

**STATE OF MICHIGAN**

**BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

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

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**Case No. U-13225**

**INTERVENORS DAVID HOLLISTER AND CITY OF LANSING'S  
INITIAL BRIEF**

**INTRODUCTION**

Intervenors David Hollister and the City of Lansing (collectively City) submit this initial brief pursuant to the schedule established by Administrative Law Judge James N. Rigas. This case involves an application of Wolverine Pipe Line Company (Wolverine) filed with the Michigan Public Service Commission (MPSC) seeking approval for the construction, operation and maintenance of a 12 inch pipeline system, approximately 26 miles in length, for the transportation of liquid petroleum products. Nearly 7 miles of the proposed location of the system traverses City of Lansing boundaries.

**HISTORY OF PROCEEDINGS**

On or about December 6, 2001, Wolverine filed the present application with the MPSC seeking approval of the construction of a 12 inch pipeline system approximately 26 miles in length. Nearly 7 miles of the pipeline would be operated and maintained by Wolverine within Lansing City limits. Wolverine's application stems from its previous filing on March 3, 2000 in

Case No. U-12334 in which it sought comparable authority. In that case, the MPSC determined the pipeline was necessary but it did not approve the route requested through East Lansing and Meridian Township (Okemos) as Wolverine withdrew this part of its request. Wolverine then devised a different pipeline route running through the City of Lansing and, subsequently, filed the present application.

In response, the City filed its motion to intervene on December 19, 2001. On January 4, 2002, pursuant to a duly issued Notice of Hearing, a prehearing conference was held before Judge Rigas. The Judge granted intervenor status to the City and Ingham County Commissioner Lisa Dedden. The MPSC Staff was represented by counsel. In a timely fashion, all parties filed direct testimonies and exhibits and rebuttal testimonies and exhibits. On March 25 and 26, 2002, cross-examination of 17 witnesses was held. Subject to objection, direct and rebuttal testimony as well as 36 exhibits were bound into evidence. The record in this case consists of three volumes of transcripts totaling 792 pages.

## **ARGUMENT**

### **I. BECAUSE WOLVERINE FAILED TO INCLUDE EVIDENCE OF CONSENT WITH ITS APPLICATION AS REQUIRED BY MPSC RULE 460.17601(2)(d), STATE STATUTES AND THE MICHIGAN CONSTITUTION, SUMMARY DISPOSITION FOR THE CITY IS NECESSARY**

Counsel for the City made his motion for summary disposition at the conclusion of Petitioner's case after he had established that Wolverine did not attach the consent of the City of Lansing (or any other jurisdiction) to the pipeline as required. (2 Tr 458 - 459.) In fact, Wolverine admitted it has yet to obtain such consent and it apparently believes it can commence

construction of its pipeline along I-96 without it. This position is contrary to the requirements of MPSC Rule 460.17601(2)(d), the Michigan Constitution, state statutes and case law.

The ALJ took the City's motion under advisement at that time but still declined to make a ruling at the end of all the testimony. Instead, he deferred the ruling to this Commission.

**A. MPSC Rule 460.17601(2)(d)**

The Commission's own Rule, R 460.17601(2)(d), requires a Petitioner to attach with its application a copy of the City's consent:

The municipality from which the appropriate franchise or consent has been obtained, if required, together with a true copy of the franchise or consent.

Consent from the City and other municipalities whose territory is to be crossed by the I-96 pipeline is clearly required by the Michigan Constitution and the following statutes.

**B. Constitutional and Statutory Provisions**

Mich Const 1963, art 7 §29 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 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.

MCLS §247.183(1) states:

Telegraph, telephone, power, and other public utility companies, cable television companies, and municipalities may enter upon, construct, and maintain telegraph, telephone, or power lines, pipe lines, wires, cables, poles, conduits, sewers or similar structures upon, over, across, or under any public road, bridge, street, or public place, including, subject to subsection (2), longitudinally within limited access highway rights of way, and across or under any of the waters in this state, with all necessary erections and fixtures for that purpose. A telegraph, telephone, power, and other public utility company, cable television company, and municipality, before any of this work is commenced, shall first obtain the consent of the governing body of the city, village, or township through or along which these lines and poles are to be constructed and maintained.

MCLS §247.184 states:

In case it is proposed to construct a telegraph, telephone, power line or cable television line, pipe lines, wires, cables, poles, conduits, sewers, or like structures upon, over or under a county road or bridge, the consent of the board of county road commissioners shall be obtained before the work of such construction shall be commenced; and in case it is proposed to construct a telegraph, telephone, power line, cable television line, pipe line, wires, cables, poles, conduits, sewers or like structures, upon, or over or under a state trunk line highway, or upon, over or under any bridge that the state has participated in constructing, the consent of the state highway commissioner shall be obtained before the work of such construction shall be commenced.

Nothing in MPSC Rule 460.17601(2)(d), the Michigan Constitution or the statutes quoted is ambiguous. Each clearly requires that an applicant seeking to construct a pipeline in the I-96 right-of-way must first obtain the consent of the local units of government whose territories it proposes to cross. Without this necessary element, the Commission lacks subject matter jurisdiction to consider Wolverine's application and therefore summary disposition is mandated under MCR 2.116(C)(4). According to *Fox v Board of Regents of the University of Michigan*, 375 Mich 238, 242; 134 NW2d 146 (1965), when a court is without jurisdiction over the subject matter, any action with respect to such a cause, other than to dismiss it, is absolutely void. Procedural requirements established by the legislature are jurisdictional and a failure to comply with them requires dismissal. *Bellamy v Arrow Overall Co*, 171 Mich App 310 (1988), *Detroit v Lucas*, 180 Mich App 47, 50 (1989).

### **C. Case Law**

One of the first cases to directly address the issue of whether local government consent was necessary when constructing a pipeline in a road right-of-way was *Union Twp v Mount Pleasant*, 381 Mich 82, 85; 158 NW2d 905 (1968).

In *Union Township*, the city of Mt. Pleasant wanted to construct another pipeline to its water source. The city obtained permission from the county road commission to lay a new pipeline within the right-of-way of a county road running through Union Township but it did not obtain the township's permission. The township filed suit claiming that Article 7, §29 of the Michigan Constitution required the city to seek and obtain its permission to lay the pipeline along a road within its territorial limits.

The city argued that all township roads had been taken over by the county road commission and that Article 7, §29 granted no power to the township to approve or disapprove its pipeline construction, which was wholly within the right-of-way of a county road.

The Court ruled that under MCLS §§247.183 and 247.184, both the township and the county's consent are required when a public utility seeks to construct a pipeline within a county road running through a township. The Court stated that provisions requiring township approval were unchanged by Article 7, §29's addition of counties to governmental units whose consent must be obtained. In so ruling, the Court disagreed with the defendant's assertion that since the McNitt Act eliminated any township roads as such because all township roads have been taken over by county road commissions. Therefore, they argued, Article 7, §29 grants no power to a township to approve or disapprove a pipeline construction route which is wholly within the right-of-way of a county road and not any part of "the highways, streets, alleys or other public places of the township." (Id at 87.) In considering the argument the Court held:

Defendant's counsel urges us to read the two statutory sections as mutually exclusive, that is to say, that when the county's consent is required by section 14, the township's consent otherwise required by section 13 need not be obtained. . . The trouble with defendant's argument is that, if it be correct, the two sections are in conflict and the statute does not provide, in such circumstances, which of the conflicting sections should prevail. . . These statutory provisions have remained unchanged since their enactment in 1925, notwithstanding the 1963 Constitution's addition of counties to the governmental units whose consent must be obtained. Thus, today, our Constitution of 1963 and Act No 368 both require the county's consent as well as the township's consent in such circumstances as are presented by this case. (Id at 88 & 89.)

\* \* \*

It is significant to our decision that the statute requires consent of both governmental units, that section 13 is not limited to township roads, et cetera, but, rather, speaks in more general language of “public” roads in the city, village or township through or along which said pipelines, et cetera, are to be constructed. *We construe this to mean any public road, including a county road and a State highway*, thus manifesting the legislature's intent that townships, for example, retain their right of reasonable control over utility use of public roads passing through their territory, considering the inconvenience to township residents and businesses that generally results from construction within the right-of-way of public roads. (Id at 89-90. Emphasis added.)

The *Union City* decision was reaffirmed in *Williams v Redford Twp*, 207 Mich App 331, 334; 524 NW2d 262 (1994), and in *City of South Haven v South Haven*, 204 Mich App 49, 52; 514 NW2d 176 (1994) where the Court stated that:

It is clear that the trial court could not issue a writ of mandamus compelling the township to consent to the city's request for permission to extend its water pipeline along Blue Star Memorial Highway. The reason for this is that the granting or denying of consent by the township is discretionary, and a court cannot by mandamus compel a discretionary act. *Delly v Bureau of State Lottery*, 183 Mich App 258, 261; 454 NW2d 141 (1990). In this matter the granting or withholding of consent by the township is a discretionary legislative function, and the township has the right to grant or withhold consent under Const 1963, art 7, §29, provided the township's decision is not arbitrary and unreasonable.

In conclusion, Wolverine’s admission that it has failed to comply with the mandatory legal requirements of the Michigan Constitution of 1963 article 7 §29, MCLS §247.183(1) and MPSC Rule 460.17601(2)(d) *before* making its application to this Commission

requires that the City's Motion for Summary Disposition be granted. Commission. (2 Tr 458 - 459), MCR 2.116(C)(4) and *Travelers Ins Co v Detroit Edison Co* 465 Mich 185; 631 NW2d 733 (2001).

**II. IT IS NOT IN THE PUBLIC INTEREST TO PERMIT THE PIPELINE ROUTE PROPOSED AS IT WOULD UNLAWFULLY DISCRIMINATE AGAINST MINORITIES LIVING IN THE CITY OF LANSING**

Wolverine's witness, Steven Koster, admitted under cross examination that at the request of MDOT, he amended his report to consider the issue of environmental discrimination in the pipeline's proposed route. He then reviewed U.S. Census Bureau data and determined that the pipeline route's impact to minority populations along I-96 was not "disproportionately high." (2 Tr 350.) However, he then went on to say that this data showed the presence of minority populations along the route that are above the national average. (2 Tr 351.) The only other demographic information relied upon for the conclusion that there was no disparate treatment or impact to Lansing minorities were "observations in the field", which consisted of driving along the proposed route. (2 Tr 354, 357.)

However, the U.S. Census data that Mr. Koster refers to clearly shows, contrary to his assertion, that Wolverine's currently proposed route would have a disproportionately high impact on minorities.(See attached U.S. Census data incorporated herein by reference as Exhibit A.)

An examination of the 2000 U.S. Census data demonstrates that the tracts along the Lansing route contain a range of minorities from 12% to 55.5%. The tracts along the

Meridian Township route, on the other hand, contains a minority population of 7.6% to 17.1%, with most of the minority members being of Asian heritage.

Lansing's median minority population percentage rate is therefore 190.6% greater than that of the East Lansing/Meridian Township route. Similarly, Lansing's average minority population percentage is 166.7% greater than East Lansing and Meridian's. How can Wolverine honestly assert that a 190.6% and 166.7% difference is not disproportionately high?

Wolverine's stated reason for changing its proposed route because the East Lansing and Meridian route was too heavily developed and congested (2 TR 325 & 3 TR 744,745), is obviously false since the demographic data and evidence shows that the I-96 replacement route is longer, more densely populated and congested. (See Census exhibit and 3 TR 561) The only difference is that the people that would be affected by the currently proposed route are more minority and low income. Thus, the only logical conclusion that can be drawn from Wolverine's behavior and the evidence presented is that the route through Lansing was chosen because a conscious decision was made to remove the adverse effects of the pipeline from the mostly white and wealthy inhabitants of East Lansing and Meridian Township and place it in an area where the population that would suffer would be minorities and low income individuals.

Such conduct demonstrates a discriminatory purpose that illegally puts minority persons at risk of any pipeline leaks or ruptures. Under the Elliot-Larsen Civil Rights Act, MCL 37.2101 et seq, a prima facie case of race discrimination can be made by showing either intentional discrimination, disparate treatment, or disparate impact. *Reisman v Regents of Wayne State University*, 188 Mich App 526, 538-539; 470 NW2d 678 (1991); app den'd 440 Mich. 911, 440 Mich. 913, 489 NW2d 82 (1992); reconsideration den'd 496 N.W.2d 294 (1993)

Given the evidence presented, approval of Wolverine's permit would violate Title VI of the Civil Rights Act, 42 USC 2000d, and the Equal Protection clauses of the Federal and Michigan Constitutions, Michigan Const 1963, art 4, §§51, 52 and MCLS 37.2101 et seq and MCLS §483.5.

### **MCLS §483.5**

In addition to Constitutional requirements, Michigan has a specific statute which incorporates the public policy that public utilities transporting petroleum products by pipeline are prohibited from discriminating in pipeline placement. In the context of condemnation, MCLS §483.5 states that:

Every corporation, association or person, now or hereafter engaged in the business of carrying or transporting crude oil or petroleum, or any of the products thereof, for hire or compensation or otherwise, by pipe line or lines, within this state, shall be a common carrier thereof as at common law, and no such common carrier shall allow or be guilty of *any unjust or unlawful discrimination, directly or indirectly, in favor of the carriage, transportation, storage or delivery of any crude, stock or storage oil, or any products thereof, in its possession or control, or in which it may be interested, directly or indirectly.* (Emphasis added.)

Although condemnation is not at issue here, it is safe to infer that our legislature would not prohibit discrimination in one circumstance of pipeline construction while allowing it in another.

Discrimination may be proved by either direct or indirect evidence. *Harrison v Olde Financial Corp*, 225 Mich App 601, 606; 572 NW2d 679 (1997). Although Wolverine alleges that it abandoned its initial route in favor of the I-96 route through Lansing because of concerns over its effect on a densely populated area, the intervenors have produced both direct and indirect evidence supporting their assertion that this rationale is a pretext and that the route under consideration by this Commission illegally discriminates against Lansing's minority population.

The Courts recognize three ways a plaintiff can establish that a defendant's stated legitimate, nondiscriminatory reasons are pretexts: (1) by showing the reasons had no basis in fact, (2) if they have a basis in fact, by showing that they were not the actual factors motivating the decision, or (3) if they were factors, by showing that they were jointly insufficient to justify the decision. *Chappell v GTE Products Corp*, 803 F2d 261, 266 (CA 6, 1986), cert den 480 U.S. 919; 107 S Ct 1375; 94 L Ed 2d 690 (1987).

As already demonstrated, Wolverine's stated reason for withdrawing the petition for its initial route is not supported by the evidence since the route currently proposed has a larger population density than the previously withdrawn route. Therefore, the reason given for abandoning the previous route and pursuing the I-96 route: (1) has no basis in fact and, (2) cannot be the actual factor motivating the decision and, (3) is insufficient to justify the route now under consideration.

Although the City was prohibited from pursuing questions that may have added evidence to that which already shows Wolverine's direct discrimination, a look at the census data demonstrates both the elements of direct and indirect discrimination.

The statistical data derived from the Census Records shows how terribly disproportionate the effect of a pipeline rupture would be to minorities if the I-96 route were to be approved. The United States Supreme Court has established that statistical evidence can provide substantial guidance in evaluating a discrimination claim. See *Teamsters v United States*, 431 US 324, 339; 97 S Ct 1843; 52 L Ed 2d 396 (1977); *Hazelwood School District v United States*, 433 US 299, 307; 97 S Ct 2736; 53 L Ed 2d 768 (1977). Indeed, where gross statistical disparities can be shown as they are here, statistical evidence alone can suffice to establish a prima facie case of racial discrimination. *Teamsters*, 431 US at 339; *Hazelwood School District*, 433 US at 307-08. See also, *Meagher v Wayne State Univ*, 222 Mich App 700, 708-710; 565 NW2d 401 (1997). *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973).

In *Hazelwood School Dist v United States*, 433 US 299, 309 n 14; 97 S Ct 2736; 53 L Ed 2d 768 (1977), a showing of two to three standard deviations allowed the plaintiffs to overcome a hypothesis that the result was random, thus establishing a prima facie case of disparate impact discrimination. As such, this Commission should not condone any form of discriminatory conduct by Wolverine or any other public utility. MCLS §483.5

### **III. RELEVANT AND MATERIAL EVIDENCE WAS IMPROPERLY EXCLUDED BY THE ADMINISTRATIVE LAW JUDGE**

#### **Questions Concerning Wolverine's Route Determination were Improperly Excluded**

Counsel for the City of Lansing attempted to question Wolverine's witness as to why the previous route proposed through East Lansing and Meridian Township was abandoned

in favor of the currently proposed route through Lansing. (2 Tr 417- 429.) Wolverine’s counsel objected and the Judge sustained the objection on the ground that such questioning delved into protected “settlement negotiations.” However, as the City’s attorney pointed out, the information he sought concerned how the current route was arrived at; not the terms or negotiations of any settlement.

The information sought by the City’s attorney was not for the purpose of proving tort liability, but instead, was to impeach Wolverine’s stated reason for pursuing the I-96 route instead of the one through East Lansing and Meridian Township. By refusing to allow any questioning in this regard, the ALJ excluded relevant and material evidence concerning the City’s allegations of illegal discrimination.

Even if the line of questioning sought to be pursued did concern settlement discussions, since it was not for the purpose of establishing liability or the invalidity of a claim, it should have been admitted as MRE 408 states that “. . . *This rule does not require exclusion when the evidence is offered for another purpose . . .*” Also see *Windemuller Electric Co v Blodgett Memorial Medical Center*, 130 Mich App 17; 343 NW2d 223 (1983).

If, in fact, a settlement was made which put at risk the safety of Lansing’s minority population in place of Meridian Township and East Lansing’s wealthy and mostly white residents, then such an agreement itself violates public policy and should be revealed and voided. All agreements whose purpose is to create a situation that tends to operate to the detriment of the public interest are against public policy and void, regardless of whether the purpose of the agreement is or is not effectuated. For a particular undertaking to be against public policy actual injury need not be shown; it is enough if the potentialities for harm are present. *Mahoney v*

*Lincoln Brick Co*, 304 Mich 694, 705; 8 NW2d 883 (1943). See also, *Federoff v Ewing*, 386 Mich 474, 481; 192 NW2d 242 (1971).

However, in this case the ALJ made no inquiry into whether a settlement agreement existed, or under what circumstance any alleged negotiations took. Nor did he address the City's argument that the witness being examined had already testified under oath that the matters being asked about were not part of any settlement discussions. Instead, the judge made a blanket ruling that *any* discussions held between January 12<sup>th</sup> and March 31<sup>st</sup> of 2001 were off limits. (2 Tr 428.)

MRE 408 explicitly states that: “. . .*This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations.*” Thus, the ALJ erroneously ruled that questions concerning Wolverine's decision to withdraw its petition for the Meridian Township route and file one for this route instead were inadmissible.

#### **IV. THE RISK TO THE PUBLIC INTEREST IN APPROVING THE CONSTRUCTION AND INSTALLATION OF THE PROPOSED PIPELINE FAR OUTWEIGHS ANY PERCEIVED BENEFIT**

##### **The Pipeline Poses Significant Risks To The General Population Of Lansing**

During the course of the hearing, the testimony elicited by respective counsel from their witnesses was divergent in many respects. Wolverine's witnesses testified that the construction, installation and maintenance of the pipeline would be environmentally sound; constructed and installed in a manner consistent with federal regulations; and, create little risk to those residing near, or traveling through, the proposed route of the pipeline.

The City's witnesses testified to the contrary. Under oath, they maintained that the pipeline was environmentally hazardous to drinking water, rivers and streams; that the construction and installation of the proposed pipeline presented serious risks concerning its physical integrity; and that residents and motorists in close proximity to the line would be placed in harms way.

The opinions expressed by the parties' witnesses are divergent to say the least. Nonetheless, a common thread runs throughout their testimony. Wolverine cannot produce a pipeline which is failsafe. Moreover, it cannot overcome credible evidence that demonstrates significant risks to the public interest concerning issues such as property damage, personal injury and the contamination of rivers, streams, waterways and potable drinking water. This is evident by reference to the facts elicited during the course of the hearing.

The one thing Wolverine, the City and MPSC Staff all agree on is that the possibility of third-party damage to the pipeline is a real threat. (2 Tr 223, 402; 3 Tr 676, 743.) In fact, the MPSC Staff witness Mazuchowski explains that not only is third-party damage one of the leading causes of pipeline incidents (3 Tr 743, Ex S-32), it is also the leading cause of accidental petroleum product release by volume. (3 Tr 743, Ex S-33.) Wolverine admits that third-party damage accounts for 25% to 30% of reportable incidents. (2 Tr 161.)

Wolverine also maintains that even with pipeline pressure sensors, a great volume of pipeline petroleum product can be released before detection. Wolverine explains that a leak below the detection level of its automatic detection system (SCADA) could equal a tanker truck per hour of product (1,056 gallons per 30 minutes). (2 Tr 381.) However, Wolverine minimizes this possibility by stating that it will visually inspect the pipe once per week. (2 Tr 403.) Mr.

Mazuchowski of MPSC Staff confirms that the visual inspection will be by aerial patrols. (3 Tr 745.) With 168 hours in a week, a spill of 354,816 gallons (1,056 gal x 2 x 168 hrs) could take place without detection within Wolverine's own recognized parameters. This is merely one example of risks to the general public associated with the pipeline.

Another consequence completely overlooked by Wolverine in choosing this route is the negative effect it would have on the City's Master Plan. (2 Tr 213-214.) The Commission should therefore heed the words of Jim Ruff, the City's Manager of Planning, when he states that the pipeline's proposed path will undermine the effectiveness of the City's Master Plan. Mr. Ruff details the number of residences and businesses in close proximity to the pipeline route and the chilling effect it would have on future development within the city. (3 Tr 558-567.)

More specifically, the risks presented by the pipeline to the populace at large can be broken down into five (5) categories: 1) fire, 2) motorist safety, 3) population density, 4) drinking water contamination, and 5) surface water contamination. These are addressed sequentially below.

**1. Fire Risk**

Lansing Fire Chief Greg Martin testified as to some of the inherent dangers associated with installing a 12 inch liquid petroleum product pipeline with a maximum operating pressure of 1440 psig through the I-96 corridor.

He stated that in case of a catastrophic failure of the line, there is always the danger of fire. Even if the line's safety valves are located one mile apart, the amount of product contained within a 12 inch pipeline transporting gasoline is enormous. A pipeline failure under

such pressure could result in a fountain of fire with blowtorch type of effects. A life-threatening danger exists to those in close proximity to the pipeline. (3 Tr 503.)

Professor Campbell Laird also testified about the disastrous consequences of pipeline leaks to the surrounding people and property. In February of 1999, the fracture of an underground natural gas line in New Jersey ripped apart 30 feet of the line which launched a fireball hundreds of feet into the air. As a result, property damage was enormous as evidenced by the incineration of apartments nearly 1/4 mile away. (3 Tr 660.) Similarly, Wolverine's witness, Daniel Cooper, acknowledged the risks associated with pipeline failure as it applies to the well being of motorists traveling along I-96 if a fire were to occur. (2 Tr 217.)

In short, fires associated with pipeline failure can be devastating and the more people who reside in close proximity to the fire, the more likely it is that someone will be killed or injured. The significant population along this route would be placed in great danger if such an accident were to occur since, as the Fire Chief testified, Lansing is without the ability to extinguish large flammable liquid fires occurring within its boundaries. (3 Tr 504.) Therefore, it would be in the public's best interest if Wolverine were to choose a less dangerous and populated route.

## **2. Motorist Risk**

James Ruff, Lansing's Manager of its Planning Office, is charged with the responsibility of land use planning and zoning for the City. In this capacity he is keenly aware that Wolverine's proposed pipeline route may run next to I-96 as it traverses through Lansing. Mr. Ruff testified that even though I-96 is a limited access highway, approximately 40,500 vehicles, including large semi-tractor trailers, use this section of the expressway on a daily basis.

Michigan's climate results in a number of hazardous driving conditions that produce numerous accidents which could damage or rupture the proposed line. Accordingly, Lansing's populace may face the risk of serious fires and environmental contamination. (3 Tr 560.)

This much was acknowledged by Wolverine's witness, Daniel Cooper. When asked whether an open pipeline together with an ignition source would cause concern regarding motorists traveling I-96 along the proposed line, he responded:

A. Certainly would.

Q. In what respect?

A. I would be concerned about the fire hazard. You mentioned ignition source. If you have that much gasoline being released and it was ignited and presented a danger – it could present a danger, depending upon the proximity to the travel area of the highway. (2 Tr 217.)

Simply stated, it is beyond question that the route of the line proposed by Wolverine would subject an inordinate number of motorists, driving upon I-96, to the risks and danger inherent in pipeline failure. A tipped semi, a motor vehicle collision or a burning cigarette flipped from a car window could very well be disastrous.

### **3. Population Density**

Given the inherent risks of pipeline failure such as fire and environmental contamination, the density of persons residing, working or patronizing businesses located in

close proximity to the proposed line is of critical importance. During the course of the hearing, this was a topic of much discussion.

In the capacity of Lansing's Manager of its Planning Office, Mr. Ruff testified that the location of the proposed pipeline is within a highly populated and developed area. (3 Tr 561.) Adjacent to the I-96 expressway are many residential areas, including residential subdivisions, mobile home parks, multiple family apartments and a burgeoning commercial area consisting of Sam's Club, Target, Celebration Cinema (21 screens), Meijer, Holiday Inn South Hotel and Convention Center, Lowes, Menards, Shaheen Chevrolet, WILX TV-10 and numerous restaurants, retail and office facilities. (3 Tr 558.)

On the south side of Lansing where the proposed line would be installed, there are numerous single family homes in the Aurelius, Dell and Floyd area (177 dwelling units); the Mill Pond Village Mobile Home Park (355 ± dwelling units); Oak Park Village (612 dwelling units); and, 60 acres of residentially zoned land where 850 dwelling units are in the development stage. In addition, there are single family homes in the Fisher, Dadson, Washington, Richard Roads area (250 homes) and the Life O'Riley Mobile Home Park (130 ± dwelling units). Breaking these numbers down, there exists 2,374 ± dwelling units subject to the significant risks posed by construction of the pipeline. Of equal importance is that north of the I-96 expressway there are thousands of more dwelling units within Lansing and additional land that is zoned and proposed for residential dwelling units. (3 Tr 566.) That said, included in the subject area are wetlands and locations of future development where there presently exists an application to rezone property to allow for as many as 1,000 dwelling units. (3 Tr 557, 558.) To add fuel to the fire, the 2000 Census for Census Blocks immediately adjacent to I-96 within Lansing reveals a total

of 9,113 persons in 4,295 housing units or, if total population for all tracts within the route are examined, 25,777 people live within the pipeline's path. (3 Tr 558 and Census Exhibit attached.)

Finally, the proposed pipeline route passes through at least two subdivisions as it follows the I-96 right of way through Lansing. These are the Supervisor's Plat of Bridson's Plat and the Supervisor's Plat of Elmview Subdivision (3 Tr 568.)

Suffice it to say, the area through which the pipeline is proposed to run is so densely populated that it fails to fulfill the recommendations and address the concerns raised by the Commission in Case No. U-12334. Instead, these concerns should be carefully scrutinized by the present forum given the density of the City's population that has potentially been placed in harms way.

Significantly, Mr. Ruff's testimony regarding population density adjacent to the pipeline proposed by Wolverine is not disputed. Instead, it is confirmed by the testimony of MPSC Staff member, Donald Mazuchowski. During the course of Mr. Mazuchowski's cross examination, he was asked to read notes he had prepared regarding the proximity of a limited number of residential and commercial properties to the proposed route.

- A. Okay. I have on the north side of Willow Highway, white house, 87 feet from the pipeline. House on the east – east/south side of Grand River near the church is 108 feet from the pipeline.

I have a house that's on the – east of the Grand River about – east of the Grand River about one mile. It's a blue house. It's 121.5 feet from the pipeline.

I have a house at 2797 Grovenburg Road, 105 feet from the pipeline. And I have a house at 2796 Grovenburg, 863 feet from the pipeline.

I have a house at 6726 Washington, that's inside the trailer park area, 165 feet from the pipeline. I have the Life O'Riley Trailer Park park office, 25 feet from the pipeline.

I have a white house – or a trailer that's near the white house inside the Life O'Riley Trailer Park. And I have a 6743 Richard Road house, 129 feet from the pipeline.

I have a gray house on the corner of Cooper and Fisher Road, 165 feet from the pipeline. I have Oak Park Condos, 126 feet from the pipeline. I have another condo building near there, 144 feet from the pipeline.

I have the YMCA building, 81 feet from the pipeline. I have the Charlie Kang's Restaurant, 180 feet from the pipeline. A log home just east of the Cedar Street interchange, 99 feet from the pipeline.

I have a white older house west of -127, 117 feet from the pipeline. I have tan home in a new subdivision just west of -127, 157 feet from the pipeline. I have a white house east of -127, 193 feet from the pipeline. That's what I have. (2 Tr 755, 756, 757.)

It is evident from Mr. Mazuchowski's limited sampling that there are houses, businesses and people merely a stone's throw from the proposed route of the line. Nonetheless, Mazuchowski finds *this* densely populated route superior to four others he acknowledges are acceptable. (2 Tr 766, 767.) Notably, the superiority of the proposed route is absent any factual explanation. This simply defies logic since proximity is an issue central to the public interest. As

if this were not enough to persuade the Commission to deny Wolverine's permit, the company's own witness admitted that applicable federal guidelines favor routing pipelines through less populated routes. (2 TR 204) All of the 6 alternate routes available would apparently impact far fewer people than this one.

#### **4. Drinking Water Contamination**

Clean drinking water - one of Lansing's most precious commodities - is being placed in harm's way and at significant risk by Wolverine's proposed pipeline route. It is the City's and Mayor Hollister's duty and obligation to guard the health, safety and welfare of its residents and visitors, as this proposed pipeline route "poses an unreasonable risk of harm to Lansing residents and property owners, because it travels through or near highly populated portions of this City and will be buried close to many City water wells. Any leak of petroleum products from this pipeline will cause damage to City property and harm the health of its residents. The risk of a catastrophic event should this pipeline fail is significant." (3 Tr 481.)

Clyde Dugan, director of special projects for the Board of Water and Light (BWL), testified that the BWL is Michigan's third largest utility, serving over 54,000 water customers in Lansing alone. In addition, the BWL supplies water to Delta Township, Lansing Township, Meridian Township, and the City of East Lansing. Thus, the BWL provides drinking water to over 200,000 people in the Greater Lansing Area." (3 Tr 590.)

The current Wolverine proposed pipeline route would travel over 9.5 linear miles of a Wellhead Protection Area (WHP). Bruce Hensel, an expert in hydrogeology, explained that the WHP is an area defined by the United States Geological Survey (USGS) and approved by the Michigan Department of Environmental Quality (MDEQ) where a leak or spill could result in

contamination of groundwater that could migrate to water supply wells. He went on to state that ten municipal drinking water wells are located within one-quarter mile of the proposed pipeline route with the Wellhead Protection Area. (3 Tr 532.)

Mr. Dugan emphasized this with the following testimony:

. . . If you assume a buffer zone of 1/4 mile, the pipeline would impact 3.3 square miles of Wellhead Protection Area. Ten public water supply wells would be directly impacted within the 1/4 mile buffer zone, and an additional 13 wells are within the Wellhead Protection Area Areas.

The twenty three wells within the impacted Wellhead Protection Area represent 22% of our [BWL] total well field capacity. Because these wells are very productive and require minimal conditioning, they represent 25% of our total “base load” . . . well field capacity.

In addition to existing wells, the proposed pipeline route also goes through areas where new wells are planned to be installed to handle growth and expansion. These planned Wellhead Protection Areas are not indicated on Exhibit I-22. (3 Tr 593.)

When asked what would be the consequences to the Wellhead Protection Area if the pipeline failed, Mr. Dugan stated that it would be “significantly impacted by either a catastrophic failure (a sudden and large release that can be detected by the pipeline control software) or a non-catastrophic failure (e.g. an undetected leak).” If such petroleum products and the contaminants it contains enters the ground well, it would eventually enter the drinking water aquifer. Because the layer of rock (predominately shale) that separates the upper ground water (the glacial aquifer) and the lower body of water we use as a source for our drinking water (the Saginaw aquifer) is discontinuous in much of this portion of the wellhead protection area, any

leak would be able to migrate to (and contaminate) the aquifer. In addition, the proposed pipeline route passes through the southwest well field (the Steifel well field) wellhead protection area, which has no protective layer at all. (3 Tr 594.)

While a catastrophic failure could have a horrific effect on this environmentally sensitive area, a non-catastrophic failure may produce just as horrible results. Since there are limitations to the pipeline's automated control system's ability to detect leaks, a small leak could go undetected for a very long time. With a flow volume of 3.1 million gallons, if a "small" leak formed that only drained 1/100 of 1% of the daily flow, 310 gallons per day would enter the ground. If the leak remained undetected for a year, over 100,000 gallons would be lost. And the first that we would learn of the leak would likely be when the contamination plume begins to impact Board of Water and Light drinking water wells. (3 Tr 595.)

As well as passing through or over the WHP, this proposed pipeline also intersects with the Mason Esker. This is another environmentally sensitive area that could be gravely threatened if a pipeline failure event occurred. Mr. Dugan testified that "[t]he most famous and longest esker in Michigan is the Mason Esker, which runs from DeWitt through Holt and Lansing, and ends in Mason....The Mason Esker is of concern to me because water (and any other liquid) moves very rapidly through the sand and gravel of an esker. If contamination occurred in the area of the Mason Esker, it would quickly move through the esker in the direction of Mason, impacting drinking water wells along the route." (3 Tr 598.)

The tremendous risks to the drinking water that supplies so many people are too high and too severe to allow a pipeline to be constructed as currently proposed. This was tacitly

acknowledged by Wolverine's witness, Steven Koster. In Mr. Koster's report under the ground water quality section, 4.21 and 4.22, he indicated as follows:

4.21 "Potential long-term impacts from larger petroleum spills may occur due to valve or pipeline failure during the pipe operation."

4.22 "Potential long-term impacts on ground water quality include release of petroleum products from a pipeline or valve failure during the operation of a pipeline." (2 Tr 226.)

Daniel Cooper concurred that he also was "greatly concerned" with the potential long-term water quality impacts to the drinking water system under I-96 that would result in a pipeline failure.(2 Tr 229) Clearly, they were aware of the aquifer below the proposed pipeline route and the terrible long-term consequences to the drinking water if a pipeline failure occurred.

From Exhibit I-23, entitled *Contaminants of Concern in Gasoline*, it reflects that some of the typical contaminants found in gasoline, even in extremely low levels, would cause very serious health problems.

As an example, the health based limit on Toluene is 1.0 milligrams per Liter. And the health based limit for Benzene is only .005 milligrams per Liter (5 micrograms in the exhibit table)! This is the roughly the equivalent of 5 drops of Benzene in 12,000 gallons of water. And some of these contaminants are known carcinogens!" (3 Tr 596.)

Mr. Hensel testified as to the geological effects on water supply wells from a petroleum spill as follows:

The water table is within shallow sand, silt and clay (unlithified) deposits, while the LBWL water supply wells near the pipeline pump from a relatively deep sandstone (bedrock) formation (Saginaw Aquifer), so it is unlikely that light petroleum product could directly enter the water supply wells. However, chemical constituents in the petroleum product will dissolve into groundwater if the pipeline leaks. Many of these chemical constituents, such as benzene, are known carcinogens.

The potential for chemical constituents dissolved in groundwater to migrate to the water supply wells is greatly influenced by the presence or absence of a continuous confining layer, consisting of clay soil or shale bedrock, between the water table aquifer and the Saginaw aquifer. 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. (3 Tr 633.)

He further testified that this “confining layer” is not “continuous.” As the migration is downward, if a pipeline failure occurred, there is the potential of the Saginaw aquifer being contaminated is high.

Furthermore, there is a continuous sand unit that crosses the pipeline corridor along I-96; the Mason Esker, a linear (like a wide river) feature that crosses between U.S.-127 and Cedar Street. This is a highly permeable sand formation, meaning that contaminants that enter this formation can migrate relatively quickly with travel times up to hundreds of feet per year. The Mason Esker and other permeable sands are directly connected to the Saginaw Aquifer north

of I-496. It is not known if there is a direct hydraulic connection in the vicinity of the pipeline.

The preceding observations indicate that a continuous clay confining layer is not present in the pipeline corridor. The boring logs also clearly indicate that there is no continuous shale confining layer. Only two of the seven logs within the corridor area listed the presence of a shale confining unit overlying the sandstone of the Saginaw Aquifer. Therefore, five of the seven wells are located in areas where the shale confining layer is absent. Where the shale bedrock confining layer is discontinuous, the possibility exists for direct hydraulic connection between the shallow water table aquifer and the deeper Saginaw Aquifer. (3 Tr 635.)

Wolverine's witness, Martin Sara, also failed to establish that the bedrock aquifers positioned under the current proposed pipeline route are protected from surface contaminations with a continuous clay or shale layer. Mr. Sara's assertion that the layer was continuous was based on well logs provided by the MDEQ. (2 Tr 291). However, he admits he did not observe or participate in the drilling of these wells and did not know if these well logs were prepared by trained geologists or drillers. (2 Tr 295, 297). On the other hand, the City's witness, Mr. Dugan testified that he had gone out on the drilling rigs and witnessed the City's well logs being prepared by well drillers. He testified that well drillers usually conduct such tests and further indicated that he did not have much confidence in these drillers' logs for a number of reasons.(3 Tr 612). He stated such logs are subjective and it is very difficult to determine the strata of the subsurface based on these alone. (3 Tr 613). Thus, Mr. Sara's opinion on the geology of the region is way too subjective and unreliable and it would be against the public's best interest to put at risk the drinking water of so many people on this basis.

Even with information concerning the substantial risks and long-term impact on this densely populated and environmentally sensitive area, Wolverine did not consider other viable options because they would be more costly. Thus, the cost to population of Lansing and surrounding area is less significant than the cost to route the pipeline through a less populated area. (2 Tr 240.)

##### **5. Surface Water Contamination**

While the effect of a spill on ground water would, under some circumstances, be gradual over time, the impact of a spill on surface water would be direct and immediate. The proposed pipeline plan has it crossing the Grand River twice and the Sycamore Creek once. (2 Tr 219, 368, Ex A-5, §3.4.) Clearly, a leak at any of these points would go directly into the water course.

Additionally, the plan has the pipeline crossing a number of drains (2 Tr 368) and Wolverine says it expects to construct the pipe in the slope of the drainage ditch. (2 Tr 366 - 368.) Wolverine also acknowledges that a leak in this area of the pipeline would, given sufficient time and product, also enter the Grand River or Sycamore Creek. (2 Tr, 218-219, 368-369.)

Finally, a review of the overhead aerial photographs with the pipeline route superimposed in Appendix B of Exhibit A-5 (Environmental Impact Review for Wolverine) reveals a number of wetlands and ponds that abut the proposed route. A total of 88 wetland areas are located within the project area. (Ex A-5, §3.5.5, p 30., 2 TR 195) The potential hazard to

surface water resulting from a third-party accident damaging the pipeline has not been adequately addressed and is generally ignored in Wolverine's Exhibit A-5.

Wolverine explains away the potential pollution of the Grand River and Sycamore Creek in case of a spill by indicating that this damage to the environment is comparatively better than polluting the drinking water supply. (2 Tr 332.)

Similarly, although Wolverine's safety expert Daniel Cooper is aware of the Bellingham, Washington incident in which three people died when petroleum products that leaked from a pipeline were ignited while floating on a creek, he fails to explain how such a danger is avoided here. (2 Tr 234-235.) Mr. Cooper finds in some way significant the fact that the ignition source in Bellingham was a lighter as if no one along the proposed route here could be in possession of a lighter or other source of ignition. (2 Tr 235.) The testimony makes it obvious that the potential danger to the public of the ignition of spilled petroleum floating on surface water is totally lacking in Wolverine's risk analysis.

Here, the risk of fire and pipeline failure is palpable. This risk is exacerbated by densely populated areas in extremely close proximity to the proposed route of the pipeline. For example, Life O'Riley Mobile Home Park, consisting of approximately 130 dwelling units, is located "25 feet from the pipeline." Hence, the danger to residents, patrons of businesses and passing motorists is simply unacceptable. In short, the construction and installation of the pipeline in the location proposed by Wolverine clearly fails to serve the public interest. Rather, it creates a disservice to the public at large, contrary to that risks which the MPSC is required to mitigate.

To put the 25,777 Lansing residents who would live nearby this pipeline at risk for all of the above hazards is unwarranted and unnecessary; especially when the evidence indicates there are six alternate routes which Wolverine could use for its pipeline that would put at risk far fewer residents, motorists, properties and water supplies. By its own admission, Wolverine has four other viable routes, and the City's expert has produced two in addition to that. (3 Tr 766, 767 and 3 Tr 697.)

**CONCLUSION AND RELIEF REQUESTED**

Both the law and evidence presented by the City justify its request that Wolverine Pipeline's petition in this case be summarily dismissed or, in the alternative, that it be denied.

**OFFICE OF THE CITY ATTORNEY  
CITY OF LANSING**

Dated: April 12, 2002

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