mr. Murray, where does Dominion's gas come into the system?

17 A. It comes into the Standard Pipeline and the Chester
18 Pipeline which is the lines between the CMS box going up
19 to Turtle Lake and then up on the page to Vienna Plant.

20 JUDGE EYSTER: Okay. So let me just make sure. It's
21 coming into Standard untreated?

22 THE WITNESS: Comes into Standard untreated.

23 JUDGE EYSTER: And also coming into the Vienna Plant
24 and through the Turtle Lake Plant. So it's coming into the
25 system at the Vienna Plant and Turtle Lake?

1 THE WITNESS: That's right.

2 JUDGE EYSTER: And treated again at CMS?

3 THE WITNESS: That's correct.

4 JUDGE EYSTER: I know you said this already, Turtle
5 Lake is owned and operated by whom?

6 THE WITNESS: Owned and operated by an affiliate of
7 MichCon.

8 JUDGE EYSTER: Mr. Odunlami?

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

10 BY MR. ODUNLAMI CONTINUING:

11 Q. Do you have your initial filed testimony Mr. Murray? Do
12 you have that in front of you?

13 JUDGE EYSTER: Which testimony?

14 MR. ODUNLAMI: The prefiled direct testimony.

15 Q. Mr. Murray, could you please describe the kinds of Capacity
16 Agreement that CMS entered into with MichCon for treating
17 of MichCon's gas that's found on DOM-12?

18 MR. OLIVA: I'm going to object on the grounds of
19 relevancy. And, it goes back to Mr. Murray has withdrawn -- the
20 reason Mr. Murray withdrew that portion of his original filed
21 evidence related to the capacity agreement is that clearly as
22 was evident from a part of Mr. Aaron's cross of Mr. Barnhart
23 yesterday. There is some apparent dispute between MichCon and
24 CMS over the Capacity Agreement. That has no relevance to the
25 issues in this case.

1 JUDGE EYSTER: Mr. Odunlami, what was your question
2 again?

3 MR. ODUNLAMI: Your Honor, first of all I believe it
4 is relevant because part of it --

5 JUDGE EYSTER: What is your question first?

6 MR. ODUNLAMI: I said if Mr. Murray could please give
7 us a detailed, or a very simple description concerning the
8 carbon dioxide agreement between MichCon and the gas that flows
9 into the CMS Plant shown on DOM-12, and it was part of the
10 description that Mr. Murray described in his originally prefiled
11 direct testimony.

12 JUDGE EYSTER: And your response to the objection?

13 MR. ODUNLAMI: Your Honor, the objection is irrelevant
14 on the grounds, that first of all the parties have discussed
15 what's called curtailment, that means for one reason or the
16 other the CMS agreement with MichCon has some provisions in
17 there that talks of the treating carbon dioxide, that talks
18 about costs to CMS to refurbish the plant. Those are all
19 relevant information to Staff in this case.

20 MR. AARON: May I reply to that?

21 JUDGE EYSTER: Yes.

22 MR. AARON: Mr. Oliva's objection goes to the
23 relevance of the Capacity Agreement between CMS and MichCon. I
24 asked, without objection, a number of questions of Dominion's
25 witnesses about their understanding of the agreement. I did so

1 because the very basis of their decision to go with CMS for
2 treating was that CMS was going to provide more reliable service
3 as compared to actually MichCon Gathering was going to be
4 providing under the Capacity Agreement.

5 They specifically, in the exhibits, referred to the
6 Capacity Agreement. There's an exhibit confirming a gas
7 treating agreement between Dominion and CMS referring to the
8 Capacity Agreement. This Capacity Agreement is relevant. Mr.
9 Murray and Mr. Oliva want to take out his testimony. The
10 Capacity Agreement and questions about it are relevant in this
11 case.

12 JUDGE EYSTER: The objection is overruled.

13 MR. ODUNLAMI: Thank you, your Honor.

14 BY MR. ODUNLAMI CONTINUING

15 Q. I'm going to repeat the question again. Mr. Murray, could
16 you please give us a very detailed summary of the Capacity
17 Agreement that was entered into between MichCon and CMS
18 Antrim?

19 A. The agreement between MichCon and CMS Antrim calls for
20 treating of gas. The original agreement that was signed
21 called for treating of gas input of 14% CO₂. As part of
22 that MichCon pays to CMS a demand component and a
23 commodities component, which adds up to 11 cents of gas
24 treated up to the contractual quantity. Any volumes in
25 excess of contract demand specified to the original

1 agreement are overrun volumes and they were treated at a
2 rate of 9 cents.

3 Q. Do you know that -- assuming there was a quantity of gas
4 that is coming out of the CMS Plant on the AEP, and you've
5 indicated that on Exhibit DOM-13, 14, is that right?

6 A. That's correct.

7 Q. This would be 2.04 MMcf/d, right?

8 A. That's correct.

9 Q. Do you know the percentage of MichCon gas that's treated in
10 that agreement?

11 A. Off hand?

12 Q. Just a rough estimate. It doesn't have to be accurate.

13 A. I would say approximately 70% of that gas was under a
14 contract with MichCon?

15 Q. Contract with MichCon?

16 A. Yes, this was in November of 2005.

17 Q. And 70% of the gas from the CMS Plant on the AEP was
18 actually contracted for MichCon to get treated at 0.75%?

19 A. That is correct.

20 Q. And that same gas is the gas that is blended, the gas
21 coming from CMS and between Goose Creek point is the same
22 gas that MichCon blends with that treated gas?

23 A. That is correct.

24 Q. So in other words, MichCon is taking advantage of the 0.75%
25 treating that they contracted for to treat?

1 JUDGE EYSTER: MichCon or MichCon Gathering?

2 MR. ODUNLAMI: MichCon Gathering.

3 JUDGE EYSTER: And the prior questions are referring
4 to MichCon Gathering also, and those are the answers you gave?

5 THE WITNESS: The contract between MichCon was
6 originally signed with Michigan Consolidated Gas Company, and
7 Michigan Consolidated Gas Company is still obligated under that
8 contract.

9 JUDGE EYSTER: I just want to make sure. The contract
10 is between CMS and MichCon?

11 THE WITNESS: That's correct.

12 JUDGE EYSTER: And the remainder of these questions we
13 are talking about the blending going on with MichCon Gathering?

14 THE WITNESS: That's correct.

15 JUDGE EYSTER: I tell you what, I'm going to get so
16 confused when I try to work through this and everybody is just
17 referring to MichCon.

18 Q. Okay. MichCon Gathering operates the AEP?

19 A. That's correct.

20 Q. So the gas that's coming into the right arm box, the
21 Goose Creek box is injected into the AEP by whom?

22 A. By the producers.

23 Q. And they have a contract with whom?

24 A. With MichCon Gathering.

25 Q. So, it's the same entity Who contracted with CMS to

1 treat the gas that CMS has that is delivered to CMS by

2 MichCon or MichCon Gathering? Who contracted with CMS?

3 A. The original contract was with Michigan Consolidated Gas
4 Company, MichCon assigned that to MichCon Gathering, but
5 is still obligated under a contract with CMS.

6 Q. Thank you. So, you've stated that MichCon Gathering
7 contracted with CMS to treat the gas to 0.75%, which was
8 the gas that is released from the CMS pipeline. The same
9 gas that's been blended with the gas that's coming from --
10 you didn't put an arrow there, the gas that's coming from
11 the arrow between CMS and Goose Creek, right?

12 A. That's correct.

13 Q. Could you please describe the curtailment issues that
14 CMS has experienced in regard to treating all gas that
15 comes into the CMS treating plant?

16 A. During those periods of time CMS may not be able to process
17 all the gas that is delivered during that period where
18 curtailment is and CMS is not able to process all the gas.
19 If additional quantities of gas need to be curtailed, then
20 if necessary CMS prorates the additional required
21 quantities to its firm contracts based upon the lesser of
22 MDQ or flowing volumes.

23 Q. This affects all producers that have contracts with
24 MichCon Gathering for treatment of their gas through the
25 CMS Plant?

1 A. That's correct.

2 Q. It's not going to affect one differently from the other?

3 A. CMS curtails it's contracts, so we contract directly with
4 MichCon.

5 Q. MichCon is giving their curtailments notice as are the
6 people that are contracted directly with CMS.

7 JUDGE EYSTER: MichCon Gathering or MichCon?

8 THE WITNESS: It would be MichCon Gathering receiving
9 the notice.

10 JUDGE EYSTER: Okay, now you've got a contract with
11 Dominion, don't you?

12 THE WITNESS: That is right.

13 BY MR. ODUNLAMI CONTINUING

14 Q. In the contract, I think in your testimony you've stated
15 the contract that CMS has with Dominion presently relieves
16 the curtailment they were experiencing when they were
17 contracted through MichCon Gathering?

18 A. Is that correct.

19 Q. That curtailment has been relieved. Relieved because?

20 A. Relieved because as part of the contract between CMS and
21 Dominion CMS was obligated to refurbish Plant 1 and retain
22 that capacity to avoid curtailments in the future.

23 Q. So in essence, if we assume Dominion can move out of
24 MichCon's contract they would have been able to shift
25 their volume of gas away from MichCon to CMS, is that

1 right?

2 A. That would be correct, yes.

3 Q. And in doing so MichCon --

4 JUDGE EYSTER: MichCon or MichCon Gathering?

5 MR. ODUNLAMI: MichCon Gathering, your Honor.

6 Q. In doing so, as you stated in your testimony CMS now can
7 recoup the costs of refurbishing Plant 1?

8 A. That is correct.

9 Q. What was the cost of refurbishing?

10 A. In excess of \$700,000.

11 JUDGE EYSTER: Plant 1 is within that box labeled CMS?

12 THE WITNESS: Yes, that box labeled CMS has five
13 individual plants in it.

14 BY MR. ODUNLAMI CONTINUING

15 Q. And before CMS and Dominion agreed to a contract, how many
16 plants were you using?

17 A. We had five plants that were available for use. We were
18 using them all at reduced rates. We did not require too
19 much service of Plant 1. We would have processed all of
20 the gas that was delivered to us or as our maintenance
21 Plant 1.

22 Q. So, you are saying you were at five plants, was Plant 1
23 operational?

24 A. Yes, it was operational. It required significant
25 maintenance due to corrosion.

1 Q. So, most of the curtailment before the agreement between
2 CMS and Dominion if Plant 1 was operational you would
3 have been able to relieve these curtailments?

4 A. Prior to the agreement with Dominion, Plant 1 typically
5 could not process more than 15 million cubic feet a day.
6 By refurbishing Plant 1 we included it's capacity to just
7 over 30 million cubic per day.

8 Q. My question is, if Plant 1 was refurbished when CMS had a
9 contract with MichCon Gathering you would have been able
10 to relieve a lot of these curtailments they had?

11 A. Yes, under the MichCon agreement would have been
12 refurbished, but CMS would not have been able to recoup
13 those costs.

14 Q. Why?

15 A. Because there were no provisions to recoup those costs.

16 Q. What do you mean?

17 A. By CMS contracting with Dominion, CMS is receiving 11 cents
18 Mcf of gas under the MichCon gas. Had Dominion been
19 treated under the Gathering contract CMS would have only
20 received 9 cents Mcf.

21 Q. So, under that MichCon contract if CMS had refurbished
22 Plant 1, you are saying CMS would have been making less
23 money, not making any money?

24 A. CMS would have been making less money if the gas was under
25 a MichCon agreement. CMS would not have invested \$700,000

1 to refurbish Plant 1. We would have shut it down.

2 Q. I'm going to rephrase that question. Under the CMS,
3 MichCon Gathering contract if Plant 1 was operational, you
4 would have been making some money?

5 A. That is correct.

6 Q. Even though the money would not have covered the cost of
7 the so-called refurbishing?

8 A. Correct.

9 Q. But, eventually at some point you would have been able
10 to recover the money with them, you just couldn't do it
11 under that contract?

12 A. Correct.

13 Q. And under that contract, CMS would not have expected the
14 money to refurbish that plant? Listen to your answer
15 and I'm going to go back to that question. When you
16 refurbished -- when that plant was refurbished there were
17 no curtailments, right?

18 A. Yes.

19 Q. So when you --

20 JUDGE EYSTER: What's a lot of curtailment?

21 THE WITNESS: That means some of the volume of gas is
22 curtailed to some percentage. That's all it means. The actual
23 figure, I mean it's not really relevant. I'm just trying to say
24 when there's a curtailment the amount of gas that flows on the
25 AEP or that can be treated is reduced.

1 JUDGE EYSTER: When you start throwing in words like
2 there are a lot, I have no idea what that means?

3 BY MR. ODUNLAMI CONTINUING

4 Q. Could you just please tell us, if there was a curtailment
5 give us an average percentage that gets curtailed?

6 MR. OLIVA: I object to the question. The average
7 percentage -- there's no context to the question.

8 JUDGE EYSTER: I'm not sure I understand what that
9 means.

10 MR. ODUNLAMI: Your Honor, you just asked me -- I used
11 the word a lot, and a lot has no significant number. We are
12 talking about numbers here. I am saying Mr. Murray has given us
13 DOM-12, that's got a lot of numbers on it, an average percentage
14 means based on his own experience and his curtailment, personal
15 experience. What is the average percentage of gas that gets
16 curtailed, the average volume through the plant? Some of that
17 gas is curtailed, it cannot be released. That's the question.

18 JUDGE EYSTER: Is that over the time period?

19 MR. ODUNLAMI: Average means over the time period
20 because curtailment is not once a year, is it?

21 THE WITNESS: That's reflected in one of my exhibits,
22 your Honor.

23 JUDGE EYSTER: Which one is that?

24 THE WITNESS: It used to be FMM-6.

25 JUDGE EYSTER: I think that actually became DOM-12.

1 MR. OLIVA: DOM-13 now. It was FMM-6.

2 THE WITNESS: In this case, we had to go for the
3 maintenance of Plant 2, our available capacity at that time --
4 Plant 1 was being refurbished.

5 MR. ODUNLAMI: Your Honor, I move to strike the
6 response because I didn't ask the witness a question.

7 JUDGE EYSTER: Could you explain to me what that means,
8 the available capacity at the time, without Plant 1 in service
9 and without one of the four plants out of service for repair?

10 THE WITNESS: Prior to the events over force that year
11 our plant was processing 240 million per day. When we take
12 Plant 1 out our capacity was 200 million.

13 JUDGE EYSTER: Is that two million or hundred? So,
14 MMcf/d 1 is?

15 THE WITNESS: One thousand.

16 JUDGE EYSTER: A hundred would be C?

17 THE WITNESS: Correct.

18 JUDGE EYSTER: So, you were at 240 million cubic feet
19 per day?

20 THE WITNESS: Correct.

21 JUDGE EYSTER: And you knocked it down to 200?

22 THE WITNESS: That's correct.

23 JUDGE EYSTER: Because Plant 2 went down and we had to
24 reduce the amount of gas coming into our facility.

25 JUDGE EYSTER: So, that was Plant 1 off line, and Plant

1 2 went down, and when you got this Plant 1 rehabbed how much
2 were you going to have in addition?

3 THE WITNESS: Additional 30 million cubic feet instead
4 of the 200 we would have 230 million cubic feet.

5 JUDGE EYSTER: Is Plant 1 running right now?

6 THE WITNESS: Yes, it is.

7 JUDGE EYSTER: So that brought 30 million more on line?

8 THE WITNESS: Thirty million more available capacity.

9 JUDGE EYSTER: And, it was about 15 before?

10 THE WITNESS: Correct.

11 JUDGE EYSTER: So that gives you a significant
12 additional capacity?

13 THE WITNESS: Yes, it does, your Honor.

14 JUDGE EYSTER: All the other plants are running at 15
15 million per day?

16 THE WITNESS: The other plants are running at
17 approximately 65 million per day, yes.

18 JUDGE EYSTER: So, Plant 1 is the baby of the bunch?

19 THE WITNESS: That's correct.

20 JUDGE EYSTER: Mr. Odunlami, continue please.

21 BY MR. ODUNLAMI CONTINUING

22 Q. Mr. Murray, I think the Judge just went with you looking at
23 Exhibit DOM-13 and is it accurate, to the best of your
24 estimate, that when curtailments are caused 20% of the gas
25 is curtailed?

1 A. Without Plant 1 in service just 20% curtailment would be
2 appropriate.

3 Q. My question is, if Plant 1 was refurbished during MichCon
4 Gathering's contract might the contract still exist right
5 now?

6 A. Yes.

7 Q. If Plant 1 was refurbished before CMS had the issue of
8 curtailment would have gone down?

9 A. If Plant 1 was refurbished --

10 Q. Yes, or no?

11 A. If Plant 1 was refurbished, yes.

12 Q. I believe, initially in your prefiled direct testimony you
13 did state the amount of money that you think Dominion and
14 MichCon would be losing because now if Dominion could move
15 their gas away from MichCon and their contract with CMS you
16 did state in your testimony that MichCon would lose around
17 \$300,000 and \$400,000 per year?

18 A. That is correct.

19 MR. OLIVA: I'll just note that my objection is
20 continuing with respect to this line of cross. You don't need
21 to rerule.

22 JUDGE EYSTER: Okay.

23 BY MR. ODUNLAMI CONTINUING

24 Q. In the rough estimate, would that money now be the money
25 that CMS would be making under that CMS Dominion agreement?

1 A. I don't follow the question.

2 Q. I'll repeat the question. The money you stated you did
3 accumulate and stated that based on, if we assume that
4 Dominion can move it's gas away from the MichCon contract
5 and contract with CMS specifically, MichCon would be losing
6 in excess of \$300,000 to \$400,000 per year?

7 JUDGE EYSTER: MichCon Gathering?

8 MR. ODUNLAMI: MichCon Gathering.

9 Q. And the question was to a rough approximation because of
10 the CMS, Dominion contract the \$300,000 per year would now
11 go to CMS roughly?

12 A. That would be correct.

13 Q. Based on the money or fees that CMS generates for carbon
14 dioxide treatment, is their provision for maintenance
15 expenses in those costs?

16 A. Yes, that is.

17 MR. OLIVA: Your Honor, the fee for what? We've been
18 talking about two different agreements.

19 JUDGE EYSTER: Yes, in reference to what?

20 MR. ODUNLAMI: I'm referring to the fees CMS collected
21 for physical treating of gas for carbon dioxide.

22 JUDGE EYSTER: Which party?

23 MR. ODUNLAMI: Everybody.

24 MR. OLIVA: I object to the question. It's compound.
25 There's two separate contracts. He's asking about a specific

1 component.

2 MR. ODUNLAMI: Your Honor, I'm not referring to a
3 contract. I'm referring to the operation of the plant.

4 JUDGE EYSTER: But the amount they received is pursuant
5 to the contract.

6 MR. ODUNLAMI: It doesn't matter which contract, they
7 were receiving money to treat. My question states is there a
8 provision that you were charging 11 cents to treat gas to remove
9 carbon dioxide? Is there a provision in that cost that would be
10 responsible for plant maintenance?

11 JUDGE EYSTER: Which contract are you referring to?

12 MR. ODUNLAMI: It doesn't matter.

13 MR. OLIVA: If he's talking about 11 cents, he's
14 talking about one contract. If he's talking about 9 cents he's
15 talking about another contract.

16 MR. ODUNLAMI: It doesn't matter how much they charged,
17 your Honor, I'm referring to the operation.

18 JUDGE EYSTER: In terms of how many different rates do
19 you have for treating?

20 THE WITNESS: We charge, typically we charge between
21 10 cents and 11 cents. I would say 9 cents.

22 JUDGE EYSTER: Nine cents. Who has contracts at 9
23 cents?

24 THE WITNESS: MichCon is the only one, with MichCon and
25 MichCon Gathering, 9 cents.

1 JUDGE EYSTER: And then there's other contracts at 10
2 or well, anywhere between 9 and 11?

3 THE WITNESS: I have some contracts at 10, some at 10
4 and a half. Like the Dominion contract is at 11 cents.

5 JUDGE EYSTER: How many separate contracts do you have
6 for treatment? How many separate companies?

7 THE WITNESS: If you give me one second I can tell you
8 that. It's on DOM-13, which lists the individual contracts.

9 JUDGE EYSTER: What exhibit was that?

10 THE WITNESS: DOM-13.

11 JUDGE EYSTER: That was?

12 THE WITNESS: That lists the individual contracts that
13 we have with the parties other than MichCon and MichCon
14 Gathering.

15 JUDGE EYSTER: Okay. So, Mr. Odunlami you want to know
16 the acting procedures that they have?

17 MR. ODUNLAMI: Yes.

18 MR. OLIVA: That's irrelevant.

19 JUDGE EYSTER: And you want to know for the various
20 contracts that they have?

21 MR. ODUNLAMI: No, your Honor. Whatever accounts or
22 amounts they charge to treat gas is irrelevant to me. Yes,
23 your Honor they operate, and you can charge any amount of money
24 you want, you can prorate your cost all you want. My question
25 is based on all funds collected. It doesn't matter whom you

1 collect the money from.

2 Is there a provision in the total intake of money that
3 would cover maintenance of the plant. You cannot have a cost
4 base without putting in some of your overhead or everything
5 involved. That's my question. It doesn't matter who gives you
6 the contract..

7 JUDGE EYSTER: So you want to know whether CMS has a
8 maintenance budget?

9 MR. ODUNLAMI: Yes, within the cost that's been imposed
10 on people for treatment of their gas? That's my question.

11 MR. OLIVA: I'll object on the grounds of relevance.
12 What possible relevance are the internal contracts producers
13 have to MichCon in this case.

14 JUDGE EYSTER: Mr. Odunlami, relevance?

15 MR. ODUNLAMI: Relevance is because CMS -- the
16 relevancy goes to the curtailment issue. Mr. Murray testified
17 that because they refurbished the plant they will be able to
18 recover that costs.

19 JUDGE EYSTER: All right. You know we are spending a
20 lot of time. If I had to guess at it, I would expect they had a
21 maintenance budget, so we can move on. Maybe Mr. Oliva is
22 correct, it may not be relevant, but we are wasting too much
23 time.

24 MR. ODUNLAMI: To me it is.

25 JUDGE EYSTER: So, you can answer the witness.

1 THE WITNESS: Of the total revenue we collected for
2 treatment all of our O&M there at the Antrim Plant are covered
3 from our revenues generated at plants.

4 MR. ODUNLAMI: Could you define O&M?

5 THE WITNESS: Operation and maintenance costs?

6 MR. ODUNLAMI: Okay, thank you,

7 BY MR. ODUNLAMI CONTINUING

8 Q. Did you read Mr. Lyle's -- I think in his rebuttal
9 testimony, did you read that?

10 A. Yes, I have read that.

11 Q. Do you know at some point, if you cannot recall it that's
12 fine, at some point Mr. Lyle stated that about \$900,000
13 annually crude oxygen surcharge is supposed to be used for
14 plant repair. Is that true or not?

15 A. That is correct.

16 Q. So, let me rephrase that again. So CMS collected \$900,000
17 annually for oxygen surcharge for maintenance relative to
18 oxygen?

19 A. Yes.

20 Q. And this money -- before CMS entered into a contract with
21 Dominion, this money would not have been money to refurbish
22 Plant 1?

23 A. That money was dedicated to allow a certain amount of
24 oxygen into the CMS plants. That money was delegated for
25 capitol improvements and the recovery of those capitol

1 improvements as costs at plant due to oxygen being in the
2 gas.

3 Q. Did you also look at Mr. Lyle's testimony where he stated
4 that based on the contract that CMS had entered into with
5 Dominion CMS is going to gain or realize about \$830,000
6 over a five year period?

7 A. Yes.

8 Q. Is that true?

9 A. That is very close to the actual numbers that's on a
10 contract basis. If you discount that that is roughly,
11 about \$700,000 we invested in Plant 1 to refurbish it.

12 Q. My next question is, if we assume that the gas leaving
13 CMS is at 2%, not at 1.9% --

14 A. All gas or just Dominion's?

15 Q. If you assume Dominion's gas is leaving CMS at 2% what
16 happens to the concentration at Kalkaska?

17 A. That would go up.

18 Q. So under the MichCon CMS contract, MichCon Gathering and
19 CMS contract 0.75% you can have the gas treating Kalkaska
20 and you have a low level of carbon dioxide, yes or no?

21 A. Yes, if there's less carbon dioxide in the gas treatment it
22 would leave you farther below what leaves Kalkaska.

23 Q. Do you have, in any of your exhibits data showing the
24 concentration of carbon dioxide at Kalkaska when you were
25 treating gas to 2%? Do you have that in any of your

1 exhibits?

2 A. No, I do not.

3 Q. Do you have, in any of your exhibits the concentration of
4 carbon dioxide in the gas at Kalkaska with CMS treating?

5 MR. OLIVA: Objection to the question. It assumes a
6 fact not in evidence, and actually contrary to evidence that CMS
7 is actually treating the gas to 2%?

8 JUDGE EYSTER: I think the question he is asking is if
9 any exhibits showed the concentration going to Kalkaska --
10 coming out of Kalkaska. I think he was talking about 0.75.

11 MR. OLIVA: That wasn't the question.

12 JUDGE EYSTER: Repeat the question please.

13 BY MR. ODUNLAMI CONTINUING

14 Q. Do you have, in any of the exhibits you presented so far
15 Mr. Murray, showing the concentration of gas coming out of
16 Kalkaska with Dominion's gas treated to 0.75% at the CMS
17 plant?

18 A. Yes, I do.

19 Q. Where is that? Which exhibit are you referring to?

20 A. Coming out of Kalkaska, no I don't, going into Kalkaska
21 from the AEP I do. That would be Exhibit DOM-17 showing
22 the CO2 contents of gas going into Kalkaska, not coming out
23 of Kalkaska.

24 Q. So, you don't have the composition of, if Dominion's gas is
25 treated to 2% at the CMS plant how it would affect

1 Kalkaska?

2 A. No, I don't.

3 MR. OLIVA: Excuse me. The question before was did he
4 have it as an exhibit.

5 JUDGE EYSTER: Right.

6 MR. OLIVA: And the question now is does he have that
7 information anywhere?

8 MR. ODUNLAMI: He said he doesn't.

9 MR. OLIVA: I'm asking for clarification of the
10 question.

11 MR. ODUNLAMI: The question is, I'm rephrasing his
12 answer because he said he doesn't have anything in the exhibits
13 he has presented, that would show if gas is treated to 0.75% at
14 the CMS plant -- what kind of composition you are going to get
15 at Kalkaska. Not going into Kalkaska, he said he doesn't have
16 that data. I'm trying to rephrase his answer to make it clear.

17 JUDGE EYSTER: Now is this Exhibit DOM-7?

18 MR. ODUNLAMI: DOM-12.

19 JUDGE EYSTER: That indicates coming out of Kalkaska for
20 December 2005?

21 THE WITNESS: That's correct.

22 JUDGE EYSTER: Being treated to 0.75%?

23 THE WITNESS: That is correct.

24 JUDGE EYSTER: That exhibit shows the result on
25 average. Asking him if it was, you believe to 2%? Well, he

1 asked both and I think Mr. Murray changed his answer to say he
2 did not have anything to show.

3 THE WITNESS: This flow diagram was based upon data
4 prior to the Dominion contract being effective at the time
5 Dominion's gas was being treated under the MichCon agreement.

6 JUDGE EYSTER: Was Dominion treated at 2% for any
7 period of time?

8 THE WITNESS: Under the terms of their ASATT agreement
9 with MichCon they were treated to 2%.

10 JUDGE EYSTER: But the gas coming out of your plant,
11 what is it coming out at?

12 THE WITNESS: 0.95% represents the average of the
13 MichCon agreement with CMS on the AEP and our contract with a
14 third party.

15 JUDGE EYSTER: But in reality, that gas is coming in
16 and getting mixed and it runs into the plant and you get the
17 different gas under different contracts and you get a number
18 coming out, and you treat it to a certain level coming out of
19 that plant?

20 THE WITNESS: Correct.

21 JUDGE EYSTER: So when was that, a timeframe?

22 THE WITNESS: We treated Dominion's gas to that
23 specification for the month of December 2005 and January 2006.

24 JUDGE EYSTER: Okay, thank you.

25 BY MR. ODUNLAMI CONTINUING

1 Q. Mr. Murray, the Exhibit DOM-12 shows the outlet of
2 Kalkaska at 1.94%, when CMS has a contract with MichCon
3 Gathering to treat the gas at 0.75%?

4 A. That's correct.

5 Q. Do you have any prepared data that shows the content of the
6 gas carbon dioxide at Kalkaska, if Dominion gas was treated
7 at 2%?

8 JUDGE EYSTER: Are you talking about the example here
9 today?

10 MR. ODUNLAMI: Data anywhere in his possession. What
11 has already been submitted with the record.

12 MR. OLIVA: Now, I'm confused. Is the question --
13 first I thought the question was clear.

14 JUDGE EYSTER: I should have just left it alone I
15 guess.

16 MR. OLIVA: And the question is does he have any
17 information, whether in the record or outside of the record.

18 MR. ODUNLAMI: No, I said in all the exhibits. I used
19 the word exhibit. I never used etc. I used the word exhibit.
20 That was my question.

21 MR. OLIVA: The question was just in the exhibit.

22 THE WITNESS: With regard to just the exhibit?

23 THE WITNESS: No, I do not.

24 BY MR. ODUNLAMI CONTINUING

25 Q. This is the last question. Is the net effect of Dominion's

1 contract in regard to revenues to CMS, over 12 cents per
2 day, is that because CMS, under the CMS MichCon Gathering
3 contract was receiving 9 cents and 11 cents from MichCon
4 Gathering?

5 A. CMS was receiving 9 cents from MichCon Gathering. Under
6 the terms of Dominion, CMS is receiving 11 cents.

7 MR. ODUNLAMI: That ends my questions, your Honor.

8 MR. AARON: Your Honor, would this be a good time to
9 take a lunch break?

10 JUDGE EYSTER: I don't know. I guess it kind of
11 depends. I just want to make sure. It looks like it is. Any
12 redirect?

13 MR. OLIVA: Let me just confer very briefly with the
14 witness, your Honor. If I do have any, it may not be too long.
15 Just give me two minutes. No redirect, your Honor.

16 JUDGE EYSTER: Okay, you may step down, Mr. Murray. How
17 many more witnesses?

18 MR. AARON: Three witnesses.

19 JUDGE EYSTER: Mr. Oliva how long do you expect cross
20 examination of Mr. Aaron's witnesses to go?

21 MR. OLIVA: I'm hopeful we can get done there with both
22 Respondent's and with Staff's, that's my hope, but, I can't
23 speak for how long cross examination Mr. Odunlami has.

24 JUDGE EYSTER: What time would everybody like to be
25 back?

1 MR. AARON: One o'clock.

2 JUDGE EYSTER: Let's be back at 1:00.

3 ***

4 (Off the record at 11:45 a.m.)

5 (Back on the record at 1:00 p.m.)

6 ***

7 JUDGE EYSTER: On the record in U-14754. Mr. Aaron?

8 MR. AARON: Thank you, your Honor. The company calls
9 to the stand Karl R. Wittbold.

10 K-A-R-L W-I-T-T-B-O-L-D, after first being sworn, was
11 examined under his oath and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. AARON

14 Q. Would you please state your name for the record?

15 A. Karl Wittbold.

16 Q. And by whom are you employed?

17 A. DTE Energy Services.

18 Q. In what capacity are you employed by DTE Energy, sir?

19 A. I'm Vice President of Business Development.

20 Q. In connection with your employment, did you prepare a
21 document that is before you consisting of a cover page and
22 three pages of questions and answers?

23 A. Yes, I did.

24 Q. Do you have any changes or additions that you would like
25 to make to the answers set forth in this document?

1 A. No, I do not.

2 Q. If I were to ask you the questions that are set forth in
3 this document would you answer them the same?

4 A. Yes.

5 Q. Do you adopt the answers as your sworn testimony in this
6 case?

7 A. Yes, I did.

8 Q. Did you prepare or cause to be prepared any exhibits with
9 your testimony?

10 A. No, I did not.

11 Q. With that your Honor, I'd move to request that the prefiled
12 direct testimony of Mr. Wittbold be bound into the record.
13 I understand there's a motion to strike.

14 JUDGE EYSTER: Mr. Oliva?

15 MR. OLIVA: As set forth in our motion, we move to
16 strike Mr. Wittbold's testimony on the basis it's entirely
17 related on the face of the reasons that MichCon said I entered
18 into the Capacity Agreement with CMS Antrim. We just don't
19 believe that's it's relevant to any issue in this case.

20 JUDGE EYSTER: Mr. Aaron, did you want to reply to
21 that?

22 MR. AARON: Yes, your Honor. First, I'll rely largely
23 on my first response. I would point out that the nature of
24 Dominion's objection is akin to the objections earlier raised
25 today concerning questions and answers on the Capacity

1 Agreement. Again, this Capacity Agreement is relevant, the
2 testimony on the Capacity Agreement is relevant. Dominion's
3 decision making was largely predicated on the assumption that
4 the Capacity Agreement was interrupted. We've gone through
5 already questions and answers about the Capacity Agreement and
6 this is consistent with that line of testimony.

7 JUDGE EYSTER: Mr. Odunlami, any comment.

8 MR. ODUNLAMI: No, your Honor.

9 JUDGE EYSTER: I tend to agree with Mr. Oliva. I know
10 you tried to withdraw this line of testimony from the hearing.
11 We had a considerable amount of testimony on the subject so far,
12 so, I'm going to allow this in and err on the side of admitting
13 the evidence. The motion is denied. Any objection. You did
14 make a motion that was going to be bound into the record?

15 MR. AARON: I ask that it be bound into the record.

16 JUDGE EYSTER: Any objections?

17 MR. ODUNLAMI: None from Staff, your Honor.

18 JUDGE EYSTER: It will be bound into the record.

19 ---
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21
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25

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of DOMINION MIDWEST)
ENERGY, INC. and DOMINION RESERVES, INC.)
against MICHCON GATHERING COMPANY)
and MICHIGAN CONSOLIDATED GAS COMPANY.)
_____)

Case No. U-14754

QUALIFICATIONS
AND
DIRECT TESTIMONY
OF
KARL R. WITTBOLD

MICHCON GATHERING COMPANY AND
MICHIGAN CONSOLIDATED GAS COMPANY
QUALIFICATIONS OF KARL R. WITTBOLD

Line
No.

1 **Q. What is your name, business address and by whom are you employed?**

2 A. My name is Karl R. Wittbold. My business address is 414 S Main St., Ste.
3 600, Ann Arbor, MI 48104. I am employed by DTE Energy Services as Vice
4 President Project Development.

5

6 **Q. What is your educational background?**

7 A. In 1978, I earned a Bachelor of Science degree in Business Administration
8 from Central Michigan University.

9

10 **Q. What is your professional experience?**

11 A. In 1979, I was hired by ANR Pipeline Company as an Accountant and was
12 eventually promoted to Regulatory Affairs Supervisor. In 1983, I was
13 promoted to Manager of Market Development. In 1985, I was hired by
14 Colorado Interstate Gas Company as the Director of Market Development. In
15 1989, I was hired by CMS Gas Transmission and Storage as the Vice
16 President. In 1998, I was promoted to Vice President of CMS Enterprises. In
17 August 2000, I was hired by DTE Energy Services into my current position.

18

19 **Q. Have you previously testified before the Commission?**

20 A. No.

MICHCON GATHERING COMPANY AND
MICHIGAN CONSOLIDATED GAS COMPANY
DIRECT TESTIMONY OF KARL R. WITTBOLD

Line
No.

1 **Q. What is the purpose of your testimony?**

2 A. I will address the reasons I executed on behalf of CMS Antrim Gas LLC ("CMS")
3 the agreement for treating services ("Capacity Agreement") between CMS as
4 successor to Antrim Limited Partnership and MichCon Gathering Company
5 ("MGAT"), as successor to Michigan Consolidated Gas Company ("MichCon").

6

7 **Q. What is the basis for your knowledge relating to the Capacity**
8 **Agreement?**

9 A. I executed the Capacity Agreement on behalf of CMS.

10

11 **Q. Did CMS have any other customers for treating services at this facility?**

12 A. No. At the time I executed the Capacity Agreement MGAT was the only customer.

13

14 **Q. Why did CMS execute the Capacity Agreement with MGAT?**

15 A. CMS needed to have guaranteed revenues sufficient to operate and finance
16 the existing CO₂ treating plants and to construct additional plants. MGAT
17 explained to CMS that it needed risk management relating to services provided
18 under long term agreements with producers that contained no guaranteed
19 revenues. In basic terms, CMS wanted to maximize their guaranteed revenue,
20 while MGAT wanted to minimize their required fixed payments.

21

22 **Q. What level of treating service did CMS agree to provide MGAT under the**
23 **Capacity Agreement by CMS?**

24 A. CMS agreed to provide MGAT up to 260 MMcf/d of treating services.

**Line
No.**

1 **Q. Under the terms of the Capacity Agreement did MGAT provide any**
2 **guarantees to CMS?**

3 A. Yes. MGAT agreed to pay a reservation rate on a certain level of volumes
4 known as the Demand Charge Volume in the contract, and to provide 67% of
5 the Antrim gas dedicated to MGAT for treatment on the Antrim Expansion
6 Project. This promise was important to CMS because it guaranteed a revenue
7 stream that CMS needed to secure the financing it needed to support the
8 existing treating plants and finance future plant improvements.

9

10 **Q. Did the Capacity Agreement provide MGAT or any other customer a**
11 **priority level of service?**

12 A. No. Because MGAT was the only customer is was not necessary for CMS or
13 MGAT to establish or define a priority of service.

14

15 **Q. Does this complete your testimony?**

16 A. Yes.

1 JUDGE EYSTER: Any cross Mr. Oliva?

2 MR. OLIVA: No cross, your Honor.

3 JUDGE EYSTER: Mr. Odunlami?

4 MR. ODUNLAMI: Yes, I do have one or two questions,
5 your Honor.

6 CROSS EXAMINATION

7 BY MR. ODUNLAMI

8 Q. Good afternoon, Mr. Wittbold?

9 A. Good afternoon.

10 Q. Do you remember when CMS Antrim and Michigan Consolidated
11 Gas Company entered into the Capacity Agreement? I know it
12 was later transferred to MichCon Gas, do you remember the
13 exact time or date?

14 A. The date on the contract is April of 1995.

15 Q. Was that before the Commission approved MichCon's
16 application in Case Number 10547?

17 A. I don't recall specifically if it was before or after the
18 Commission Order.

19 Q. Do you recollect the reason why MichCon and CMS agreed
20 to a 260 MMcf/d of treating services. Do you know the
21 reason why you picked that number?

22 A. Yes, at the time I think that was the best estimate of the
23 gas that would be produced from the Antrim formation that
24 would be directed toward that location in the pipeline.

25 Q. So, the estimate was proposed or designed to estimate the

1 amount of Antrim gas that would be treated at the CMS
2 treatment plant, is that correct?

3 A. 260 million a day was the estimate of gas that we treated,
4 yes, sir.

5 Q. So, this estimate did not include MichCon's estimate as to
6 gas that would be blended on the AEP?

7 A. That's correct.

8 Q. Do you recollect how much gas that MichCon thought of
9 blending on the AEP at that time?

10 A. I don't recall the specific number, but it was in excess
11 of 200 million.

12 Q. And the advantage of entering into this Capacity Agreement
13 to treat this amount of gas would be for MichCon to be able
14 to blend to treat the gas from CMS and thier own treatment
15 of gas on the AEP?

16 A. That's correct.

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

18 JUDGE EYSTER: Redirect, Mr. Aaron?

19 MR. AARON: No, your Honor.

20 JUDGE EYSTER: Thank you very much. You may step down.

21 MR. AARON: Your Honor, the company would call Todd F.
22 Persells to the stand.

23 T-O-D-D P-E-R-S-E-L-L-S, after first being sworn, was
24 examined under his oath and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. AARON

2 Q. Would you please state your name for the record?

3 A. Todd F. Persells.

4 Q. By whom are you employed?

5 A. I'm employed by Michigan Consolidated Gas Company.

6 Q. In what capacity are you employed by Michigan Consolidated
7 Gas Company?

8 A. I'm a Director of Asset Management and Engineering,
9 responsible for engineering, construction and planning.

10 Q. In connection with your employment, did you prepare or
11 cause to be prepared a document before you that has a cover
12 page and consists of 16 pages of questions and answers?

13 A. Yes, I did.

14 Q. Do you have any changes or corrections to the answers set
15 forth in this document today?

16 A. No, I do not.

17 Q. If I were to ask you the questions that are set forth in
18 this document would your answers be the same today?

19 A. Yes, they would.

20 Q. Do you adopt these answers as your sworn direct testimony
21 in this proceeding?

22 A. Yes, I do.

23 Q. In connection with your testimony, did you prepare or cause
24 to be prepared two documents that are before you, one
25 marked MGAT-1 and the second one marked MGAT-2?

1 A. Yes, I did.

2 Q. Do you refer to those documents or exhibits in your
3 testimony?

4 A. Yes, I do.

5 MR. AARON: At this point your Honor, I would request
6 that the prefiled direct testimony of Mr. Persells be bound into
7 the record and I move admission of Exhibits MGAT-1 and MGAT-2.

8 JUDGE EYSTER: Mr. Oliva?

9 MR. OLIVA: Your Honor, I would like to voir dire Mr.
10 Persells prior to taking up the motion to strike.

11 JUDGE EYSTER: Please proceed.

12 VOIR DIRE

13 BY MR. OLIVA

14 Q. Good morning, Mr. Persells.

15 A. Good morning.

16 Q. You state in your qualifications that you began your career
17 with ANR Pipeline in 1978 as a Staff Engineer. At that
18 time the ANR Pipeline Company was affiliated with MichCon,
19 is that right?

20 A. Yes, it was.

21 Q. Up until when?

22 A. I can't give you an exact date, but I believe it was around
23 1981, 1982.

24 Q. After 1981, 1982 the ANR Pipeline was not an affiliate of
25 MichCon, is that right?

1 A. That is correct.

2 Q. So, up until April of 2001 you continued to be employed in
3 the various capacities of the ANR Pipeline, is that
4 correct?

5 A. That is correct.

6 Q. So you did not have any direct involvement in the
7 negotiations with any individual producers of the terms
8 of any of the ASATT agreements for the AEP Pipeline, is
9 that right?

10 A. That is correct, I did not.

11 Q. And you were not involved with the negotiations of any
12 of those producers with any of the terms of the dedications
13 or any of the commitments of the AEP, is that right?

14 A. I did not -- was not involved in the negotiations.

15 Q. And you didn't draft any of the ASATT agreements for the
16 AEP Pipeline?

17 A. No, I did not.

18 Q. And you did not draft any of the dedications or
19 commitments to the AEP Pipeline, is that right?

20 A. No, I did not.

21 Q. Have you negotiated directly with individual producers the
22 terms of any ASATT agreements for any other pipeline in the
23 State of Michigan?

24 A. No, I have not.

25 Q. So you have not drafted an ASATT agreement with any

1 individual producer for any other pipeline in Michigan, is
2 that right?

3 A. Can you repeat the question.

4 Q. You have not negotiated directly with any individual
5 producers in terms of any other ASATT agreements for any
6 other pipelines besides the AEP in Michigan, is that right?

7 A. The only pipeline that I'm aware of that has an ASATT
8 agreement is the AEP, and I have not negotiated any of
9 that.

10 Q. You were not involved while you were at ANR Pipeline in any
11 way with the decision making process to build or not build
12 the AEP Pipeline, is that right?

13 A. Not for Michigan Consolidated Gas Company. ANR Pipeline
14 was a competitor at that time. I was pile in negotiations
15 where they provided an interim service to render
16 transportation prior to construction of the AEP?

17 MR. OLIVA: Can I have the answer read back to my
18 question?

19 REPORTER: Not for Michigan Consolidated Gas Company.

20 Q. You had no role at the time in analyzing for Michigan
21 Consolidated Gas Company the business or financing risks
22 associated with building or not building the AEP, is
23 that correct?

24 A. I did not work for Michigan Consolidated Gas Company and
25 was not employed by Michigan Consolidated at the time. I

1 did monitor the procedures for the ANR Pipeline.

2 MR. OLIVA: That's all the voir dire I have, your
3 Honor.

4 Now, with respect to the motion to strike, in
5 paragraph 5 of our motion to strike we move to strike that
6 portion of Mr. Persells' testimony beginning at page 7, lines
7 13 through page 9, line four. It is clear that that portion of
8 the testimony, is unplaced, and is being offered to attempt to
9 explain what business risks MichCon was and wasn't willing to
10 undertake in determining whether or not to construct the
11 facilities, what conditions it required as a producer in order
12 to undertake that risk, what decisions that it made with respect
13 to changes to be made in the contract with producers, and
14 whether or not MichCon would have been willing to undertake the
15 financial risks absent dedications.

16 It is clear that there is no basis for Mr. Persells to
17 testify as to those matters, because it is outside the scope of
18 what he was doing. He was not even an employee of the company
19 at the time. He's testified here he had no role in the
20 negotiations or the drafting of any of the ASATTs, no role in
21 the decision making process to build or not build the AEP, no
22 role in undertaking any analysis of financial or other risks
23 associated with making that decision. So, therefore this
24 testimony is inadmissible and should be stricken. It is from
25 his standpoint, merely speculation and cannot be regarded as

1 competent testimony with respect to the subject matter he's
2 attempting to address.

3 JUDGE EYSTER: Does that apply to that portion of his
4 testimony, that argument that you just made that starts on page
5 7, line 20 and goes over to page 8, line 4?

6 MR. OLIVA: Yes, same argument as well.

7 JUDGE EYSTER: Mr. Aaron, any response?

8 MR. AARON: Yes, your Honor. We have heard in the
9 course of this hearing already that experts can acquire
10 knowledge, and need not be personally involved in the
11 transaction in order to give testimony on it. Mr. Persells is a
12 qualified expert in the since that he has been hired by MichCon
13 and is a responsible, with respect to the particular system in
14 place. The fact that he wasn't employed by MichCon in 1994, is
15 not determinative of whether he can speak authoritatively to the
16 issues he addresses in his testimony. And, you know the scope
17 of his testimony is pretty clear and direct within his job
18 responsibilities.

19 I point out in my response to the written motion, not
20 only is he qualified to talk about things that fall within his
21 job duties, the Commission can give probative effect to matters
22 that a person would not have personal knowledge of if that
23 person is -- if the information falls within what a reasonably,
24 prudent person would take into account in the course of their
25 employment. That's Rule 235.

1 So this specifically is the type of evidence that he's
2 putting in this case. It is the type of evidence that a person,
3 a reasonably prudent person, in the conduct of their affairs,
4 would rely upon so he could make decisions in the course of his
5 job. This is not something of a nature that would require
6 personal knowledge. We just had Mr. Murray sitting here talking
7 about how much CO₂ content was coming in and out of the various
8 locations of a pipeline. He certainly doesn't have personal
9 knowledge to figure out the actual measurements. He's relying
10 on business measures. And, that's all Mr. Persells is doing
11 here. So, the testimony is proper and admissible.

12 Mr. Murray was allowed to provide contractual,
13 background information that he doesn't necessary have personal
14 knowledge of. We object to it on the basis of relevance, but
15 not to the basis of lack of personal knowledge.

16 MR. OLIVA: Your Honor, the testimony of Mr. Persells
17 is an attempt to open' is -- it's on it's face not being offered
18 as expert testimony. It's purports to be testimony as to facts
19 as to what risks MichCon was or wasn't willing to undertake at a
20 time when Mr. Persells was in no position to know.

21 JUDGE EYSTER: All right, I'm going to take this
22 question by question. We're starting at page 7 line 13. Mr.
23 Oliva, how is that any different than the testimony that Mr.
24 Murray gave earlier today?

25 MR. OLIVA: That's basically background information.

1 JUDGE EYSTER: The motion is denied for that question.

2 Next question goes over onto page 8.

3 MR. OLIVA: That's also basically background
4 information.

5 JUDGE EYSTER: I'm going to deny it for that basis.
6 Lines 6-12 on page 8. Sir, what is your position right now?

7 THE WITNESS: I'm the Director of Asset Management and
8 Engineering. I have responsibilities for engineering,
9 construction, planning on the northern Michigan pipeline for
10 MichCon.

11 JUDGE EYSTER: Mr. Oliva, next question. It appears
12 to me that the answer to this next question that starts on line
13 6 page 8, answers ends on line 12.

14 MR. OLIVA: This to me appears to be an attempt to
15 testify as to what MichCon agreed to, and on what basis they
16 were willing to -- what business risks they were willing to
17 assume at the time.

18 MR. AARON: This is pretty general stuff.

19 JUDGE EYSTER: Mr. Oliva, I understand where your
20 objection is, but I think that to a degree this question appears
21 to me, and I think he's qualified as an expert is just an
22 assessment of what the risks where. It doesn't really even say
23 what the risks were, other than significant business risks.
24 But, that they agreed to invest in facilities, and fixed payment
25 obligations in return for revenues generated. It's really --

1 I'm not sure it goes to -- I think your objection really is that
2 he's trying to -- we'll get to that later. I'm going to deny it
3 for that portion. I'm going to deny the motion on the next
4 question and deny it for the next question. It's granted on the
5 line 1, which would be lines 1-4 on page 9.

6 MR. OLIVA: This, again appears to be an attempt to
7 testify as to what --

8 JUDGE EYSTER: I'm granting the motion on that.

9 MR. OLIVA: You're granting the motion on lines 1-4?

10 JUDGE EYSTER: Yes. Is that all for this witness?

11 MR. OLIVA: That was the only portion of the motion to
12 strike with respect to Mr. Persells.

13 JUDGE EYSTER: Okay, Mr. Aaron you did make a motion
14 to have his testimony bound into the record?

15 MR. AARON: Yes, I did.

16 JUDGE EYSTER: Any objection?

17 MR. OLIVA: Subject to your Honor's ruling, no.

18 JUDGE EYSTER: Mr. Odunlami?

19 MR. ODUNLAMI: No, your Honor.

20 JUDGE EYSTER: Then the testimony will be bound into
21 the record, subject to that portion of lines 1-4 on page 9,
22 which were struck.

23 ---
24
25

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of DOMINION MIDWEST)
ENERGY, INC. and DOMINION RESERVES, INC.)
against MICHCON GATHERING COMPANY)
and MICHIGAN CONSOLIDATED GAS COMPANY.)
_____)

Case No. U-14754

QUALIFICATIONS
AND
DIRECT TESTIMONY
OF
TODD F. PERSELLS

MICHCON GATHERING COMPANY AND
MICHIGAN CONSOLIDATED GAS COMPANY
QUALIFICATIONS OF TODD F. PERSELLS

**Line
No.**

1 **Q. What is your name, business address and by whom you are employed?**

2 A. My name is Todd F. Persells. My business address is 2000 Second Avenue,
3 Detroit, Michigan 48226. I am employed by Michigan Consolidated Gas
4 Company (MichCon) and hold the position of Director Asset Management and
5 Engineering.

6
7 **Q. Would you please summarize your educational background and work**
8 **experience?**

9 A. I graduated in April 1978 from Oakland University, Rochester, Michigan with a
10 Bachelor of Science Degree in Mechanical Engineering with a concentration in
11 Management. I received a MBA from Oakland University in 1980. In 1978, I
12 began my career with ANR Pipeline Company as a Staff Engineer in the
13 System Engineering Planning Activity. From 1978 through 1995, I held various
14 positions of increasing responsibility within ANR Pipeline's Engineering
15 Planning activity where I was responsible for the design, cost analysis,
16 economic evaluation, capital budget and preparation of engineering regulatory
17 exhibits and material specifications for complete system design proposals
18 involving pipeline gathering, transmission and storage facilities. In 1995, I was
19 appointed Assistant Vice President of Facility Planning at ANR Pipeline and
20 was responsible for providing strategic direction and policy to the activity as
21 related to an integrated natural gas system. In 1997, I was appointed
22 Assistant Vice President of Project Development and Marketing and was
23 responsible for policy and strategic direction associated with commercial
24 development for new business ventures and facility expansions. I held that

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No.**

1 position until 2001. In April 2001, I took a position with DTE Energy Trading as
2 Director of Marketing, where I was responsible for the origination of business
3 opportunities involving gas supply, pipeline transport, storage, power plant fuel
4 management and sales services. In August 2003, I took a position with DTE
5 Gas Storage, Pipelines and Processing as Director of Business Development,
6 where I was responsible for the origination of business opportunities involving
7 development of natural gas pipeline transport, storage and processing
8 services. On April 17, 2006, I took my present position with MichCon.

9

10 **Q. What are your current duties and responsibilities in your position?**

11 A. I am responsible for the engineering, construction and planning activities for
12 MichCon. These responsibilities include the development of policy for
13 MichCon's northern Michigan gathering systems.

14

15 **Q. Have you been involved in any prior regulatory proceedings?**

16 A. Yes. I have provided testimony in rate case proceedings before the Federal
17 Energy Regulatory Commission.

MICHCON GATHERING COMPANY AND
MICHIGAN CONSOLIDATED GAS COMPANY
DIRECT TESTIMONY OF TODD F. PERSELLS

Line
No.

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

2 A. The purpose of my testimony is to review MichCon's and MichCon Gathering
3 Company's (MGAT) role in northern Michigan with respect to transporting and
4 treating natural gas. My testimony will show that Dominion Midwest Energy,
5 and Dominion Reserves. Inc. are wrong in their allegations that MGAT and
6 MichCon's policy has changed concerning the management of CO₂ over the
7 life of the Antrim Expansion Project (AEP). I will also document that MGAT
8 was given the authority in MPSC Case No. U-10547 to manage the gas quality
9 of northern Michigan production delivered to its pipelines, that MGAT was
10 given authority to blend natural gas streams in its pipelines and that MGAT
11 assures that natural gas delivered to specified delivery points would have
12 levels of CO₂ at two percent or less.

13

14 **Q. Are you sponsoring any exhibits?**

15 A. Yes, I am sponsoring the following Exhibits:

16 Exhibit MGAT-1 (TFP-1) Map of Northern Michigan

17 Exhibit MGAT-2 (TFP-2) Letter from Michael J. Kidd

18

19 **Q. What is Exhibit MGAT-2 (TFP-2)?**

20 A. It is an accurate and complete copy of a letter dated May 3, 1999 received by
21 MichCon on May 6, 1999. The letter is from Michael J. Kidd, Director of the
22 Gas Division of the Michigan Public Service Commission Staff and addresses
23 CO₂ content on the AEP.

24

**Line
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1 **Q. How did you obtain a copy of Exhibit MGAT-2 (TFP-2)?**

2 A. The letter was retrieved from MichCon's normal business records.

3

4 **Q. How do you recognize this exhibit to be a complete and accurate copy?**

5 A. I have seen and read this letter previously and recognize it to be a complete
6 copy. In the normal course of business, MichCon corresponds with the Staff
7 from time to time. When letters like this are received, they are date stamped
8 and maintained in MichCon files, which are under my direction and control.

9

10 **Q. Did MichCon rely upon the content of this letter for the conduct of**
11 **MichCon's business?**

12 A. Yes.

13

14 **Q. Were these exhibits prepared by you or under your direction and**
15 **supervision?**

16 A. Exhibit MGAT-1 (TFP-1) was prepared under my direction and supervision.
17 Exhibit MGAT-2 (TFP-2) was copied at my direction.

18

19 **Q. Can you explain the organizational relationship between MGAT and**
20 **MichCon and their associated operating responsibilities?**

21 A. MichCon is a utility pipeline, providing transportation and distribution services.
22 MGAT is a wholly owned subsidiary of MichCon. MGAT owns the AEP and
23 provides transportation and treating services for customers delivering gas to
24 the AEP. MichCon originally built the pipeline under the authorization granted
25 in Case No. U-10547. The assets of the AEP were legally transferred to

**Line
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1 MGAT in the fourth quarter of 1995. I will refer to MGAT in this testimony as
2 the successor to MichCon in references to building, authorizations and
3 operation of the AEP when in fact the legal entity at the time may have been
4 MichCon.

5

6 **MichCon's Role Regarding the AEP**

7 **Q. What is MichCon's role with respect to the AEP?**

8 A. MichCon accepts gas deliveries from the terminus of the AEP into its system at
9 Kalkaska, Michigan to serve its markets; including residential customers, off
10 system customers, storage customers, and End User Transportation
11 customers.

12

13 **Q. What is MichCon's gas quality standard with respect to CO₂ at receipt**
14 **points into its transmission and distribution systems?**

15 A. All deliveries into MichCon's system must be made in accordance with the gas
16 quality standards set forth in its MPSC Tariff, Section F3.1, Quality. The
17 specific standard for deliveries is a CO₂ content of no more than 2%.

18

19 **Q. Is this CO₂ standard consistent with industry requirements?**

20 A. Yes, it is. All of the delivery point requirements with other interstate and
21 intrastate companies accepting gas from the AEP or MichCon have an
22 identical standard for CO₂ content of no more than 2%. Further, ANR and
23 Consumers (with deliveries at Goose Creek) have informed MichCon's Gas
24 Control that gas deliveries with CO₂ content exceeding 2% will be rejected.

25

**Line
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1 **Q. Has the maximum CO₂ content limit of 2% or less at the delivery points**
2 **varied since the AEP went into service?**

3 A. No. The 2% CO₂ maximum limit at the delivery points has not varied since the
4 AEP went into service.

5

6 **Q. Has the Michigan Public Service Commission Gas Safety Staff addressed**
7 **the maximum CO₂ content limit of 2% or less?**

8 A. Yes. MichCon was informed by the Gas Safety Staff that deviations from the
9 2% or less standard were not acceptable under any circumstances for even
10 short durations of time. The Staff and MichCon set up strict standards and
11 reporting requirements which remain in place today. Those standards hold
12 MichCon accountable for maintaining 2% or less CO₂ at all delivery points. A
13 copy of a letter dated May 3, 1999, from the MPSC Gas Safety Staff is
14 attached as Exhibit MGAT-2 (TFP-2).

15

16 **Q. Why is this “standard” important?**

17 A. The primary reason for the standard is to assure that corrosive effects caused
18 by CO₂ and water in the piping systems are minimized to avoid premature
19 deterioration of major transmission and distribution piping networks and
20 storage fields that could fail and create safety problems.

21

22 **Role of MGAT in Northern Michigan**

23 **Q. Can you describe MGAT’s role in northern Michigan with respect to**
24 **transporting and treating natural gas?**

25 A. MGAT is owner and operator of the AEP and provides transportation and

**Line
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1 treating service to shippers on the AEP and related lateral piping systems in
2 northern Michigan as shown on the map identified as Exhibit MGAT-1 (TFP-1).
3 Additionally, MGAT is responsible for metering of all gas volumes which
4 ultimately flow on the AEP and final allocation of volumes (less CO₂ and fuel
5 use) at final delivery points into Great Lakes Gas Transmission Company
6 (GLGT), ANR Pipeline Company (ANR), Consumers Energy Company
7 (Consumers) or MichCon. MGAT offers shippers the opportunity to contract
8 for transportation and CO₂ treating services under what is called an ASATT
9 agreement. For shippers who contract directly for CO₂ treating services,
10 MGAT provides transportation only services under what is called an ASAT
11 agreement.

12

13 **Q. Why was the AEP built?**

14 A. The AEP was built to transport dry Antrim gas, to deliver the gas to CO₂
15 treating facilities, and to ultimately deliver the gas to delivery points described
16 above and shown on Exhibit MGAT-1 (TFP-1). At the time of AEP
17 construction, Antrim drilling was expanding rapidly, production volumes were
18 increasing and CO₂ levels were considerably lower than they are today.

19

20 **Q. How has the operation of the AEP evolved since it was originally put into**
21 **service?**

22 A. The AEP went into service in November 1995. Initially, there were
23 approximately 3400 wells and about 135 receipt points connected to the
24 system. Over the years, producers have drilled hundreds of wells and
25 established many additional receipt points. The Antrim volumes grew until the

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1 late 1990's when the production volume peaked. Today there are over 4900
2 Antrim wells and over 170 receipt points connected to the AEP. While new
3 wells and receipt points continue to be added, natural gas volumes continue to
4 decline and CO₂ levels continue to rise into the AEP.

5

6 **Q. What business risks did MGAT accept when it agreed to construct the**
7 **AEP facilities?**

8 A. MGAT agreed to invest in facilities and take on fixed payment obligations in
9 return for revenues generated by commodity rates collected for firm
10 transportation and treating services. Significant business risk was taken based
11 on reserve estimates that existed at the time MGAT requested approval to
12 construct the pipeline.

13

14 **Q. What guarantees did MGAT require to ensure that shippers' Antrim**
15 **volumes would be delivered into the AEP system to support these risks?**

16 A. As described in Mr. Lyle's testimony, MGAT required producers to enter into
17 reserve dedication agreements for their reserves. These dedications were put
18 in place to ensure that when the reserves were produced they would be
19 treated when necessary and transported on the AEP.

20

21 **Q. Was there anything else placed in the contracts with the producers that**
22 **would guarantee that the reserves would flow into the AEP?**

23 A. No.

24

25

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1 **Q. Would the AEP have been built by MGAT without the dedication of**
2 **lifetime reserves?**

3 A. No. Without such a guarantee, the financial risk of the AEP would have been
4 far too great and MGAT would not have constructed the pipeline.

5

6 **Authority to Manage Gas Quality**

7 **Q. What are the CO₂ standards on the AEP at the delivery points?**

8 A. As stated above, the standard on the AEP is a CO₂ content of 2% or less at
9 the delivery points.

10

11 **Q. Where does the maximum CO₂ content limit of 2% or less at all delivery**
12 **points on the AEP come from?**

13 A. The maximum CO₂ content limit of 2% comes from the MPSC's Order in Case
14 No. U-10547, dated March 29, 1995. That Order for the AEP required that gas
15 deliveries at all delivery points into MichCon, Consumers, GLGT and ANR
16 systems be made with a CO₂ content at or below 2%. Additionally, GLGT,
17 ANR, Consumers, and MichCon all maintain pipeline gas quality standards and
18 will turn back any gas streams that contain more than 2% CO₂.

19

20 **Q. How has MGAT maintained control over the 170 receipt points to ensure**
21 **that the CO₂ content at the delivery points is at or below 2%?**

22 A. As described by Mr. Lyle, MGAT entered into an agreement with CMS that
23 allows for the treating of its ASATT gas volumes to an outlet specification of
24 0.75% of CO₂. By treating MGAT's volumes to an outlet specification of 0.75%
25 of CO₂, MGAT has been able to blend volumes containing higher CO₂ contents

**Line
No.**

1 from shippers that do not have access to treating. Additionally, MGAT
2 manages the flow from all the receipt points where in some cases CO₂ levels
3 are now over 30%. This requires understanding and managing pre-treating
4 services, and all other treating services to ensure delivery of gas at 2% or less.

5

6 **Q. Did the Order in Case No. U-10547 provide for blending (indirect treating**
7 **of high CO₂ gas by combining it with low CO₂ gas to meet the CO₂**
8 **requirements) and why?**

9 A. Yes. The Order was specific relative to blending to accommodate existing
10 production that was not adjacent to CO₂ treating plants and was impractical
11 and too costly to re-route to a plant. In fact, Savoy and the Attorney General
12 advocated in Case No. U-10547 that additional treating be built throughout
13 northern Michigan. The Commission, however, determined in its findings that
14 such expenditures would make construction of the pipelines to these facilities
15 economically infeasible.

16

17 **Q. What benefit did this provide?**

18 A. The Order provided that the AEP could operate the system to accommodate
19 treating for customers who can not economically justify the construction of
20 facilities to a treating facility or to construct their own treating facilities by
21 allowing them to produce volumes and be treated through blending. In
22 general, it also allowed producers to transport their gas at an economic rate. If
23 producers would have built processing facilities, they would also have had to
24 build gathering lines to these facilities. All of this would have meant
25 significantly greater costs to the producing community.

Line
No.

1 **Q. Who is ultimately responsible for maintaining the required CO₂ content**
2 **obligation limit of 2% or less at the delivery points from the AEP?**

3 A. The Commission, as it has with all common carrier pipelines in Michigan,
4 authorized MGAT, the AEP owner and operator, to monitor and manage all
5 supply inputs, interconnected treating facilities and delivery points and set
6 standards that maintain the CO₂ content at 2% or less for the benefit of all
7 shippers into the downstream pipeline delivery points.

8

9 **Q. How has the maximum CO₂ content limit of 2% been maintained by**
10 **MGAT on the AEP?**

11 A. MGAT monitors the production volumes in northern Michigan, which on
12 average is declining at 6% per year, while CO₂ on an annual basis is
13 increasing by 0.4-0.6% per year. While the overall CO₂ treating capacity within
14 northern Michigan is more than adequate for existing and anticipated
15 production, there are certain occurrences (plant outages, plant or pipeline
16 upset conditions or even unique operations) which can and do cause CO₂
17 levels at delivery points to exceed the 2% maximum if left unchecked.
18 Consequently, MGAT monitors flows and outlets at treating facilities, receipt
19 and delivery locations to allow the system to meet the downstream obligations
20 of 2% or less CO₂ at the delivery locations. The location of new Receipt Meter
21 Sites (RMS) also changes the delicate balance of CO₂ levels at delivery points.
22 If an RMS is located downstream of treating, additional upstream treating is
23 required in order to blend the new stream.

24

25

**Line
No.**

1 **Q. Can you describe how the production that flows on the AEP is received**
2 **from the producers?**

3 A. The sources of gas that ultimately flow into the AEP are scattered across
4 several counties in northern Michigan at approximately 170 metering sites or
5 RMS. This gas is transported from these RMS by various laterals and other
6 pipelines until it ultimately is received by the AEP. The gas at receipt points is
7 accepted by MGAT if the producer/shipper can demonstrate a contractual
8 relationship with a treater (typically downstream of the RMS) to physically
9 remove CO₂ so that the maximum 2% standard at the delivery point locations
10 is not compromised.

11

12 **Q. What factors have changed that led to this complaint?**

13 A. As previously stated, the overall production volumes in northern Michigan are
14 in a constant state of change. While on average gas volumes continue to
15 decline, the average CO₂ content of the gas stream is increasing slightly each
16 year. MGAT has relied on its ability to set both standards for gas volumes
17 delivered into its system and to use its existing treating contract with CMS that
18 provides for a 0.75% outlet at the CMS plant for MGAT's volumes to maintain
19 its obligation to deliver gas at a CO₂ content of 2% or less. Because of the
20 variability of gas volumes, their associated and variable CO₂ content, and the
21 physical location of each receipt point on the AEP, MGAT must continuously
22 monitor and adjust its management formulas to maintain proper CO₂ content.
23 Through this careful management, MGAT has avoided curtailments and shut-
24 ins which would otherwise occur due to excess CO₂ content, i.e., percentages
25 above 2%. Dominion's decision to contract with CMS directly and to only

**Line
No.**

1 contract for treating to a CO₂ outlet of 2% compromises this delicate and
2 complicated balance. Dominion's volume is approximately 26 MMcf/d or 10%
3 of the total volume flowing through the South Chester facility. At a 2% treating
4 standard, MGAT will not be able to maintain a 2% or less standard at the
5 downstream delivery points. With the rising levels of CO₂, and the desire to
6 keep as much production flowing as possible, MGAT has advised Dominion
7 that it will require all new contracts for AEP transport to contract for treating to
8 meet the outlet specification of 0.75% of CO₂ at the South Chester facility. As
9 part of the operation of the AEP, MGAT must police the gathering system to
10 maintain its ability to satisfy all obligations to transmission and distribution
11 deliveries with firm CO₂ specifications. The MPSC gave MGAT the
12 responsibility to set the specifications through contractual or other means. Mr.
13 Lyle more fully describes the contract negotiations and issues associated with
14 Dominion volumes that have led to this case. He will also describe the net
15 impact of Dominion's decision with regard to MGAT, and he will describe the
16 impasse in negotiations which are the subject of this complaint.

17

18 **Q. Are there alternatives to blending?**

19 A. Yes. The alternatives are:

- 20 1. Treat each and every receipt point to 2% or less CO₂
- 21 2. Shut-in all gas above 2% CO₂
- 22 3. Allow MGAT, as it has prior to the commencement of this case, to
23 specify by contract the CO₂ treating percentage.

24

25

**Line
No.**

1 **Q. What are some of the requirements and impacts under alternative**
2 **number 1 above?**

3 A. To have each and every receipt point treated to a level of 2% or less CO₂
4 content would require construction of various gathering pipelines and
5 numerous CO₂ treating facilities. As mentioned above, there are 170 RMS
6 locations that bring gas to the AEP, and each would need to be at 2% or less
7 at the RMS. The existing treating facilities would no longer be needed, but an
8 extraordinary amount of capital to build the additional infrastructure would be
9 needed.

10

11 **Q. Is this a reasonable alternative?**

12 A. No. This alternative was cost prohibitive when the Commission rejected this
13 concept in the original Case No. U-10547 and it remains cost prohibitive today.
14 In simple terms, it would require processing plants to be built all across the
15 Antrim trend of northern Michigan. There is not enough money or political
16 capital that could be spent to build the facilities, let alone address all of the
17 attendant issues that would be raised by the producers, or the citizens of
18 Michigan. This in my opinion is precisely why the Commission authorized
19 MGAT to blend gas streams in its pipeline systems.

20

21 **Q. What are the potential impacts under alternative number 2 above?**

22 A. This scenario would result in the shut-in of all production that exceeded 2%
23 CO₂ content. Due to increased CO₂ content in the current gas streams, this
24 would effectively eliminate nearly all Antrim production from being transported
25 or produced.

**Line
No.**

1 **Q. Why do you think that this is an alternative?**

2 A. The Commission has clearly stated in a letter from Michael J. Kidd (Exhibit
3 MGAT-2 (TFP-2)) that it anticipated that MGAT would curtail gas rather than
4 delivering it with CO₂ levels above 2%.
5

6 **Q. What are the potential impacts under alternative number 3 above?**

7 A. Under this scenario, MGAT would have the authority specifically granted in
8 Case No. U-10547 Commission Order to set the required level of CO₂ treating
9 to keep the maximum amount of production flowing at all times. This leaves
10 the operational balancing decisions to MGAT, which in turn allows MGAT to
11 keep production flowing through attainment of the required specifications.
12 These decisions must be made by the transporter, because the transporter,
13 and only the transporter, is contractually bound to make deliveries to the
14 delivery points. It is only the transporter (pipeline operator) that has the ability
15 to know the operational conditions and constraints of its transportation system.
16 Volumes and directions of gas flow can change hourly, depending on the
17 weather, operational constraints, and a myriad of other factors including CO₂
18 levels, O₂ levels, plant upsets, and production facility maintenance and upsets.
19 Only MGAT, like all other common carrier pipeline owners and operators, has
20 the ability to monitor and manage all of these conditions and constraints on a
21 daily basis.
22

23 **Q. Are you familiar with the Act 9 industry practice in Michigan with respect**
24 **to tariffs?**

25 A. Yes.

**Line
No.**

1 **Q. Do any other intrastate pipelines regulated under Act 9 file tariffs with the**
2 **MPSC?**

3 A. No. No other Act 9 pipeline files tariffs. A simple review of the MPSC website
4 confirms this.

5

6 **Q. What are the outcomes that you expect or wish for relative to this case?**

7 A. The desired outcome in this case would be an Order from the Commission that
8 reinforces the Commission's Order in Case No. U-10547 authorizing MGAT to
9 contractually set CO₂ levels that assure compliance with gas quality standards
10 for all companies receiving deliveries from the AEP and dismisses Dominion's
11 complaint in its entirety.

12

13 **Q. Does this complete your prefiled direct testimony?**

14 A. Yes, it does.

1 JUDGE EYSTER: I think you made a motion on exhibits.

2 MR. AARON: I move for the admission of Exhibits
3 MGAT-1 and MGAT-2.

4 MR. OLIVA: No objection, your Honor.

5 MR. ODUNLAMI: No objection, your Honor.

6 JUDGE EYSTER: The exhibits will be admitted. Cross?

7 MR. OLIVA: Yes, your Honor.

8 CROSS EXAMINATION

9 BY MR. OLIVA

10 Q. Mr. Persells, would you turn to page 9 of your testimony?

11 A. I'm on page 9.

12 Q. You say beginning of line 24, by treating MGAT's volumes
13 to an outlet specification of 0.75% of CO₂, MGAT has been
14 able to blend volumes containing higher CO₂ contents from
15 shippers that do not have access to treating. When you say
16 shippers do not have access to treating, are you referring
17 to, for example, looking to the flow diagram that we were
18 discussing earlier this morning, the blend calculated
19 that's shown coming into the AEP on this chart?

20 A. Are you referring to the number that the arrow comes in
21 just to the left of the CMS Plant?

22 Q. That's correct.

23 A. Yes, MGAT has been taking advantage of the opportunity
24 to have the gas treated at the CMS plant at three-quarters
25 of a percent to allow all of the shippers that have

1 contracts to be serviced on the AEP to have their gas
2 moved whether or not they were directly connected to the
3 plant, this way we provided these cost alternatives to
4 producers.

5 Q. So, you charge those producers who have transportation
6 treating agreements a treating charge to have their gas
7 blended with gas upstream that's been treated at the CMS
8 Antrim Plant, is that right?

9 A. Yes.

10 Q. That rate is 12 cents Mcf?

11 A. That is correct.

12 Q. CMS charges you 9 cents Mcf for the treating services,
13 isn't that right?

14 A. For the portion of their contract. What we have in their
15 particular operation is a situation where we have a fixed
16 payment under a Capacity Agreement that amounts to
17 approximately 12 cents, then for another volume 11. In
18 that agreement we pay a 9 cent charge so we have a blend on
19 the CMS. Some is paid at 11, some 8, 9.

20 Q. Then you pocket the 2 cent difference between 11 cents and
21 9 cents on the overrun?

22 A. I wouldn't phrase it that way. The 2 cents does not go
23 to MichCon. What happens is MGAT has installed it's own
24 treating plant through an affiliate, plus MGAT has it's
25 own operating expenses on the system. So, what MGAT makes

1 through the treating of all that is much less than the --

2 I would say 7 tenth of a cents.

3 Q. So the overrun effect in terms of treatment is to get gas
4 on the AEP by the time it's delivered to Kalkaska at a CO2
5 level of not greater than 2%, is that right?

6 A. MGAT is required by the Commission's Order to deliver gas
7 at least at 2% at all downstream delivery points off the
8 AEP, so we do honor that obligation. That is what we are
9 managing to.

10 Q. According to this chart, the Exhibit from November 2005 the
11 gas that was delivered to Kalkaska off the AEP was at 1.68?

12 A. That's what's the chart read.

13 MR. AARON: When they are talking about that chart we
14 are talking about an exhibit that was on an easel today.

15 JUDGE EYSTER: That's Exhibit DOM-12. Who made the
16 blow-up of that?

17 MR. ODUNLAMI: I did.

18 BY MR. OLIVA CONTINUING

19 Q. Isn't it the case, that if volumes of gas at the CMS Plant
20 here Dominion has were treated only to 2% at CMS that the
21 CO2 content of gas delivered from the AEP to Kalkaska would
22 still be at 2% at least?

23 A. I don't know. I haven't done a calculation.

24 Q. So, you don't know whether or not Dominion, having it's gas
25 treated at the CMS Antrim Plant at 2% as opposed to 0.75%

1 could prevent the AEP from delivering gas to Kalkaska at 2%
2 or less CO2 content?

3 A. Not for that particular diagram. I haven't done a
4 calculation. That's what you were referring to me at the
5 time you asked me the question?

6 Q. Yes.

7 A. In terms of whether or not they would be treated to 2% or
8 not, that was the basis for why MGAT entered into the CMS
9 Capacity Agreement.

10 JUDGE EYSTER: MGAT purchased service from CMS to
11 treat it to three quarters of a percent?

12 THE WITNESS: We would allow the overall shippers the
13 benefits of the CMS Kalkaska treating arrangement as such
14 maintained, or obligated to ship gas downstream to less than 2%.

15 BY MR. OLIVA CONTINUING

16 Q. When you say delivered to other shippers, you are referring
17 as well to shippers on the Wet Header, isn't that right?

18 A. Yes. Historically on the Wet Header we have had Antrim
19 gas that would have been transported to the Chester Plant
20 after blending at Kalkaska. Some of those particular
21 shippers are on month-to-month contracts and they've been
22 informed by MichCon they need to be long term arrangements.
23 It's also my understanding that Merit at Shell Plant is
24 installing CO2 removal facility that will be treated by
25 Merit at Shell Plant upon their release.

1 Q. When you say released from your agreement, what agreement
2 are you referring to?

3 A. The MGAT treating arrangement with the shippers on the Wet
4 Header, and those shippers are being managed so that we can
5 maintain 2% or least at the Kalkaska delivery point.

6 We have told them this is not a long term arrangement.
7 We are going to work with them to help the, out. They are
8 on month-to-month extensions that they can cancel as soon
9 as they get long term agreements in place. They have
10 indicated to us their preference is to go with the Merit
11 Plant at Kalkaska.

12 Q. When you say manage, just how your are managing them to
13 maintain 2% or below at Kalkaska, the deliveries from the
14 Wet Header into Kalkaska at the Merit Outlet FOM Meter, as
15 shown on MichCon's own exhibits are well above 2% CO₂
16 content, is that correct?

17 MR. AARON: Objection. Well above, it's a number.

18 MR. OLIVA: At 2.74% on the flow chart we've been
19 looking at, is that right?

20 THE WITNESS: The Merit Outlet FOM Meter is at 52.39
21 cubic feet on the chart that you are showing.

22 MR. AARON: Again, this chart is DOM-12 for purposes
23 of the record.

24 Q. Do you have any reason to think the contents is incorrect?

25 A. I don't have a reason to agree or disagree with it.

1 Q. So, when you say you're maintaining it, the arrangement
2 from shippers on the Wet Header for CO₂ treatment in order
3 to get 2% at Kalkaska, you are talking about delivery out
4 of Kalkaska, not delivery from the Wet Header into
5 Kalkaska, is that right?

6 A. We manage all the pipelines in their vicinity to maintain
7 less than 2% at delivery points.

8 Q. By delivery points, do you mean delivery to the MichCon
9 system off of Kalkaska?

10 A. That is one of them. If you look at my Exhibit MGAT-1
11 we have listed the delivery points. We are obligated to
12 maintain the CO₂ quality specification. There is a
13 delivery point into the ANR pipeline just west of South
14 Chester. There is another group of delivery points in the
15 Goose Creek location, there is the Consumers Energy and
16 Great Lakes Gas Transmission and Kalkaska interconnections
17 with the AEP pipeline and MichCon.

18 Q. Sir, on your Exhibit MGAT-1, where you have labeled S.
19 Chester, on DOM-12 is that what is labeled CMS?

20 A. That is correct.

21 Q. You heard earlier this morning, the South Chester site is
22 the location where CMS has their contract services for
23 treating?

24 A. We have contract services for treating, there is also a
25 plant there owned by Wilderness.

1 Q. You said, the sentence beginning on line that Great Lakes,
2 ANR, Consumers, and MichCon will turn back gas streams that
3 contain more than 2% CO₂. To your knowledge, have any of them
4 turned back gas streams out of the AEP because of what the CO₂
5 content was?

6 THE WITNESS: When I was at the ANR Pipeline we turned
7 it back.

8 Q. Off of the AEP Pipeline?

9 A. We told them we were not going to accept gas above 2%.

10 Q. What about MichCon, do you know if MichCon has ever turned
11 back gas off the AEP?

12 A. I don't know if MichCon ever turned it back. I know
13 MichCon is required and MGAT is required to keep the gas
14 below 2%. We take it very seriously, so we don't have that
15 situation.

16 Q. If MGAT was keeping the gas out, is it that the ANR turns
17 back gas out of AEP for being overdue?

18 A. This was back in the early development of the Antrim
19 pipeline before all the plants were constructed at Chester.
20 It was typical for MichCon to try to get ANR Pipeline to
21 take receipts of it's system. And, in order to maximum the
22 the level, because when their pipeline was built there
23 were very large amounts of gas flowing on the ANR Pipeline.
24 Had storage facilities up there and did not want the
25 potential liability of injecting high gas into storage and

1 let it sit there, and corrode expensive storage facilities.

2 Q. If you look back on U-10547, the Commissions Order is for
3 MGAT to maintain a 2% standard, is that correct?

4 A. I am not aware of that.

5 Q. You are not aware of that issue?

6 A. I am not aware of the Commission relieving MichCon
7 standard. I do not know what you're quoting me to be true
8 or not true.

9 Q. Turning back to page 8, do you say beginning of line 16,
10 you say as described in Mr. Lyle's testimony, "MGAT
11 required producers to enter into reserve dedication
12 agreements for their reserves." Have you personally
13 reviewed the dedication agreement for the AEP?

14 A. Not all of them. I have read the dedications that Dominion
15 entered into.

16 Q. But, not the other ones?

17 A. Not all of them.

18 Q. Have you read some of them?

19 A. I have.

20 MR. OLIVA: May I approach the witness?

21 JUDGE EYSTER: Yes.

22 BY MR. OLIVA CONTINUING

23 Q. Have you read --

24 MR. AARON: Can I take a brief look at that?

25 MR. OLIVA: Yes.

1 Q. I'm handing you a document that was furnished to us on
2 discovery by the Respondent in this case. It's captioned
3 Dedication of Reserves Transportation Services Montmorency
4 County, dated December 1, 1998 between MichCon Gathering
5 Company and Elmira Antrim Company. Is this one of the
6 dedications you've produced?

7 A. I do not recall reading this one.

8 Q. Would you turn to the second page of this document,
9 paragraph 3?

10 A. I'm there.

11 Q. Paragraph 3 says, "It is the intent of the parties that the
12 dedications of reserves provided for in this Dedication
13 Agreement runs with the real property described on
14 Attachment 1 for the life of the Dedicated Reserves and
15 as such, binds all subsequent transferees of any interest
16 in that real property." Did you see that?

17 A. Yes, I did.

18 Q. The clause, for the life of the dedicated reserves does not
19 appear in the dedication that was previously marked as
20 DOM-2, executed in connection with ASATT #1, is that
21 correct?

22 A. The use for life of the reserve does not appear, but the
23 phrase, all of the reserves does appear. I also noticed
24 this because waited in 1997 and 1998 I was sure when the
25 Dominion one was dedicated. Referring back, it's 1994.

1 Q. I'm handing you a document that I asked the Court Reporter
2 to mark as Exhibit DOM-19, this was a document provided to
3 us on discovery by the Respondent entitled Dedication of
4 Transportation Services, Montmorency County, dated
5 December 1, 1998 by MichCon and GeoTrend Exploration, Inc.
6 Is this one of the dedications that you reviewed?

7 A. I don't recall it by name.

8 Q. If you turn again to page 2, paragraph 3 it says, "It is
9 the intent of the parties that the dedication of reserves
10 provided for in this Dedication Agreement runs with the
11 real property described on Attachment 1 for the life of the
12 Dedicated Reserves and, as such, binds all subsequent
13 transferees of any interests in that real property, is
14 that correct?

15 A. That is correct.

16 Q. I've handed you a document that I asked the Court Reporter
17 to mark as DOM-20. This is an ASATT, with two T's. It's a
18 Dedication of Reserves dated as of January 1, 2002 between
19 Michcon Gathering and Fruehauf Antrim Limited Partnership,
20 is that one of the dedications that you said you had
21 reviewed?

22 A. I can't recall the names of the individual producers I
23 reviewed. When I looked them over I did look over various
24 agreements.

25 Q. And paragraph 3, at the bottom of the page 1 says, It is

1 the intent of the parties that the dedication of reserves
2 provided for in this Dedication Agreement runs with the
3 currently existing wells described on Attachment through
4 December 31, 2005 and, as such binds all subsequent
5 transferees of any interest in those wells, is that
6 correct?

7 A. Yes, that's what it reads.

8 Q. Do you know how many ASAT's with one T or ASATT's with two
9 T agreement are there for the AEP?

10 A. No, I do not.

11 Q. Would you be surprised to know there were at least,
12 according to the numbers turned over for discovery by
13 Respondent, 58 not 30?

14 A. Fifty-eight combined.

15 Q. Combined?

16 A. I wouldn't be surprised, but I don't know the number.

17 Q. Do you know of any other dedications of reserves for the
18 AEP other than the 2 that were marked DOM-18 and DOM-19
19 that's expressly stated in them that the dedication runs
20 for the life of the dedication reserves."

21 A. Can you repeat the question for me?

22 Q. Do you know of any other dedications to the AEP besides the
23 documents that I've had marked as DOM-18 and DOM-19 that
24 expressly states in them that the dedication runs "for the
25 life of the dedication reserves"?

1 A. I can't tell you by that specific language what the level
2 of the contracts are that is dedicated to have that.

3 JUDGE EYSTER: Are any other considered to have
4 equivalent language?

5 THE WITNESS: I have asked individuals in our
6 organizations for the types of contracts we have over time. I
7 was told that the agreement that we -- when we signed the AEP
8 are typically for the life of the reserve, because we wanted
9 that for the purpose, for the fact we ran into a large
10 investment, or as well as a large capacity agreement, CMS with
11 no guarantee of revenues. It was also on a commodities basis.
12 As time revolved later in the process we relaxed some of the
13 standards. It wasn't the same risk after the AEP was
14 constructed as it was when they were making the building
15 decision to build the AEP.

16 JUDGE EYSTER: So, are you aware or not aware of other
17 dedications that you have which you would consider to have
18 substantially similar language?

19 MR. AARON: Substantially similar to what?

20 THE WITNESS: Where I'm struggling your Honor is --

21 MR. AARON: Wait, wait.

22 JUDGE EYSTER: Mr. Oliva, where is the language you
23 are reading from?

24 MR. OLIVA: I was reading from paragraph 3, DOM-18 or
25 DOM-19. The language was "for the life of the dedicated

1 reserves."

2 JUDGE EYSTER: Are you aware of any other contracts
3 with the equivalent language?

4 THE WITNESS: For the life of the dedicated reserve?

5 JUDGE EYSTER: Yes.

6 THE WITNESS: I couldn't tell you how many contracts
7 have that language in them. I know we have contracts that have
8 these languages in them. I couldn't tell you if these were the
9 only ones or if there were others.

10 JUDGE EYSTER: Okay, Mr. Oliva?

11 BY MR. OLIVA CONTINUING

12 Q. On Page 13 of your testimony, beginning in the middle of
13 line 6, you said, MGAT has advised Dominion that it will
14 require all new contracts for AEP transport to contract for
15 treating to meet the outlet specification of 0.75% of CO₂
16 at the South Chester Facility. Is it not the case that on
17 the contract that MGAT has either for transportation only
18 or for transportation and treating is specified on the AEP
19 specified a CO₂ treatment level of 0.75% at the current
20 contract with Dominion?

21 A. That's correct.

22 Q. Therefore, all of the other contracts for transportation
23 and treatment or transportation only specified CO₂ content
24 of not more than 2%, is that correct?

25 A. Can you repeat that?

1 Q. Other than that contract with Dominion, all of the other
2 contracts, the other 57 contracts that MGAT has with
3 producers either for transportation only or for
4 transportation and treatment specifies CO₂ content of not
5 more than 2%?

6 MR. AARON: Asked and answered. That was the first
7 question he just answered.

8 MR. OLIVA: He asked me to repeat it.

9 THE WITNESS: Yes, that was a two part question,
10 because you asked for transportation, and you asked for
11 transportation, treating. The situation, due to the
12 negotiations that have occurred here, is that the CO₂ has been
13 rising on the system, and there is not enough capacity generated
14 out of CO₂ removal without all future contracts being on the
15 same footing as the AEP was originally built and designed for,
16 which was three quarters percent contract.

17 MR. OLIVA: Move to strike the answer, not responsive.

18 My question is, and I'll contain it to the ASAT,
19 transportation only ASAT #1.

20 JUDGE EYSTER: Any response to retraction? I'm going
21 to grant it.

22 MR. AARON: Your Honor, if you're going to strike it I
23 want to make a record. I think it's proper testimony. We've
24 had a lot of reiteration of questions. It was a compound
25 question.

1 JUDGE EYSTER: I don't think he addressed it. It
2 wasn't responsive. I want you to listen to the question. We
3 are going to break it into two parts.

4 MR. OLIVA: Do you understand correctly that all of
5 the ASATT agreements for the AEP provided in the quality
6 specifications for a CO2 content at the delivery point of not
7 more than 2%?

8 THE WITNESS: That's correct.

9 MR. OLIVA: Now, with respect to the -- and, I believe
10 there were 21 of them in the -- wait just a moment. Is it less
11 than with 2%, or not more than with 2%?

12 THE WITNESS: It provides we will deliver gas at
13 delivery points less than 2%. The problem is that the
14 treatments --

15 JUDGE EYSTER: That's all I need to know. I just want
16 to make sure. Mr. Oliva?

17 BY MR. OLIVA CONTINUING:

18 Q. I'm going to hand you this, which is page 49 of a ASATT #1
19 which is Exhibit DOM-1.

20 JUDGE EYSTER: Just a minute, Mr. Oliva. I just want
21 to make sure the less than 2% is what the ASATT is. It is to
22 the delivery point at less than 2%?

23 THE WITNESS: Yes. We are putting in the contract we
24 will make delivery less than 2%.

25 BY MR. OLIVA CONTINUING

1 Q. Page 49 of ASATT #1, which was Exhibit DOM-2, subparagraph
2 it's a small e in the middle of the page?

3 A. Yes, I see it.

4 Q. It says, on each delivery point the carbon should not
5 exceed 2% whole, is that right?

6 A. That's specific language.

7 Q. The specific language that it's not to exceed 2%, right?

8 A. That's correct.

9 Q. Not shall be less than 2%?

10 A. If you're not exceeding it, it's going to be at it or
11 less.

12 JUDGE EYSTER: There is a difference.

13 Q. This is the same language that's in all of the ASATT's,
14 is that right, not exceed 2%?

15 A. I haven't reviewed all of the ASATT's. I assume it is.

16 Q. Now, with respect to ASAT #1, the transportation only
17 agreement, is it not the case that other than the one
18 agreement for Dominion other ASAT agreements provide a
19 quality specification for CO₂ of not to exceed 2%?

20 A. That is my understanding.

21 MR. OLIVA: I have no further questions, your Honor.

22 JUDGE EYSTER: Mr. Odunlami?

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

24 CROSS EXAMINATION

25 BY MR. ODUNLAMI

1 Q. Good morning Mr. Persells?

2 A. Good morning.

3 Q. Could your please describe or give us a definition of
4 delivery points?

5 A. Delivery point is a point where gas is transferred from one
6 pipeline entity to another pipeline entity.

7 Q. So delivery point means a pipe connecting off the AEP, am
8 I right?

9 A. That's correct.

10 Q. So it does not reference delivery, therefore we would not
11 consider the arrow which is between CMS and the Goose Creek
12 box on DOM-12 as a delivery point?

13 A. Well, the arrow into -- can you help me with that? It's
14 the arrow out of Goose Creek, is that the one that you're
15 referring to?

16 Q. No, the one into?

17 A. No, I would refer to that as a receipt point. It's coming
18 into the pipe.

19 Q. Thank you. So, at that receipt point, I'm still referring
20 to the one where there is an arrow between the CMS box and
21 the Goose Creek box on DOM-12 at that receipt point we are
22 talking approximately about 28.75% CO₂?

23 A. That was the calculation that was shown on the exhibit.

24 Q. Yes. Do you have an idea how much you have right now?

25 A. How much -- the CO₂ percent is at that location?

1 Q. Yes?

2 A. I happened to ask Mr. Lisle that the morning he was
3 estimating that it was around 19%.

4 Q. But, it varies low?

5 A. Yes, it does vary at that particular location.

6 Q. So when CMS treats gas at that point where we have the CMS
7 block on DOM-12 and that gas continues on the AEP will not
8 consider that gas as delivery point gas?

9 A. That is correct.

10 Q. Could you please turn to page 5 of your testimony? I'm
11 interested in lines 15-17?

12 A. Yes, I'm there.

13 Q. Did you state in line 15 that all deliveries into MichCon's
14 system was made at carbon dioxide content of no more than
15 2%?

16 A. That's correct.

17 Q. What are you referring to as MichCon systems?

18 A. I'm referring to Michigan Consolidated Gas Company System
19 as a MichCon system, it would be the AEP, it would be the
20 facilities downstream of the Kalkaska delivery point.

21 Q. Do you -- and I think on cross examination for Mr. Oliva,
22 and I'm referencing, I'm making reference to CMS block on
23 DOM-12 in regard to MichCon Gathering's contract with CMS
24 in terms of revenues netted by MichCon Gathering are those
25 shippers that have entered into ASATT agreements, I think

1 you stated that some percentage of money collected from
2 those shippers flows into operational expenses for MichCon.
3 Did you state that?

4 A. Yes, the payment that we receive from our customers pay not
5 only for CMS expenses, but they pay administrative and
6 operational costs of facilities that are operating to
7 render treating services.

8 Q. So, in other words, you are saying MichCon Gathering
9 does incur some expenses, administrative expenses for
10 gas treatment?

11 A. Yes I do, and MichCon Gathering has an affiliate as a
12 treating plant t the Chester site as well.

13 Q. On Exhibit DOM-12, and I'm referring to the arrow between
14 the CMS block and Goose Creek block, does MichCon Gathering
15 get any revenue from the gas at that receipt point?

16 A. Yes, those shippers are charged the same rates as any ASATT
17 shipper.

18 Q. And the revenue collected from those shippers at that
19 receipt point between CMS and Goose Creek delivery point
20 how do you account for the difference between physical
21 treatment and administrative expenses?

22 A. We do not account for them separately. We put all the
23 revenues together when we look at our treating operations.

24 Q. So, are your saying for those, at that receipt point the
25 administrative expenses is just the amount of money you get

1 from those shippers? Is that what you are saying?

2 A. In terms of the operations that is rendered all the
3 shippers who are charge and those dollars are used to
4 offset other expenses, including operation and maintenance
5 expenses. So, we treat everybody the same. We don't break
6 out one versus the other, whether shippers are coming into
7 the system downstreaming the plant, or upcoming. They are
8 all involved in the reconciliation of the costs.

9 Q. Operation expenses as to what? Now, the first time you
10 said operation expenses as to what? For receipt points
11 between CMS and the Goose Creek delivery points?

12 A. We have set up a subsidiary that collects all the revenues
13 of treating. It's a third company that's called DTE
14 Michigan Holding, which takes all the revenues from
15 treating and all the expenses and including the operation
16 of their own plant, which they have an investment of
17 approximately \$3.7 million at Chester for treating
18 facilities.

19 When we rendered their agreement for shippers we
20 render it so that we are taking into account all the
21 revenues versus the expenses. That's what I was saying in
22 terms of treating everybody the same, the revenues versus
23 the expenses we get from treating on that are probably in
24 the order of 7 tenths of a cent on each shipper's volume.
25 I think we made something like \$500,000 or \$600,000.

1 Q. At the Winchester Treatment Plant does MichCon Gathering
2 charge for carbon dioxide treatment? At the Wilderness
3 Treatment Plant does MichCon get revenue for treatment?

4 A. The Wilderness Plant, we do not have ownership of it. That
5 plant is owned by the Wilderness Partnership. I think
6 Frank Murray gave some information on that this morning.
7 We have in the past to help provide the overall treating
8 services that are rendered.

9 Q. So, when you are referring to the operational expenses, are
10 you referring to the supplemental treating?

11 A. I am referring to the treating services we have purchased
12 as well as the use of our own facilities.

13 Q. Could you tell me the difference between ASATT #1 contracts
14 and ASATT contracts?

15 A. The difference between ASATT #1?

16 Q. No, A-S-A-T and A-S-A-T-T are two different contracts. The
17 ASATT agreement two T's stands for transportation and
18 treating that is a service provided for AEP shippers under
19 which MichCon Gathering renders both transportation on the
20 AEP and agrees to have the gas treated to make deliveries
21 at the delivery points not more than 2%. Under the A-S-A-T
22 agreement there is no treating rendered. It's rendered by
23 another party, and the AEP agrees just to transport it.

24 JUDGE EYSTER: When was the first ASAT signed?

25 THE WITNESS: I don't know the date on it.

1 JUDGE EYSTER: Roughly, year?

2 THE WITNESS: Mr. Lyle might be able to answer that
3 question better, but I'll give you, it was probably four or five
4 years after the AEP was constructed.

5 JUDGE EYSTER: Mr. Odunlami?

6 By MR. ODUNLAMI CONTINUING

7 Q. On the ASATT #1, the contract, what was the specification
8 of carbon dioxide at the receipt point?

9 A. The specification?

10 Q. The incoming gas composition carbon dioxide?

11 A. At the receipt point?

12 Q. Within the contract?

13 A. The gas that's received by MichCon Gathering varies across
14 the board. I've seen specifications with the CO2 as high
15 as 30%.

16 Q. That's not what I'm referring to. For ASATT contracts
17 you've gave the definition they are contracts that the
18 shipper has contracted for to treat their gas to, that
19 means before it is taken at a receipt. I'm asking what is
20 it's specification at the receipt point?

21 A. In the historical agreement that I referred to before, the
22 specification was 2% maximum.

23 Q. Thank you. Are they different now, has that changed?

24 A. Well, in terms of -- I assume it's the same issue we've had
25 since Dominion and we've implemented the requirement that

1 if anybody is going to take an ASATT agreement and have
2 their gas treated through the CMS facility, we are going to
3 require the gas come in at three quarters of one percent.

4 Q. I guess you've stated that you advised Dominion if they
5 want ASATT #1 contract, they have to treat their gas to
6 0.75%. It doesn't matter where they treat the gas.

7 A. The only option there is CMS. I think I understand your
8 question now. Let me rephrase it. Your question is, if
9 gas comes in at a receipt point and is not treated --

10 Q. ASATT contract --

11 A. They have to come in at 2% or less if it's coming in and
12 it's going to be treated we allow the gas --

13 MR. ODUNLAMI: I'm not asking that question.

14 BY MR. ODUNLAMI CONTINUING

15 Q. I'm going to rephrase your answer so the record will be
16 clear. Under existing ASATT #1 the contracts at the
17 receipt points, the specifications by MichCon to those
18 shippers on those kind of contracts is at 2% maximum, yes
19 or no?

20 A. I'm going to refer that question to Mr. Lyle, if I can
21 because I don't have a copy of the contract right in front
22 of me.

23 Q. Could you turn to page 13 of your testimony? I'm
24 interested in line 2, where the sentence starts with
25 Dominion?

1 A. Yes.

2 Q. Is there an advantage to MichCon Gathering based on
3 Dominion's 26 MMcf/d per day gas flowing to MichCon
4 Gathering? Is there an advantage to that?

5 A. Is there an advantage to MGAT to have it continue to flow
6 out?

7 Q. At that volume?

8 A. At that volume there is an advantage.

9 Q. The advantage is what?

10 A. There's two advantages, one in terms of revenue that we
11 receive. We receive 11 cents. Our expenses depends upon
12 if we're above or below the demand charge in the CMS
13 contract. If we are above the demand charge we are up
14 to 9 cents overrun we have 2 cents. If we are below the
15 level where we pay an amount to CMS we don't make any money
16 on that, just a netting of revenue and expenses.

17 Q. So, in other words, you are saying if based on the volume
18 flowing of Dominion gas, if that gas is treated to 0.75%
19 that gas comes in at the receipt points between CMS and
20 Goose Creek block on DOM-12 you'll be able to reduce the
21 contents of carbon dioxide by blending those two?

22 A. That's correct.

23 Q. I think Mr. Oliva presented about three different
24 dedications of reserves marked as Exhibits 18, 19, and 20,
25 do you recollect that?

1 A. I have seen those, but I didn't write down which ones were
2 17,18 or 19.

3 Q. You did say that you actually reviewed those dedications,
4 which he was asking you those dedications are part of what
5 you reviewed?

6 A. Yes, I looked at several dedications to get a feel for the
7 types of language. I couldn't recall specifically by
8 shipper if I looked at those or not.

9 Q. Do you have experience with dedication of reserves?

10 A. Other than in terms of -- I had worked at DTE Gas Storage,
11 Pipelines and Processing where I was responsible for
12 treating facilities in the CO2 removal facilities and we
13 had at those treating facilities also relied on dedication
14 of reserves in order for us to invest in treating
15 facilities. So, I have experience from a business end.

16 Q. I'm going to rephrase that question. Are you familiar
17 generally about how people dedicate reserves on a pipeline?

18 A. Yes, I am familiar with how MichCon does it.

19 Q. Have you done any for MichCon recently?

20 A. Dedications?

21 Q. Yes?

22 A. Not since I've taken over at my current position at
23 MichCon.

24 Q. How about your previous job, did you do any in your
25 previous job?

1 A. I did work on dedications.

2 Q. Is it possible for MichCon Gathering -- I'm talking about
3 transportation, don't worry about treating. Is it possible
4 for MichCon Gathering to redirect Dominion's gas, even at
5 the expiration of the contract is it possible for MichCon
6 Gathering to redirect --

7 MR. AARON: Your Honor, we're bordering on asking for
8 a legal opinion.

9 MR. ODUNLAMI: No, I'm not. I'm trying to get to the
10 point, where based on his experience in transportation, whether
11 it's possible, or I can lay a foundation for it, your Honor.

12 JUDGE EYSTER: Why don't you do that.

13 MR. ODUNLAMI CONTINUING

14 Q. Do you know how somebody goes about constructing a
15 pipeline?

16 A. Yes.

17 Q. What do you have to do to do that?

18 JUDGE EYSTER: How much detail do you want?

19 Q. Do you have to get a Certificate of Public Convenience
20 and Necessity do that before the Commission?

21 A. It depends on what jurisdiction you're building the
22 facility in. In the state of North Dakota it's the federal
23 level. You go to the FERC. There are some states,
24 gathering facilities that do not require certificates.

25 Q. Once you get that certificate --

1 JUDGE EYSTER: Mr. Odunlami, where are you going with
2 this questioning?

3 MR. ODUNLAMI: Your Honor, I'm going to -- in order to
4 at least establish some ideas of what Staff's position might be.

5 JUDGE EYSTER: You mentioned -- I think you asked him
6 if it was possible -- you started with, is it possible --

7 MR. AARON: To reject.

8 MR. ODUNLAMI: To refuse.

9 JUDGE EYSTER: Possible in a physical sense.

10 MR. ODUNLAMI: No, possible in terms of --

11 JUDGE EYSTER: Under any conditions?

12 MR. ODUNLAMI: No, I don't mean it that way is. Is it
13 possible for a gas transporter to reject to transport gas on a
14 pipeline where that transporter is the only monopoly?

15 JUDGE EYSTER: Under what condition?

16 MR. AARON: This is where the legal conclusion is.

17 JUDGE EYSTER: Are you talking about the physical
18 conditions? For instance, we have had discussions about process
19 plants going down and gas not being accepted, right?

20 MR. ODUNLAMI: Yes.

21 JUDGE EYSTER: So clearly there's instances where you
22 think the pipeline the 45089 about to take the gas are you
23 trying to go beyond that to something else.

24 MR. ODUNLAMI: Not really, assuming the transporter
25 will meet all those conditions. I can withdraw that question if

1 it's a legal issue.

2 JUDGE EYSTER: Maybe if you had a witness that was
3 actually making those decisions. I'm not sure --

4 MR. ODUNLAMI: No further questions.

5 JUDGE EYSTER: Any redirect?

6 MR. AARON: Can we have five minutes just to look
7 through my names?

8 JUDGE EYSTER: Yes. Off the record.

9 (Off the record at

10 (Back on the record at

11 JUDGE EYSTER: Back on the record in U-14754. Mr.
12 Aaron, any redirect?

13 MR. AARON: No redirect your Honor.

14 JUDGE EYSTER: Mr. Oliva?

15 MR. OLIVA: I move for admission of DOM-18, 19 and 20.

16 JUDGE EYSTER: Any objections? Those exhibits are
17 admitted. Sir, you can step down. Thank you, very much.

18 MR. AARON: Your Honor, the company calls Arthur
19 Raymond Lisle to the stand.

20 A-R-T-H-U-R L-Y-L-E, after first being duly sworn, was
21 examined under his oath and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. AARON

24 Q. Would you state your name for the record?

25 A. Arthur Raymond Lyle II.

1 Q. By whom are you employed?

2 A. Michigan Consolidated Gas Company.

3 Q. In what capacity?

4 A. I'm a Staff Engineer working on the Northern Michigan
5 pipelines and projects.

6 Q. In connection with your employment, did you prepare or
7 cause to be prepared a document before you with a cover
8 page and titled Qualifications and Direct Testimony of
9 Arthur Raymond Lyle II, consisting of 19 additional pages
10 of questions and answers?

11 A. Yes, I did.

12 Q. Do you have any corrections to those answers set forth in
13 that document today?

14 A. No, I do not.

15 Q. If I were to ask you the questions set forth in this
16 document would your answers be the same today?

17 A. Yes, they would.

18 Q. Do you adopt the answers as your sworn direct testimony in
19 this proceeding?

20 A. I do.

21 Q. Did you also prepare or caused to be prepared a document
22 before you captioned Rebuttal Testimony of Arthur Raymond
23 Lyle II?

24 A. Yes, I do.

25 Q. Does this consist of questions and answers on pages

1 starting ARL-20 through ARL-31?

2 A. Yes, it does.

3 Q. Do you have any changes to the answers set forth in that
4 document that you would like to make today?

5 A. No.

6 Q. If I were to ask you the questions set forth in this
7 document would your answers be the same today?

8 A. Yes, they would.

9 Q. Do you adopt these answers as your sworn testimony in
10 these proceedings?

11 A. Yes.

12 Q. Did you prepare, in connection with your testimony a number
13 of exhibits that were prefiled with the Commission, MGAT-3?

14 A. Yes.

15 Q. I guess it's only one exhibit?

16 A. It's one exhibit.

17 MR. AARON: Your Honor, I would ask that the prefiled
18 direct testimony and rebuttal testimony of Mr. Lyle be bound
19 into the record and I move admission of exhibits as sponsored.

20 JUDGE EYSTER: Okay, Mr. Oliva?

21 MR. OLIVA: Yes, your Honor, I would like to voir dire
22 the witness, prior to arguing the motion to strike.

23 JUDGE EYSTER: Please proceed.

24 VOIR DIRE

25 BY MR. OLIVA

1 Q. Good morning, Mr. Lyle.

2 A. Good morning.

3 Q. You state on page 1 of your Qualifications portion of your
4 testimony that your educational background is that you a
5 Bachelor of Science Degree of Mechanical Engineering. You
6 do not have a law degree?

7 A. No, I do not.

8 Q. Have you ever attended law school?

9 A. No.

10 Q. You are not a licensed attorney in the State of Michigan?

11 A. No.

12 Q. Or in any other state?

13 A. No.

14 Q. It states here on line 19 you became an employee of MichCon
15 in September of 2005. At the time that ASATT #1 was
16 negotiated and executed you were then a Staff Engineer
17 at ANR Pipeline?

18 A. Yes, that's right.

19 Q. At that time ANR Pipeline was not an affiliate of MichCon
20 or MichCon Gathering, which didn't exist then?

21 A. No.

22 Q. So, you were not involved directly in the negotiations with
23 individual producers of the terms of any of the ASATT or
24 ASAT agreements for the AEP Pipeline, is that correct?

25 A. Not the original.

1 Q. And have you been directly involved in negotiations with
2 individual producers of the terms of any ASATT or ASAT
3 agreement or any other pipeline in Michigan besides the
4 AEP?

5 A. Besides the AEP, no.

6 Q. For any other pipeline in any other state?

7 A. For various pipelines in other states, transportation type
8 agreements. I don't know of any ASAT agreements that would
9 be necessary specific to the AEP.

10 Q. You were not directly involved in the negotiations with any
11 of the individual producers of any of the terms of any of
12 the commitments or any of the dedications of acreage of
13 the AEP, is that correct?

14 A. If you're speaking to any agreements ever signed on the
15 AEP that's not correct. If you mean the ones prior to the
16 construction of the AEP, that would be correct.

17 Q. You were involved in negotiations of individual dedication
18 of acreage to the AEP since September 2005?

19 A. Yes.

20 Q. But none prior to September 2005?

21 A. I actually started doing some work for MichCon in May of
22 2005. I may have been involved.

23 Q. What was the nature of your involvement in the negotiations
24 of the terms of a dedication subsequent to September 2005?

25 A. It would have been to review any agreements we were

1 proposing to send out and discuss anything with producers
2 if any questions arose.

3 Q. You did not draft any of the ASAT or ASATT agreements with
4 the AEP, is that correct?

5 A. I have reviewed them, but I did not originally draft them.

6 Q. What was the scope of your review?

7 A. Looking through the agreement itself, seeing if there was
8 anything out of place, or if the producer had a question or
9 requested a change in a certain language or term, we may
10 have reviewed that.

11 Q. And you did not draft any of the dedications or any of the
12 commitments for the AEP, is that correct?

13 A. No.

14 Q. And you have not drafted an ASATT or an ASAT agreement for
15 any other pipeline in Michigan besides the AEP, is that
16 correct?

17 A. That's correct.

18 Q. And you have not drafted a dedication or a commitment for
19 any other pipeline in the State of Michigan, is that right?

20 A. That's correct.

21 Q. Have you ever drafted any other business contracts in the
22 course of your duties for MichCon?

23 A. I have been involved in various agreements.

24 Q. That wasn't my question. Have you drafted business
25 contracts?

1 A. I guess the question would be -- if you consider reviewing
2 it, suggesting changes part of drafting the agreement.

3 Q. Your review has not been from a legal standpoint, is that
4 right?

5 A. No, just from a business standpoint.

6 Q. Have you ever drafted a deed?

7 A. Personally no.

8 Q. Or a lease of real estate?

9 A. No.

10 Q. Or an easement?

11 A. I have been involved in drafting of an easement, but
12 haven't actually.

13 Q. In the same sense that you spoke of before, that you
14 reviewed things that other people drafted, and have
15 suggested changes?

16 A. That's correct.

17 Q. Have you ever drafted any other instrument in the
18 conveyance of an interest in real estate?

19 A. No.

20 Q. You were not been involved in the negotiations of the
21 Capacity Agreement between MichCon and CMS Antrim
22 day-to-day for 1995 were you?

23 A. No.

24 MR. OLIVA: That's all my voir dire, your Honor. I
25 take up a motion to strike.

1 JUDGE EYSTER: Please do.

2 MR. OLIVA: In paragraph 6 of our motion to strike, we
3 move to strike Mr. Lyle's direct testimony, beginning at page 2,
4 lines 17 through page 5, line 23. And, also page 7, lines 6-23.

5 It's clear that Mr. Lyle has no formal legal
6 education. He's not an attorney, and none of his job functions
7 involve any legal analysis. His direct testimony is clearly
8 legal opinion as to this portion, and it should be stricken in
9 it's entirety under MRE 702. For example, he gives legal
10 opinion related to interpretation of the Dominion dedicated
11 reserves and the ASATT agreement, also, with respect to the
12 Capacity Agreement, over on pages 6 and 7. And also legal
13 opinion with respect to the interpretation of the Commission's
14 Order. I mean for an engineer to be parsing documents based
15 upon contingents as to whether there's an entirety clause in a
16 provision and what that means is patently and offer of a legal
17 opinion. These are all matters that are not -- he's not
18 properly qualified to present testimony as to. It's something
19 that MichCon can argue from a legal standpoint in it's brief.

20 JUDGE EYSTER: Mr. Aaron?

21 MR. AARON: Your Honor, I would be willing to
22 stipulate that Mr. Lyle doesn't have a legal degree, nor does he
23 need a legal degree to conduct his business. And,
24 characterizing Mr. Lyle's testimony as legal opinion doesn't
25 make it so. The fact of the matter is Mr. Lyle testifies on the

1 basis of the documents he uses on a day-to-day basis in his
2 business activities. Contracts, you don't have to have a law
3 degree. Business people all the time use and apply contracts in
4 their day-to-day business. You don't need to have a lawyer
5 render an opinion. That's what this witness is purporting to
6 do. For example, when he's asked, why do you believe the
7 dedications are still binding? He just simply says there's no
8 expressed term, and he gives a reason.

9 JUDGE EYSTER: Why is that not asking for a legal
10 conclusion?

11 MR. AARON: It's a statement of position.

12 JUDGE EYSTER: It's not asking how he conducted his
13 work? It's not asking him why is it that you do something a
14 certain way? We're taking it to understand then, well, because
15 it's my understanding that this document allows us to do
16 something. I mean these questions are straight out -- you're
17 asking legal questions.

18 MR. AARON: Your Honor, if you start off with the first
19 one it's a foundational question, and you go to the next one.

20 JUDGE EYSTER: Wait, let's look at the first one, "Why
21 do you believe the Dominion dedication is still binding?" Is
22 that the first question?

23 MR. OLIVA: Yes, that's the first one.

24 MR. AARON: The first question he moved to strike. I
25 mean he isn't saying -- he's saying, I look at the document and

1 this is what I see. I see no expressed termination date. You
2 don't have to be a lawyer to say that. I mean in the course of
3 his business --

4 JUDGE EYSTER: Why is it relevant?

5 MR. AARON: If a contract has a termination date and
6 he's looking at an ASATT that expires, he, as a businessman
7 needs to know it's going to expire at a certain term so that he
8 can go and work with the shipper to renew the contract.

9 JUDGE EYSTER: You're not asking him any of those
10 questions though.

11 MR. AARON: He's got the knowledge to be able to make
12 that determination.

13 JUDGE EYSTER: Mr. Odunlami, any comment?

14 MR. ODUNLAMI: No comments, your Honor.

15 JUDGE EYSTER: For the most part I agree with the
16 motion to strike, but I do want to go through just to make sure
17 on each one of them. We are covering a number of pages.

18 I'm gong to strike, starting on page 2, line 17, the
19 remainder of that page. I think that clearly is asking for a
20 legal opinion. On page 3, same problem with that question and
21 answer.

22 MR. ODUNLAMI: Which line, your Honor?

23 JUDGE EYSTER: Starting on line 1 down to line 11.
24 The next question I have the same problem with that.

25 MR. ODUNLAMI: Your Honor, I have something to say.

1 MR. AARON: You have the same problem. You think
2 that's a legal conclusion?

3 JUDGE EYSTER: I think you're asking for a legal
4 conclusion.

5 MR. AARON: To describe the history. The question
6 asks for history.

7 JUDGE EYSTER: Describe the history of Dominion's
8 contractual relationship with MGAT?

9 MR. AARON: Contractual relationships are factual
10 relationships. The word contract does not create a legal
11 opinion. Contracts are legally binding because the law makes
12 them so. Take out the word relationship and it's the same
13 answer, it's referencing to --

14 JUDGE EYSTER: Well, it violates the best evidence
15 rule. I don't know if it's proper foundation laid for that
16 testimony.

17 MR. AARON: Your Honor, you're not here to ascertain
18 for Mr. Oliva. He is arguing that this is a legal conclusion.
19 If he wants to raise those issues that's something he should
20 have done in writing beforehand.

21 JUDGE EYSTER: I'm going to make a ruling on this.

22 MR. ODUNLAMI: If I could say something before you
23 make a ruling, if you don't mind?

24 JUDGE EYSTER: Make it real quick.

25 MR. ODUNLAMI: Yes, I'll do that. I think, in Staff's

1 opinion, this is not asking for legal conclusion. I think I can
2 remember Dominion's witnesses that discussed ASATT #16 and ASATT
3 #1 in their testimony. This is the heart of the question that
4 Staff is puzzled about, that you, yourself asked yesterday. Why
5 we have a ASATT #16 contract and ASATT #1? If you remember,
6 your Honor, you were asking are those dedications, one is a
7 commitment letter, one is a dedication. You were asking
8 yesterday whether the acreage in the dedication and the
9 commitment letter had the same thing. So, this is one of those
10 puzzling questions, as stated in Staff's position, that's left
11 unanswered. I think what Mr. Lyle is trying to do is give his
12 own explanation, just like Dominion's witness did yesterday
13 about what he thought ASATT #1 and ASATT #16 was.

14 JUDGE EYSTER: This is the way I'm going to look at
15 this, and I'm going to rule on this. It's got a lot of
16 problems. One of them I think, is what Mr. Oliva raised and
17 there are several other ones, including Mr. Lyle's
18 qualifications as a Mechanical Engineer, given the fact that
19 he's recently come to work for -- you're with MGAT now?

20 THE WITNESS: Michigan Consolidated Gas Company, with
21 MichCon.

22 JUDGE EYSTER: You know it's either, he's either
23 making a legal conclusion as to what those contracts mean or
24 he's trying to tell me what the terms of the contract are. I
25 can look at the contracts. For the reasons Mr. Oliva stated in

1 his motion to strike the next question is out lines 13-17. And,
2 the next question beginning on page 3, line 19 ending on page 4
3 line 2 is out for the same reason stated in the motion.

4 Okay, up to page -- I'm striking everything up to page
5 5.

6 MR. AARON: You're striking all of page 4?

7 JUDGE EYSTER: Yes. So, I guess that's the remainder
8 of that first portion. On page 7, lines 6-23. Mr. Oliva do you
9 want to address this particular question?

10 MR. OLIVA: It's pursuant to my earlier one. This is,
11 again, an attempt on the face of it to have the witness testify
12 as to what the terms and meaning of the Capacity Agreement are.
13 Again, he's not a lawyer, also he has no involvement in the
14 negotiations of that Capacity Agreement.

15 JUDGE EYSTER: Mr. Aaron?

16 MR. AARON: Your Honor, I want to make sure we are
17 talking about the same thing, page 6, lines 1 through page 7
18 line 23?

19 JUDGE EYSTER: No, page 7, lines 6-23?

20 MR. AARON: Page 7, lines 6-23?

21 JUDGE EYSTER: Yes.

22 MR. AARON: It certainly, it isn't legal conclusion.
23 It's asking if the witness agrees with Mr. Murray. I mean, he
24 says, you know, this is rebutting what Mr. Murray has said.
25 We've got that in the record.

1 JUDGE EYSTER: I'm going to deny that portion of the
2 motion to strike.

3 MR. OLIVA: The next part of my motion was page 6,
4 line 1. Then page 13, lines 1 through page 19. This is all
5 testimony related to the Capacity Agreement between CMS, CMS
6 Antrim and MichCon.

7 JUDGE EYSTER: You're objecting on the lack of
8 foundation?

9 MR. OLIVA: Yes, foundation and also relevance. I
10 think your Honor turned us down on the relevance issue before.
11 He doesn't have any personal knowledge what the business plans
12 are for Dominion or CMS. There's been no basis to show that
13 he's qualified to testify as to business or financial matters or
14 analysis basically to Dominion's current treatment or production
15 practices. Your Honor says, he's qualified as an expert here.

16 JUDGE EYSTER: Mr. Aaron?

17 MR. AARON: I just want to make sure I'm on the same
18 page as everyone else. We're talking about page 13?

19 JUDGE EYSTER: Page 6, the whole page. And, 6 and 7
20 and page 13-19.

21 MR. ODUNLAMI: I think the ALJ ruled on page 7
22 already.

23 MR. OLIVA: The second part of the motion covers that
24 as well. Pages 6 and 7, and also pages 13-19.

25 JUDGE EYSTER: Okay, I wanted to just stick to right

1 now page 6. Mr. Aaron, I guess I don't understand what -- how
2 is this witness -- what foundation would you be able to
3 establish to have him qualified to speak to. He starts out his
4 answer in the second paragraph, "As Mr. Wittbold testified...".
5 Are you just using him to bolster the testimony of Mr. Wittbold?

6 MR. AARON: Your Honor, this witness has duties that
7 includes the analysis and handling of Northern Michigan Pipeline
8 operations and analysis of CO₂ treating requirements. His job
9 has him looking at these documents, using these documents,
10 applying them. So, he has to have an understanding of how MGAT
11 treats the gas under transportation treating agreements. He
12 needs to understand the Capacity Agreement and the conditions
13 under which it's been operating. He has to do this for his job.
14 He has to know what the contractual obligation states. He
15 doesn't need to be a lawyer to do that. The fact that he didn't
16 draft the agreement, that he's not a scribe doesn't disqualify
17 him. This is a large sophisticated company. To suggest that in
18 order for someone to talk about a contract they have to bring
19 their legal department is bordering on the absurd. As to what
20 Mr. Oliva's argument would be requiring.

21 JUDGE EYSTER: Mr. Lyle, did you negotiate with
22 lending institutions for financing?

23 THE WITNESS: No, I did not.

24 JUDGE EYSTER: Did you crunch some numbers to provide
25 CMS with, in order to determine a guaranteed level of treating

1 commitment satisfactory for blending?

2 THE WITNESS: No, that was up to CMS.

3 JUDGE EYSTER: I don't see how this witness can
4 testify.

5 MR. AARON: All he's done here is set up a background
6 to reach the conclusion. If you're looking at the questions and
7 answers at 10 and on 17 he gives you the background and explains
8 why MGAT did what they did. Mr. Wittbold's testimony is already
9 in the record. He's just referencing and drawing a correlation
10 between the two

11 JUDGE EYSTER: Sir, do you work for MichCon?

12 THE WITNESS: Currently, yes.

13 JUDGE EYSTER: What exactly are you doing for MichCon
14 again?

15 THE WITNESS: I work on the Northern Michigan Pipeline
16 treating services.

17 JUDGE EYSTER: So, you don't work for MichCon
18 Gathering, correct?

19 THE WITNESS: Correct.

20 JUDGE EYSTER: Well, I'm striking page 6,

21 MR. AARON: All of page 6?

22 JUDGE EYSTER: That's all of page 6, then we're down
23 to page 7, lines 1-4.

24 JUDGE EYSTER: I'm going to leave that one question.
25 I don't know why, but, now we're on -- that was the remainder of

1 7. Page 13, lines 1 through page 19. Mr. Oliva, you've got
2 page 13 line one through?

3 MR. OLIVA: Let me double check.

4 JUDGE EYSTER: I think it is halfway through his
5 answer.

6 MR. OLIVA: If I can just take a moment, your Honor,
7 on this. There may have been a typo referred to in the pages
8 here. I think if we start at page 13, there's no basis because
9 the witness already said he wasn't involved in the negotiations
10 of the Capacity Agreement with CMS. Getting him to testify
11 about the terms of the agreement, the agreement called
12 Interruptible Agreement being referred to here. And then again
13 if I go over to page 14, lines 19 through the end, there's no
14 foundation to show the witness has any knowledge with respect to
15 discussions and negotiations we've talked about here there is
16 over on page 1. Next questions and answered. Again, there's no
17 foundation to show. There's no foundation for the witness to
18 have any knowledge about industry standard for CO₂ contents.

19 Page 16, the question begins at line 4. There is no
20 foundation that the witness has any confidence to talk about the
21 financial impact or analysis of it. Whether he's an expert of
22 it or if it's within the scope of his duties. And, there's no
23 basis for him to having any knowledge with respect to the
24 option.

25 The next question on 16 again, no foundation for his

1 testimony. On the top of page 17, first question, asked and
2 answered. Second question asked and answered, again it is
3 talking about the terms of the Capacity Agreement. It is a
4 legal conclusion. And, on page 18 there's a projection of the
5 incremental revenue for CMS. There's no basis to show the
6 witness has any expertise or foundation for that testimony.

7 Then, the last question asked and answered going over
8 to the last page is based on what again, asks for both legal
9 conclusions and the assessment of business risks that MGAT would
10 be willing to or did undertake in connection with the AEP?
11 There's no foundation for this witness to testify about that.

12 JUDGE EYSTER: Mr. Aaron?

13 MR. AARON: We're starting on page 13?

14 MR. OLIVA: Right.

15 MR. AARON: This witness, his job duties fall within
16 the scope of his testimony. The objections that Mr. Oliva made
17 aren't to the relevance. We have had questions and answers on
18 all of this stuff during the course of the day. Certainly, it's
19 been relevant, because it's been coming. Mr. Lyle is qualified
20 to do his job he's been hired to do it. Characterizing
21 something when someone says I mentions a standard of
22 specification that somehow there's a legal implication doesn't
23 make it a legal opinion.

24 JUDGE EYSTER: Mr. Oliva, you're not objection because
25 it's a legal opinion are you?

1 MR. OLIVA: It's just on one or two of questions. I
2 think it gets into legal conclusion for the bulk of his
3 knowledge. Basically there's no foundation. His testimony is
4 outside the scope of his expertise, and outside the scope of his
5 job duties.

6 JUDGE EYSTER: Mr. Aaron, how is his testimony with
7 regards to contracts between CMS and MGAT, how is he qualified
8 to testify about the reasons for which the contract was made?

9 MR. AARON: His job duties includes analysis of
10 handling Northern Michigan Pipeline operations and CO₂ treating
11 plants. He has to pick these documents up and read them. He
12 has to understand them. As a MichCon employee he works for
13 MGAT.

14 JUDGE EYSTER: He just indicated he didn't work for
15 MichCon Gathering.

16 MR. AARON: He's employed by Michigan Consolidated Gas
17 Company. That's what he said. He operates the MGAT system.

18 MR. ODUNLAMI: Your Honor, can I?

19 JUDGE EYSTER: Yes, Mr. Odunlami.

20 MR. ODUNLAMI: Your Honor, I think on the basis of Mr.
21 Lyle's testimony, because Staff already has asked some questions
22 of Mr. Murray about Mr. Lyle's statement, which Mr. Murray
23 answered to amicably. I think, in terms of Mr. Lyle's
24 qualifications, number one, he's an engineer. As an engineer at
25 least someone would assume he has some business to practice

1 engineering. Secondly, MichCon has interest with MichCon
2 Gathering. So they assign somebody to monitor the Northern
3 Pipeline and give them their opinion of what's going on. I
4 think he should be able to do that. I don't see any reason why
5 someone has to have some kind of business, so-called business
6 degree in order to testify to things relating to the Capacity
7 Agreement or the mathematical calculation of what happens when
8 you have a changing flow instrument. This is actually within
9 his expertise in terms of carbon dioxide, in terms of
10 mathematical calculations of concentration. He's an engineer,
11 and most of this testimony relates to that. I don't see how all
12 his testimony is based on legal conclusion and should be
13 stricken.

14 JUDGE EYSTER: So, you don't feel it should be
15 stricken from the record?

16 MR. ODUNLAMI: No, your Honor, especially on page 18,
17 lines 1-17.

18 JUDGE EYSTER: The financial portions you don't
19 believe should be stricken?

20 MR. ODUNLAMI: Your Honor, nothing should be stricken,
21 your Honor. I know someone has a business degree and they're
22 good at whatever business, but there's also people without a
23 degree and they can also have some business argument in terms of
24 crunching numbers and making assumptions based on those numbers,
25 your Honor.

1 JUDGE EYSTER: All right, Mr. Odunlami, you're going
2 to carry the day on this one.

3 MR. ODUNLAMI: Thank you.

4 JUDGE EYSTER: I deny it for that portion of the
5 motion. Mr. Oliva, feel free to cross examine him on that, any
6 of those statements.

7 MR. AARON: Your Honor, before we get started, can I
8 have a clarification of what's in and what's out, now I'm
9 totally lost.

10 JUDGE EYSTER: Don't give up hope.

11 MR. AARON: I just want to make sure.

12 JUDGE EYSTER: Page 2, line 17 to page 5 line 23 was
13 stricken, and correct me if it's otherwise. Page 7 --

14 MR. OLIVA: I believe your Honor struck all of page 6
15 as well. The first four lines of page 7.

16 JUDGE EYSTER: The first four lines of page 7 have
17 been stricken. The remainder of page 7 has not and then nothing
18 else was. Any objection to the testimony being bound into the
19 record with those portions that were struck from it? Seeing
20 none, it's bound into the record.

21 ---
22
23
24
25

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of DOMINION MIDWEST)
ENERGY, INC. and DOMINION RESERVES, INC.)
against MICHCON GATHERING COMPANY)
and MICHIGAN CONSOLIDATED GAS COMPANY.)
_____)

Case No. U-14754

QUALIFICATIONS
AND
DIRECT TESTIMONY
OF
ARTHUR RAYMOND LYLE II

MICHCON GATHERING COMPANY AND
MICHIGAN CONSOLIDATED GAS COMPANY
QUALIFICATIONS OF ARTHUR RAYMOND LYLE II

Line
No.

1 **Q. What is your name, business address and by whom are you employed?**

2 A. My name is Arthur Raymond Lyle II. My business address is 2000 Second
3 Avenue, Detroit, Michigan 48226. I am employed by Michigan Consolidated
4 Gas Company ("MichCon") as a Staff Engineer.

5

6 **Q. What is your educational background?**

7 A. I graduated in December 1993 from the University of Michigan, Dearborn,
8 Michigan with a Bachelor of Science Degree in Mechanical Engineering.

9

10 **Q. What is your professional experience?**

11 A. In February of 1994, I began my career as a Staff Engineer in the Facility
12 Planning department of ANR Pipeline Company in Detroit, Michigan. Through
13 June of 2001, I remained with the same department of ANR with increasing
14 responsibilities, ultimately as a Project Engineer. My duties included flow
15 simulations of various pipeline systems, design of new connections, economic
16 analyses and preparation and support of Federal Energy Regulatory
17 Commission filings. From June 2001 through September 2005, I consulted for
18 various companies including El Paso Corporation, DTE GSPP and MichCon.
19 In September of 2005, I became an employee of MichCon. My duties currently
20 include the analysis and handling of northern Michigan pipeline operations and
21 analysis of CO₂ treating requirements.

22

23 **Q. Have you previously testified before the Commission?**

24 A. No.

MICHCON GATHERING COMPANY AND
MICHIGAN CONSOLIDATED GAS COMPANY
DIRECT TESTIMONY OF ARTHUR RAYMOND LYLE II

Line
No.

1 **Q. What is the purpose of your testimony?**

2 A. My testimony will discuss the contractual and operational issues raised by
3 Complainant relating to the transportation and treating of natural gas in
4 northern Michigan, more specifically as it relates to the Antrim Expansion
5 Project (“AEP”). My testimony will:

6 1) demonstrate that the Dedication Of Reserves (“Dedication”) of Dominion is
7 still valid and binding;

8 2) describe the history and function of an agreement for CO₂ treating services;

9 3) address the responsibility regarding delivery point CO₂ requirements;

10 4) define the chain of events related to the treatment of Dominion’s gas; and

11 5) address a number of issues raised in the Dominion witnesses’ testimony.

12

13 **Q. Which Exhibit are you supporting?**

14 A. I am supporting the following Exhibit:

15 Exhibit No. MGAT-3 (ARL-1) – Dedication of Antrim Reserves and Affidavits

16

17 **Dominion’s Dedication Remains Valid and Binding**

18 **Q. Why do you believe the Dominion Dedication is still binding?**

19 A. The Dedication for treating and transportation services on the Antrim
20 Expansion Project (“AEP”) has no expressed termination date other than for
21 the life of the reserves. History demonstrates the contractual terms of the
22 Dedication have not expired even though a related transportation and treating
23 agreement has expired.

24

**Line
No.**

1 **Q. Can you describe the history of Dominion's contractual relationship with**
2 **MGAT?**

3 A. There are two contracts relating to Dominion's production, known as ASATT
4 #1 and ASATT #16. ASATT #1 originally was executed by Wolverine Gas &
5 Oil Company, Inc. on September 12, 1994, for an initial term of ten years after
6 the in-service date of the AEP. ASATT #16 was executed by Dominion
7 Reserves, Inc. on February 6, 1995, with an initial term of ten years from the
8 in-service date of the AEP. At a later point in time, a Dominion subsidiary
9 acquired the production assets involved with ASATT #1. With the AEP
10 commencing service in November 1995, the initial terms of these agreements
11 expired in November 2005.

12

13 **Q. What differences are there between the two agreements?**

14 A. The two agreements for the most part contain similar terms and conditions.
15 One of the main differences between the agreements is that ASATT #1
16 referenced the execution of a Dedication, while ASATT #16 referenced the
17 execution of a commitment of the reserves.

18

19 **Q. What is the difference between a Dedication and a commitment of the**
20 **reserves?**

21 A. The Dedication is a contract between the parties that I understand is treated as
22 an interest in real property and recorded with the County. Unless the
23 Dedication has a termination date, the Dedication would appear in the County
24 records with the land for the life of the reserves. The commitment is a
25 contractual document that specifies an end date for the commitment of the

**Line
No.**

1 reserves, but is not treated as an interest in real property and, thus, not
2 recorded with the registrar of deeds in the County.

3

4 **Q. Does the Dedication under ASATT #1 define an expiration date?**

5 A. No. It is my understanding that the Dedication is for the life of the reserves.

6

7 **Q. Does the commitment of reserves under ASATT #16 define an expiration**
8 **date?**

9 A. The commitment of reserves specifically stated that it would expire at the end
10 of the term of the Service Agreement, ASATT #16, or if the Service Agreement
11 was terminated for any reason.

12

13 **Q. Has the Company always acted with the understanding that the**
14 **Dedication is for the life of the reserves unless a term is specifically**
15 **stated?**

16 A. Yes. The Company has made other agreements with other producers with the
17 knowledge that the Dedication clause pertained to the life of the reserves. For
18 example, MGAT signed a related 15-year treating contract ("Capacity Agreement")
19 with CMS Antrim Gas LLC ("CMS") rather than for a shorter period of time, which
20 would have been the case if the clause was not for the life of the reserves.

21

22 **Q. Why was the initial term of the transportation and treating agreements**
23 **for 10 years rather than a longer period of time?**

24 A. The initial term of the transportation and treating agreements were for ten
25 years to allow the parties to the agreement an opportunity to renegotiate

**Line
No.**

1 various terms and conditions in a timelier manner and because it is not in the
2 best interests of MGAT to lock in transportation and treating rates, terms and
3 conditions for such long periods of time based on reserve and throughput
4 estimates that may never materialize.

5

6 **Q. Is there anything to indicate that the Dedication was tied to the terms of**
7 **the transportation and treating agreement?**

8 A. No. The Dedication, attached as Exhibit No. MGAT-3 (ARL-1), contains an
9 “entireties” clause, which spells out that the Dedication is fully defined by the
10 language contained in the Dedication, exclusive of any prior understandings or
11 negotiations between the parties. Because the Dedication has no expiration
12 date, the Dedication is for the life of the reserves.

13

14 **Q. Regarding Mr. Jansma’s testimony concerning the Dedication, is there**
15 **anything contrary to his assertion as to the intent of the parties?**

16 A. Yes. Mr. Jansma cannot speak for MichCon. Moreover, the Dedication states
17 the intent of the Parties is “a transfer of an interest in the real property
18 described on Exhibit A and, as such, shall bind all subsequent transferees of
19 any interests in that real property.” This, coupled with the Entireties Clause,
20 indicates that the Dedication was for the life of the reserves. Mr. Jansma’s
21 recollections to the contrary as discussed in his testimony are simply not part
22 of the terms contained in the Dedication.

23

24

25

Line
No.

1 **Capacity Agreement – History and Function**

2 **Q. How does MGAT treat the gas under its transportation and treating**
3 **agreements?**

4 A. Under normal conditions, the gas is treated under the Capacity Agreement
5 MGAT has with CMS. This was executed in April 1995, with MGAT as the sole
6 customer of CMS for treating services. At that time, MGAT owned the treating
7 plant at South Chester in partnership with CMS, and CMS was interested in
8 purchasing MGAT's partnership share.

9

10 **Q. Under what conditions did CMS agree to the Capacity Agreement?**

11 A. As Mr. Wittbold testifies, CMS required a guaranteed level of treating
12 commitments satisfactory to lending institutions in order to finance the existing
13 treating plants and to finance the construction and ownership of additional
14 treating facilities. The Capacity Agreement includes a minimum payment on a
15 monthly basis for a period of fifteen years. MGAT made this commitment to
16 guarantee the construction of sufficient capacity to treat the majority of the
17 Antrim production expected to flow onto the AEP.

18

19 **Q. Why did MGAT agree to a fifteen year reservation charge with no**
20 **reservation rate in its transportation and treating agreements?**

21 A. MGAT used the dedications as an alternative means to secure the volume
22 necessary to cover the reservation charges under the Capacity Agreement.
23 This was, however, not without risk.

24

25

**Line
No.**

1 **Q. What risk is involved in these Dedications?**

2 A. There is a risk that the estimated production will not appear, or that the decline
3 rate will be higher than expected. Under these scenarios, there is risk that
4 certain costs may not be recovered.

5

6 **Q. Do you agree with Mr. Murray's description in his pre-filed direct
7 testimony of the requirements and terms of the Capacity Agreement?**

8 A. I agree that the treatment of volumes under the Capacity Agreement provides
9 for an outlet CO₂ content of 0.75%. However, I disagree with Mr. Murray's
10 description of "MDQ" on page 4, line 11, of his pre-filed direct testimony. Mr.
11 Murray indicates that the quantity of gas subject to the \$0.11/Mcf rate is within
12 the "MDQ" and that the quantity of gas that is subject to the \$0.09/Mcf rate is in
13 excess of the "MDQ". "MDQ" is not a defined term in the agreement. As Mr.
14 Wittbold testifies, with MGAT as the sole customer, there was no need to
15 define that the contractual capacity level of 260 MMcf/d was firm. There is a
16 term used in the agreement, which is the basis for the reservation rate charged
17 during the term of the agreement, known as the Demand Charge Volume. I
18 agree that the total charges for volumes up to this level are \$0.11/Mcf and
19 volumes over that level are charged \$0.09/Mcf. I disagree with the defining of
20 volumes at levels in excess of the Demand Charge Volume as Overrun. There
21 is a defined "Overrun Rate" in the contract, which is the \$0.09/Mcf referenced
22 above, but there is no reference to a reduced preference for service relating to
23 those volumes.

24

25

Line
No.

1 **Responsibility for CO₂ Content at Delivery Points**

2 **Q. What is MGAT's responsibility as it relates to CO₂ requirements?**

3 A. My understanding is that the Commission Order authorizing the construction
4 and operation of the AEP in Case No. U-10547 specified that the operator of
5 the AEP was to maintain deliveries of gas from its system at a level of 2% or
6 less CO₂. Mr. Persells in his testimony addresses a follow up letter received
7 from the Commission Staff after the AEP went into operation that reinforces
8 the existence of this obligation. Additionally, the Commission's Order included
9 the capability to allow blending of gas, meaning the indirect treating of volumes
10 of high CO₂ content gas with lower CO₂ content gas in such a manner as to
11 obtain an overall gas mixture with CO₂ levels within the required specification
12 of 2% or less at the delivery points.

13

14 **Q. Did the subsequent Commission Order in Case No. U-12342 (the**
15 **Dominion complaint on the rates charged by MGAT on the AEP) affect**
16 **the CO₂ requirements at the delivery points or the capability to blend**
17 **volumes?**

18 A. No. It is my understanding that the Commission Order in that case simply
19 reset the rate charged for transportation services on the AEP.

20

21 **Q. Referencing Mr. Murray's answer on page 5 of his testimony at lines 24-**
22 **30, do you agree with his interpretation of what the Commission Order in**
23 **Case No. U-10547 indicated relating to treating gas to a 2% CO₂ level?**

24 A. No. The order specified that the gas must be at 2% or less CO₂ content when
25 it reaches the off system delivery points at the end of its transportation such as

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1 Kalkaska, but the Order did not specify that treating gas upstream at a location
2 upstream of a delivery point to a 2% specification meets those requirements.
3 Additionally, his reference to Amendment #3 listing 2% as a minimum
4 requirement does not preclude MGAT from insisting on a different standard
5 from shippers as it determines that balancing the gas volume, quality and
6 receipt point variables in the pipeline operations will require such. If MGAT
7 negotiates changes in the requirements, a treating service provider would
8 need to offer a service to that level or risk the production not being accepted
9 as meeting requirements.

10

11 **Q. Have the obligations of the AEP operator at the delivery points remained**
12 **constant since AEP operations began?**

13 A. Yes. However, because of the geographic location of the receipt points, and
14 the continuous changes in the number of receipt points, the volumes of gas at
15 the receipt points and the CO₂ content of the receipt point, MGAT, as the AEP
16 operator, must constantly reassess and actively manage the amount and
17 location of CO₂ treating in order to balance the entire AEP gas stream such
18 that it contains 2% or less CO₂ at the delivery points.

19

20 Based on reserve reports provided to the MPSC in 1995 when the AEP began
21 operations, there was a volume level of approximately 355 MMcf/d of Antrim
22 production (operationally reported after losses and shrink or approximately 390
23 MMcf/d pre-shrunk) and a CO₂ content of 10.5% on average from production
24 contracted to flow on the AEP. At that time, there were approximately 135
25 Receipt locations delivering volumes for transportation on the AEP. With that

**Line
No.**

1 level of volume and the majority being treated through the capacity agreement,
2 the balancing equation to meet the required delivery standards was an easier
3 task than today because of the historic changes in the production volumes,
4 the CO₂ content of the gas and the total number of receipt points.

5

6 **Q. What historic changes have occurred with the production in this area?**

7 A. The volumes delivered to the AEP have been declining since approximately
8 1997, and the overall CO₂ content of the gas stream has been increasing since
9 the production first began to flow.

10

11 **Q. What makes maintaining the delivery point CO₂ levels more difficult**
12 **today?**

13 A. As mentioned above, there are variables such as lower volumes and higher
14 relative CO₂ contents today than in the past and the geographic location of the
15 receipt points that place production volumes in the transported gas stream.
16 Today there are approximately 170 Receipt locations bringing production to the
17 AEP, including a number that are downstream of the treating facilities. In
18 March 2006 on the AEP, the Antrim production volume levels were
19 approximately 253 MMcf/d and the CO₂ content averaged 16.6%. With CMS
20 having contracts for treating to a level of only 2%, the potential for large
21 volumetric deliveries at South Chester and Goose Creek and the volumes
22 blended on the system, the delicate balance of maintaining 2% or less at the
23 delivery points has become a much more complex task. The balance is
24 dependent on all of these factors, and requires the solution to an equation that
25 begins with the variables of volume and CO₂ content at the outlet of the CMS

Line
No.

1 plant, includes the variables of volume and CO₂ content from each of the
2 eleven receipts on the AEP downstream of the CMS plant, needs to factor in
3 the volume and CO₂ content of deliveries to ANR at South Chester, Great
4 Lakes and Consumers Energy at Goose Creek, and tracks the requirements at
5 Kalkaska to maintain the required delivery specification, which includes the
6 volume and CO₂ content from the Merit hydrocarbon treating plant, the
7 volumes and CO₂ content of the volumes flowing into or out of Kalkaska from
8 the various MichCon pipelines and the volumes and CO₂ content from the
9 Saginaw Bay system. All of these factors are managed to meet the required
10 delivery specifications.

11

12 **Q. What would a large volume previously treated to 0.75% at the CMS plant**
13 **outlet shifting to a level of 2% do to this operation?**

14 A. A proposed change in outlet CO₂ content for a large volume of production,
15 such as the Dominion production, throws off the balance of the system and
16 further exacerbates the potential problems maintaining the required
17 specifications. With a change in the operational requirements of the AEP
18 related to a shift in treating requirements on volumes of this magnitude,
19 approximately 325 Mcf/d of additional CO₂ would remain in the gas stream on
20 the outlet of the CMS plant. This equates to a curtailment of volumes with a
21 similar CO₂ content that are downstream of the plant, or approximately 2,300
22 Mcf/d of production with a 14% CO₂ content would be shut in, to maintain
23 similar operations.

24

25

Line
No.

1 **Chain of Events of Treatment of Dominion's Gas**

2 **Q. What outlet CO₂ content was the Dominion production treated to prior to**
3 **Dominion's execution of the treating agreement with CMS?**

4 A. The production was treated to an outlet CO₂ content of 0.75%.

5

6 **Q. Mr. Barnhart and Mr. Weyland both indicate that they had discussed**
7 **setting an outlet treating level of 0.75% CO₂ with CMS. Would that have**
8 **been a change from the previous treating service performed for that**
9 **production?**

10 A. No. The CMS outlet CO₂ requirement of 0.75% would be required whether or
11 not Dominion contracts with CMS directly or contracts with MGAT. The reason
12 adherence to this standard is required is because to do otherwise upsets the
13 delicate balancing equation which takes into account all volumes and all CO₂
14 content at all receipt points on the AEP. If one large volume producer is
15 allowed to unilaterally change its treating requirement, this change will ripple
16 across all producers and modify all treating arrangements for all producers. It
17 would be difficult, if not impossible, for MGAT to monitor and manage CO₂
18 content under such conditions.

19

20 **Q. Is there more CO₂ required to be removed from the Dominion gas at the**
21 **CMS facility today than when it was under the ASATT agreement with**
22 **MGAT?**

23 A. No. When the Dominion gas was treated previously, the service was
24 performed under the Capacity Agreement, and it was treated at the CMS
25 facility from an inlet CO₂ level of 14% to an outlet level of 0.75%. By agreeing

**Line
No.**

1 to remove only 12% CO₂ content from the Dominion gas under the new
2 agreement (i.e., from 14% to 2%), CMS is actually removing nearly 9.5% less
3 CO₂ from the Dominion gas than they previously did when the gas was treated
4 under the Capacity Agreement.

5

6 **Q. After CMS notified MGAT of its intent to change its outlet CO₂ target**
7 **levels, how did MGAT prepare to keep production flowing?**

8 A. A new agreement with CMS ("Interruptible Agreement") was set up to treat the outlet
9 stream of the plant to a level less than the level that CMS planned for the outlet in
10 order to maintain the delivery points at the 2% or less CO₂ content requirement.

11

12 **Q. What was the cause of the change in the outlet CO₂ target of CMS?**

13 A. The cause of the change was the treatment of the Dominion gas under a new
14 treating agreement with CMS requiring only 2% CO₂ at the outlet of the plant.

15

16 **Q. What is the status of treating of the Dominion production?**

17 A. It is my understanding that Dominion is pre-treating their production, prior to
18 delivery to CMS, to a level of 12.75% CO₂ (originally 14% when provided
19 treating services under the Capacity Agreement) and CMS has agreed to
20 remove the same 12% CO₂ content (14% less 2%) provided in the agreement
21 with Dominion to achieve a plant outlet level of 0.75% (12.75% less 12%) CO₂.

22

23 **Q. Would you please define a pre-treating service?**

24 A. A pre-treating service is a removal of a level of CO₂ from the gas, usually prior
25 to the final treatment to the requirements of the pipeline. For gas on the AEP,

Line
No.

1 volumes that have CO₂ levels in excess of 14% need to subscribe to services
2 to remove CO₂ prior to final treatment to achieve the 14% level.

3

4 **Q. Is Dominion the only shipper with a pre-treating service requirement?**

5 A. No. The majority of the producers transporting gas have production requiring
6 some level of pre-treating. The only producers that do not have pre-treating
7 requirements have gas streams that have production with CO₂ content below
8 the specification of 14% without treating.

9

10 **Q. What would happen if the CO₂ content at the outlet of the South Chester**
11 **CO₂ plants were allowed to rise?**

12 A. MGAT would first require curtailments at certain production locations. These
13 production locations would be required to reduce the production rates to
14 maintain the requirement of 2% or less CO₂ at all delivery points. If the CO₂
15 content at the delivery points were allowed to approach 2% overall, any
16 production without a direct connection to a treating facility would be shut in.

17

18 **Testimony of Complainant Witnesses**

19 **Q. What can you tell us regarding the various discussions with MGAT**
20 **relating to contract negotiations Mr. Barnhart and Mr. Weyland describe**
21 **in their pre-filed direct testimony?**

22 A. This was part of business discussions and negotiations in an attempt to satisfy
23 the needs of all the parties involved.

24

25

**Line
No.**

1 **Q. Do you agree with the statements on Page 6, lines 6 through 12, of Mr.**
2 **Murray's testimony relating to standard CO₂ content?**

3 A. No. I would disagree with his implication that 2% CO₂ content is a standard.
4 In my experience, I would say that a 2% maximum CO₂ content is standard in
5 the industry, with the average CO₂ content on the overall systems being at
6 levels under that specification.

7

8 **Q. Can you clarify the description of Exhibit FMM-5 provided on page 6,**
9 **lines 15-28, of Mr. Murray's testimony?**

10 A. Mr. Murray apparently has taken monthly average data to calculate the various
11 totals in the Exhibit. His numbers are a fair approximation of the average
12 operation for November of 2005. However, what Mr. Murray's calculation
13 ignores is that the operations, receipts, and deliveries on the system
14 continuously change.

15

16 **Q. Do you agree with the assertion that the Company has insufficient**
17 **blending capacity as indicated on Page 7, lines 21 through 30, and**
18 **continuing on Page 8, lines 1 through 10, of Mr. Murray's testimony?**

19 A. No. What Mr. Murray does not reveal in his description of the operation
20 outside of the fact that there was a CO₂ plant that was being rehabilitated over
21 an extended period of time, is that there are operational issues that MGAT
22 does not currently have the authority to control. More specifically, if MGAT
23 were able to limit the level of gas deliveries nominated to be delivered to
24 Goose Creek, the balance of Kaskaska would not have been impacted during
25 this period. In order to allow all the nominations submitted to continue during

**Line
No.**

1 this dispute, MGAT has nominated additional services for treating under the
2 Interruptible Agreement, when CMS is able to provide such service.

3

4 **Q. Is the financial impact on MichCon referenced in Mr. Murray's testimony,**
5 **specifically on page 8, lines 13 through 30, and on page 9, lines 1**
6 **through 3, also indicative of a benefit potentially realized by CMS?**

7 A. Yes. To the extent MGAT pays for additional treating services from CMS
8 under the Interruptible Agreement for Dominion's gas to reach an outlet
9 content of 0.75% CO₂, CMS would realize revenues of approximately
10 \$160,000 per year. CMS would also realize additional revenues of
11 approximately \$180,000 per year from the differential in what MGAT paid CMS
12 for services and what Dominion would pay directly to CMS.

13

14 **Q. What is the potential for interruption of treating services when under**
15 **contract directly from CMS as discussed by Mr. Barnhart and Mr.**
16 **Weyland?**

17 A. Based on the testimony filed by the witnesses for the Complainant, it appears
18 that CMS communicated to Dominion that their treating services would have a
19 very small chance of being interrupted as CMS would prepare to make repairs
20 to their Plant 1 facility, which was in a state of disrepair. Mr. Murray indicates
21 in his testimony on Page 9, lines 6-15, that Plant 1 provides approximately 30
22 MMcf/d of capacity and by rehabilitating the plant at a cost of \$700,000,
23 Dominion would not realize any curtailment with one of the large plants out of
24 service during the term of the agreement between Dominion and CMS. The
25 large plants have capacity of approximately 75 MMcf/d.

**Line
No.**

1 **Q. What does Mr. Murray’s testimony on page 9, lines 6-29, infer with regard to**
2 **CMS having the ability to commit to a higher level of service for Dominion?**

3 A. CMS has apparently promised Dominion that its gas will be provided a higher
4 level of service, under an agreement directly with CMS, than what CMS is
5 willing to offer all other producers or MGAT for identical treating services
6 associated with the AEP. In simple terms, CMS has promised Dominion its
7 gas will flow even when other producers’ gas will be curtailed or shut in. CMS
8 has chosen to treat contracts with parties requiring no long term reservation
9 payment as having a higher overall priority than for the services provided
10 under an agreement with reservation payments, which does not make much
11 sense. CMS cannot place Dominion at a higher level of service than MGAT
12 since MGAT would also have a comparable firm service agreement and should
13 be treated the same if an interruption were to occur.

14

15 **Q. Does Mr. Murray’s testimony on Page 9, line 15, accurately describe the**
16 **terms in the Capacity Agreement?**

17 A. To a certain extent, it does. However, Mr. Murray’s testimony fails to
18 acknowledge that the original Capacity Agreement, as confirmed in Mr.
19 Wittbold’s testimony, was between the sole treating customer and the sole
20 treating provider and, therefore, no definition of service level needed to be
21 placed into the Capacity Agreement.

22

23 **Q. Have you reviewed Exhibit DOM-11?**

24 A. Yes. It is a letter sent from Dominion to MGAT regarding their invoice for CO₂
25 Processing and Oxygen Surcharge.

**Line
No.**

1 **Q. What is the Oxygen Surcharge?**

2 A. The Oxygen Surcharge relates to a settlement between the producers, MGAT
3 and CMS, relating to having measurable Oxygen content, which was prohibited
4 in the original gas quality specifications, in the gas stream and the effects it
5 had on the CMS treating facilities. Based on inlet volumes of 245,000 Mcf/d
6 into the treating facilities and an Oxygen Surcharge rate of \$0.011/Mcf, CMS
7 would receive approximately \$980,000 annually to pay for plant repairs and
8 upgrades.

9

10 **Q. What would you project to be the incremental revenue to CMS under the**
11 **Dominion treating agreement over its five year term?**

12 A. CMS would realize approximately \$830,000 over the five year term, assuming
13 a \$0.02/Mcf revenue increase and a 2006 flow rate of 26,000 Mcf/d based on
14 an annual decline rate of 6.6%. Therefore, it seems that CMS is the only party
15 realizing a direct benefit created from the shift in treating agreements from
16 MGAT to CMS.

17

18 **Q. How do the various facts throughout your testimony reconcile with the**
19 **matters of the case?**

20 A. The main issues premised in this case are the validity of the Dedication and
21 the responsibility for delivery point CO₂ levels. The Dedication, by its own
22 express terms, has been entered into freely and is valid for the life of the
23 reserves. Premised on the Dedication involved in this case and the
24 dedications of other producers, MGAT paid for the construction and began the
25 operation of the AEP, signed a long term agreement for CO₂ treating services

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1 with CMS and accepted the responsibility to maintain the standard of 2% CO₂
2 or less at each of the delivery points off of its pipeline. With regard to the
3 second issue relevant to the case, the Commission gave the responsibility for
4 maintaining the level of CO₂ at all delivery points to MGAT under the initial
5 Commission Order related to authority to construct the AEP. The Commission
6 has reinforced that point in the interim and MGAT retains the responsibility to
7 maintain that standard today. The methodology for achieving that standard
8 also remains with MGAT, which makes the decisions necessary to maintain
9 the proper and mandated operation of its facilities.

10

11 **Q. Does this complete your testimony?**

12 A. Yes.

1 JUDGE EYSTER: Cross, Mr. Oliva?

2 MR. OLIVA: Thank you, your Honor.

3 CROSS EXAMINATION

4 BY MR. OLIVA

5 Q. Mr. Lyle, in connection with the discovery in this case --

6 JUDGE EYSTER: Just a moment. Do we have some
7 exhibits?

8 MR. AARON: Yes, we have one exhibit, Exhibit MGAT-3.

9 JUDGE EYSTER: And that was?

10 MR. OLIVA: A copy of the Dedication of Antrim
11 Reserves.

12 JUDGE EYSTER: Any objection to that being admitted
13 into evidence? Had that been admitted, Mr. Oliva as another
14 exhibit?

15 MR. OLIVA: The first three pages of this proposed
16 exhibit, your Honor has been previously admitted as Exhibit
17 DOM-2.

18 JUDGE EYSTER: Do you have an objection?

19 MR. ODUNLAMI: None.

20 MR. OLIVA: Notwithstanding that portion of Mr.
21 Lyle's testimony, to which was stricken. I would not object at
22 this time.

23 JUDGE EYSTER: Mr. Odunlami, any objection to the
24 exhibit?

25 MR. ODUNLAMI: Which Exhibit, MGAT-3, and the

1 testimony stricken?

2 MR. OLIVA: I don't have an objection, your Honor.

3 JUDGE EYSTER: Do you have any objections, Mr.
4 Odunlami?

5 MR. ODUNLAMI: None, your Honor.

6 JUDGE EYSTER: It's admitted. Now, the rebuttal
7 testimony.

8 MR. AARON: I move to have that bound in as well, your
9 Honor.

10 JUDGE EYSTER: Any objections?

11 MR. OLIVA: No, your Honor.

12 JUDGE EYSTER: All right, Mr. Lyle's rebuttal
13 testimony will be bound into the record.

14 ---
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STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of DOMINION MIDWEST)
ENERGY, INC. and DOMINION RESERVES, INC.)
against MICHCON GATHERING COMPANY)
and MICHIGAN CONSOLIDATED GAS COMPANY.)
_____)

Case No. U-14754

REBUTTAL TESTIMONY

OF

ARTHUR RAYMOND LYLE II

MICHCON GATHERING COMPANY AND
MICHIGAN CONSOLIDATED GAS COMPANY
REBUTTAL TESTIMONY OF ARTHUR RAY LYLE II

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1 **Q. What is the purpose of your rebuttal testimony?**

2 **A.** I will respond to the Michigan Public Service Commission (MPSC) Staff
3 witness Mr. Mazuchowski's testimony regarding MGAT and the AEP.
4 Specifically, I will address his statements regarding the responsibility for
5 maintaining 2% or less CO₂ content at all of the delivery points from the
6 AEP, the negative effect adoption of his position would have on MGAT's
7 balancing equation when one producer changes specifications without
8 agreement from MGAT, and I will address his assessment of dedications to
9 treating and transportation.

10

11 **Q. Do you agree with Mr. Mazuchowski's statements on Page 5, lines 3-4,**
12 **regarding CO₂ limits?**

13 **A.** No. The Commission's condition contained in the U-10547 order was that
14 MGAT must maintain a level of 2% or less CO₂ at the delivery points, also
15 called downstream take-away points, but the Commission never stated as
16 Mr. Mazuchowski asserts that the gas transported on the AEP needed to be
17 2% or less CO₂ content.

18

19 **Q. Do you agree that Mr. Mazuchowski's statements on Page 5, lines 20-**
20 **22, and on Page 6, lines 1-4 relating to the initial ASAT agreements in**
21 **relation to the CO₂ content of the gas, are accurate and complete?**

22

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1 **A.** No. Mr. Mazuchowski does not address the fact that the initial executed
2 ASAT agreements, which were introduced into the record by MGAT in the
3 initial AEP case, Case No. U-10547, did not contemplate a third party
4 treating for CO₂ because there was no third party treating capability at that
5 time. This is demonstrated by the fact that the gas quality standards in these
6 original ASAT agreements, negotiated and signed before certification and
7 construction of the AEP, contractually specified that CO₂ levels were not to
8 exceed 2%, ***not only at the delivery point but also at the receipt point*** .
9

10 **Q.** **What is the significance of contractually specifying a CO₂ level at the**
11 **receipt point in the original ASAT agreements?**

12 **A.** This means that the gas production that entered the AEP had to have a CO₂
13 content of 2% or less at the receipt point, i.e. the point at which a producer's
14 gas is measured upstream of the AEP pipeline, throughout the term of the
15 ASAT agreement. A CO₂ content of 2% or less could be accomplished
16 either because the shipper did not expect their production to exceed 2%
17 CO₂ or the shipper planned to install treating facilities upstream of the
18 receipt point.
19

20 **Q.** **Has MGAT changed the CO₂ content for Antrim gas as Mr.**
21 **Mazuchowski testifies on Page 6, lines 7-9?**

22 **A.** No. MGAT has not changed the CO₂ content of the Antrim gas transported
23 on the AEP, as the CO₂ content is based on variables related to the actual

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1 production itself. The requirement that MGAT must maintain a CO₂ content
2 of 2% or less for all gas delivered from the AEP is still the same. MGAT's
3 CO₂ requirement pertains to the entire gas stream, which is the cumulative
4 total of gas from all producers. In order to meet its CO₂ content requirement
5 for the entire gas stream requires careful balancing based on the volume
6 and the CO₂ content of each producer's gas and the location of the receipt
7 point where that gas enters the AEP. If one producer changes its CO₂
8 content it can upset the entire equation causing the treatment requirements
9 for all other producers' gas to change. In this case, all gas previously
10 delivered to CMS under the Capacity Agreement was treated to 0.75% CO₂.
11 MGAT still offers this same service at the same terms. To avoid upsetting
12 the CO₂ balancing equation for all AEP shippers MGAT needs contractual
13 assurance from shippers opting for ASAT service, i.e transportation only
14 service with no CO₂ treating, that they will obtain the same level of treating
15 from CMS or another 3rd party treater that was previously provided by MGAT.
16 If CMS or another 3rd party treater is unwilling or unable to offer the service at
17 the same price, the shippers have the option to contract with MGAT. Dominion
18 in this case ignored the Dedication of gas to MGAT for treating and
19 transportation, and instead obtained a separate treating contract with CMS.
20 Not only did the contract change the CO₂ outlet content to 2% from 0.75% but
21 also appears to provide Dominion with a preferential level of service not
22 offered to MGAT or other producers. Dominion has since rectified the higher
23 outlet CO₂ content through a pretreatment arrangement for the duration of

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1 this case, but before this occurred MGAT had to pay for extra treating at the
2 CMS plant to maintain the CO₂ content balancing equation that allows gas to
3 continue to meet the 2% or less CO₂ content at the delivery points.

4

5 **Q. On Page 6, lines 13-21, Mr. Mazuchowski uses the term “carbon**
6 **dioxide free gas”, does CO₂ “free” production exist?**

7 **A.** No. While production from the Niagaran and Prairie Du Chien (“PDC”)
8 formations has lower CO₂ content on average than production from the
9 Antrim formation, the majority of the production sampled has measurable
10 CO₂ content that ranges from 0.01 to over 4% for Niagaran and 0.08 to
11 0.4% for PDC. MGAT does not receive any carbon dioxide free gas that it
12 can use to lower CO₂ content through blending downstream of the CMS
13 plant.

14

15 **Q. Is Mr. Mazuchowski’s point that MGAT elected to blend Niagaran and**
16 **PDC formation gas with Antrim gas instead of treating all Antrim gas**
17 **accurate?**

18 **A.** No. The blending which takes place on the AEP is a cost effective means of
19 assuring Antrim gas from multiple receipt points is available for transport
20 and ultimate delivery at downstream takeaway points at 2% or less CO₂.
21 Without blending of Antrim gas, significant additional facilities in the form of
22 pipelines and CO₂ treating plants would be required to enable the various
23 producers with no direct access to CO₂ treating facilities to be able to

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1 transport their gas. The Niagaran and PDC production transported on the
2 AEP has nothing to do with blending on the AEP. The Niagaran and PDC
3 production received by MGAT for AEP transport actually passes through the
4 CMS treating facility as part of the blended gas stream delivered for treating
5 services. It is my understanding that the Commission in Case No. U-10547
6 specifically rejected as too costly a proposal made by several intervening
7 parties that the AEP construct CO₂ treatment facilities at numerous
8 additional locations on the AEP.

9

10 **Q. What about the assertion on Page 6, lines 13-21 that the Niagaran and**
11 **PDC production was the gas used for blending instead of treating the**
12 **gas for CO₂ removal?**

13 **A.** While some Niagaran gas was unable to be economically separated for
14 transportation on the Wet Header pipeline after the construction of the AEP,
15 the majority of the gas transported on the AEP is and has been Antrim
16 production. The main vehicle that allowed blending of gas on the AEP was
17 the MGAT Capacity Agreement with CMS, as referenced on Page 7, lines 3-4.

18

19 **Q. At page 8, line 6, Mr. Mazuchowski testifies that MGAT is being unfair,**
20 **unreasonable and discriminatory, do you agree?**

21 **A.** No. First, MGAT is not mandating a “new” 0.75% CO₂ level for Antrim gas
22 transportation contracts. As I have explained previously, MGAT is merely
23 insisting that Dominion treat the same gas under a 3rd party treating

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1 agreement the same way the gas was treated under the MGAT treating
2 contract. Second, MGAT is not being unfair, discriminatory or
3 unreasonable. MGAT is operating the AEP fairly to assure all gas is
4 delivered on behalf of all of the shippers that hold contracts for
5 transportation service on the AEP, not just Dominion. What Dominion has
6 done directly affects the ability of MGAT to deliver all of the shipper's gas to
7 the delivery points within the required standards of 2% or less, and
8 potentially would increase the costs incurred and required to be recovered
9 from all of the shippers, or in a worst case scenario where individual
10 producers ignore their pro-rata treating responsibilities, shut-in all gas
11 production that flows on the AEP.

12

13 **Q. Do all Antrim gas Shippers pay the same treating charge for CO₂**
14 **removal as indicated on Page 8, lines 6-13?**

15 **A.** No. While the contracts that MGAT has have the same treating charge of
16 \$0.11/Mcf for service provided at the CMS plant from 14% to 0.75%, it
17 appears that CMS is requiring Shippers to pay the same rate but for a lower
18 amount of CO₂ removal service. Specifically, the treating CMS is providing
19 to Dominion is from 14% to 2% at the same rate charged by MGAT for
20 treating this same gas to 0.75%. Thus, Dominion is paying an overall higher
21 charge for treating to the same level that MGAT was obtaining for
22 Dominion's dedicated gas.

23

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1 **Q. Do you agree with the statements on page 8, lines 14-22 of Mr.**
2 **Mazuchowski's testimony that MGAT does not have enough gas to**
3 **blend, and that it is trying to pass the cost on to its customers?**

4 **A.** No. MGAT is allowed a reasonable opportunity to make a return on its
5 investments and is entitled to recover the cost it incurs in providing its
6 transportation and treating services from its customers. MGAT is not
7 required to and will not provide services for free. Contrary to Mr.
8 Mazuchowski's assertions, MGAT did not depend on the non-Antrim
9 production for blending services. The level of non-Antrim production
10 remaining on the AEP was kept to an economically feasible minimum, and
11 in fact flows through the CMS plant as part of the blended stream of
12 production flowing upstream of the CMS plant inlet. As to his assertion that
13 not enough Antrim volumes are currently treated to a 0.75% CO₂ level, this
14 is the issue the Dominion Dedication for treating and transportation was
15 intended to address by assuring the necessary volumes would be treated to
16 the 0.75% level. No additional costs are incurred under an ASATT for this
17 level of treating service, but MGAT is not in control of the treating
18 agreement terms or rates signed by other parties, which may result in
19 additional costs. In Mr. Mazuchowski's reference to MGAT not having
20 enough capacity, as I previously discussed, some of the issues that MGAT
21 has no control over are the amount of gas delivered upstream of Kalkaska
22 and the actual outlet content received from the CMS plant, each of which
23 effects the amount and quality of gas available for delivery downstream on

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1 the AEP. These illustrate why MGAT as operator of the pipeline and like all
2 other common carrier pipeline operators was given the authority by the
3 Commission to be able to strike the balance between all production that will
4 be transported on the AEP to ensure that all producers' gas will continue to
5 flow.

6

7 **Q. Is MGAT trying to get the shippers to "foot the bill" as Mr.**
8 **Mazuchowski states on Page 8, lines 21-22?**

9 **A.** No. MGAT is attempting to keep all gas delivered from the AEP to 2% or
10 less CO₂ and is unwilling to incur additional costs.

11

12 **Q. Is MGAT required to transport gas to 2% or less per Page 9, lines 7-10?**

13 **A.** No. Transporting gas does not inherently change the level of CO₂ it
14 contains. MGAT is required to make **deliveries** with CO₂ content of 2% or
15 less from the AEP, but currently receives and transports gas in excess of
16 2% from a multitude of Receipt Points on the pipeline. If the Commission
17 desires that no gas in excess of 2% be transported on the system, the
18 scenario would require additional treating facilities to be installed at each
19 Receipt Point.

20

21 **Q. Is MGAT requiring that the producers spend extra money as**
22 **referenced on Page 9, lines 12-16?**

23

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1 **A.** No. The shippers still have the available option of executing an ASATT, at
2 the same rate offered previously, to provide the treating with the outlet
3 specification of 0.75% CO₂. MGAT does not control what other parties may
4 charge shippers for an alternative treating service. What MGAT must be
5 able to control to ensure all producers gas continues to flow on the AEP is
6 the balancing of the level of CO₂ treating which the Commission authorized
7 MGAT to do at the time construction of the AEP was approved. If CMS
8 charges a higher rate directly to shippers to provide the same service MGAT
9 previously provided, or a lesser treating service at the same price MGAT
10 charged for greater treating, as occurs with Dominion's contract with CMS,
11 that is a matter between CMS and Dominion and any other producers who
12 may object that they now fall behind Dominion's preferential status, i.e. CMS
13 appears to have promised to curtail treatment of all other producers' gas,
14 including gas subject to MGAT's capacity agreement with CMS, before
15 Dominion's gas would be curtailed.

16

17 **Q. Do you agree with Mr. Mazuchowski's statements on Page 9, lines 20-**
18 **22 and Page 10, lines 1-8, concerning who has the responsibility for**
19 **maintaining the 2% or less CO₂ level?**

20 **A.** No. MGAT is one entity and it is absurd to suggest that MGAT could or
21 should be separated into two entities with two sets of responsibilities.
22 MGAT as the pipeline operator of the AEP has the obligation to assure that
23 gas delivered to the delivery point meets the 2% or less CO₂ content

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1 requirement. MGAT does not have the obligation to treat all Antrim gas with
2 over 2% CO₂ content before it is delivered to its receipt points, whether it is
3 on the AEP or another pipeline system in northern Michigan. If MGAT were
4 required to treat all gas to 2% or less at each receipt point, i.e. treated
5 before the gas is transported on the AEP, even just for AEP contracted
6 Antrim production, there could be no third party treating services. CMS
7 would have to immediately terminate all agreements for third party treating
8 services. MGAT would then need to sign CO₂ treating agreements with
9 those parties previously contracted with CMS, and any volumes currently
10 blended would need to reach a treating plant, either through a new lateral to
11 an existing treating plant or by constructing a new treating plant at the
12 receipt point. While ultimately this scenario would be operationally feasible,
13 all of this is counter to the Commission's U-10547 grant of authority to
14 MGAT to allow blending, and thus minimize the total facilities constructed, in
15 turn keeping transportation costs at a reasonable level. MGAT has the
16 operational responsibility to meet the required CO₂ levels at downstream
17 take away points, but MGAT does not have the financial responsibility to
18 incur the above described additional expenses.

19

20 **Q. Is MGAT making unreasonable demands on Antrim shippers as**
21 **indicated on Page 10, lines 17-21?**

22 **A.** No. MGAT is actually the reasonable party, and has offered a simple
23 alternative to Dominion who has disregarded the terms of its contractual

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1 obligations, i.e., the Dedication. MGAT's requirement that the same gas it
2 treated for Dominion under contract to a level of 0.75%, must still be treated
3 to a CO₂ level of 0.75% under a 3rd party treating agreement to avoid
4 upsetting the entire AEP gas stream, which affects all shippers not just
5 Dominion, is innately reasonable. Attempting to force other shippers not
6 involved in this case to accept the potential outcomes of this case so that
7 Dominion can ignore its obligations under the Dedication and have a
8 preferential treating contract with CMS is unreasonable. If the Commission
9 were to accept Dominion's position in this case and allow Dominion to
10 contract directly with CMS for lesser CO₂ treating services than MGAT
11 requires, then MGAT would be forced to terminate agreements or curtail
12 production related to agreements it has with many or all AEP shippers, none
13 of whom are parties to this case. There would be nothing reasonable about
14 allowing one shipper to unilaterally dictate for all other shippers on a
15 common carrier pipeline the costs of transportation and treating, and the
16 ability to meet transportation requirements. When one shipper, (Dominion)
17 significantly and unilaterally changes the equation MGAT uses to maintain
18 the 2% or less CO₂ standard at the delivery points on the AEP, all of the
19 remaining shippers are impacted. Authorizing such behavior by one shipper
20 will likely lead to chaos and a perpetual cycle where each shipper
21 unilaterally seeks modifications to their treating arrangements and in turn
22 force other producers to change their agreements. This cycle could
23 ultimately lead to a pipeline CO₂ content exceeding 2% at the AEP delivery

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1 points and the shut-in of all gas transported on the AEP. Such a
2 consequence is not in the public interest nor what the Commission
3 envisioned when it gave MGAT the responsibility to manage the treating
4 requirements on the AEP.

5

6 **Q. Do you agree with the assertion that the reserves may be dedicated to**
7 **transportation and treating for the life of the AEP per Page 11, lines 3-**
8 **15?**

9 **A.** No. As discussed in my initial testimony and Mr. Persell's initial testimony in
10 this case, the dedications are for the life of the reserves.

11

12 **Q. Does this complete your testimony?**

13 **A.** Yes, it does.

1 BY MR. OLIVA CONTINUING

2 Q. Mr. Lyle, in connection with discovery in this case, the
3 Respondents were asked, both by Dominion and also by Staff
4 to provide on discovery copies of all of the ASATT and
5 ASAT agreements and also all of the dedications with
6 respect to the AEP, and those were provided under your
7 signature with Respondent, is that correct?

8 A. That's correct.

9 Q. On page 8 of your direct testimony, beginning on line 6,
10 you refer that Mr. Persells, in his testimony addresses a
11 follow up letter received from the Commission Staff
12 regarding the CO₂ level on the AEP, and you were here in
13 the room while I was asking Mr. Persells about that were
14 you not?

15 A. I was in the room.

16 Q. I asked Mr. Persells if he was aware of the Commission
17 Order which for a time relieved the AEP of it's obligation
18 to maintain CO₂ at 2% level, do you recall that question?

19 A. Yes, I do.

20 Q. Do you have any knowledge of such a Commission Order?

21 A. I recall there was a request for a temporary waiver.

22 Q. And that it was by the Commission?

23 A. Yes.

24 Q. Would you turn to page 9 of your testimony, the question
25 and answer beginning on line 11. You state that MGAT, as

1 the AEP operator, must constantly reassess and actively
2 manage the amount and location of CO₂ treating in order to
3 balance the entire AEP gas stream such that it contains 2%
4 or less CO₂ at the delivery points. When you say, it, you
5 mean the AEP, the entire AEP gas stream?

6 A. I mean the delivery points will be at the 2% or less.

7 Q. So it's not that the AEP gas treated is 2% or less, but
8 that the gas treating out of Kalkaska is at 2% or less?

9 A. That would be one of the delivery points.

10 Q. So, when you say, it, you're not referring to the AEP gas
11 stream?

12 A. Not directly, no.

13 Q. You are familiar, are you not, with the document that was
14 previously marked and received into evidence as Exhibit
15 DOM-14, which was originally Mr. Murray's Rebuttal Exhibit
16 7, are you not?

17 A. I have seen the document.

18 Q. Do you have that in front of you?

19 A. Yes.

20 Q. And, according to this document, 2003, 2004, 2005, and
21 the first month of 2006 at no point did the CO₂ content of
22 the AEP delivered at the point it was delivered into
23 Kalkaska exceed 2%, is that correct?

24 A. That's what this document depicts.

25 Q. And that includes November and December of 2005, is that

1 right?

2 A. That's correct.

3 Q. Now if I understand correctly, the gas that is basically
4 upstream of the CMS Antrim gas flowing on the AEP is
5 treated to below 2% on average in order to blend with
6 untreated gas that's downstream of the CMS Antrim Plant on
7 the AEP, is that right?

8 A. That's correct.

9 Q. And, for purposes of those producers who are downstream
10 blending their gas with super treated gas upstream is to
11 have it, for all intention purposes treated as regarded, if
12 it's being treated, is that right?

13 A. I'm not sure what you mean by super treated.

14 Q. Treated below 2%.

15 A. Gas treated below 2%, whether it's with the gas downstream
16 does have excess to treating.

17 Q. Those producers who are downstream are charged for the
18 treating by MGAT for that blending, right?

19 A. That's correct.

20 Q. You stated on page 12 of your direct testimony, that the
21 CMS outlet CO2 requirement would be required whether or not
22 Dominion contracts with CMS directly or contracts with
23 MGAT. You said because otherwise it would upset the
24 balancing equation, including the blending we just talked
25 about, is that correct?

1 JUDGE EYSTER: What line are you on?

2 MR. OLIVA: Well, beginning on line 10, page 12.

3 A. That's correct.

4 Q. Is there any reason why MGAT would not contract with CMS to
5 have Dominion's gas treated below 2%, even though Dominion
6 had contracted with CMS directly to have it treated at 2%?

7 A. If there's no contract between MGAT and Dominion we
8 wouldn't be able to have their gas treated.

9 Q. Couldn't you contract directly with CMS to have the
10 whatever gas flow is out of -- let me start over. Couldn't
11 you contract directly with -- let me start over again.
12 From the standpoint of operation of the pipeline, gas is
13 spongeable, isn't it?

14 A. If you don't contract molecules, yes.

15 Q. Is there any reason why MGAT could not contract with CMS to
16 provide whatever gas comes out of the CMS Plant be treated
17 to a certain percentage notwithstanding that CMS may have
18 individual contracts with various producers?

19 A. I guess that would be a discussion that MGAT would have to
20 have directly with CMS to determine if it was possible for
21 CMS to supply that service.

22 Q. But, from the operation, just on operational standpoint of
23 the pipeline line is there any reason?

24 A. Based on the operation of the pipeline, and based on the
25 plant capacity, there may be.

1 Q. There is an Interruptible Capacity Agreement between CMS
2 and CMS Antrim and MGAT, isn't there?

3 A. Yes, there is.

4 Q. From an operational standpoint that provides for additional
5 treating of the volumes of gas that flows out of the CMS
6 plant, not withstanding whatever other provisions,
7 whatever contractual arrangements that those shippers who
8 have, based on any of the agreements may have?

9 A. To the extent MGAT places a nomination for services and
10 CMS approves them.

11 MR. OLIVA: I have no further questions at this time,
12 your Honor. And, I hesitate to do this, but we have 58 ASATTs,
13 A-S-A-T-T and A-S-A-T that were produced on discovery. Frankly,
14 giving the volume of them at this point, I do not have extra
15 copies of them. I'm inclined, however at this time that they
16 all be marked as exhibits and admitted into evidence.

17 JUDGE EYSTER: Mr. Aaron?

18 MR. AARON: I haven't been able to verify these are
19 the ones we actually produced on discovery so I can't stipulate
20 to their admission. But certainly to the ones that we have
21 produced I don't have an objection on the basis, on
22 authenticity. If it's a matter of marking the exhibits, we've
23 got witnesses here. We should take advantage of the time.

24 MR. ODUNLAMI: No comment, your Honor.

25 JUDGE EYSTER: You can figure out how you can get

1 those documents in.

2 MR. OLIVA: They are of such a volume that the
3 Respondent provided them to us in paper form rather than
4 electronically. It just seems impractical to e-mail each one of
5 them individually. Otherwise we may have to scan them.

6 JUDGE EYSTER: How do you want me to -- I need to
7 rule? I guess they will be admitted subject to you two getting
8 together and confirming that you have the actual documents that
9 were produced on discovery and putting them in the proper form
10 for being entered into the record. How long do you need to do
11 that? I'm guessing take like a day or two.

12 MR. AARON: I would say a couple of days.

13 JUDGE EYSTER: Get them in there by Friday. If you
14 want to do it next week that's fine.

15 MR. OLIVA: We will just have to work out procedures
16 to make sure the parties are in agreement what got scanned was
17 provided and not take up the Court's time.

18 JUDGE EYSTER: Next week?

19 MR. OLIVA: Yes.

20 MR. AARON: Yes.

21 JUDGE EYSTER: Give you like what two Fridays from now
22 to have it in?

23 MR. OLIVA: I don't think it will take that long.

24 JUDGE EYSTER: Hopefully, it will not.

25 MR. AARON: Two Fridays is fine.

1 JUDGE EYSTER: Make sure you have it placed on the
2 record by two Fridays from now. Subject to check I believe that
3 would end up being DOM-21 through 78 I think. Mr. Odunlami,
4 cross?

5 MR. ODUNLAMI: Not much, your Honor.

6 BY MR. ODUNLAMI CONTINUING

7 Q. I have what is marked as Exhibit S-1, Mr. Lyle's response
8 to Staff's discovery question, STMC-1.3/3, I'm just
9 going to try to file into evidence.

10 JUDGE EYSTER: Any objections?

11 MR. AARON: No, your Honor.

12 MR. OLIVA: No, your Honor.

13 JUDGE EYSTER: It will be admitted as S-1.

14 BY MR. ODUNLAMI CONTINUING

15 Q. Mr. Lyle, I don't have that many questions for you except
16 as a correction I had. Based on your testimony on, I think
17 it's on page 20, lines 11, I believe through line 19 where
18 you stated Mr. Mazuchowski's statements in his testimony on
19 page 5, lines 20-22 discuss the ASAT agreement.

20 I can give you a copy of Mr. Mazuchowski's testimony
21 and you will find where Mr. Mazuchowski was discussing ASAT
22 agreements. Do you want to see a copy of that?

23 A. I have a copy. Beginning on page 5, he has that sentence
24 discussing ASATT and on page 6 he certainly goes on to
25 discuss the ASAT with a single T.

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

2 JUDGE EYSTER: Any redirect, Mr. Aaron?

3 MR. AARON: No, your Honor.

4 MR. ODUNLAMI: I will waive for Staff's witness.

5 JUDGE EYSTER: You may step down.

6 MR. AARON: Your Honor, MichCon and MichCon Gathering
7 is withdrawing their motion to strike Mr. Mazuchowski's
8 testimony.

9 JUDGE EYSTER: Okay. Mr. Odunlami?

10 MR. ODUNLAMI: I call Mr. Mazuchowski.

11 D-O-N-A-L-D M-A-Z-U-C-H-O-W-S-K-I, after first being
12 duly sworn, was examined under his oath and testified as
13 follows:

14 DIRECT TESTIMONY

15 BY MR. ODUNLAMI

16 Q. Good evening, Mr. Mazuchowski.

17 A. Good evening.

18 Q. Did you prepare in preparation for this case testimony
19 titled Qualifications and Direct Testimony of Donald J.
20 Mazuchowski of the Michigan Public Service Commission
21 consisting of pages 1-11, including a cover page?

22 A. Yes.

23 Q. And did you prepare this testimony by yourself?

24 A. Yes, I did.

25 Q. Do you have any changes to this testimony?

1 A. No, I don't.

2 Q. If asked the same questions today would your answers be the
3 same?

4 A. Yes, they would.

5 MR. ODUNLAMI: Your Honor, I move for binding of Mr.
6 Mazuchowski's testimony into the record.

7 JUDGE EYSTER: Any objections?

8 MR. AARON: No.

9 MR. OLIVA: No objection, your Honor.

10 JUDGE EYSTER: The testimony will be bound into the
11 record. ---
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STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * *

In the matter of the application of Dominion Midwest Energy, Inc. and Dominion Reserves, Inc., Complainants,	))))	 Case No. U- 14754
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vs.

MichCon Gathering Company and Michigan Consolidated Gas Company Respondents 	))))))
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QUALIFICATIONS AND DIRECT TESTIMONY OF

DONALD J. MAZUCHOWSKI

MICHIGAN PUBLIC SERVICE COMMISSION

May 10, 2006

QUALIFICATIONS OF DONALD J. MAZUCHOWSKI
CASE NUMBER U-14754
PART I

1 Q. Will you please state your name and business address.

2 A. My name is Donald J. Mazuchowski, 6545 Mercantile Way, Lansing, Michigan,
3 48911.

4 Q. By whom are you employed and in what capacity?

5 A. I am employed as an Intrastate Pipeline Engineer Specialist on the Staff of the
6 Michigan Public Service Commission.

7 Q. Will you briefly describe your educational background and professional
8 experience?

9 A. I was graduated from Michigan State University in June of 1977 with a Bachelor
10 of Science Degree in Biochemistry and a Bachelor of Science Degree in Chemical
11 Engineering in August of 1980. I was employed by Gearhart Industries in New
12 York from September of 1980 until June of 1981. I was put in charge of a well
13 logging truck and crew. I evaluated the gas reserves and productive possibilities
14 of the gas and oil wells in the western New York and northwestern Pennsylvania
15 areas. Since January 1982, I have been a Petroleum Engineer with the Staff of the
16 Michigan Public Service Commission. One of my principle duties with the Staff
17 has been to make various engineering studies related to the Commission's
18 regulation of intrastate gas production, proration and transmission. My
19 responsibilities include well log analysis, geophysical evaluation, drawing of
20 isopach maps, evaluation of well tests and calculation of field reserves. For
21 pipeline applications, I have been responsible for field route reviews,
22 environmental reviews, economic feasibility studies, gas pipeline specifications
23 and the preparation and presentation of Staff cases for public hearing. My duties

QUALIFICATIONS OF DONALD J. MAZUCHOWSKI
CASE NUMBER U-14754
PART I

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1 also involve the issuance of Standard Well Connection Permits and Allowable
2 Withdrawal Orders, participation in intrastate gas purchase contract pricing cases,
3 maintaining gas production records and tabulating gas field proration balances.

4 Q. Can you elaborate on what is involved in your environmental reviews of pipeline
5 projects?

6 A. I analyze the potential environmental effects that a proposed pipeline project will
7 have on the state. This analysis includes an evaluation of the proposed route to
8 minimize the amount of new right-of-way utilized, minimize the amount of
9 environmentally-sensitive areas crossed by the pipeline and recommending the
10 use of construction methods that have the least impact on the environment. The
11 projects are handled on a case-by-case basis, with some requiring a more in-depth
12 analysis than others.

13 Q. Have you presented expert testimony before the Commission in the past on
14 environmental issues and other areas of your responsibilities?

15 A. Yes, on numerous occasions.

16 Q. Have you participated in or attended any educational programs or seminars
17 related to your work experience?

18 A. I have completed engineering courses and seminars in Well Logging
19 Fundamentals and Applications; Reservoir Engineering; Petroleum Geology;
20 Pressure Buildup and Drawdown Analysis; Gas Supply; and, Natural Gas
21 Engineering - Production and Storage, among others. I have also completed the
22 "Annual Regulatory Studies Program" sponsored by the National Association of

QUALIFICATIONS OF DONALD J. MAZUCHOWSKI
CASE NUMBER U-14754
PART I

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1 Regulatory Utility Commissioners at Michigan State University and a Pipeline
2 Safety Seminar sponsored by the U.S. Department of Transportation.
3 Q. Are you a member of any professional societies or organizations?
4 A. Yes. I am a Registered Professional Engineer in the State of Michigan and a
5 member of the Michigan Section of the Society of Petroleum Engineers.
6
7

DIRECT TESTIMONY OF DONALD J. MAZUCHOWSKI
CASE NUMBER U-14754
PART II

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What is the purpose of your testimony?

A. I will be offering opinions and making recommendations to the Commission regarding the transportation contract dispute between Dominion Midwest Energy and Mich Con Gathering.

Q. Are you familiar with the Antrim Dry header pipeline (AEP) application filed by Michigan Consolidated Gas Company U-10547?

A. Yes. I was the case coordinator for the MPSC Staff and developed Staff's position in Case No. U-10547. Case No. U-10547 mandates specific conditions relating to the gas transportation contracts on the AEP pipeline between Dominion and Mich Con Gathering that are now in dispute.

Q. Did the Commission order in U-10547 address carbon dioxide processing?

A. Yes. The Commission stated they had authority to regulate carbon dioxide processing but only addressed the flexible location aspects of carbon treating facilities. In part, on page 50, the Commission order in U-10547 states The Commission agrees with the Staff that Act 9 contains a grant of authority to regulate all pertinent pipeline facilities, including the CO2 treatment plants that are integral to the operation of the Antrim Dry Header.

DIRECT TESTIMONY OF DONALD J. MAZUCHOWSKI
CASE NUMBER U-14754
PART II

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1 Q. Did the Order in U-10547 have a carbon dioxide limit for gas transported on the
2 AEP pipeline?

3 A. Yes. The Commission ordered that the carbon dioxide level for gas transported
4 on the AEP to be 2% or less at all delivery points or take-away locations.

5
6 Q. Why is there a concern with carbon dioxide concentration in pipeline systems?

7 A. In the presence of water, carbon dioxide can form carbonic acid which can cause
8 corrosion that damage pipelines, storage field wells and storage field piping.

9
10 Q. In the initial AEP pipeline case (Case No.U-10547), what type of transportation
11 did the Antrim shippers desire?

12 A. The shippers wanted a pipeline system that minimized the potential for
13 curtailments, removed the carbon dioxide content to below 2% and the ability to
14 ship to four different delivery points or take-away locations for marketing their
15 gas. For the most part, the Commission order in U-10547 gave the shippers what
16 they desired.

17
18 Q. Initially, what type of transportation contracts did Mich Con Gathering offer on
19 the AEP pipeline?

20 A. Mich Con Gathering offered Antrim gas shippers transportation on the AEP with
21 two basic types of contracts; An ASATT contract for gas with a carbon dioxide
22 content over 2% which provides contract treating service and transportation. And

DIRECT TESTIMONY OF DONALD J. MAZUCHOWSKI
CASE NUMBER U-14754
PART II

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1 an ASAT contract for gas with a carbon dioxide content of 2% or less, which only
2 provided for transportation. Both sets of contracts had a carbon dioxide content
3 of 2% or less at the delivery points so shippers could market their gas and the
4 pipelines were also protected.

5

6 Q. What is Mich Con Gathering offering now with respect to carbon dioxide levels?

7 A. In regards to the specifics of the present case, Mich Con Gathering's has changed
8 the CO₂ content for Antrim gas transported on the AEP from a maximum of 2%
9 to 0.75%.

10

11 Q. What does the terms blending and physical treatment of CO₂ mean, and how are
12 they related to Antrim gas carbon dioxide removal?

13 A. At the time the AEP pipeline application was filed with the Commission in 1994,
14 Michigan Consolidated Gas Company (MCGC) the predecessor to Mich Con
15 Gathering, transported or bought a significant amount of carbon dioxide free gas,
16 which was from the Niagaran and PDC formations. MCGC decided to use this
17 gas for blending instead of treating all of the Antrim gas for carbon dioxide
18 removal. MCGC blended the carbon dioxide free gas with the Antrim gas to
19 achieve gas with a carbon dioxide content of 2% or less at the delivery points. It
20 was convenient for the shippers and owners of the carbon dioxide removal
21 facilities. Another method to reduce the carbon dioxide level was to super treat
22 the Antrim gas to a level below 2% so it could be blended with Antrim gas with

DIRECT TESTIMONY OF DONALD J. MAZUCHOWSKI
CASE NUMBER U-14754
PART II

1 higher carbon dioxide content. Fewer carbon dioxide treatment plants were
2 required with the use of blending and the plants that were constructed operated
3 efficiently based on the economies of scale. Thus, MCGC negotiated a contract
4 with CMS to treat Antrim Gas to a carbon dioxide level of 0.75%

5
6 Q. How does the Commission regulate transportation contracts on pipeline it
7 approves?

8 A. Act 9 of 1929 and the rules promulgated there under, authorize the Commission to
9 regulate transportation contracts. The parties negotiate their initial gas
10 transportation contract and the Commission approves any changes. This includes
11 expired contracts that are renewed. Section 10 of Act 9 states in
12 part.....Thereafter, a common purchaser or common carrier of natural gas may
13 alter or amend its price paid, rates charges, and conditions of service by
14 application to and approval by the commission...

15
16 Q. What is your opinion regarding Mich Con Gathering changes to the carbon
17 dioxide level limit for ASAT transportation contracts from a max of 2% to 0.75%
18 CO₂ level?

19 A. It's the Staff opinion that Mich Con Gathering must first obtain the Commission
20 approval before it can offer changes to their existing transportation contracts.
21 Changes to price or terms and conditions, under Act 9, are to be approved by the
22 Commission before they can be implemented. Therefore, until Mich Con

DIRECT TESTIMONY OF DONALD J. MAZUCHOWSKI
CASE NUMBER U-14754
PART II

1 Gathering seeks and receives approval of the new 0.75% level it cannot be
2 mandated it on the shippers.

3

4 Q. What is your opinion regarding Mich Con Gathering new mandate of 0.75%
5 carbon dioxide level for Antrim gas transportation contracts?

6 A. I believe it is unfair, unreasonable and discriminatory. Mich Con Gathering
7 cannot unilaterally mandate CO₂ specifications on the AEP without the
8 Commission approval. All Antrim gas Shippers have to pay the same treating
9 charge for CO₂ removal whether through blending or actual physical removal to
10 2% or less carbon dioxide content at the delivery points. For Mich Con
11 Gathering to meet its obligations under the ASATT contracts, Mich Con
12 Gathering contracts to super treat the gas to a level of 0.75% at the South Chester
13 carbon dioxide plants.

14 Initially, Mich Con Gathering had enough non-Antrim gas to either
15 blend with non-Antrim gas or super treat to 0.75%. It now appears Mich Con
16 Gathering does not have all the gas it once had for blending. And instead of
17 paying for the treating it needs to meet its obligations of less than 2% CO₂ content
18 at all take-away delivery points, Mich Con Gathering is now attempting to pass
19 the treating cost on to the shippers. Frank Murray's testimony (pg7) and exhibit
20 (FMM-6) demonstrates that Mich Con Gathering does not have enough contract
21 carbon dioxide treating capacity. It's my opinion that Mich Con Gathering is
22 attempting to have the shippers foot Mich Con Gathering incremental treating bill.

DIRECT TESTIMONY OF DONALD J. MAZUCHOWSKI
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PART II

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1
2 Q. Why do you believe the Mich Con Gathering mandate of 0.75% carbon dioxide
3 level is unfair?

4 A. Mich Con Gathering was granted approval of the AEP pipeline system through a
5 competing pipeline process. Initially, there were four or five projects proposed.
6 A significant number of parties supported Mich Con Gathering's modified
7 proposal and the Commission subsequently approved it. It was approved with a
8 negotiated set of terms and conditions between Mich Con Gathering and its
9 shippers, one being to transport Antrim gas to a carbon dioxide level two percent
10 or less. The pipeline is essentially a monopoly; the shippers don't have any
11 practical options for transporting their gas to market. It doesn't seem fair to
12 unilaterally change an important condition of the transportation contract. In
13 addition, the shippers are required to spend extra money to super treat its gas to
14 0.75% level and Mich Con Gathering is using the gas for its benefit by blending it
15 with other shippers gas and also charges the shippers whose gas is blended a
16 treating fee corresponding to cost for physical treatment.

17
18 Q Who is responsible for delivering Antrim gas at two percent or less at the delivery
19 points?

20 A Mich Con Gathering wears many hats regarding the transportation and treating of
21 Antrim gas. Mich Con Gathering the blender of Antrim gas is responsible not
22 Mich Con Gathering the transporter. Mich Con Gathering has stated that Antrim

DIRECT TESTIMONY OF DONALD J. MAZUCHOWSKI
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1 gas over 2% carbon dioxide content will not be allowed on their system unless the
2 shippers pays Mich Con Gathering to treat the gas. Therefore, Mich Con
3 Gathering is responsible for treating all Antrim gas above 2% carbon dioxide
4 level. Mich Con Gathering has contracted with CMS for carbon dioxide removal
5 capacity. If the gas is not arriving at a carbon dioxide level of 2% or less at the
6 delivery points, Mich Con Gathering is not providing the treating services they
7 are charging the shippers for. The shipper has no control of the carbon dioxide
8 content once the gas reaches the AEP pipeline.

9
10 Q. Is there any reasonable safety benefit for Dominion or any other shippers to treat
11 their Antrim gas to below 2% carbon dioxide level?

12 A. No. Industry studies have not shown any corrosion from natural gas with a
13 carbon dioxide level of 2% or below. Most pipeline companies use a maximum 2
14 percent carbon dioxide level in their gas transportation contracts.

15
16 Q. Should the Commission regulate carbon dioxide treating?

17 A. If Mich Con Gathering continues to make unreasonable demands on the shippers
18 of the Antrim gas, the Commission should step in and regulate carbon dioxide
19 treating. However, this is the first time in over 10 years the parties have had a
20 major disagreement over the contracts, therefore the system currently appears to
21 be adequate.

22

DIRECT TESTIMONY OF DONALD J. MAZUCHOWSKI
CASE NUMBER U-14754
PART II

1 Q. What is your opinion in regards to the dedication of reserves being for the term of
2 the contract or the life of the AEP?

3 A. My recollection of the dedication before the pipeline was constructed was that the
4 shippers agreed to dedicate their Antrim gas reserves for transportation for the life
5 of the AEP. The main reason they agreed was to avoid a demand charge for
6 transportation. Exhibit No. DOM-2, the dedication for the ASATT #1 contract,
7 filed in this case, demonstrates that the parties may have dedicated for the life of
8 the AEP pipeline both gas transportation and treating. In Michigan, most
9 transportation contracts are done without separate dedications. So the fact that a
10 dedication was used suggest that the parties may have contemplated securing the
11 gas transportation and treating for the life of the AEP pipeline. It is also my
12 opinion that the Commission, under Act 9, can adjudicate the issues relating to the
13 contested dedication of reserves for the ASATT #1 contract because it relates to
14 contractual terms regarding gas reserves, its transportation and treating
15 agreements.

1 JUDGE EYSTER: Cross, Mr. Oliva?

2 MR. OLIVA: Yes, your Honor.

3 CROSS EXAMINATION

4 BY MR. OLIVA

5 Q. Good afternoon, Mr. Mazuchowski?

6 A. Good afternoon.

7 Q. Mr. Mazuchowski could you turn to page 11 of your prefiled
8 direct testimony?

9 A. Yes.

10 Q. You state, beginning on line 3, "My recollection of the
11 dedication before the pipeline was constructed was that the
12 shippers agreed to dedicate their Antrim gas reserves for
13 transportation for the life of the AEP." In connection
14 with preparing your testimony did you review all of the
15 individual dedications for all of the producers that were
16 executed prior to the time of the completion of the AEP?

17 A. Not all of them, no. I did review a few of them.

18 Q. Isn't it the case, for example, with respect to -- let me
19 restate that. ASATT #16, which has previously been
20 admitted into evidence as Exhibit DOM-3?

21 A. Right.

22 Q. That was executed prior to the construction of the AEP, was
23 it not?

24 A. Correct.

25 Q. That calls for a dedication of reserves only for the term

1 of the ASATT, isn't that right?

2 A. It a appears to be a commitment dedication of the sort,
3 yes.

4 Q. But, only for the life?

5 A. Yes.

6 Q. But not for the life of the reserves, is that right?

7 A. Yes.

8 MR. ODUNLAMI: For clarification, you're referring to
9 ASATT #16, not ASATT #1?

10 MR. OLIVA: He said 16, which is Exhibit DOM-3 and the
11 dedication letter connected to that is DOM-2.

12 MR. ODUNLAMI: Thank you.

13 JUDGE EYSTER: Did you mean to say the life of the
14 reserve or life of the AEP?

15 MR. OLIVA: The life of the reserve is what my
16 question is.

17 BY MR. OLIVA CONTINUING

18 Q. Do you know of any of the dedications of, which state in
19 those words that the dedication is for the life of the AEP?

20 A I'm not sure. I don't know of any, but that doesn't mean
21 they don't exist.

22 Q. Okay. Staff was provided copies of all of the ASATT 1 T
23 and 2 T agreements by Respondents, is that right?

24 A. That's correct.

25 Q. And did you, subsequent to filing your testimony review all

1 of those agreements?

2 A. No, I didn't.

3 Q. You were here earlier when we were questioning Respondent's
4 witness with regards to Exhibit DOM-18 and 19, the
5 dedication letters, is that right?

6 A. Yes.

7 Q. Would it surprise you to know that DOM-18 and DOM-19 were
8 the only dedications produced on discovery in this case,
9 which expressly state --

10 MR. ODUNLAMI: Your Honor, Staff is going to object to
11 that line of questioning.

12 MR. AARON: So will I, your Honor.

13 MR. ODUNLAMI: It's not within the scope of Mr.
14 Mazuchowski's testimony. That's not within the scope at all.

15 MR. OLIVA: Well, he's testifying about what his
16 understanding is in terms of the dedication.

17 JUDGE EYSTER: I'm going to overrule the objection on
18 that ground. Mr. Aaron, you have a separate objection?

19 MR. AARON: Yes, Mr. Oliva is testifying here that
20 these are the only documents. He's only presented three
21 documents. We don't have in this record the other documents he
22 seems to be referencing. If Mr. Oliva wants to testify as an
23 expert having read them, he should be on the stand. It's
24 assuming a fact not in evidence.

25 JUDGE EYSTER: Any response?

1 MR. OLIVA: Let me withdraw the question and rephrase
2 it.

3 BY MR. OLIVA CONTINUING

4 Q. Other than the Exhibit DOM-18 and DOM-19 are you aware of
5 any dedications for the AEP which expressly state that
6 they are "for life of the reserves"?

7 A. No, I'm an not.

8 MR. OLIVA: I have no further questions, your Honor.

9 JUDGE EYSTER: Mr. Aaron?

10 MR. AARON: Yes, your Honor. Prior to today's
11 hearing, I had advised counsel that I was planning on asking Mr.
12 Mazuchowski a number of questions related to his testimony in
13 Case Number U-10547, which was the case in which the AEP was --
14 it's certificate was granted, and in particular questions about
15 Mr. Mazuchowski's testimony throughout the Staff's case. In
16 lieu of asking a number of questions that would be related to
17 this I asked counsel if they would agree to stipulate to marking
18 as exhibits Volumes 15 and 16 from that case into the record, so
19 that we can refer to them in lieu of cross examination. I
20 understand Staff's agreeable to that. I haven't heard from Mr.
21 Oliva at this point.

22 MR. OLIVA: Your Honor, I had a brief discussion with
23 Mr. Aaron about this. It's my understanding what he is
24 proposing to have marked as an exhibit is two volumes of the
25 transcript from that case, which contains not only Mr.

1 Mazuchowski's direct and cross, but also the direct and cross of
2 various other witnesses. I don't know, it is unclear to me for
3 what purpose under the rules of evidence the testimony, or
4 excuse me the transcript are being offered.

5 It would not, in my mind, typically fall within the
6 provisions of Rule 613, Prior Statements of Witnesses, which
7 states, "Extrinsic evidence of a prior inconsistent statement by
8 a witness is not admissible unless the witness is afforded an
9 opportunity to explain or deny the same and the opposite party
10 is afforded an opportunity to interrogate the witness thereon,
11 or the interests of justice otherwise require. This provision
12 does not apply to admissions of a party opponent as defined in
13 Rule 801 (d) (2)." I don't know if this was supposed to be
14 offered as prior to the inconsistent statements of the witness,
15 in which case, obviously the portions of the transcript which
16 don't relate to Mr. Mazuchowski, don't fall within it. And, I
17 don't know whether this is being offered as admissions of a
18 party under 801 d2.

19 JUDGE EYSTER: Mr. Aaron?

20 MR. AARON: I just asked if he would stipulate, if he
21 won't I will just go ahead and ask the questions and we'll be
22 here for a while. The fact of the matter is this is public
23 record. It is a complete public record, it's certified. On
24 that basis alone, it's admissible under Rule 1005. This is
25 something the Commission can reference and has done in the past.

1 This has information that's pertinent. I wanted it for
2 completeness, but you know, I mean, if Mr. Oliva wants me to go
3 through the process of asking Mr. Mazuchowski questions that are
4 either consistent with his testimony in the prior case and
5 should be appropriate here or inconsistent and impeach him, for
6 whatever, he was the Staff Case Coordinator.

7 MR. OLIVA: I'm not questioning the authenticity of
8 the document under Rule 1005, but it talks about that it's
9 otherwise admissible. And there is a vast volume of material
10 here that I don't know what most of it, if is relevant at all to
11 this case.

12 MR. AARON: I was just trying to shorten this. These
13 need to be marked for identification purposes as MGAT-6 and
14 MGAT-7.

15 CROSS EXAMINATION

16 BY MR. AARON CONTINUING

17 Q. Mr. Mazuchowski, I have documents placed before you that
18 are marked for identification purposes as MGAT-6 and
19 MGAT-7, have you seen those before?

20 A. Yes, I have.

21 Q. Can you tell me what they are?

22 A. They are transcripts from the Case U-10547 of September
23 8, 1994 and September 7, 1994.

24 Q. Have you recently reviewed the contents of these documents?

25 A. Very briefly.

1 Q. Were you a witness in 10547?

2 A. Yes, I was.

3 Q. And were you also the Case Coordinator in Case U-10547?

4 A. Yes, I was.

5 Q. As the Case Coordinator did you have to know and understand
6 Staff's position of all Staff's witnesses?

7 A. Yes, I did.

8 JUDGE EYSTER: Why does the witness have these
9 documents? Don't read them right now. What's the purpose?

10 MR. AARON: I just want him to recognize them.

11 JUDGE EYSTER: What are you going to do with them?

12 MR. AARON: Have them available for impeachment, or
13 for him to reference if he needs to refresh his recollection.

14 JUDGE EYSTER: But the problem is he's looking through
15 them right now.

16 MR. AARON: What's inappropriate about that?

17 JUDGE EYSTER: A witness reading a document that's for
18 him to refresh his recollection prior to asking him a question.

19 MR. AARON: I asked him a question, to take a look at
20 it. He has to be able to see them. I have to be able to
21 confront him with this, the statements that are going to be
22 coming. I'm not doing this by surprise.

23 JUDGE EYSTER: Why don't you just leave them there and
24 don't look at them please.

25 THE WITNESS: Okay.

JUDGE EYSTER: Continue?

BY MR. AARON CONTINUING

Q. Mr. Mazuchowski, is it true that you took a position in Case U-10547 that it's the producers's responsibility to remove CO2 from their gas?

A. That sounds reasonable. I don't recall everything about that case. That sounds like a position I would take.

Q. Mr. Mazuchowski, please take a look at pages 2883 and 2884 and see if that refreshes your recollection? I'm sorry, I may have referred you to the wrong page number. Does that refresh your recollection?

A. Yes.

Q. What is your recollection today?

A. Back then I said it, it's actually the producers responsibility to remove the CO2 from their gas. I guess that would still be my position today, yes.

Q. And also isn't it true that you took the position if producers fail to cause enough CO₂ treating facilities to be shut in subject to rebuilt their gas with high CO₂ content should be shut in?

A. That's correct.

Q. Now, you also expected MichCon to enforce the CO2 specifications in it's agreement, is that correct?

A. That's correct.

Q. Now, one of the concerns that Staff had at this point in

1 your testimony was a lack of producer commitment to the
2 pipeline, is that correct?

3 A. In U-10547?

4 Q. In U-10547?

5 A. Yes.

6 Q. When you were testifying September 7, 1994?

7 A. Yes.

8 Q. In response to your express concern, do you recall what the
9 producers did in this case?

10 A. No.

11 Q. We'll come back to that topic. Mr. Mazuchowski, Staff
12 wanted to isolate the amount of CO2 to be removed, and to
13 do so in an efficient manner in that case, did they not?

14 A. Yes.

15 Q. In particular, Staff wanted to isolate the Antrim gas from
16 the Niagaran gas, did it not?

17 A. That's correct.

18 Q. And you, as Staff's witness recommended a design that would
19 permit efficient removal of CO2 contents from this Antrim
20 gas, is that correct?

21 A. Yes, I had a proposal.

22 Q. And did the Commission adopt that proposal?

23 A. No, they didn't.

24 Q. In what way did they not adopt it?

25 A. I had a certain design and they adopted -- they didn't

1 approve my design. I guess I don't understand your
2 question.

3 Q. Did the Commission adopt the Staff recommendation that the
4 CO2 removal be done in an efficient manner?

5 A. Yes. I thought you were talking about the physical design
6 of the pipe.

7 Q. They didn't approve a Certificate for the pipe that you had
8 recommended, is that what you are telling us, correct.

9 Q. But they did adopt your recommendation for expectant CO₂
10 removal?

11 A. Yes, they did.

12 Q. And one of the reasons that you wanted to provide for the
13 efficient CO₂ removal was to minimize the cost to transport
14 entry gas to market, and efficiently transport gas to
15 market, is that right?

16 A. Can you refer me to that.

17 Q. For your recollection try page 2875.

18 A. Yes, that's correct.

19 Q. Do you recall MichCon's request asking for rate based
20 treatment of the AEP originally?

21 JUDGE EYSTER: Mr. Mazuchowski, if you could just try
22 not to review the transcript until asked to.

23 A. What do you mean by rate based treatment?

24 Q. Do you recall the original proposal for the AEP to have the
25 facilities being included in MichCon's rate?

1 A. No, I do not.

2 Q. Mr. Mazuchowski, as part of your job do you review Act 9
3 Certificate Applications?

4 A. Yes, I do.

5 Q. And, in the number of years that you've been at the
6 Commission can you give me an approximate number of Act 9
7 Certificates you've reviewed?

8 A. Maybe over a couple hundred, but I don't really know.

9 Q. As part of your job, you recommend Staff's position
10 concerning whether the application meets that Act 9?

11 A. That's correct.

12 Q. In fact, you took such a role in Case Number U-10547,
13 didn't you?

14 A. Yes.

15 Q. I want to go back just one more time to CO₂ treating
16 facilities. You believe that Staff has taken a position
17 that even though CO₂ treatment facilities were necessary
18 prior to the AEP where they should be separated from the
19 pipeline operation, is that correct?

20 A. That's correct.

21 Q. And you justified this position because it was like CO₂
22 treating was like dehydration and compression, is that
23 right?

24 A. Yes.

25 Q. Has any of that position changed for you today?

1 A. No.

2 Q. Mr. Mazuchowski, we sent some discovery to Staff and
3 identified a large number of pipelines and asked if you
4 could indicate as to whether the pipeline had filed tariffs
5 with the Commission, and part of the answer was, no, the
6 pipelines we identified hadn't filed tariffs. Do you
7 recall that question?

8 A. Yes, I do.

9 Q. Staff expressed some difficulty in being able to determine
10 whether the pipelines we identified were common carriers
11 for hire under Act 9. Do you recall that?

12 A. Yes, I do.

13 Q. Mr. Mazuchowski, can you tell me what it would take to
14 determine whether a pipeline was certified under Act 9?

15 MR. ODUNLAMI: Your Honor, I object to that question.
16 The discovery question was if we have a tariff, not carriers
17 under Act 9.

18 MR. AARON: The question was -- the answer was, that
19 Staff cannot reasonably identify whether the pipelines were
20 operated by the common carriers under Act 9. I'm asking the
21 witness if he can tell me what he needs to know.

22 MR. ODUNLAMI: Your Honor, may I respond?

23 JUDGE EYSTER: Yes, briefly.

24 MR. ODUNLAMI: Your Honor, what Staff said in their
25 discovery response was that based on the time available to

1 Staff, Staff is not going to go from 26 pipelines and try to
2 find out whether or not they have tariff. Also, Staff decided,
3 no, they don't have a tariff. So, the question of whether they
4 operate on Act 9 is irrelevant. Staff said, no, even without the
5 objections. No, they don't have a tariff on file.

6 JUDGE EYSTER: Objection is overruled.

7 THE WITNESS: What was your question again.

8 BY MR. AARON CONTINUING

9 Q. Let me try it this way. Mr. Mazuchowski, if I show you an
10 order from the Commission, can you take a look at an Order
11 and tell me whether it's a pipeline order or whether -- if
12 there's sufficient information in the Order to be able to
13 tell me whether it's an Act 9 Certificate or a common
14 carrier under Act 9?

15 A. Yes.

16 MR. AARON: Your Honor, I don't plan on having this
17 marked. I want to walk this witness through this Order.

18 Q. Mr. Mazuchowski, if you take a look at the finding of
19 the Commission on page 2 of this order?

20 A. Yes.

21 Q. Does the Commission state that it's a jurisdiction rule
22 under Act 9?

23 A. Yes, it does.

24 Q. Does that tell you that this is an Act 9 Certificate
25 Pipeline?

1 A. Yes, it does.

2 Q. Like wise, this order approves transportation rates for
3 this particular pipeline, does it not?

4 A. Yes, it does.

5 Q. And, in the ordering section on page 3, the Commission
6 doesn't direct in any of the pipelines to file any tariffs
7 does
8 it?

9 A. No, it doesn't.

10 Q. So, if I would do a search on the Commission's website
11 involving the pipelines that I asked you for in discovery,
12 would I go through the same process in each case to find
13 out whether one is an Act 9 pipeline, whether the
14 Commission approved a rate and three, whether it was
15 required to file tariffs?

16 A. Yes, you would.

17 JUDGE EYSTER: Did you identify this order?

18 MR. AARON: Sure. This Order is an April 28th Order,
19 2004 in case Number U-14077, it's involving the application of
20 Major Pipelines, LLC in order to construct and operate Three
21 Timbers in Otsego County.

22 JUDGE EYSTER: Thank you.

23 MR. AARON: Your Honor, that concludes my cross. I
24 move for admission of Exhibits MGAT-6 and MGAT-7.

25 JUDGE EYSTER: Mr. Oliva, any objection?

1 MR. OLIVA: Yes, your Honor. Mr. Aaron asked Mr.
2 Mazuchowski to look at the documents solely for the purpose of
3 refreshing his recollection on one or two points. And I'm -- it
4 looks to me there are several hundreds of pages here in this
5 document that there's been no basis to determine that they are
6 relevant to any purpose in the case, or fall within any of the
7 provisions of the rules of evidence.

8 If Mr. Aaron is not proposing that they be introduced
9 for limited purpose of impeachment or prior inconsistent
10 statements or admission of the parties.

11 JUDGE EYSTER: I don't even know for what purpose they
12 are being offered. You move to have these admitted?

13 MR. AARON: Your Honor, they are reflective of the
14 background and the time frame and the material that Staff was
15 looking at in terms of discussing and making recommendation with
16 respect to this pipeline. It addresses issues that are
17 pertinent to this case.

18 JUDGE EYSTER: For what purpose do you wish those to
19 be considered?

20 MR. AARON: For the statement and truth of the matter.
21 Those are authenticated documents from the Commission's, and
22 their position taken. There's more stuff in there than I would
23 ordinarily want to have in this case, but the other alternative
24 was to ask you to take administrative notice of the entire
25 record of 10547.

1 MR. OLIVA: I don't believe it's proper to talk about
2 admitting them for the truth of the matter set forth. As best,
3 they are, as I understand the position that Staff took in a
4 contested case. Why the positions that Staff took in a
5 contested case are relevant here beyond the matters which Mr.
6 Aaron was able to cross examine Mr. Mazuchowski about is a
7 mystery to me.

8 JUDGE EYSTER: All right. Mr. Odunlami, any comment?

9 MR. ODUNLAMI: Your Honor, I understand that I have
10 already stipulated to the admission of the exhibits. I don't
11 remember their names anymore, but I'm not trying to sent back
12 MichCon Gathering or Mr. Aaron, but these questions have very
13 limited -- like Mr. Oliva stated, he didn't actually go into
14 detail. He only way went into a couple of pages of cross of Mr.
15 Mazuchowski, which, again, Mr. Oliva said that Mr. Aaron hadn't
16 given us the grounds that those portions of the exhibits would
17 be admitted. Like Mr. Oliva said, maybe they could be limited
18 for some purposes. I'm not sure.

19 MR. AARON: Your Honor, first of all, I'm not holding
20 Mr. Odunlami to the stipulation because I couldn't get the
21 stipulation.

22 JUDGE EYSTER: What exceptions to the hearsay rule
23 would that apply to?

24 MR. AARON: This is a public document, this is part of
25 the Commission's books and records. The document is

1 self-authenticating. I asked the Commission Secretary to
2 certify this document. This is a public document that's been
3 self-authenticated. It contains Mr. Mazuchowski's testimony --

4 JUDGE EYSTER: So it's authenticated. How does that
5 make it admissible? It's still hearsay. It's an out of Court
6 statement, being admitted for the truthfulness of the matter
7 asserted. It's a transcript, you got your witness here. It
8 hasn't even established -- I don't even know who the other
9 witnesses are in there. You haven't established they're
10 unavailable.

11 MR. AARON: Your Honor, this is a public record, that
12 in itself takes it from the hearsay rule, the contents of an
13 official record.

14 JUDGE EYSTER: Which rule is that?

15 MR. AARON: 1005, The contents of an official record,
16 or document that is authorized by Staff can be established by
17 having a certified copy as the record in accordance of Rule 902.

18 JUDGE EYSTER: That's establishing the contents of a
19 document right? That's authentication.

20 MR. AARON: The contents of an official record
21 authorized to be recorded, may be proved by copy certified. So,
22 it's been authenticated, correct?

23 MR. OLIVA: We did not contest the authenticity of it.
24 That's not the objection.

25 MR. AARON: It's relevant bearing on the hearsay.

1 JUDGE EYSTER: You need to find the hearsay section
2 for me. You say 1005 goes to authentication.

3 MR. AARON: Your Honor, 803.8 says, and it's declaring
4 the availability is in the material, that's public records and
5 reports, statements, or data compilations, in any form, of
6 public offices or agencies, setting forth.

7 JUDGE EYSTER: Setting forth in agencies.

8 MR. AARON: That's this agency. This is the
9 Commission's record. They are required to record these
10 hearings. Additionally your Honor, this is something that we
11 can ask you to take administrative notice of.

12 MR. OLIVA: Your Honor, again, I guess if it will
13 short cut this at all I will not object to the admission of the
14 statements, to the extent that they are for the limited purposes
15 these are positions the Staff took in the case; and only for
16 that purpose.

17 JUDGE EYSTER: So, it's limited to the testimony of
18 Staff, and that it is evident of the position they took?

19 MR. OLIVA: The position they took in the prior case,
20 but this admission against party opponent, Mr. Aaron can't use
21 this as admission against a party opponent to use against
22 Dominion because we are not the party opponent making the
23 statement. It's a very limited use of a document like this
24 against Staff, but it can't be used against Dominion.

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

1 JUDGE EYSTER: So, you're willing to accept Mr.
2 Oliva's stipulation?

3 MR. AARON: The only thing I want to be clear about is
4 that I am offering this as admission, as a part of interest,
5 Staff as a party. As I understand that's what Mr. Oliva is
6 allowing me to do this for, that's the stipulation. But the
7 extent to the Commission's Order adopts the Staff's position as
8 adverse to Dominion that shouldn't preclude me from arguing
9 that Staff versus Dominion.

10 JUDGE EYSTER: I don't know how I can limit it that
11 way.

12 MR. OLIVA: I don't want to prolong this forever.
13 That's part of my problem with it. The Order speaks for itself
14 as to what it orders, I mean --

15 JUDGE EYSTER: What's your stipulation again? What
16 are you willing to stipulate to?

17 MR. OLIVA: I will stipulate that these two exhibits
18 come into evidence for sole purpose of them establishing what
19 position Staff took in that case, U-10547.

20 JUDGE EYSTER: Mr. Aaron, is that acceptable to you?

21 MR. AARON: That's acceptable, yes.

22 JUDGE EYSTER: Mr. Odunlami?

23 MR. ODUNLAMI: Yes, your Honor.

24 JUDGE EYSTER: Okay, for that limited purpose then
25 these documents are admitted into evidence. Mr. Odunlami,

1 redirect?

2 MR. ODUNLAMI: Can I confer just a minute. Just one
3 question.

4 JUDGE EYSTER: Mr. Odunlami?

5 REDIRECT EXAMINATION

6 BY MR. ODUNLAMI

7 Q. Mr. Mazuchowski, would you please tell us briefly Staff's
8 role to the Commission, The Michigan Public Service
9 Commission? Tell us briefly what's Staff's role is to the
10 Michigan Public Service Commission Staff's?

11 A. Staff's role is to make recommendations to the Commission
12 on matters that the Commission assigns to us.

13 Q. Does the Commission adopt Staff's position?

14 A. The Commission can adopt Staff's position or they can adopt
15 a different position.

16 MR. ODUNLAMI: That's my questions, your Honor.

17 JUDGE EYSTER: Any recross Mr. Aaron?

18 MR. AARON: No, your Honor.

19 MR. OLIVA: No, your Honor.

20 JUDGE EYSTER: Thank you, Mr. Mazuchowski, you may
21 step down. Any other witnesses for Staff?

22 MR. ODUNLAMI: No.

23 JUDGE EYSTER: Any other matters the parties need to
24 address today?

25 MR. OLIVA: None other than based on the earlier

1 discussions that we keep the record open in order to get the
2 transportation and treating agreements that were produced on
3 discovery, the related dedications marked as exhibits. The
4 parties would like to stipulate to authenticate them and get the
5 copies put into electronic form, the ones that were actually
6 produced.

7 JUDGE EYSTER: And, we already have a schedule for
8 briefs, Mr. Odunlami?

9 MR. ODUNLAMI: I think we have them already, your
10 Honor.

11 MR. AARON: I believe we do have a briefing schedule.
12 Your Honor, one more bookkeeping matter. I apologize that I
13 asked these to be marked 6 and 7, the most recent exhibits and
14 they should be marked 5, 6.

15 JUDGE EYSTER: So, 6 will become 5?

16 MR. AARON: Exhibit 6 will become 5, and 7 will become
17 6.

18 JUDGE EYSTER: Okay. How long will it take us to
19 receive the transcript?

20 REPORTER: I have to have it within 10 days.

21 JUDGE EYSTER: So, then the transcript will be
22 available July 6th. That's fine. Briefs?

23 MR. OLIVA: About four weeks from the transcript that
24 would be Thursday, August 3rd.

25 MR. ODUNLAMI: Or Friday, August 4th.

1 MR. OLIVA: Okay, Friday, August 4th.

2 JUDGE EYSTER: Mr. Aaron, is that okay with you?

3 MR. AARON: That's fine and then two weeks for reply
4 briefs?

5 MR. OLIVA: That would be the 18th, August 18th for
6 reply briefs.

7 MR. ODUNLAMI: That's fine.

8 JUDGE EYSTER: Initial briefs will be due Friday,
9 August 4th, reply briefs by August 18, 2006. Anything else we
10 need to address?

11 MR. OLIVA: No, your Honor.

12 JUDGE EYSTER: Thank you. That's all for the record.
13 I guess the record is open until next Friday for submission of
14 the exhibits. That's all for today.

15 (Proceedings concluded at 4:50 p.m.)
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C E R T I F I C A T E

STATE OF MICHIGAN)

COUNTY OF INGHAM)

I certify that this transcript, consisting of 260
pages, is a complete, true and correct transcript of the
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Not Verified**Lorea A.
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