

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on February 2, 2007.

Exceptions, if any, must be filed with the Michigan Public Service Commission, P.O. Box 30221, 6545 Mercantile Way, Lansing, Michigan 48909, and served on all other parties of record on or before February 23, 2007, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before March 9, 2007. **The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.**

At the expiration of the period for filing of exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for

Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

STATE OFFICE OF ADMINISTRATIVE
HEARINGS AND RULES
For the Michigan Public Service Commission

Mark D. Eyster
Administrative Law Judge

February 2, 2007
Lansing, Michigan
dmp

STATE OF MICHIGAN
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FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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PROPOSAL FOR DECISION

HISTORY OF PROCEEDINGS

On January 9, 2006, Dominion Midwest Energy, Inc. and Dominion Reserves, Inc. (hereinafter jointly referred to as Dominion or Complainant) filed this complaint against MichCon Gathering Company (MGAT) and MichCon Consolidated Gas Company (MichCon). The complaint centers about the contractual obligations and practices of the parties as they relate to the operation of the Antrim Expansion Pipeline (AEP) and associated natural gas treatment facilities.

On February 22, 2006, separate answers were filed on behalf of MGAT and MichCon. MichCon filed an amended answer on February 23, 2006.

On March 2, 2006, Quicksilver Resources, Inc. and Terra Energy, Ltd. filed a petition for leave to intervene. The following day, CMS Antrim Gas, Ltd. (CMS) filed a late-filed petition for leave to intervene.

On March 9, 2006, a prehearing conference was conducted. At the prehearing, Dominion appeared through its attorneys, Michael G. Oliva and Anna Rose Stern. MGAT and MichCon appeared through its attorneys, Richard P. Middleton and Richard J. Aaron. Michigan Public Service Commission Staff (Staff) was represented by Emmanuel B. Odunlami. Also present was attorney James A. Christopherson, on behalf of Quicksilver Resources, Inc. and Terra Energy, Ltd., and attorney John E. Palincsar, on behalf of CMS. After oral arguments, both petitions for leave to intervene were denied. Thereafter, a schedule for the remainder of the case was established.

Prior to the prehearing conference, MGAT filed a Motion for Summary Disposition. Oral arguments on the motion were heard at a motion hearing on March 29, 2006. At the hearing, the motion was denied in its entirety.

An evidentiary hearing was conducted on June 20 and 21, 2006. At that hearing, the prefiled testimony of Dominion's witnesses Sidney J. Jansma, Jr., Ray A. Barnhart, James M. Weyland, and Frank M. Murray was bound into the record and the witnesses were subject to cross-examination. For Respondents, the prefiled testimony of Karl R. Wittbold, Todd F. Persells, and Arthur R. Lyle II was bound into the record and the witnesses were subject to cross-examination. Additionally, the prefiled testimony of Staff's witness, Donald Mazuchowski, was bound into the record and he was subject to cross-examination. The record contains 127 exhibits and a transcript, 260 pages in length.

The parties filed initial briefs on August 21, 2006. Reply briefs were filed on September 6, 2006.

OVERVIEW

The AEP began operating on November 8, 1995. It was designed to transport primarily Antrim gas; a natural gas produced from Devonian age shale that underlies much of the northern lower peninsula of Michigan. This gas contains relatively high concentrations of CO₂ and requires treatment (CO₂ removal) before arrival at delivery points. For purposes of the case at hand, the AEP starts at the CMS owned CO₂ treatment facilities near Gaylord, Michigan. From Gaylord, it runs, generally, southwest to Kalkaska, with receipt and delivery points along the way. In Kalkaska, the gas from the AEP is mixed with gas from other pipelines before reaching its final delivery point.

When approving the AEP's construction, the Commission mandated that the AEP deliver natural gas with a CO₂ content of 2% or less and established the transportation rate to be charged gas producers using the AEP. However, the Commission left to the parties the responsibility of negotiating non-discriminatory contracts covering the remainder of the terms for the transportation and associated treatment of natural gas on the AEP. These agreements are known as ASATTS.

For approximately ten years, the parties to this case performed under the terms of the relevant ASATTS¹. Pursuant to the terms of the ASATTS, to ensure firm service, Dominion and Wolverine Gas and Oil Company, Inc (Wolverine) both, individually, dedicated their natural gas reserves to the transportation and treatment facilities of the AEP.

¹ There are two ASATTS involving Dominion in this Case. One was executed between MichCon and Dominion. The second ASATT was signed by representatives from MichCon and Wolverine Gas and Oil Company, Inc (Wolverine). After its signing, Dominion acquired all of Wolverine's interest in the gas covered by that ASATT. An interpretation of the terms of the Wolverine ASATT and its associated dedication of gas reserves underlies a portion of this dispute.

Since Commission approval of the AEP and execution of the early ASATTS, the AEP's ownership status has changed. The relevant CO₂ treatment facility, near Gaylord, is now independently owned and operated by CMS. While this facility is properly considered part of the AEP, for purpose of clarity, I may refer to it as a separate entity from the remainder of the AEP. The AEP pipeline, itself, is now owned and operated by MichCon's subsidiary MGAT.

As the expiration date of Dominion's ASATTS approached, the parties began negotiating new agreements. These negotiations were, to say the least, contentious and not entirely satisfactory to the parties. Eventually, Dominion contracted directly with CMS for CO₂ treatment of its gas and the gas it had acquired from Wolverine. Under the contract, CMS agreed to treat Dominion's gas to a 2.00% CO₂ content. Additionally, CMS agreed to refurbish its facilities to increase treatment capacity and reliability. After Dominion contracted with CMS, MGAT demanded, as a condition for transportation, that Dominion agree to a treatment level of 0.75% CO₂ content. In response, Dominion filed this complaint and later signed, under protest, a transportation agreement with the 0.75% CO₂ content requirement. In its complaint, Dominion requests, among other things, interpretation of the dedication executed by Wolverine, a declaration that the 0.75% CO₂ treatment requirement is discriminatory, and a requirement that MGAT file detailed tariffs for services on the AEP.

FINDINGS OF FACT

AEP Configuration and Operation

On March 29, 1995, the Commission granted a certificate of public convenience and necessity to construct and operate the AEP, “subject to the requirements of 1929 PA 9, as amended, and on condition that Michigan Consolidated Gas Company . . . maintains a carbon dioxide level of 2% or less at all downstream take-away points [and] provides impartial, non-discriminatory access to all take-away transportation systems” *Application of Michigan Consolidated Gas Company*, U-10547, Opinion and Order, pp. 60-61, (March 29, 1995). In addition, the Commission granted MichCon the “flexibility to []locate the [CO₂] treatment facilities in order to optimize the CO₂ processing operations.” *Id.* at 50. In doing so, the Commission noted that “MichCon . . . intends to locate CO₂ treatment plants in order to take advantage of ‘blending’ opportunities made possible through the commingling of Antrim gas with non-Antrim gas.” *Id.* at 43. “Blending is the reduction in aggregate levels of CO₂ by commingling gas with high CO₂ content, i.e., greater than 2% CO₂, with gas that contains low CO₂, i.e., less than 2%, such that the entire gas stream contains 2% or less CO₂. Tr. 4, p. 231.

When the AEP began operation in November, 1995, it serviced approximately 3500 wells and had about 135 receipt points. Tr. 4, p. 327. Today, the AEP serves over 4900 wells via more than 170 receipt points. *Id.* at 328. Currently, even with the increased number of wells, the volume of natural gas produced is declining and, what is produced, contains increasing concentrations of CO₂. *Id.*

CMS's facility is a complex of five gas treatment plants and "provides the majority of the carbon dioxide treating for natural gas flowing on the . . . [AEP]." Tr. 4, p. 229. Gas enters the CMS treatment facility from a variety of sources. It arrives from the east via the Spartan Pipeline, the South Chester Pipeline System, and the Little Bear Pipeline System. Exh. Dom-12. These pipelines are owned by CMS and are not considered part of the AEP. Tr. 4, pp. 252-53. Immediately north of the CMS facility is the Wilderness Chester treatment plant, in which Dominion has an ownership interest. Tr. 3, p. 153. Dominion uses the Wilderness Chester Plant as a pre-treatment plant for removal of CO₂ to a level below 14%. *Id.* at 154. Gas flows from the Wilderness Chester facility to the MichCon affiliated Turtle Lake facility and then to the CMS facility, where it is treated by CMS. Tr. 4, p. 254. Tr. 4, p. 276. Dominion's gas accounts for approximately 10% of the total volume of gas flowing through the CMS facility. *Id.* at 333. Upon leaving CMS's facility, the gas on the AEP has a CO₂ concentration of approximately 0.95%. *Id.* at 233.

Almost immediately upon leaving the CMS facility, gas on the AEP is delivered to the ANR pipeline, without blending, with a CO₂ content of 0.95%. Tr. 4, p. 270. After the ANR delivery point, gas travels on the AEP to the Goose Creek delivery point. *Id.* at 275. Along the way, untreated Antrim gas is delivered to the AEP and is blended with the gas previously treated by CMS. *Id.* By the time gas reaches Goose Creek, the CO₂ content rises to approximately 1.68%. *Id.* After Goose Creek, gas continues on the AEP with no further blending until it reaches Kalkaska. *Id.* In Kalkaska, low CO₂ gas on the AEP is blended with high CO₂ gas from MichCon's Wet Header pipeline and with gas from MichCon's Saginaw Bay pipeline. *Id.* at 233. After the gas from these three

pipelines is blended the concentration of CO₂ is approximately 2.00% and it is set for final delivery. *Id.* at 275.

Early Contractual Relations

On February 18, 1994, pursuant to 1929 PA 9, MichCon filed an application for authority to construct and operate the AEP. *Application of Michigan Consolidated Gas Company*, U-10547, Opinion and Order, p. 1, (March 29, 1995). During the pendency of the application and the subsequent construction of the AEP, MichCon and gas producers entered into approximately 20 ASATTs for the transportation and treating of Antrim gas. Exh. Dom-21-41. A large number of these ASATTs expired 10 years after the in-service date of the AEP. *Id.* As a condition for firm transportation service under the ASATTs, producers were required to dedicate of their reserves to the AEP. Exh. Dom-21-41.

On September 12, 1994, Wolverine and MichCon signed ASATT #1. Exh. Dom-1. Article II of ASATT #1 reads, in part:

2.1 For any Antrim Gas to be transported and treated on a firm basis pursuant to this agreement, the party who owns or controls the acreage from which the gas is transported and treated is produced shall have first committed, by a Letter of Dedication, all previously undedicated Antrim reserves which it owns and controls and which can be reasonably serviced by the [AEP] (Initial Acreage Dedication). Furthermore, Antrim Gas which is produced from after acquired or controlled acreage and which desires firm transportation must also first be committed to the [AEP] by a Letter of Dedication (Additional Acreage Dedication). Such dedications shall be made on a form provided or approved by MichCon. MichCon may refuse firm service for any Antrim Gas which has not been committed as provided for above.

Exh. Dom -1.

Additionally, ASATT #1 states, in part:

VI. GAS QUALITY SPECIFICATIONS

Unless prior approval is obtained from MichCon, all Gas received and delivered under the terms of this Agreement shall perform to the following specifications:

* * *

(e) At each Delivery Point the carbon dioxide content of the Gas shall not exceed two (2%) mole percent; at any Receipt Point, the carbon dioxide content of the Gas shall not exceed 25 mole percent, provided, however, that Shipper's aggregate Receipt Point gas hereunder shall not exceed 14 mole percent

Exh. Dom-1.

Article III of ASATT #1 reads, in part, "All terms and conditions of this Agreement . . . shall be effective on the in-service date . . . of the [AEP] . . . and shall terminate ten (10) years later . . ." Exh. Dom-1.

To comply with Article II, above, Wolverine executed, contemporaneous with the signing of ASATT #1, the "Dedication of Antrim Reserves" (Dedication). Exh. Dom-2.

Tr. 3, p. 123. The Dedication includes the following language:

1. Producer . . . dedicates to the transportation and treating services provided by MichCon on the [AEP] all of the natural gas produced from the Antrim shale formation

* * *

3. It is the intent of the Parties that the dedication provided for in this Agreement is a transfer of an interest in the real property described on Exhibit A and, as such, shall bind all subsequent transferees of any interests in the real property.

4. The agreement constitutes the entire agreement between MichCon and Producer concerning the subject matter hereof. Any prior understandings, representation, promises, undertakings, agreement or inducements, whether written or oral, concerning the subject matter hereof not contained herein shall have no force and effect. This Agreement may be modified or amended only by a writing duly executed by both parties.

Exh. Dom-2.

At hearing, Sidney J. Jansma, Jr. testified about the circumstance surrounding the signing of ASATT #1 and the Dedication. I found his testimony credible and persuasive. His un rebutted testimony established that ASATT #1 and the Dedication were drafted by MichCon and that they were presented as one agreement. Tr. 3, p. 116. *Id.* at 123. His testimony also established that it was the intention of the parties that the “Dedication . . . expire . . . simultaneously with the expiration of . . . ASATT #1.” *Id.* at 117. Finally, Mr. Jansma testified that it was “standard industry practice” to have such dedications expire simultaneously with the expiration of the associated transportation agreements. *Id.*

On February 6, 1995, Dominion and MichCon entered into ASATT #16. Exh. DOM-3. Also, on that day, their representatives signed a “Commitment Letter” as required by Article III of ASATT #16. Exh. Dom-4. Like the Dedication, the Commitment Letter, commit[ted] . . . certain quantities of natural gas for Gas Transportation Service on the [AEP].” *Id.* Unlike the Dedication, the Commitment Letter, by its express terms, expired with the expiration of ASATT #16. *Id.* The parties agree that the Commitment Letter has expired.

Effective January 1, 1997, Dominion acquired Wolverine’s interest in the gas covered by ASATT #1. Tr. 3, p. 156. The acreage covered by ASATT #1 and ASATT #16 is nearly identical. *Id.* However, of the gas now produced by Dominion, approximately 85% is gas that was covered by ASATT #16 and its Commitment Letter. *Id.* at 161-62.

To meet its treatment obligations, in April of 1995, MGAT executed an, apparently, 15-year contract (Capacity Agreement) to have gas treated at the South

Chester treatment facility (CMS's facility). Tr. 4, p. 391. At that time, the facility was owned by Antrim Limited Partnership, a partnership between MGAT and CMS, with CMS expressing a desire to purchase MGAT's interest in the facility. *Id.* at 307, 391. On some later date, that appears unclear from the record, MGAT transferred its interest in the facility to CMS.

Under the Capacity Agreement, CMS "agreed to provide MGAT up to 260 MMcf/d of treating services" and MGAT agreed to pay a minimum monthly reservation charge for 15 years. Tr. 4, pp. 307, 391. Historically, MGAT "has relied on its ability to set . . . gas volumes delivered into its system and to use its existing treating contract with CMS that provides for a 0.75% outlet at the CMS plant . . . to maintain its obligation to deliver gas at a CO₂ content of 2% or less." *Id.* at 332.

New Contract Negotiations

In November, 2004, prior to the expiration of ASATT #1 and #16, Edward Rowling of MGAT contacted Ray Barnhart, Operations Manager for Dominion, to discuss extending the contracts. He stated that MGAT would be willing to offer a five-year extension with a treatment cost of \$0.11/mcf. Mr. Rowling made follow up calls in January and March of 2005. During the March call, Mr. Barnhart advised him that Dominion would be willing to meet with MGAT, that Dominion's decision regarding treatment would be greatly influenced by reliability of service, that Dominion would be discussing treatment options directly with CMS Antrim, and that Dominion was considering building its own CO₂ treatment plant. Tr. 3, pp. 143-44.

From March through August of 2005, MGAT, Dominion, and another producer, Quicksilver Resources, Inc., engaged in numerous discussions regarding treatment

options. Tr. 3, pp. 145-46. At the same time, Dominion was also discussing several treatment proposals with CMS. In August 2005, as part of these discussions, CMS offered to refurbish one of its treatment plants and to maintain one larger plant of redundant capacity. *Id.* at 146. Dominion believed these improvements would eliminate all curtailments related to plant shut downs and agreed to enter into a five-year treatment contract with CMS at a rate of \$0.11/mcf. *Id.*

In late September, Mr. Barnhard informed Mr. Rowling of Dominion's decision and asked that MGAT send him an ASAT (a contract for transportation, only) for review and execution. Tr. 3, p. 146. At that time, Mr. Rowling indicated that he would do so. *Id.* However, on September 30, Mr. Rowling informed Mr. Barnhard that MGAT had taken the position that the reserves under ASATT #1 were perpetually dedicated to MGAT for transportation and treatment. *Id.*

On October 3, 2005, instead of an ASAT, MGAT provided Dominion with draft ASATTs for its consideration. Tr. 3, p. 147. On October 12, Mr. Rowling sent Dominion correspondence repeating MGAT's "position that the gas covered under [ASATT #1] is dedicated for transportation and treating on [MGAT's AEP]." Exh. Dom-7. Included in the correspondence was an ASAT to replace ASATT #16. Under the ASAT, Dominion was responsible for treatment of its gas to a CO₂ level of 2%. *Id.* Mr. Rowling further indicated that Dominion needed to identify the gas "attributable to" ASATT #16. *Id.* Dominion objected and expressed its disagreement with MGAT's interpretation of the dedication associated with ASATT #1. Tr. 3, p. 147. In late November, the parties unsuccessfully attempted to negotiate a resolution to their impasse. *Id.* at 148-49. On November 29, 2005, Dominion signed a Firm Gas Treating Agreement with CMS. Exh.

Dom-6. Under the agreement, CMS agreed to treat Dominion's gas, as necessary, to a 2% CO₂ content level. *Id.*

On December 1, 2005, Mr. Rowling again corresponded with Dominion. In his letter, Mr. Rowling repeated MGAT's position "that Dominion's gas under ASATT #1 is dedicated for the life of the reserves to MichCon Gathering for treating and transportation." Exh. Dom-8. Additionally, MGAT offered to "release Dominion from the dedication upon the execution of a new . . . ASAT", a copy of which was attached.

Id. The attached ASAT included the following clause:

VI. GAS QUALITY SPECIFICATIONS

Unless prior approval is obtained from MichCon Gathering, all Gas received and delivered under the terms of this Agreement must conform to the following specifications:

* * *

(e) At any Receipt Point, the *carbon dioxide content of the Gas may not exceed three fourths of one mole percent (0.75%)* unless Shipper can demonstrate that it has downstream processing agreements satisfactory to MichCon Gathering which provide that the carbon dioxide content of the gas will not exceed three fourths of one mole percent (0.75%) at the outlet of the processing plant, in which case the carbon dioxide content may not exceed twenty-five mole percent (25%) provided, however, the Shipper's aggregate Receipt Point Gas hereunder may not exceed 14 mole percent.

Exh. Dom-1 (emphasis added).

Upon reviewing the ASAT, Dominion officials asked CMS to amend the Dominion treatment contract so as to reduce CO₂ content from 2% to .75%. Tr. 3, p. 148. CMS refused to do so and informed Dominion that "MichCon was already paying [CMS] to do this." *Id.*

In mid-December, Mr. Rowley informed Dominion that, unless it executed the ASAT with the 0.75% CO₂ treatment requirement, Dominion would not be able to nominate gas for transportation on the AEP for January, 2006. Tr. 3, p. 183. As

promised, during the week of December 19, 2005, Dominion found itself unable to nominate its gas for transportation. *Id.* After Dominion complained to the MPSC, MGAT's Mr. Rowling sent a letter to Dominion, on December 22, 2005, that stated, among other things, that Dominion could nominate gas for January transport and that if Dominion did not execute the ASAT agreement prior to February 1, 2006, Dominion's gas would "be considered trespass gas." Tr. 3, p. 184. Exh. Dom-9.

On January 9, 2006, this complaint was filed. In mid-January, Mr. Rowling informed Dominion's Mr. Weyland that MGAT had a "new policy" that required gas to be treated to a .75% CO₂ content under all new ASATS. Tr. 3, p. 184. As part of this proceeding, MGAT describes this policy as requiring "all new contracts for AEP transport to contract for treating to meet the outlet specification of 0.75% of CO₂ [sic] at the [CMS] facility." Tr. 4, p. 333.

On January 30, 2006, Dominion executed the 0.75% ASAT "under protest." Exh. Dom-10. To comply with the treating requirements, Dominion contracted with Wilderness Chester for additional treatment to achieve 0.75% CO₂ content at the tailgate of the CMS facility. Tr. 3, p. 150. No other ASAT contains the 0.75% requirement. Tr. 4, p. 352.

Other Contracts

Copies of 60 ASATs and ASATTs were entered into evidence. Of them, 22 were ASAT agreements. Exhs. Dom 21-80. Of the 22 ASATs, it appears that 4 have expired. *Id.* The remaining appear to be either currently in effect or, by their terms, to have continuing effect on a month-to-month or a year-to-year basis. *Id.* Twenty-one of the

22 ASATs have a 2.0% CO₂ content requirement. *Id.* Only the January 30, 2006, Dominion ASAT has the 0.75% CO₂ content requirement. Tr. 4, p. 352.

In addition to the contract with Dominion, CMS has contracts for the treatment of gas to 2.0% CO₂ content with Quicksilver Resources, signed November 1, 2005; Paxton Resources, signed December 1, 2005; and Chevron Production, signed January 1, 2006. Tr. 4, p. 231-32. The Dominion contract, signed December 1, 2006, was amended February 1, 2006 to include an outlet specification of 0.75% CO₂ content. *Id.* at 232.

POSITIONS OF THE PARTIES

Dedication

With regard to the dedication of reserves, Complainant asserts “it is industry practice that reserve dedication provisions generally run for the duration of the associated service contract.” Dominion Initial Brief, p. 9. More importantly, however, Dominion argues that it was the “express intent of the parties that the ASATT and the dedication of reserves constituted one (1) fully integrated agreement and that such single agreement would expire after ten (10) years.” *Id.* at 10 (citations omitted). Dominion adds that “[n]o *express* term is included in the dedication . . . that would suggest a reserve dedication longer than ten years” and “an extended or perpetual dedication is not *implied*.” *Id.* at 11. Dominion continues by arguing that “Respondent’s argument that the reserves are subject to perpetual dedication is moot because . . . the lands subject to the ASATT #1 dedication are the same lands burdened under the ASATT #16 dedication.” Dominion Initial Brief, p. 12. For these reasons, Dominion feels the Commission should hold that the “reservation of lands at issue under ASATT No.1 expired along with the corresponding [s]ervice [a]greement.” *Id.*

MGAT argues that Dominion has failed to identify “any statute, Commission rule or Commission order which has been violated” by MGAT’s position that the Dedication runs for the life of the reserves. MichCon Initial Brief, p. 6. MGAT contends that Mr. Jansma’s testimony should be rejected because it is “at odds with the clear language of the dedication” and because his “ability to recall specific information was nonexistent.” *Id.* Finally, MGAT argues that the “dedication is a transfer of an interest in real property which does not expire until production ceases.” *Id.* at 9.

Staff argues that MCL 483.104 “imposes an obligation on a producer of natural gas to dedicate its [r]eserves for the life of the pipeline.” Staff Initial Brief, p. 13. Staff’s argument is made by analogy to federal law and relies primarily on *Sunray Mid-Continent Oil Co v FPC*, 80 S Ct 1388 (1960) and *United Gas Pipeline Co v FPC*, 350 F2d 689 (1965). *Id.* at 16-18. Additionally, Staff points to paragraph 1 of the Dedication and argues that it represents a dedication for the “life of the pipeline.” *Id.* at 19.

Dominion argues that Staff’s reliance upon federal regulatory schemes to determine the length of the dedication is misplaced. Dominion Reply Brief, p. 5.

Dominion further argues that:

[T]o the extent this argument is intended to advance the conclusion that gas dedicated pursuant to ASATT #1 was perpetually dedicated . . . for treatment, it must be pointed out that Respondents do not own the treating facilities, but have sold their interest to CMS Antrim. If the policy argument . . . is dependant upon a dedication having a sufficient term of years for the carrier to recoup its investment, they have no such investment in treating facilities If the dedication . . . is deemed to extend beyond 10 years, it can only be concluded that the dedication is to the facility, and not to Respondents, and that Complainants are free to contract directly with the current owner of that facility for treatment.

Dominion Reply Brief, p. 5.

Discrimination

Dominion notes that it “is the *only* producer required to treat its gas to 0.75%” CO₂ content and argues that “Respondent is . . . prohibited by Act 9, [1929 PA 9, as amended], from giving *any* preference or advantage to any . . . entity . . . as to rates; service, including transportation; facilities for service; or commodities delivered” Dominion Initial Brief, p. 5-6. To support this argument, Dominion relies upon MCL 483.104², MCL 483.106³, and administrative rule 460.872⁴. *Id.* at 5. In short, Dominion argues that “because all other similarly situated producers are required to treat to a maximum CO₂ content of 2%, Respondent is illegally discriminating against Dominion . . .

² 483.104 Common purchaser; definition; purchase without discrimination.

Sec. 4. Every corporation . . . exercising the right to . . . transport natural gas by pipe line . . . shall be a common purchaser . . . and shall purchase all the natural gas . . . without discrimination in favor of 1 producer . . . as against another, and shall fully perform all the duties of a common purchaser; but if it shall be unable to perform the same, or be legally excused from purchasing and transporting all the natural gas produced or offered, then it shall purchase and transport natural gas from each . . . producer ratably, in proportion to the average production, and such common purchasers are . . . prohibited from discriminating in price or amount for like grades of natural gas or facilities as between producers . . . ; and in the event it is likewise a producer, it is . . . prohibited from discrimination in favor of its own production, or production in which it may be interested directly or indirectly, in whole or in part, and its own production shall be treated as that of any other person or producer.

³ 483.106 Common carriers; preference prohibited.

Sec. 6. All corporations . . . purchasing or collecting natural gas and transmitting or conveying the same . . . by pipe line . . . as a common carrier shall be a common carrier thereof as at common law, and it shall be unlawful for any such common carrier . . . to give, either directly or indirectly, any preference or advantage to any . . . corporation . . . , in any respect whatsoever as to rates, service, facilities for service or commodity delivered.

⁴ R 460.872 Discrimination.

Rule 22. (1) Common purchasers and common carriers are expressly prohibited from discrimination in amount of gas taken, price paid for or rates charged for like grades of natural gas or facilities as between producers or persons; and if a common purchaser or common carrier is likewise a producer, it shall not discriminate in favor of its own production or of production in which it may be interested directly or indirectly. The commission shall have authority to relieve any such common purchaser or common carrier, after due application, notice and hearing, from the obligation of purchasing or receiving gas from wells which due to variation in quality and pressure, or for economic reasons, are not at the time a practicable source of supply.

(2) Except in cases where exigency of service requires emergency measures, common purchasers or common carriers shall not abandon nor curtail withdrawals or purchases of gas from any pool or section of pool in favor of another pool or section thereof, because of temporary or permanent decline in reservoir or producing pressure without having first received the approval of the commission.

. .” *Id.* at 9. Dominion feels the result is that it is “being required to subsidize Respondent’s gas treatment obligations by super-treating its gas.” Dominion Reply Brief, p. 8.

MGAT, however, argues that “[f]undamentally this is a case about which party may determine the CO₂ quality of gas at the point shippers deliver into the . . . [AEP]. MichCon Initial Brief, p. 1. For Respondent, “it is essential that MGAT be able to establish a specific CO₂ content of gas delivered by all shippers.” *Id.*

MGAT argues that “Dominion’s case is based upon the [erroneous] assumption that gas needs to be treated only to a . . . 2% CO₂ content when delivered by a shipper” MichCon Initial Brief, p. 10. MGAT claims that, in Case No U-10547, the Commission “rejected the idea of imposing a specific CO₂ content standard for gas delivered to the AEP but conditioned operation of the AEP on maintaining a CO₂ level of ‘2% or less’ at downstream take-away points.” MichCon Initial Brief, p. 10. As MGAT sees it, “[c]learly, the Commission provided the pipeline owner/operator with the discretion to establish in contracts with shippers a CO₂ content so MGAT could achieve a . . . CO₂ [level] of ‘2% or less at all downstream take-away points’ and recognized the benefits of blending on the AEP.” *Id.* at 12.

MGAT claims that Section 6 of Act 9, (MCL 483.106), requires equal treatment of “similarly situated persons and conditions” unless there is “a rational basis for treating them differently.” MichCon Initial Brief, p. 13. Or in other words, “Section 6 prohibits only unjust or undue discrimination arising out of preferences or advantages.” *Id.*

MGAT argues that “no discrimination exists because [the] 0.75% CO₂ content [requirement] . . . applies to all similarly situated transporters,” i.e., “all transporters who

have access to a CO₂ treating facility and who chose to contract with third party providers.” MichCon Initial Brief, p. 14. In the alternative, MGAT states that “no unlawful discrimination exists with respect to the 0.75% CO₂ content specification because[,] to the extent there is a difference among shippers, any difference is justified by legitimate business reasons.” *Id.*

MGAT continues by arguing that “no discrimination exists with respect to requiring 0.75% CO₂ content” for delivery to the AEP of “gas that is dedicated to MGAT. . . .” MichCon Initial Brief, p. 13. “The fact that Dominion has attempted to disregard its dedication to MGAT and . . . contract with CMS, does not obviate the rational business reasons for insisting that the gas be delivered to the AEP with the 0.75% CO₂ content. Because the gas has historically been treated as [sic] 0.75% it is not discriminatory . . . to insist it continue to be treated to that level” *Id.*

Staff argues that Act 9, as interpreted by the Commission in Case No. U-10807, “does not require uniform rates for all transportation on a pipeline” and “does not require that all producers or sellers receive the same service if they are differently situated.” Staff Initial Brief, p. 11. To that, Staff adds that Act 9, “prohibits a common carrier from granting preferential treatment or advantage to one producer over another. *Id.*

Staff argues that “the Commission . . . permits [MGAT] to take advantage of the blending opportunities on the AEP. However, [MGAT] . . . cannot take advantage of blending opportunities . . . at the expense of similarly situated . . . producers who transport . . . gas on the AEP. . . .” Staff Initial Brief, p. 12. In Staff’s view, MGAT “should not be allowed to subsidize its gas blending activities through imposition of different CO₂ concentration on similarly situated producers” *Id.* at 12-13. Staff

finds that, for gas no longer covered by a dedication, MGAT's "imposition of 0.75% CO₂ concentration . . . is . . . discriminatory and illegal; it constitutes . . . abuse of its certificate of public convenience and necessity." *Id.* at 13.

However, as noted above, citing *Sunray Mid-Continent Oil Co v FPC*, 80 S Ct 1388 (1960) and *United Gas Pipeline Co v FPC*, 350 F2d 689 (1965), Staff argues that MCL 483.104 "imposes an obligation on a producer . . . to dedicate its [r]eserves for the life of the pipeline." Staff Initial Brief, pp. 13, 16-18. Additionally, Staff argues that paragraph 1 of the Dedication represents a dedication for the "life of the pipeline." *Id.* at 19.

In short, Staff argues that natural gas, or, at least, that originally covered by ASATT #1, is dedicated to MichCon⁵ for the life of the pipeline and that gas, so dedicated, is MichCon's gas to treat as it wishes. Staff adds, however, that, if the gas is found to no longer be dedicated, MichCon is unlawfully discriminating against Dominion.

⁵ In its brief, Staff references MichCon rather than MGAT and/or CMS, the current owners of the relevant portions of the AEP. Throughout the course of this case, many witnesses and attorneys have made reference to MichCon when it appears that the reference should have been made to MGAT.

Tariff

Dominion argues that MCL 483.110⁶ requires “every common carrier file with the [C]ommission a schedule of rates and charges.” Dominion Initial Brief, p. 13. Dominion finds additional support for its argument in administrative rule 460.875⁷. *Id.* Dominion feels that Respondent should be required “to file its CO₂ treatment requirements as a part of its tariff.” *Id.* at 14. Finally, Dominion argues that:

It is in the best interest of the public that the Commission adopts measures to minimize the potential of operational discrimination by Respondent. The Commission should require Respondent to file a tariff that clearly sets forth all operational terms and conditions governing gas transportation on the AEP, including ancillary services. All interested parties should be allowed to review and comment on the filed tariff. This procedure will decrease MichCon opportunities to discriminate without

⁶ 483.110 Filing schedule of rates or charges; filing copies of contracts; alterations or amendments; application; approval; appeal.

Sec. 10. A common purchaser or common carrier of natural gas, before receiving the gas for transmission or delivery, shall file with the commission a schedule of the rates and price at which the common purchaser or common carrier will receive gas at delivery stations from a well, field, or source of supply, as well as the rates or charges at which the common purchaser or common carrier will deliver gas to connecting carriers or distributing lines or customers, and, if the common purchaser or common carrier is operating as a carrier for hire, the rates and charges which the common purchaser or common carrier will charge for the service to be performed by it. A common purchaser or common carrier operating as a carrier for hire also shall file a copy of each contract for purchasing, receiving, or supplying gas. The price to be paid and the rates and charges shall be stated and set up in the manner and form required by the commission and outlined in the rules of the commission for filing of rates of artificial gas utilities or pursuant to rules and conditions of service adopted by the commission, which the commission may make for the regulation of common purchasers and common carriers of natural gas. Thereafter, a common purchaser or common carrier of natural gas may alter or amend its price paid, rates, charges, and conditions of service by application to and approval by the commission in the same manner and by the same process and under the same legal limitations and like right as are now provided by statute for the regulation by the commission of the rates for electricity transmitted in this state and process of appeal provided in section 26 of Act No. 300 of the Public Acts of 1909, being section 462.26 of the Michigan Compiled Laws.

⁷ R 460.875 Filing of rates, contracts, and regulations.

Rule 25. (1) Complete rate schedules, and rules and regulations governing each common purchaser's or common carrier's relations with its producers and distributors, shall be filed in compliance with commission order D-3096, or in pertinent superseding or modifying orders. In case all purchase contracts in a single field are identical, the filing of such contracts as provided in section 25(2) hereof, shall be considered as fulfillment by the common purchaser of this requirement.

(2) Every common purchaser or common carrier shall file with the commission a true and verified copy of any contracts for purchasing, receiving or supplying of gas within 30 days after the making thereof.

(3) No change shall be made in any filed rates, charges, rules or regulations without approval of the commission.

detection. Authorization of the tariff will include the acceptable terms of individual service agreements for producers.

Dominion Initial Brief, p. 14-5.

MichCon argues that that Complainant's tariff argument lacks merit. MGAT notes that the Commission did not require filed tariffs in Case No. U-10547 and argues that Act 9 does not require tariffs to be filed. MichCon Initial Brief, p. 16.

DISCUSSION

Dedication

Initially, it seems important to determine to what, exactly, Wolverine's, now Dominion's, gas was actually dedicated. Complainant and Respondent do not argue that MichCon, itself, retains any interest in the natural gas. Dominion, first, claims the Dedication has, by its terms, expired and it is free to treat its gas as it pleases. In the alternative, Dominion argues that, should it be found that the Dedication is perpetual, the Dedication runs to the AEP facilities rather than to a particular corporate entity. Under the latter argument, Dominion is committed to continued use of MGAT's pipeline and CMS's treatment facilities, not to a particular contractual relationship with MGAT. MGAT, however, claims the Dedication, being perpetual by its express terms, gives it the right to control both the transportation and the treatment of the gas originally covered by ASATT #1. Staff seems to agree with MGAT, arguing that this gas is dedicated to MichCon for transportation and treating on the AEP for the life of the pipeline.

I feel the proofs support the arguments put forth by Dominion. First, it is the opinion of this judge that the Dedication of reserves does not run to any particular corporate entity but, rather, it runs to the AEP facilities. It seems clear that the original

dedications were executed primarily to establish the need for the AEP and to establish its financial viability. Additionally, pursuant to the terms of the Dedication, Wolverine's natural gas was dedicated to the "transportation and treating services . . . on the Antrim Header System." At the time of the Dedication's execution, those services were "provided by MichCon." However, today MichCon no longer provides those services. Instead, the transportation of, what was then, Wolverine's gas is provided by MGAT, MichCon's subsidiary. The physical treatment of, what was then, Wolverine's gas is now provided by CMS, a company independent of MichCon. It is recommended that the Commission find that the Wolverine Dedication runs/ran to the separate facilities now operated by MGAT and CMS. Should the Commission agree, it appears unnecessary to decide whether the Dedication has expired, as that question would appear unripe for consideration.

The reason this question is unripe for consideration is that Dominion, Wolverine's successor in interest, continues to utilize the facilities that the Dedication would require it to use. Dominion does not even suggest that it wishes to transport and treat its gas in any other manner. Quite to the contrary, Dominion's clear concern is that it have continued access to the AEP and its treatment facilities, on a non-discriminatory basis. Rather than seeking transportation and treatment elsewhere, Dominion has entered into contracts to receive services from CMS and MGAT, just as the Dedication, if effective, would require.

However, should the Commission feel it necessary to determine whether the Dedication runs for the life of the reserves, it is recommended that, for the reasons below, the Commission find that the dedication has expired.

First, I find that ASATT #1 and the associated Dedication should be treated as one single document. Section 2.1 of ASATT #1 requires the Dedication of reserves in order for the producer to receive service on a firm basis. Additionally, Section 2.1 makes clear that the Dedication will also establish what gas is eligible for firm service. Therefore, to learn all the contract terms, one must look to the Dedication. “Where one writing references another instrument for additional contract terms, the two writings should be read together.” *Forge v Smith*, 458 Mich 198, 207; 580 NW2d 876 (1998). Here, the terms of ASATT #1 are incomplete unless one looks to and considers the contents of the Dedication. Therefore, I believe it is necessary to consider and read the two documents as though they were written together as a single document. This conclusion is supported by Mr. Jansma’s testimony. He established that MichCon presented ASATT #1 and the Dedication as one agreement and that they were signed at the same time.

Reading the documents together makes clear that the Dedication was to expire with the ASATT. Contrary to the position taken by MGAT, I do not believe the Dedication, itself, includes language to indicate the length of time that the Dedication was intended to run. I find unconvincing the argument that the words, “all the natural gas produced,” found in paragraph one of the Dedication, is the equivalent of a perpetual dedication. This ambiguous language must be reconciled with that of the remainder of the ASATT. Unlike the Dedication, Section 3.1 of ASATT #1 is clear when it reads, “All terms and conditions of this agreement . . . shall be effective on the in-service date . . . of the [AEP] . . . and shall terminate ten (10) years later.” When read together, it appears that the Dedication was intended to expire with the expiration of the

ASATT. Again, this conclusion is supported by the testimony of Mr. Jansma. He established that the parties intended to have the Dedication and ASATT #1 expire simultaneously. Additionally, Mr. Jansma considered it standard industry practice to have the dedication expire simultaneously with the transportation agreement's expiration. Therefore, I conclude and recommend that, should the Commission find it ripe for consideration, the Commission find that the Wolverine Dedication has expired simultaneously with ASATT #1.

Discrimination

Originally, as MichCon prepared to construct and operate the AEP, all contracts for service on the AEP called for producers to pay MichCon for transportation and treating services. However, while some producers' gas was physically treated for the removal of CO₂, others' was treated by blending with the physically treated gas. Under this arrangement, MGAT then contracted with CMS for the super treating, i.e., treating to a .75% CO₂ concentration, of a portion of the gas and blended it with the remaining downstream gas. This strategy allowed MGAT to efficiently maintain the Commission mandated 2% CO₂ concentration at all delivery points. In essence, while some gas was super treated and the rest was blended with super treated gas, each producer paid a proportional share of the cost of treating all gas to a 2% CO₂ concentration.

As these original contracts expired, new contractual arrangements became available. Now, MGAT operates the AEP and CMS provides the bulk of the CO₂ treatment. As a consequence, some producers have chosen to contract directly with CMS for treatment services. Because of their physical location, others are unable to do so, and continue to contract with MGAT for treatment, i.e. blending. Dominion availed

itself of the opportunity and contracted with CMS for the treatment of its gas and, in the process, required CMS to upgrade its facility.

To paraphrase, MGAT argues, in part, that this matter involves Dominion's attempt to usurp MGAT's management responsibilities over the AEP and that MGAT's decision to require a 0.75% CO₂ concentration is non-discriminatory because it is based on legitimate business concerns. I cannot agree with either of these contentions.

First, Dominion has done nothing to impact MGAT's ability to manage the CO₂ concentration of gas on the AEP. As it has historically done, MGAT is free to and, it appears, continues to contract with CMS for treatment of gas to a 0.75% CO₂ content. Dominion's contract with CMS does not limit MGAT from further treating the gas to meet its blending service obligations to downstream producers; blending services for which MGAT continues to charge fees. Apparently, MGAT feels this is a reasonable business decision because, it claims, it is necessary to maintain a 2%, or less, CO₂ content at all delivery points on the AEP. However, in reality it does nothing more than transfer the cost of treating downstream gas to Dominion.

Having rejected MGAT's justification for the 0.75% CO₂ content requirement, it is helpful to determine, as best as possible, the actual reason for this requirement. Based on the record, it appears that MGAT's demand for treatment to 0.75% CO₂ content is the consequence of the historical string of decisions by MichCon and MGAT regarding corporate structures and ownership of the AEP's assets. Initially, MichCon owned the AEP and began entering into mostly ten-year ASATTs. MichCon then transferred the assets of the AEP to its subsidiary MGAT. To meet its treatment responsibilities under the ten-year ASATTs, MGAT entered into a fifteen-year treatment contract with the

South Chester (CMS) facility, a facility in which it, then, held an ownership interest. MGAT then sold its interest in the South Chester facility to CMS. In short, what was once an integrated gas treatment and transportation system owned by MichCon has become a transportation system owned by MichCon's subsidiary MGAT with its primary and, apparently, most important treatment facility independently owned by CMS.

Today, MGAT continues to operate under the remainder of its fifteen-year contract with CMS for the physical treatment of gas. However, the ten-year ASATTS and most of the associated Dedications/Commitments have expired. For the owners of gas that is treated by CMS, they now find themselves free to contract directly with CMS for treatment and MGAT for transportation. Several have chosen to do so. This appears to have placed MGAT in the undesirable position of having a fifteen-year contract, with minimum monthly charges, for the treatment of gas over which it no longer controls pursuant to the ASATTS and, of more import to MGAT, for which it no longer receives treatment fees. As Staff witness, Mr. Mazuchowski, opined, it appears that "instead of paying for the treating it needs to meet its obligations of less than 2% CO₂ content at all take-away delivery points, [MGAT] is now attempting to pass the treating cost on to the shippers." Tr. 4, p. 437. Specifically, at this time, MGAT is passing the cost of "super treating" gas to Dominion, only. Further, as Mr. Mazuchowski observed, the producers (to date, only Dominion), "are required to spend extra money to super treat its gas to 0.75% level and [MGAT] is using the gas for its benefit by blending it with other [producers] gas and also charges the [producers] whose gas is blended a treating fee corresponding to cost for physical treatment." Tr. 4, p. 438. In short, it

appears that MGAT's 0.75% CO₂ policy is driven by an attempt to offset lost revenues/profits from the treatment contracts it no longer has with producers.

As noted above, MGAT, also, argues that its 0.75% CO₂ content requirement is non-discriminatory because it applies to all similarly situated producers. For MGAT, the similarly situated producers are those that contract directly with CMS for CO₂ treating. I find this distinction or classification meaningless and without merit. In reality all producers of Antrim gas require treatment services so that their gas can be delivered with a CO₂ content of 2.00%, or less. MGAT has chosen to accomplish this by contracting with CMS for the super treating of some gas; gas that is then blended with untreated gas downstream. However, the fact that some gas is super treated does not change the fact that each and every producer's gas is actually being treated to the same standard; a CO₂ content of 2.00%, or less, at all delivery points . Therefore, the record being void of any other measure by which to segregate producers, I believe it appropriate to consider all producers receiving CO₂ treatment, by physical means or by blending, to be similarly situated.

However, the question remains as to whether this policy is unlawfully discriminatory. Act 9 does not require a pipeline operator to provide the same services or prices for transportation. See *J.A.F. Properties, Inc v MichCon Pipeline Co*, U-11294, Opinion and Order (January 8, 1998). *Wolverine Gas and Oil Co, Inc v Spartan Intrastate Pipeline System*, U-10807, Opinion and Order (March 10, 1997). By merely finding a difference in services or prices, one may not conclude that "undue discrimination has been shown in this case." *J.A.F. Properties, Inc v MichCon Pipeline Co*, U-11294, Opinion and Order, p 11 (January 8, 1998). Instead, one must undertake

an evaluation of the relevant circumstance and determine whether the disparate treatment rises to the level of undue discrimination.

As noted, finding nothing in the record to suggest otherwise, I find it appropriate to characterize all producers in need of gas treatment on the AEP as similarly situated. While MGAT is requiring Dominion to treat its gas to a 0.75% CO₂ content, it does not do so for other producers⁸. MGAT imposes this requirement to help offset its own lost profits by straddling Dominion with additional treatment costs; costs for which it appears MGAT is currently collecting fees from the downstream producers utilizing blending on the AEP. Thus, Dominion is disadvantaged or, in other words, other producers are given an advantage. I can find no legitimate reason to grant this advantage to the other producers. Therefore, I believe MGAT's business decision to be discriminatory under Section 6 of Act 9.

I note that Staff argues alternatively that the current practice of requiring Dominion to treat to 0.75% CO₂ content is discriminatory if the Dedication has expired and that it is not discriminatory if the Dedication has not expired. I am not convinced by Staff's argument that the status of the Dedication is determinative on this issue and, even if it were, as already found, I believe the Dedication has expired. Therefore, under Staff's rationale, the practice is unlawfully discriminatory.

Tariffs

As noted above, Dominion argues that MCL 483.110 and administrative rule 460.875 require MGAT to file a tariff establishing all operational terms and conditions

⁸ For instance, see Dom-78 (ASAT between MGAT and J5, Inc, requiring 2% CO₂ content), Dom-79 (ASAT between MGAT and Delta Oil Co., requiring 2% CO₂ content), Dom-80 (ASAT between MGAT and Savoy Energy, requiring 2% CO₂ content).

governing transportation and treatment on the AEP. Dominion cites no other authority for this position.

In Case No. U-10507, the Commission noted that the “rules promulgated pursuant to Act 9 . . . require[] . . . applicant . . . to include with its application . . . a schedule of rates and fees to be charged” *Application of Michigan Consolidated Gas Company*, U-10547, Opinion and Order, p. 16 (March 29, 1995). As part of that order, the Commission approved a 10-year levelized transportation rate for the AEP. In setting the transportation rate⁹, and approving a \$300.00 administrative fee, the Commission concluded that MichCon had “complied with the filing requirements” of Act 9, i.e., in part, that MichCon had filed its schedule of rates and fees. *Id.* at 59.

While the language of MCL 483.110 and administrative rule 460.875 could be read to require Dominion’s requested relief, historically, it does not appear that the Commission has interpreted them so. It is noted that Dominion has not presented support for its position by reference to any Commission order. Additionally, this ALJ is not, otherwise, aware of any such orders. MGAT, however, in addition to U-10547, cites *Re Saginaw Bay Lateral Co*, Opinion and Order, U-10486 (August 8, 1994) and *Re Consumers Power Co*, Order Granting Declaratory Relief, U-1496 (January 24, 1977) as evidence that the filing of a schedule of rates and charges is not required. I find MGAT’s position convincing. MCL 483.110 and administrative rule 460.875 do not require MGAT to file a detailed tariff, as Dominion requests.

In addition, to the degree that it is alleged that MGAT is in violation of the filing requirements of Act 9, from the record, it appears, although it is not entirely clear, that

⁹ This rate was later changed by Commission order in case number U-12342. *Dominion Midwest Energy, Inc v Michigan Consolidated Gas Co*, U-12342, Opinion and Order (July 11, 2001).

MGAT has filed with the Commission all contracts that it has entered for transportation and treating on the AEP. This, in combination with the Commission's practice of establishing and publishing the AEP transportation rates, pursuant to order, is sufficient to meet the filing requirements of Act 9.

Dominion, additionally, asks the Commission to, otherwise, require the filing of a comprehensive tariff that sets forth all operational terms and conditions governing gas transportation and treating on the AEP. While this request may have some merit and there appears no reason why the Commission could not require such filings under Act 9, the request should be denied.

Historically, it does not appear that the Commission has interpreted Act 9 as requiring such filings. As a result, pipeline operators and producers have developed contractual relations that appear to have, for the most part, produced an efficient natural gas production, treatment, and transportation system. In this light, this complaint hearing, between only four of the AEP's, and the industry's, numerous interested parties, is not the appropriate forum in which to address the need for, and possible terms, of a general tariff for services on the AEP. Should the Commission feel that such a request should be considered, I recommend a separate investigation solely for that purpose.

CONCLUSION

For the reasons stated above, I recommend that the Commission find that:

- 1) the question regarding the continuing effect of the Wolverine Dedication is not ripe for consideration and, if the Commission decides the question is ripe, that the Dedication has expired simultaneously with its associates ASATT, and;
- 2) MGAT's policy of requiring Dominion to treat its gas to a CO₂ content of 0.75% is a unlawfully discriminatory practice under MCL 483.106, and;
- 3) MGAT has not violated Act 9 by failing to file tariffs and that this is not the appropriate forum within which to order the filing of Tariffs for operation of the AEP, and;
- 4) the complaint against MichCon be dismissed, in it's entirety.

Any arguments not specifically addressed in this Proposal for Decision were deemed irrelevant to the findings and conclusions of this matter.

STATE OFFICE OF ADMINISTRATIVE
HEARINGS AND RULES
For the Michigan Public Service Commission

Mark D. Eyster
Administrative Law Judge

ISSUED AND SERVED: February 2, 2007

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

STATE OF MICHIGAN)
) SS. Case No. U-14754
County of Ingham)
_____)

PROOF OF SERVICE

Dawn M. Prawdzik deposes and says that on the 2nd day of February 2007, she served a copy of the attached Proposal for Decision, upon those persons shown on Attachment A, by enclosing same in a sealed envelope addressed as indicated above and delivering the envelope to the Commission's mail courier for (1) postage prepayment and deposit with the United States Postal Service, or (2) delivery through interdepartmental mail (I.D.M.).

Subscribed to before me this 2nd
day of February, A.D. 2007.

Notary Public, Ingham County, Michigan

My Commission expires 8-16-2011.

ATTACHMENT A

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