

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)
WOLVERINE PIPE LINE COMPANY to)
construct, operate, and maintain a combination)
12-inch and 16-inch outer diameter liquid)
petroleum products pipeline system in Jackson,)
Ingham, and Clinton counties.)
_____)

Case No. U-12334

At the May 15, 2001 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

On March 3, 2000, Wolverine Pipe Line Company (Wolverine) filed an application for authority to construct, operate, and maintain a liquid petroleum products pipeline system in Jackson, Ingham, and Clinton counties. Pursuant to due notice, Wolverine, the Commission Staff, and more than a dozen other parties, including residents along the proposed route, participated in the case. Evidentiary hearings were held on July 25, 26, and 28, 2000, resulting in a record of 724 pages of testimony and 40 exhibits. After the filing of briefs and reply briefs, the ALJ issued a Proposal for Decision on October 6, 2000, in which he recommended that the Commission deny Wolverine’s application. On October 30, 2000, Wolverine filed exceptions to the PFD, to which

there were replies. On February 5, 2001, Wolverine filed a motion to withdraw a portion of its application.

On March 7, 2001, the Commission issued an order authorizing Wolverine to construct, operate, and maintain the proposed pipeline system as amended by the February 5, 2001 motion.

On April 6, 2001, Youth Haven, Inc., filed a petition for reopening or rehearing. On April 25, 2001, Wolverine filed a response.

Youth Haven operates a camp for children and says that the order would permit Wolverine to run the pipeline through a portion of the camp's property. Youth Haven acknowledges that a member of its board of directors attended the April 13, 2000 hearing as a representative of the camp and made a statement. It says that although it was led to believe that the appearance of its representative at the hearing entitled it to receive notice of all future hearings and copies of all documents related to the hearings, it did not receive any notices or documents. As a result, it says, it was denied its due process right to comment on Wolverine's proposal. It seeks to supplement the record so as to give the Commission "a complete understanding of all of the ramifications of an approval of [Wolverine's] proposal." Youth Haven's petition, p. 13.

The Commission's rules permit only a party to file a petition for reopening or rehearing.

Rule 401 of the Commission's Rules of Practice and Procedure provides in part:

[T]he presiding officer, upon his or her own motion or upon motion of any party, may reopen the proceeding at any time before the date for the filing of exceptions to a proposal for decision or, if provided for, replies to exceptions. After the date for filing exceptions or replies to exceptions and until the expiration of the statutory time period for filing a petition for rehearing, the commission may reopen a proceeding upon its own motion or the motion of any party.

1992 AACCS, R 460.17401(2). Likewise, Rule 403 permits the filing of a petition for rehearing, and requires that it be served “on all other parties to the proceeding,” which requires that the person filing the petition also be a party. 1992 AACCS, R 460.17403(1). Youth Haven is not a party because it has never sought to intervene in the case. See, R 460.17101(f) and R 460.17201. Thus, Youth Haven does not have a right to request a reopening or rehearing of this case.

Youth Haven had the opportunity to become a party. It sent a representative to the initial prehearing conference on April 13, 2000. Tr. 4. The ALJ asked Youth Haven’s representative whether he had filed a petition for leave to intervene, and the representative indicated that he had not and was there as an observer. Tr. 5. The ALJ provided an opportunity for people who were not parties and not seeking to become parties to make statements of position pursuant to Rule 207 of the Commission’s Rules of Practice and Procedure, 1992 AACCS, R 460.17207. Tr. 14-15. The ALJ indicated that it was necessary to file a petition for leave to intervene to become a party. Tr. 15. Youth Haven’s representative offered comments under Rule 207. Tr. 24-25. Near the conclusion of the prehearing conference, the ALJ announced a second prehearing conference at which he would rule on petitions for leave to intervene. Tr. 57-58. He said that those who were going to be filing petitions should do so as soon as possible and should address the good cause standard for late-filed petitions because petitions had been due April 6, 2000. Tr. 58-61.

It is inconsistent with the Commission’s Rules of Practice and Procedure as a whole, as well as basic principles of fair play and due process, for a non-party who has notice of a case to first seek to participate as a party only after the Commission has issued its final order. It is a fundamental premise of the Commission’s rules that only those persons who intervene have the right to participation as a party, including the right to seek a reopening or rehearing. The Commission’s

rules provide an opportunity for persons who are interested in a case but do not wish to become a party to participate by making a statement of position, “but the person shall not be regarded as a party to the proceeding” and the person “is not entitled to notice of adjournment or any other notice, except as otherwise provided by law, and is not entitled to be served with pleadings or other documents.” 1992 AACRS, R 460.17207(2) and (3).

Without diminishing the importance of the concerns that Youth Haven seeks to protect, the Commission must conclude that, no later than April 13, 2000, Youth Haven knew that Wolverine’s proposed pipeline might affect its camp, and knew or should have known how to become a party to the case. Contrary to Youth Haven’s characterization of events, it was not kept out of the hearing process, and it was not denied due process. Although it may not have received information that it thought it had been promised, there is no basis for concluding that it was prevented from pursuing any of its options to obtain information or to participate in the case. Having had notice of the case and the opportunity to participate, it cannot claim to have been denied due process when it chose not to participate.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1929 PA 16, as amended, MCL 483.1 et seq.; MSA 22.1341 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1994 PA 451, MCL 324.101 et seq.; MSA 13A.101 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission’s Rules of Practice and Procedure, as amended, 1992 AACRS, R 460.17101 et seq.
- b. The petition for reopening or rehearing should be denied.

THEREFORE, IT IS ORDERED that the petition filed by Youth Haven, Inc., for reopening or rehearing is denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner, abstaining.

/s/ Robert B. Nelson
Commissioner

By its action of May 15, 2001.

/s/ Dorothy Wideman
Its Executive Secretary

THEREFORE, IT IS ORDERED that the petition filed by Youth Haven, Inc., for reopening or rehearing is denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

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Suggested Minute:

“Adopt and issue order dated May 15, 2001 denying the petition for reopening or rehearing filed by Youth Haven, Inc., as set forth in the order.”