

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
WOLVERINE PIPE LINE COMPANY for)	
authority under 1929 PA 16 to construct, operate,)	Case No. U-13225
and maintain a pipeline for the transportation of)	
liquid petroleum products.)	
_____)	

At the July 23, 2002 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

I.

HISTORY OF PROCEEDINGS

On December 6, 2001, Wolverine Pipe Line Company (Wolverine) filed an application seeking authority to construct, operate, and maintain a 12-inch pipeline system, approximately 26 miles in length, for the transportation of liquid petroleum products. Wolverine proposes to route the pipeline from a location on Meridian Road near I-96, Ingham County, to the Lansing terminal of Marathon Ashland Petroleum, LLC, which is located in Clinton County.

The proposed pipeline is about 26 miles long and consists of three segments. The first segment commences near the intersection of Wolverine’s existing 8-inch pipeline and Meridian Road. That segment will be constructed on rights-of-way obtained from private landowners along

1.57 miles of Meridian Road, crossing from the east side of the road to the west along the way. This segment will enter the I-96 right-of-way from private property. The second segment will begin near the intersection of I-96 and Meridian Road, and will proceed west and north within the corridor provided by the I-96 right-of-way for about 22 miles. The third segment will be constructed on rights-of-way that Wolverine has obtained or will obtain from private landowners. It will commence at the location on the I-96 right-of-way, and will proceed east and north about 1.2 miles to Marathon Ashland Petroleum's Lansing Terminal.

The present application arises out of Case No. U-12334, in which Wolverine sought authority to construct a liquid petroleum pipeline using a different route. In the March 7, 2001 order in Case No. U-12334, the Commission granted Wolverine's motion to withdraw from Commission consideration the portion of the pipeline that was proposed to run between I-96 and the LaPaugh station through Meridian Township, which had been the subject of most controversy. Among other things, the Commission found in that case that a public need exists for the proposed pipeline and that the design and routing of the portion of the pipeline remaining in issue in that case were reasonable. Accordingly, the Commission granted Wolverine's application as amended.

Pursuant to due notice, a public hearing was held on January 4, 2002 before Administrative Law Judge James N. Rigas (ALJ). At that time, the ALJ granted petitions to intervene filed by the City of Lansing and the Hon. David C. Hollister, Mayor (collectively, the City of Lansing or the city) and Ingham County Commissioner Lisa A. Dedden, appearing on behalf of her Ingham County resident constituents (Commissioner Dedden). The ALJ denied the petition to intervene filed by William and Cynthia Larsen. The Commission Staff (Staff) also participated in this case.

After ruling on the petitions to intervene, the ALJ opened the record to receive public comment concerning the proposed pipeline. The record contains statements from 21 members of the public registering concerns about and support for the pipeline.

In addition, the Commission received 20 letters from persons expressing their opinions about the proposed pipeline. Many of the comments, both oral and written, raise concerns about the safety of the proposed pipeline and the effect that any fault or leak might have on the environment and on the people living near the proposed route. Others object to the proximity of the proposed pipeline to the aquifer and the water wells used to serve the Lansing area. Some suggest ways that the pipeline could be made safer. For example, one person suggested that Wolverine could place a pipeline around the pipeline so any leak would be contained in the outer layer. Another person suggested that Wolverine make the pipeline thicker-walled in wetland areas, with an increased number of automatic valves so that any spill could be contained more quickly.

On the other hand, some persons submitting comments support granting the application because the proposed pipeline will fill the present need for greater shipping capacity for liquid petroleum products. These persons support the proposed route as the safest and best available alternative, including alternatives such as transporting the products via tanker trucks. In their view, the proposed pipeline is needed, is safe, and will likely help stabilize gasoline prices.

The Commission has also received two petitions signed by Lansing residents taking positions against granting the application. Those petitions allegedly contain in total about 375 residents' signatures.¹

¹Although the Commission did not perform an in-depth analysis to determine the validity of each signature, even a superficial review of these petitions reflects that some signers are not residents of Lansing, some "signatures" are merely printed names, and many signers do not reside near the proposed pipeline route.

Evidentiary hearings were held on March 25 and 26, 2002. At the conclusion of Wolverine's presentation, the City of Lansing moved for dismissal or directed verdict. The parties agreed to argue that motion in their briefs and reply briefs. The record consists of 791 pages of transcript, containing the testimony of 17 witnesses, and 35 exhibits that were admitted into evidence.²

On April 12, 2002, Wolverine, the City of Lansing, Commissioner Dedden, and the Staff filed briefs. On April 22, 2002, those parties filed reply briefs.

Also on April 22, 2000, Wolverine filed a motion to strike portions of the briefs submitted by the City of Lansing and Commissioner Dedden. By April 29, 2002, the City of Lansing and Commissioner Dedden had each filed a response to Wolverine's motion.

On May 10, 2002, Wolverine filed a motion to strike portions of the reply briefs filed by the City of Lansing and Commissioner Dedden. By May 24, 2002, Commissioner Dedden and the City of Lansing each filed a response to Wolverine's motion.

Because the Commission has agreed to read the record, the ALJ did not prepare a proposal for decision.

II.

LEGAL FRAMEWORK

Pursuant to 1929 PA 16, MCL 483.1 et seq., (Act 16) the Commission is granted the authority to control and regulate oil and petroleum pipelines. Act 16 provides the Commission with broad jurisdiction to approve the construction, maintenance, operation, and routing of pipelines delivering liquid petroleum products for public use. Generally, the Commission will grant an application pursuant to Act 16 when it finds that the applicant has demonstrated a public need for

²Exhibit I-23 was offered, but not admitted into evidence. 3 Tr. 624.

the proposed pipeline and that the proposed pipeline is designed and routed in a reasonable manner, which meets or exceeds current safety and engineering standards.

III.

POSITIONS OF THE PARTIES

Wolverine

Wolverine takes the position that the pipeline is certainly needed. At present, it says, the 8-inch pipeline cannot carry a sufficient volume of liquid petroleum products. It points to the Commission's March 7, 2001 order in Case No. U-12334, in which the Commission found a need exists for the proposed pipeline system. Wolverine states that the need still exists, as testified to by its own witnesses and Donald J. Mazuchowski, a petroleum engineer in the Commission's Gas Division.

Wolverine further takes the position that it has selected a route that satisfies important considerations. In the company's view, the route avoids placing the pipeline in a densely populated area, limits access to the area (which lowers the probability of third-party damage), and provides comparative ease of access to the pipeline for the company's maintenance activities.

Wolverine states that the proposed pipeline will be state-of-the-art in its construction. It will have a maximum throughput capacity of 55,000 barrels per day (Bpd) and a maximum operating pressure of 1,440 pounds per square inch gauge (psig). Exhibit A-12. It states that the construction methods will incorporate measures designed to protect and restore soil, groundwater, and cultural and historic resources. Wolverine commits to meeting the conditions imposed by all applicable regulatory agencies.

Wolverine further states that it will strictly comply with the numerous laws and regulations that govern pipelines. In fact, Wolverine states, the design and construction of the pipeline will

exceed many of the United States Department of Transportation's (USDOT) regulatory requirements for liquid petroleum pipelines. For example, Wolverine says, it will (1) conduct weekly inspections, twice the frequency required by federal regulations, (2) use redundant pressure control devices that are monitored constantly, (3) bury its pipeline at a depth of at least 48 inches, which is 12 inches deeper than is generally required by federal regulations, (4) use pipe with a wall thickness in excess of that mandated by the federal code, (5) install valves and gaskets throughout the system that are of higher quality than required, and (6) use a smart pig at least every 5 years to monitor the internal integrity of the pipeline.

Further, Wolverine states that its policy is to use operation and maintenance procedures that are more stringent than required by applicable regulations. It states that it will use a three-volume written procedures manual and continuous employee training to ensure that employees are able to respond appropriately to both normal and abnormal operations of the pipeline. In its reply brief, Wolverine commits to adding the safety measures suggested by the Staff.

Staff

The Staff supports Wolverine's application, and points out that the Commission has already made a finding that the pipeline is needed. The Staff takes the position that the route for the pipeline proposed in this case is far superior to the one proposed in Case No. U-12334, because, among other things, use of the public right-of-way minimizes the probability of third-party damage. The Staff recommends approval of the application contingent upon Wolverine's agreement to certain additional safety features proposed in Mr. Mazuchowski's testimony. Those additional safety measures include: (1) installing at least two automatic-operated mainline valves in the I-96 corridor, or install a safety device that would automatically detect leaks, in order to provide the ability to rapidly shut down the pipeline; (2) using pipe with a wall thickness of 0.5

inches in the area underlain by the Mason Esker, and (3) developing a specific detailed emergency response plan for this pipeline and work with state and local public safety officials to ensure that the plan can be carried out.

City of Lansing

The City of Lansing takes the position that the application should be dismissed for lack of subject matter jurisdiction, because Wolverine filed its application before obtaining the city's approval for the portion of the pipeline that will lie within the City of Lansing's boundaries. The City of Lansing argues that granting the application would violate Mich Const 1963, art 7, §29, MCL 247.183(1) and MCL 247.184, and R 460.17601(2)(d).

The City of Lansing further argues that the routing of the proposed pipeline would "unlawfully discriminate against minorities living in the City of Lansing." City of Lansing's brief, p. 8. It asserts that Wolverine's conduct demonstrates a discriminatory purpose that puts minority persons at risk of any pipeline leaks or ruptures.

Finally, the City of Lansing argues that the risks associated with the proposed pipeline far outweigh the actual benefits. It argues that the proposed pipeline poses inherent risks of tremendous damage to nearby property and motorists by fire, risk of contamination of water wells that serve the public, and risk to nearby surface water. It asserts that given the population density in the area in which the pipeline is proposed to be routed, those risks dictate against granting the application.

Commissioner Dedden

Commissioner Dedden takes the position that constructing the proposed pipeline would be against the public interest. She argues that the Commission should deny the application for the

same reasons that the ALJ in Case No. U-12334 recommended rejecting the proposed route through Meridian Township. In her view, the density of population through which the proposed pipeline would travel is just as high as that along the Meridian Township route proposed in Case No. U-12334.

Further, Commissioner Dedden argues, granting the application would violate the equal protection clauses of the Michigan and United States Constitutions. Mich Const 1963, art 1, §2, and US Const, Am XIV. She argues that the persons living along the proposed pipeline route are similarly situated to those living along the earlier proposed route through Meridian Township. Thus, she concludes, they should be treated the same. She also argues that the Staff failed to take appropriate steps for determining whether the proposed pipeline route would unduly affect minority residents.

Finally, Commissioner Dedden argues that the terrorist activities on September 11, 2001, should move the Commission to consider the likelihood that locating a petroleum products pipeline in “a densely populated and congested portion of Lansing . . . constitutes a potential new target and increases the surrounding population’s vulnerability to potential acts of terrorism.” Commissioner Dedden’s brief, p. 14.

IV.

DISCUSSION

Motion to Dismiss

In its brief, the City of Lansing renews its motion to dismiss the application based on Wolverine’s failure to include in the application the consent of the municipalities through which the proposed pipeline would travel. The City of Lansing points to R 460.17601(2)(d) [Rule 601], which provides that an applicant seeking to construct facilities to transport crude oil or petroleum

products as a common carrier for which approval is required by statute, must identify, among other things: “the municipality from which the appropriate franchise or consent has been obtained, if required, together with a true copy of the franchise or consent.” The City of Lansing argues that its consent and the consent from all municipalities crossed by the proposed pipeline is required by Michigan’s constitution and statutes. It cites Mich Const 1963, art 7, §29, which states:

No person, partnership, association or corporation, public or private, operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any county, township, city or village for wires, poles, pipes, tracks, conduits or other utility facilities without the consent of the duly constituted authority of the county, township, city or village; or to transact a local business therein without first obtaining a franchise from the township, city or village. Except as otherwise provided in this constitution, the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government.

The City of Lansing further cites MCL 247.183(1), which requires that before construction of a pipeline is commenced, the builder must first obtain the consent of the governing body of the city, village, or township through or along which the pipeline is to be constructed and maintained. Additionally, it cites MCL 247.184, which requires the consent of the county road commission or state highway commissioner before construction commences on a pipeline that is to cross a county or state constructed road, respectively.

The City of Lansing argues that Wolverine has failed to obtain the required consents before filing its application with the Commission. Accordingly, it argues that the Commission should dismiss the application.

Wolverine responds that the request for dismissal must be denied because Act 16 does not require that a franchise or consent accompany the application. It points out that the rule cited by the City of Lansing requires that a franchise or consent accompany an application only if such franchise or consent is otherwise required. Wolverine argues that accepting the City of Lansing’s

position would require an applicant to obtain consents from each and every affected municipality or governmental agency before permitting the applicant to request Act 16 approval. Wolverine argues that such a conclusion makes no sense, is not supported by precedent, would place the Commission in the middle of matters which are not within its ambit, and would contravene applicable Michigan statutes.

Wolverine notes that the Rule 601 applies to applications made under three different statutes, all passed in the same year. Of those statutes, only 1929 PA 69, MCL 460.501 et seq., (Act 69)³ expressly requires that a consent or franchise be obtained prior to filing the application.⁴ On the other hand, Wolverine notes, Act 16 does not require that any necessary consent or franchise be obtained prior to filing an application. Therefore, Wolverine argues, Rule 601(2)(d) was intended to apply only to Act 69 applications.

Wolverine argues that its interpretation of the statutory provisions makes the most sense, considering the purposes of Act 16. Obtaining consents or franchises after the Commission has completed its Act 16 analysis, Wolverine argues, permits the local units of government to have the benefit of the Commission's expertise in addressing safety, siting, and environmental concerns.

Wolverine states that it does not take the position that it may commence construction of its pipeline along I-96 without requisite consents or franchises. Although it reserves the right to challenge (in a different forum) the City of Lansing's position concerning which consents are needed, Wolverine commits that it will do that which it is legally required to do.

³Act 69 requires that whenever a public utility seeks to construct or operate public utility plant or system where another utility is already providing the same sort of service, the utility must obtain a certificate of public convenience and necessity. The statute specifically provides that the utility seeking a certificate of public convenience and necessity must show that it has already obtained the consent or franchise from the affected municipality. MCL 460.503.

⁴The other proceeding to which Rule 601 applies, in addition to Act 16 applications, is any application filed pursuant to 1929 PA 9, MCL 483.101 et seq. (Act 9).

Wolverine goes on to argue that the City of Lansing's argument that the Commission is without subject matter jurisdiction due to the lack of consents is without supporting legal authority. Wolverine argues that the Commission's rules should not be interpreted to abrogate its statutory subject matter jurisdiction over this case.

The Staff agrees with Wolverine and adds that the lack of a provision in Act 16 requiring the local consents to accompany the application also implies that the Commission may not impose such a duty on Wolverine because there is no statutory authority to do so. The Staff points out that, to the extent that the proposed pipeline will not run through Lansing, the consent of the city is irrelevant.

The Commission finds that it is not bereft of subject matter jurisdiction over the instant application merely because Wolverine did not include proof of having obtained the consent of affected municipalities. In the Commission's view, even if Wolverine is required to obtain the consent or a franchise from the City of Lansing before it begins constructing the pipeline within the city limits, the state constitution, the cited statutes, and the Commission's rules do not require Wolverine to do so before the application may be considered and disposed of by the Commission. Because no law requires that Wolverine provide those consents or franchises with its application, Rule 601(2)(d) does not require that the Commission dismiss the case. Therefore, the City of Lansing's motion to dismiss is denied.

Exclusion of Evidence

The City of Lansing complains that the ALJ excluded relevant and material evidence when he sustained Wolverine's objection to questioning about the settlement negotiations that occurred in the previous case. The City of Lansing states that it was attempting to elicit information concerning why the previous route was abandoned in favor of the presently proposed route. The city now

argues that its purpose was not to establish liability or the invalidity of a claim. Rather, it argues, if a settlement was reached that “put at risk the safety of Lansing’s minority population in place of Meridian Township and East Lansing’s wealthy and mostly white residents, such an agreement violates public policy and should be revealed and voided.” City of Lansing’s brief, p. 13.

The City of Lansing further complains that the ALJ failed to inquire as to whether a settlement agreement actually existed, or under what circumstance any alleged negotiations occurred. Rather, the city argues, the ALJ made a blanket ruling that any discussions held between January 12 and March 31, 2001 were off limits.

Wolverine responds that the ALJ properly refused to admit evidence of previous settlement negotiations. It argues that the proscription in MRE 408 against evidence of “conduct or statements made in compromise negotiations” is intended to encourage full and open disclosure in order to promote compromise and the settlement of disputes. It argues that the narrow exception to the rule does not apply to the present case. Rather, it argues, the City of Lansing’s attempt to uncover Wolverine’s actions with respect to route review when it was negotiating a compromise with the Staff in the previous case goes “straight to the heart of the parties’ negotiations.”

Wolverine’s reply brief, p. 17. Furthermore, Wolverine argues, the city did not raise a permissible purpose at the time that the objection was raised. Thus, it argues, the evidence was properly excluded.

The Staff agrees with Wolverine that the ALJ correctly excluded evidence of settlement negotiations pursuant to MRE 408. Although the City of Lansing now claims that it sought information to see whether Wolverine’s motives for pursuing the I-96 route were discriminatory or arose out of bias, the reason counsel gave at the hearing was merely to determine whether there were viable alternative routes. In the Staff’s view, the ALJ made the proper ruling considering the

arguments that were raised before him. Although MRE 408 does not require that evidence of bias be excluded, the Staff argues, neither is it required to be admitted. The Staff argues that the ALJ acted within his discretion when he limited questions on this issue, particularly in view of the extensive discussion of other routes on the record in Case No. U-12334.

The Commission finds that the ALJ properly excluded the evidence pursuant to MRE 408. That rule prohibits the introduction of statements or conduct made in settlement negotiations when the evidence is sought to prove liability or the validity or invalidity of a claim. In the previous case, the Staff took the position that the proposed route was too densely populated and highly developed for it to be reasonable. The administrative law judge in the prior case agreed. Wolverine never conceded its position that the proposed route was reasonable. Between the time that the Proposal for Decision was issued in Case No. U-12334 and the time that the Commission issued its order on March 7, 2001, Wolverine and the Staff discussed how to resolve their differences, apparently including some review of alternate routes. Out of those discussions arose Wolverine's decision to withdraw the most controversial portion of the proposed pipeline from Commission consideration. Answers to questions concerning what was offered or discussed during that time are not admissible to demonstrate the reasonableness of either Wolverine proposal.

Evidence of those discussions might have been properly elicited to demonstrate bias or wrongful intent, but those reasons were not offered to the ALJ. Rather, the City of Lansing's counsel spoke of determining what other routes were considered and how the present route was chosen. These issues do not directly speak to bias. The city's counsel did not ask the witness whether any mention of demographic makeup of the area was considered during these discussions.

There was no obvious hint at what the City of Lansing now claims its purpose to have been. The Commission therefore affirms the ALJ's determination on this issue.

Motions to Strike

As noted above, Wolverine filed motions to strike portions of the briefs and reply briefs filed by the City of Lansing and Commissioner Dedden. Wolverine objects to attempts by the City of Lansing and Commissioner Dedden to present evidence for the first time after the record was closed. The disputed items include references to data from the United States Census Bureau and the Tri-County Regional Planning Commission, facts related to that data, photographs, facts and conclusions related to the photographs, and certain statements that have no record support. In addition, Wolverine complains that the City of Lansing's brief refers to Exhibit I-23, which was not admitted into evidence. Wolverine objects to the attempt to add evidence through briefs and reply briefs because it had no opportunity to cross-examine the proposed evidence or submit rebuttal evidence. Further, Wolverine argues that the request for the Commission to take judicial notice of the asserted facts is not appropriate, because the accepted practice for such notice has not been followed.

The Staff agrees that the Commission should strike the photographic addendum to Commissioner Dedden's brief. The Staff points out that this is a contested case under the provisions of the Michigan Administrative Procedures Act, MCL 24.201 et seq., and must be decided on the record. It argues that the photographs are not a part of the record in this case and they are not probative because it is difficult to discern in most of them the location of the highway in relation to the buildings. Further, the Staff argues, there is no foundation for accepting the photos into evidence. Thus, the Staff argues, the photos should be stricken or given no weight in the Commission's determination in this case.

As to the United States Census 2000 data, the Staff points out that the figures attached to and included within the City of Lansing's brief do not match the figures on Exhibit I-18, which was admitted at the hearing. Furthermore, the Staff states, the City of Lansing never identified the location of each of the tracts. Therefore, the Staff argues, the data provide no relevant information because it is unclear how far the referenced populations are from the pipeline.

The City of Lansing responds that Wolverine merely desires to remove all statements from the briefs that do not agree with the company's position. Although it admits to referencing excluded Exhibit I-23⁵ in its filings, it states that the ALJ did not strike the portion of the sponsoring witness's testimony that relates to this exhibit. In fact, the city argues, Wolverine did not object to that testimony.

The City of Lansing further argues that Wolverine witness Steven J. Koster referred to census data to support his position. Thus, the city argues, it included the actual census data to impeach that witness's testimony. The city argues that it would be grossly unfair for the Commission to accept evidence based on census data and then refuse evidence introduced to impeach that testimony.

Moreover, the city argues, the Commission may lawfully accept and consider this evidence as it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, and may use its experience, technical competence, and specialized knowledge in evaluating this evidence. In the city's view, the evidence should be received and considered probative.

Commissioner Dedden argues that the Commission may lawfully take judicial notice of the census data. She argues that Wolverine incorrectly argues that certain procedures for judicial notice have not been followed. Those procedures include notifying the parties of the decision to

⁵Exhibit I-23, which was not admitted into evidence, contains a list of purported contaminants generally found in gasoline.

grant judicial notice of a fact and permitting the parties an opportunity to dispute the fact itself or the materiality of the fact. She points out that the referenced procedures could not take place until the Commission grants the requests for judicial notice. Therefore, she argues, the cited rule provides no reason to reject her request that judicial notice be taken.

The Commission finds that the motion to strike portions of the briefs and reply briefs filed by the City of Lansing and Commissioner Dedden should be granted in part and denied in part. To the extent that the motion to strike encompasses the photographic addendum to Commissioner Dedden's brief, citation to the United States Census statistics, and reference to the excluded exhibit, the motion is granted.

The Commission notes that Commissioner Dedden offers no persuasive argument in support of accepting the photographs. As pointed out by the Staff, this is a contested case, which must be decided on the record. The photographs were neither offered nor admitted as exhibits at the hearing, during which a sponsoring witness could have been cross-examined. Moreover, the photos lend no assistance to the Commission in resolving the questions presented in this case. It is difficult to judge distances, locations, and other characteristics of the subjects of these photographs, and the record provides no basis for the Commission's consideration of them.

The Commission further finds that the references to demographic data from the United States 2000 Census should be stricken. Although the City of Lansing and Commissioner Dedden had an opportunity to present evidence at the hearing, neither of them chose to offer the census data into the record through a witness who could be cross-examined concerning their accuracy and relevance. There is no indication that the information was not then available for presentation and cross-examination. The fact that Wolverine's expert witnesses may have relied to some extent on a review of census data does nothing to support the intervenors' argument that "actual" data

should be included in the now closed record. The intervenors had a right to request the admission of documents supporting the expert's opinion evidence at the hearing. See, MRE 705. If this information was crucial to the intervenors' cases, they should have introduced it then. By waiting until drafting their briefs to attempt its inclusion in the record, the intervenors effectively curtail Wolverine's ability to rebut the evidence and still permit the Commission to issue a timely order. Moreover, the Commission is not persuaded that its decision would be altered if it were to take official notice of the evidence. The number of persons within the tracts along the route does not necessarily correspond to numbers living within a zone of any alleged peril in case of a pipeline failure. Moreover, there is some question concerning the accuracy of the numbers presented. For the above reasons, the Commission declines to take official notice of the proffered evidence.

However, the Commission denies Wolverine's motion to strike as it relates to argument concerning facts that Wolverine says are not supported by the record. Generally, these statements are arguments that are based upon the party's interpretation of the record, even if the Commission ultimately finds some to be unfounded. In rendering its decision, the Commission can and will discern whether arguments or statements are supported by the record, without need to strike those portions of the briefs.

Reasonableness of the Proposed Pipeline

1. Equal Protection

Commissioner Dedden argues that Commission approval of the application would violate Const 1963, art 1, §2 as well as US Const, Am XIV, because the location of the proposed route would discriminate against racial minorities, low-income persons, and children by denying them equal protection of the law. She argues that people living along the proposed route are similarly situated to those living along the East Lansing/Meridian Township route previously withdrawn.

She argues that the construction and engineering specifications proposed in both cases are the same, and the population density and commercial development near the proposed I-96 route is at least as great as that along the previously proposed route. She points out that before Wolverine withdrew its request for approval of that portion of the pipeline, the Staff and the administrative law judge in the previous case recommended that the Commission deny the application because of the density of the population and commercial development. In Commissioner Dedden's view, if the pipeline was not safe enough for Meridian Township, it is not safe enough for the southern portion of Lansing.

Commissioner Dedden further takes issue with the manner in which the Staff determined the demographics of the affected area, by traveling the route, rather than examining census data. She objects to what she terms a 100% minority threshold for creating the need to study demographic data. Moreover, Commissioner Dedden argues, Steven Koster, a Wolverine witness, noted that his review of census data showed a presence of minority population above the national urban average in areas along the proposed route. She essentially argues that the existence of a higher minority population along this proposed route than the previously proposed route proves unlawful discrimination in the siting of the pipeline.

The City of Lansing makes similar arguments, and adds that Wolverine's claimed reason for changing the route, to avoid an area that was too heavily developed and congested, is false as demonstrated by the density of population and commercial development close to the new route. Thus, it argues, the only real reason for the present route was to remove the adverse consequences of a pipeline from the mostly white and wealthy inhabitants of East Lansing and Meridian Township, and place those consequences on minorities and those with a low income. It argues that such a disparate impact supports a finding of unlawful discrimination under the Elliott-Larsen Civil

Rights Act, MCL 37.2101 et seq. Further, the City of Lansing argues, granting the application would violate 42 USC 2000d, Mich Const 1963, art 4, §§ 51 and 52, MCL 37.2101 et seq., and MCL 483.5.

Wolverine responds that the arguments that the proposed pipeline route is discriminatory are without merit. It further argues that the constitutional issues are not properly reviewable by the Commission. In addition, Wolverine argues, these arguments are based on facts that are not a part of the evidentiary record and should be stricken, as it argued in the motions to strike.

Even if the Commission denies the motion to strike, Wolverine argues, the record does not support the validity of the intervenors' arguments. It points to the testimony offered by Mr. Koster and Mr. Mazuchowski that there should be no consequential effects on minority populations. Mr. Koster testified that he had reviewed the environmental justice issue at the request of the Michigan Department of Transportation (MDOT). Despite the acknowledged presence of minority population areas existing along the route, Wolverine notes, Mr. Koster concluded that:

Impacts to minority populations along the proposed pipeline route are not anticipated to be disproportionately high and adverse. As concluded in this [Environmental Impact Review], no significant impacts from the pipeline are anticipated. The proposed route traverses both minority and non-minority areas, and design, construction, and operation of the pipeline will be similar to and, in many instances, superior to that of existing pipelines in non-minority areas throughout the state. Exhibit A-5, Section 4.9, p. 65.

Wolverine further states that the intervenors' arguments miss several important points. First, Wolverine says, the pipeline will be within a highway right-of-way, which means that, contrary to the previous route, the pipeline will not traverse parking lots of a shopping mall and apartment complexes, or travel below commercial buildings and school yards. Second, Wolverine states, the density of residences and commercial developments along the proposed route is much less than that of the previously proposed route. Third, it asserts that the pipeline will be constructed to

state-of-the-art specifications and will surpass many federal regulations. Fourth, Wolverine notes the testimony of experts that performed risk assessments and concluded that the pipeline route is safe and is the best route. Wolverine declares that the pipeline will not be a hazard to anyone, minority or otherwise.

The Staff asserts that regardless of any racial, ethnic, or other demographic variations among discrete populations, there is only one set of standards under which the appropriateness of a pipeline project within Michigan is judged. According to the Staff, those standards address whether the pipeline and the route chosen will serve the convenience and necessity of the public.

The Staff argues that Commissioner Dedden is incorrect when she states that if the pipeline was not safe enough for Meridian Township, it is not safe enough for south Lansing. According to the Staff, the incorrectness lies in Commissioner Dedden's failure to appreciate the difference between the two proposed pipeline routes. The Staff states that the current proposal, to build the pipeline in a highway right-of-way, entirely avoids traversing the personal residences of citizens within the affected community. Therefore, the Staff argues, Lansing residents are not similarly situated to those located within the previously proposed route, and no claim of disparate treatment can be substantiated.

In answer to Commissioner Dedden's complaint about the Staff's failure to perform a demographic study using census data for areas along the proposed pipeline route, the Staff answers that a demographic study is not necessary under Act 16. It states that there is no separate safety standard for areas in which minority populations reside. In fact, the Staff argues, if a different standard applied, that would constitute unlawful discrimination. Thus, the Staff argues, the census data is not relevant to the Commission's determination in this case.

Finally, the Staff urges the Commission to reject Commissioner Dedden's charge that it employs an inappropriately high bar before performing a demographic study. In fact, the Staff argues, there is no bar set either by the Commission or by Act 16. Mr. Mazuchowski's testimony merely indicated that the Staff would be alerted to unlawful discriminatory intent if it appeared that the company had deliberately sought out an area containing a very high percentage of disadvantaged groups in order to lower likely opposition to its proposal. The Staff asserts that there is no evidence that the company chose the proposed route to avoid opposition. It asserts that the obvious safety advantages of the proposed route dominate the company's rationale.

The Commission rejects as unfounded the arguments of the City of Lansing and Commissioner Dedden that granting the application would constitute a violation of equal protection provisions of the United States or Michigan constitutions, or would otherwise result in unlawful discrimination. The Commission notes first that Wolverine withdrew the portion of the pipeline that would have been routed through Meridian Township before there was any final determination concerning its reasonableness, much less its safety. Thus, a determination in this case that the proposed route for the pipeline is reasonable would not directly contradict any Commission finding in the previous case.

Second, the currently proposed pipeline route is significantly different from that proposed in the previous case. The route is almost wholly within a public highway right-of-way. That location means that there are no houses, businesses, or other buildings in the path of the pipeline.⁶ It also means that there will not likely be any such buildings constructed over the proposed pipeline in the future. In short, the allegations by the City of Lansing and Commissioner Dedden that the areas

⁶In contrast, the first segment of the proposed pipeline route and part of the earlier approved route located in Meridian Township are wholly outside the public highway right-of-way. Moreover, an alternate route proposed by Wolverine, using Consumers Energy Company's right-of-way, would have traversed more congested areas.

are similarly congested are not accurate. Because the two pipelines differ in this manner, the residents that Commissioner Dedden and the City of Lansing seek to protect are not similarly situated to those persons that were located above the pipeline route proposed in the previous case.

Moreover, the Commission finds that the City of Lansing and Commissioner Dedden have failed to meet the burden to establish a disparate impact. As noted earlier, these parties did not choose to present the evidence on the record that they now desire the Commission to consider. That “evidence” has been stricken and will not be considered in this decision.

2. Safety

The City of Lansing argues that the planned construction and installation present serious risks concerning the physical integrity of the pipeline. Further, it argues that the risk to the public far outweighs any perceived benefit, because the pipeline poses such significant risk to the general population of Lansing.

The City of Lansing argues that in the case of a catastrophic failure of the pipeline, there is always the danger of fire. According to the city, the proposed pressure level, along with the volume of product in a 12-inch pipeline, could result in a “fountain of fire with blowtorch type of effects.” City of Lansing’s brief, p. 17. It asserts that such an event would create a life-threatening danger to those close to the pipeline. It references a fracture of a natural gas pipeline in New Jersey, which “ripped apart 30 feet of the line and launched a fireball hundreds of feet in the air.” *Id.* It argues that the more people living close to the pipeline, the more likely it is that someone will be injured or killed.

The City of Lansing next asserts that, on a daily basis, approximately 40,500 vehicles travel this section of I-96. It states that Michigan’s climate results in a number of hazardous driving conditions that produce accidents, “which could damage or rupture the proposed pipeline.” City of

Lansing's brief, p. 18. It states: "A tipped semi, a motor vehicle collision or a burning cigarette flipped from a car window could very well be disastrous." Id.

The City of Lansing goes on to argue that the inherent risks of pipeline failure and the density of the population in the area of the proposed route are of critical importance. In the city's view, the area is one that is densely populated and highly developed. It cites the commercial area near South Cedar and I-96, which includes establishments like Sam's Club, Celebration Cinema, and Holiday Inn South Hotel and Convention Center, in addition to other retail stores and office facilities.⁷ Moreover, the city argues that there are numerous single family homes in the Aurelius, Dell, and Floyd area, the Mill Pond Village Mobile Home Park, Oak Park Village, and 60 acres of land zoned residential that is in the development stage. It claims that over 25,000 people live in the pipeline's path. Additionally, the city argues that the proposed route passes through at least two subdivisions as it follows the I-96 right-of-way. Thus, it argues, the concerns raised in Case No. U-12334 concerning the density of population and commercial development have not been properly addressed.

According to the City of Lansing, even with pipeline sensors in place, a significant amount of liquid petroleum can escape the pipeline should there be a breach. It states that a leak below the detection level of the automatic sensors on the pipeline could equal a full tanker truck dumping its load every hour. The City of Lansing concludes that the weekly aerial inspections of the pipeline are not sufficient to protect the public.

Commissioner Dedden argues that Wolverine cannot create a fail-safe pipeline and the population density along the proposed route creates a risk that is too great. She argues that contrary to the testimony and arguments of Wolverine and the Staff, there are many people who

⁷The Commission notes that its offices are in that area.

live close to the proposed route. In her view, the people and related buildings render the area a high density area in which a pipeline should not be built.

Commissioner Dedden argues that the Staff's observations that there are no residences within 50 feet of the pipeline and few residences within 150 feet are arbitrary, because there is no evidence to suggest that beyond 50 feet from a spill is significantly safer than being within that distance. She insists that all the evidence at the hearing indicates that persons located much further away from the pipeline may be vulnerable to risks associated with a potential spill. She argues that the Mulbauer model, which was used by one of Wolverine's experts in his risk assessment, uses a standard of 660 feet.

Wolverine takes the position that its proposed pipeline is safe with respect to both the proposed route and engineering design. Its witness Daniel M. Cooper, President of HT Engineering, Inc.,⁸ testified that the proposed pipeline would pose a very low probability of failure when compared to the available alternatives. Mr. Cooper found it significant that the route for the proposed pipeline lies mostly within the I-96 right-of-way, because of limited development near or above the line. He stated that although a pipeline could not travel through the Lansing area without encountering some development, using the I-96 right-of-way provides a corridor free of occupied buildings and places of public assembly. Further, he stated that future development within the corridor is unlikely, thus, enhancing the long-term safety of the pipeline. Moreover, Mr. Cooper stated, use of the limited access right-of-way also reduces the probability of third-party damage, because of the control exerted over access to the area by the MDOT. For example, he stated that excavation in that area would be by permit only, thus limiting the exposure to third-

⁸Mr. Cooper stated that HT Engineering is an independent consulting firm that provides engineering services for the design, construction, and operation of pipelines, processing plants, and other facilities for the oil and gas industries, among others.

party damage, a major cause of pipeline failure. Wolverine argues that it is not possible to remove all risks, and the Commission should not deny the application on that basis.

Wolverine further argues that, contrary to the intervenors' suggestions, the proposed pipeline has a very low probability of failure when compared to the alternatives. It further states that it is highly unlikely that any leak will go undetected. Wolverine states that it will use redundant pressure control devices, which are constantly monitored by manned computers. It will also perform internal ultrasonic pipe wall inspections, and weekly aerial surveys of the pipeline to monitor excavation or other activities that could endanger the line.

Wolverine notes that it is much safer to transport gasoline by pipeline than by trucks, because trucks have an accident rate 87 times that of pipelines. It points to the testimony of Mr. Mazuchowski, who stated that fires or explosions are 35 times more likely with a truck incident than a pipeline incident. Wolverine also asserts that the spill record of pipelines has improved substantially over the last 30 years, with the number of spills decreasing by nearly 40% and the volume of oil spilled decreasing by about 60%. Wolverine takes the position that improved technology in pipeline design, construction, operation, and maintenance programs, as well as quicker response times when a leak does occur, are largely responsible for these decreases.

Wolverine next counters the intervenors' argument that the risk of fire should preclude approval of the application. It says that the testimony from which the city gleaned the "fountain of fire" with "blowtorch types of effects" is based on a 1999 natural gas pipeline incident in New Jersey. Wolverine says that the New Jersey incident should not persuade the Commission to deny the application for the following reasons: (1) none of the pipeline was within a highway right-of-way; (2) there was no loss of life; (3) the pipeline was of older construction – circa 1960; (4) even

the City of Lansing's witness acknowledged that advancements have been made in pipeline technology and response plans since the installation of the pipeline in New Jersey.

Moreover, Wolverine argues that the likelihood of a leak resulting in a fire for any one-mile segment of a hazardous liquid pipeline installed in or after 1970 is only once in 2,450 years. 2 Tr. 189. Wolverine admits that, although remote, there is a possibility that damage to the top of the pipeline could result in flammable liquid being released upward, and that a nearby ignition source could start the liquid on fire. However, the magnitude of the fire would be a function of how long the pipeline remained pressurized after the damage occurred and the time between rupture and ignition. It asserts that a large release would be short lived because the automatic system would close the valves and the isolated pipeline segment would rapidly depressurize. It argues that a blowtorch effect requires pressure. Once the pumps stop and the valves are closed, there would be no pressure, no flow of product, and no additional fuel to feed the fire. In the case of a leak that is too small for the automatic system to detect, and then ignites, Wolverine states that the nature and magnitude of the fire would be a function of the release rate and location and when ignition occurred.

Wolverine further describes the normal method for cleaning up flammable liquids flowing in surface drainage areas. The drainage areas would be diked and aqueous film forming foam (AFFF) or an equivalent would be used to prevent ignition. Nearby buildings would receive protective measures in case the fuel ignited. It asserts that the City of Lansing acknowledged that it carries AFFF on city fire engines and that it would have sufficient AFFF to put out a fire at a petroleum gas station. Moreover, Wolverine states, the City of Lansing has fire mutual aid agreements with Dewitt Township, Lansing Township, East Lansing, Meridian Township, Delhi Township, Windsor Township, Delta Township, and the Capitol City Airport, in the event an

incident occurred. These jurisdictions also have supplies of AFFF. Wolverine has offered to supply additional resources and training to the city, including covering the cost of additional AFFF.

Wolverine goes on to argue that the pipeline does not pose an extraordinary risk to motorists. It points out that risk expert Mr. Cooper testified that he was not aware of any cases where a buried pipeline has been damaged due to an automobile, bus, or truck accident. It argues that damage to the proposed pipeline is perhaps even less likely because it will be buried 12 inches deeper than required by federal regulations.

Wolverine disagrees with the city's assessment that authority for the pipeline should be denied because of the "highly populated and developed area." It argues that the pipeline will not cross under residences, subdivisions, schoolyards, apartment complexes, and commercial buildings, etc. According to Wolverine, the City of Lansing's statement that "25,777 people live within the pipeline's path" is "inaccurate and intended to mislead." Wolverine's reply brief, p. 25. The company asserts that the pipeline, for the most part, is within a limited access highway right-of-way, and therefore, no one lives in its path. It points to Mr. Mazuchowski's testimony that his field observations led to the conclusion that there are no residences within 50 feet of the pipeline and few residences within 150 feet.

The Staff agrees with Wolverine and adds that only two parties compared the route of the present proposed pipeline with the route proposed in Case No. U-12334, and both concluded that the present proposed route is through a much less densely populated and developed area. It states that Exhibit A-5, Appendix B consists of aerial photographs that reflect the rural nature of the area surrounding the proposed pipeline route, even within the city limits. The Staff states that although there are some congested areas along the route, those are relatively few for the length of the pipe-

line. The Staff states that Exhibit S-34 provides a comparison that demonstrates the superiority of the current proposed route over the previous route on several issues, one of which is the relatively few persons living in close proximity to the proposed route.

The Staff explains that when it uses the terms “adjacent” or “in close proximity” to the pipeline, it speaks of those areas that are right next to the pipeline. It says that the City of Lansing, on the other hand, speaks of 9,113 persons and 4,295 housing units or census tracts, which cover a much larger area. The Staff states that it reviewed this larger area and found that those additional homes would not be at risk should the pipeline rupture, although occupants might be temporarily affected until the rupture was brought under control.

The Commission finds that approval of the application should not be denied for lack of safety in the pipeline’s construction or its route. First, the Commission notes that Wolverine has committed to constructing the pipeline in a manner that exceeds in several respects the requirements imposed by the federal government, which is responsible to oversee pipeline safety. The pipeline will be thicker walled than required, buried at least four feet under ground, and inspected and maintained on a more frequent basis than required. Wolverine has committed to using cathodic protection to prevent deterioration of the pipe. Its plans for construction include methods that are less likely to damage the pipe and inspections and tests that should ensure the initial integrity of the pipeline. These safety measures and the historical incidence of pipeline failure leads the Commission to conclude that the probability of a pipeline failure is remote.

The Commission does not agree that routing the pipeline through the limited access I-96 right-of-way unreasonably endangers citizens or motorists. The Commission finds that there are

no homes within 50 feet, and few residences within 150 feet, of the proposed route.⁹ This means that disruption to the community during construction and maintenance activities should be minimized. Also, the greater the distance between residential or commercial structures and the pipeline, the less likely any pipeline failure will injure people or property. Given the length of the pipeline, there is minimal congestion.

The Commission finds that the pipeline does not pose an extraordinary risk to motorists. Nor do motorists pose an extraordinary risk to the safety of the pipeline. Although accidents occur on I-96, some of which result in vehicles off the roadway, the pipeline will be buried with at least 48 inches cover. Thus, it is unlikely that any accident will cause a pipeline failure. Further, because the risk of a pipeline failure is very small, and the probability of an accident occurring in the area of a pipeline failure within the most congested of areas is even smaller, the Commission concludes that the risk is not sufficient to dictate denial of the application.

The Commission further finds unwarranted the concerns of the City of Lansing and Commissioner Dedden concerning the possibility of what would amount to a great blow torch should a spill occur and come in contact with an ignition source. As explained by Wolverine's witness, the blowtorch effect requires continuing pressure, which will not occur in a major breach of the pipeline. The line will be constructed with sensors that will automatically shut off valves in the event of a breach, thus cutting off the pressure source. Fire is indeed a possibility in the event of a leak. However, there are procedures for preventing, containing, and extinguishing such a fire. The Commission is convinced that with appropriate cooperation between Wolverine and the emergency response offices of the affected area, fire risks will be minimized.

⁹The Commission rejects the argument that whether a building is within 50 feet of the pipeline is irrelevant. The federal pipeline safety regulations recognize that extra precaution must be taken when there are buildings within 50 feet of the pipeline. See, 49 CFR 195.210(b).

3. Effect on the City's Master Plan

The City of Lansing complains that the proposed route would interfere with the city's master plan for future development. In the city's view, the pipeline would have a chilling effect on development in the area.

Wolverine responds that the City of Lansing has not supported its position that the pipeline will have a negative effect on the city's master plan with any record support. In fact, Wolverine states, the city's witness on this issue admitted on cross-examination that the proposed pipeline will not cross any City of Lansing resident's private property and the city is not planning to construct any business on the highway right-of-way.

The Commission finds that granting the application will have minimal, if any, effect on the city's master plan for development. The pipeline will be located mainly in the highway right-of-way, which provides a corridor that will not likely be developed beyond the highway that is now there. The record does not support a finding that where a pipeline exists, economic development is slowed or ceases. The current 8-inch pipeline that runs through Meridian Township has not discouraged growth, as evidenced by the number of businesses and residences that would be affected by replacing that pipeline along the previously proposed route.

4. Water Contamination

The City of Lansing is concerned about possible contamination of its wells. In the city's view, the risk of contamination to those wells is significant. And, it argues, that contamination might affect the 200,000 people to whom the Lansing Board of Water and Light provides drinking water. The city states that the proposed pipeline route would travel over 9.5 miles through the wellhead protection area (WHPA), an area defined by the United States Geological Survey and approved by the Michigan Department of Environmental Quality (MDEQ). The city asserts that within the

WHPA, a leak or spill could result in contamination of groundwater that could migrate to water supply wells. It says Clyde R. Dugan, Director of Special Projects for the Lansing Board of Water and Light, testified that 10 of the city's wells are located within ¼ mile of the proposed pipeline. The city argues that, as Bruce Hensel testified, the clay and shale layers that would contain contaminants are discontinuous in this area. Moreover, it states, the proposed pipeline will pass through the WHPA for the southwest well field, which, it asserts, has no protective layer at all. The City of Lansing asserts that because of the proximity of the Mason Esker (which contains gravel or permeable glacial deposits), which connects with the Saginaw aquifer, a leak that reached the esker might contaminate the drinking water for the entire region.

Additionally, the City of Lansing argues that Wolverine's expert witness Martin Sara based his opinion that there are sufficient clay layers to protect the wells on well logs provided by the MDEQ. The city argues that well drillers may have prepared those well logs rather than trained geologists. Because of the equipment and method used by drillers, the city posits, the logs are not sufficiently reliable to risk the drinking water for the city's residents.

Wolverine argues that the proposed pipeline will not adversely affect the city's water, contrary to Mayor Hollister's statement in his testimony that, according to Bruce Hensel, "if a pipeline leak were to occur, it would contaminate a significant portion of Lansing's drinking water and might possibly contaminate the entire Saginaw aquifer and thereby pollute the water supply for the entire region." 3 Tr. 482-483. Wolverine points to the section of Mayor Hollister's cross-examination testimony in which he admits that Mr. Hensel did not reach those conclusions. Rather, Wolverine states, Mr. Hensel testified that (1) there are many factors that affect water supply, (2) the relatively slow rate of ground water movement provides opportunities to mitigate contamination in

the event of a leak, and (3) it is unlikely that light petroleum products could directly enter the water supply wells.

Wolverine argues that the majority of the environmental concerns raised by the City of Lansing's witnesses did not address the actual geological conditions of the surficial glacial sediments. Rather, Wolverine states, they only described the bedrock geology without considering the surficial clay units that protect the bedrock aquifers from surface contamination. Wolverine states that the majority of the pipeline route has a significant thickness of very low permeability glacial sediments. Thus, Wolverine argues, contrary to the testimony offered by the city, the actual geological conditions underlying the majority of the pipeline route in the WHPA include clays that protect the aquifer from being quickly contaminated in the event that the pipeline fails.

Moreover, Wolverine argues, the City of Lansing mischaracterizes the testimony of Wolverine's witnesses. For example, Wolverine argues, the City of Lansing states in its brief that "the tremendous risks to the drinking water that supplies so many people are too high and severe to allow a pipeline to be constructed as currently proposed. This was tacitly acknowledged by Wolverine's witness, Steven Koster." City of Lansing's brief, pp. 24-25. However, Wolverine points out that Mr. Koster explained on cross-examination that the ground water he referenced in his Environmental Impact Report was upper ground water that may be "perched" in the soil above clay deposits and far above the deep wells from which Lansing gets its drinking water.

Finally, Wolverine urges the Commission to reject the city's claim that the proposed route should not be approved because it crosses the Grand River, several drainage ditches, and wetland areas. Wolverine points to Mr. Koster's opinion that the pipeline does not pose any significant environmental threat, and states that the alternate routes proposed by the city also cross waterways and involve environmentally sensitive areas.

The Staff argues that the risk of significant groundwater contamination, especially to drinking water supply, is remote. This is particularly true, the Staff states, because the pipeline will be built with the extra safety features recommended by Mr. Mazuchowski in addition to the numerous safeguards already contained in Wolverine's proposal.

Moreover, the Staff argues, the basis for concern with the pipeline crossing the WHPA is the alleged lack of a continuous confining layer of clay soil or shale bedrock between the water table aquifer and the Saginaw aquifer. The Staff states that, according to Mr. Hensel, if a continuous confining layer is present, then potential for migration to the Saginaw aquifer is low. If the confining layer is absent or discontinuous, or otherwise breached, then the two aquifers are hydraulically connected and there is potential for migration to the Saginaw aquifer if hydraulic gradients are downward. It notes that Mr. Hensel believes that there is a potential for dissolved constituents to migrate to the Lansing water supply wells if the proposed pipeline should leak within the WHPA.

The Staff states that the basis for the data indicating a noncontinuous layer of clay or shale insulation present within the WHPA is seven well logs that were reviewed by Mr. Hensel. Mr. Hensel admitted that the drillers who compiled the well logs listed in Exhibit I-25 are not trained geologists. Further, Mr. Hensel's testimony reflects that the methods used in creating drillers logs are not conducive to obtaining accurate results. In fact, he stated that the driller is

[J]ust trying to identify by little bits and pieces that happen to come up through the bore hole and those bits and pieces could be from the interval he's working in. They could be from five feet above the interval he's working in. And there is no real guarantee that the textual characterization of those pieces isn't going to be jumbled up as they work their way up the bore hole.

3 Tr. 643-644.

Because of the uncertainty created by the seven drillers logs that he reviewed, Mr. Hensel stated that he could not be sure about whether the clay or shale barrier is present or continuous. He then assumed for his analysis that it is not continuous. The Staff states that it is difficult to understand the negative inference that Mr. Hensel makes concerning the existence of a confining layer, when the well logs that he relied upon show that ample clay overlays range from 17 feet to 55 feet. 3 Tr. 645.

In contrast to Mr. Hensel's analysis, the Staff states, the analysis provided by Mr. Koster is based on the review of the same 7 logs, plus 14 additional public water well logs and numerous private well logs, as well as specific soil information provided by the United States Geologic Survey to identify localized geologic features. Mr. Koster concluded that:

While the clay layer between the two aquifers is not continuous throughout all portions of the WHPA, all 21 public water well logs show a clay layer present, and several show an additional confining shale layer. Furthermore, the great majority of the route intersecting the Lansing WHPA is underlain by a clay layer, which serves to protect the lower drinking water aquifer.

Geologic cross sections of the soil underlying the proposed route in the Lansing WHPA show only one small area (approximately 100 feet in length) where clay appears to be absent. The WHPA nearest the Mason Esker is underlain by clay, while the Mason Esker itself is located outside of the WHPA. Therefore, in the unlikely event of a spill in the esker area, it would take more than 10 years for contaminants to reach the closest well. In fact, depending on the release location, impacted groundwater may flow toward Sycamore Creek and never reach any public water well. While certainly no leak is desirable, in this scenario it is preferable that the leak would flow toward a surface water body where it would be more visible, and more easily controlled and cleaned up.

2 Tr. 332.

The Commission is persuaded that approval of the proposed pipeline should not be denied based on the threat to Lansing's water supply or to surface waters. It appears to the Commission that the more complete analysis was performed by Mr. Koster, who determined that, except for about 100 feet, there is a continuous confining layer of clay. In the area identified as not having a

continuous confining clay layer, the Commission concludes that placement of sentinel wells, as suggested by Mr. Hensel, will provide early warning so that any contamination can be identified and confined until remediation can occur, thereby protecting the city's wells. Moreover, the Commission notes that, in the area underlain by the Mason Esker, Wolverine has committed to using extra thickness for the pipeline walls. The Commission finds that Wolverine should follow its design, placing a valve at each border of the Mason Esker crossed by the pipeline to minimize the impact of any detected leak in that sensitive area. The extra protection of the sentinel wells, along with the other safety measures to which Wolverine has committed, provide sufficient protection and minimize any risk.

5. Third-Party Damage and Terrorist Threats

Commissioner Dedden argues that the Commission should take note that the pipeline may be an attractive target for terrorist activity. She points to the finding by the Michigan Legislature that petroleum pipelines are vulnerable targets, citing 2002 PA 140, which Governor John Engler signed on April 9, 2002. She argues that the Commission should consider that a petroleum pipeline passing through a congested business district and highly populated portion of the state capital city might constitute a potential new target, thereby increasing the surrounding population's vulnerability to attack.

The City of Lansing argues that all of the parties agree that third-party damage to the pipeline is a real threat. It points to the testimony of Mr. Mazuchowski in which he states that third-party damage is the leading cause of pipeline failure and the leading cause of accidental petroleum product release by volume. It says that even Wolverine admits that third-party damage accounts for 25% to 30% of reportable accidents. In the city's view, the proposed route of the pipeline aggravates the potential for third-party damage.

The Staff responds that the fact that the pipeline will be buried 48 inches below the surface in a limited access highway right-of-way will effectively deter any foul play, and significantly reduce the probability of other third-party damage. In fact, it states, the location would likely inhibit the ability of a terrorist to access the pipeline undetected. Also, it states, the various safety features of the pipeline (the rapid shutdown capability and implementation of the emergency response plan) will mitigate the threat posed by any terrorist activity. In the Staff's view, the proposed pipeline is among the least promising targets for terrorist activity.

The Commission finds that the threat of terrorism should not prevent this pipeline from being constructed, operated, and maintained along the proposed route. The threat of a terrorist attack on this facility is no more real or chilling than the threat of a terrorist's hijacking a loaded tanker truck and ramming it into populated residential, business, or government buildings. The proposed construction at least 48 inches below the surface minimizes the ease with which the pipeline could be damaged, and the route along a limited access highway right-of-way minimizes the opportunity for any third party to damage the pipeline, whether by terrorism or otherwise. Moreover, Wolverine has committed to safety measures that would mitigate the damage that might otherwise be caused by any third-party damage.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1929 PA 16, as amended, MCL 483.1 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1994 PA 451, MCL 324.101 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.
- b. Wolverine has demonstrated a need for the proposed pipeline system.
- c. Wolverine's system is designed and routed in a reasonable manner.

d. Wolverine's request for authority to construct, operate, and maintain its proposed pipeline system, as modified by this order, should be approved.

e. Wolverine should establish sentinel wells in the WHPA as needed and as proposed by the City of Lansing.

f. The motion to dismiss filed by the City of Lansing should be denied.

g. The motions to strike filed by Wolverine should be granted in part and denied in part.

THEREFORE, IT IS ORDERED that:

A. Wolverine Pipe Line Company is authorized to construct, operate, and maintain a 12-inch pipeline system for the transportation of liquid petroleum products, from a point near the intersection of Interstate 96 and Meridian Road, Ingham County, to the Lansing terminal of Marathon Ashland Petroleum, LLC, which is located in Clinton County, following the Interstate 96 right-of-way as proposed in its application.

B. Wolverine Pipe Line Company shall establish sentinel wells in the area identified as having a discontinuous confining layer of clay in the Wellhead Protection Area for the public water wells of the City of Lansing.

C. The motion to dismiss filed by the City of Lansing is denied.

D. The motions to strike filed by Wolverine Pipe Line Company are granted in part and denied in part.

E. Within 60 days of construction of the facilities approved in this order, Wolverine Pipe Line Company shall file a map and description of its pipeline system as constructed.

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.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of July 23, 2002.

/s/ Dorothy Wideman
Its Executive Secretary

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.

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

By its action of July 23, 2002.

Its Executive Secretary

In the matter of the application of)
WOLVERINE PIPE LINE COMPANY for)
authority under 1929 PA 16 to construct, operate,)
and maintain a pipeline for the transportation of)
liquid petroleum products.)
_____)

Case No. U-13225

Suggested Minute:

“Adopt and issue order dated July 23, 2002 granting Wolverine Pipe Line Company authority to construct, operate, and maintain a 12-inch pipeline for the transportation of petroleum products, as set forth in the order.”