

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.)**
_____)

Case No. U-13225

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

NOW COME Intervenors David Hollister and the City of Lansing, by and through their attorney, James D. Smiertka, City Attorney, and for their reply brief says as follows.

This brief responds to three main areas addressed in the initial briefs of Wolverine Pipeline Company and MPSC Staff. These areas are as follows: witness testimony concerning the safety of the pipeline; route selection criteria; and Wolverine's use of applicable federal standards.

1. Witness Testimony Concerning Safety of Pipeline

Both Wolverine Pipeline and MPSC Staff attempt to nullify the City's objections to the pipeline route by discrediting or dismissing its expert witnesses who disagree with their view of this route's potential dangers. If all experts agreed, there would be no reason to resort to adjudication of disputes but unfortunately, great minds do not always think alike. In this instance we have reputable and experienced individuals who have examined much of the same data but have come to very different conclusions.

Wolverine attempts to discredit Dr. Campbell Laird's testimony by reference to Mr. Kiefner's testimony, who admits to being a paid witness almost exclusively for pipeline companies. (Wolverine's Initial Brief, pp 10-13; 2 Tr 135.) However, Professor Laird, who was already a professor of Materials when Mr. Kiefner was still a student, demonstrates his objectivity by producing credentials that shows he has testified as a witness for the government and numerous industries and positions. (3 Tr 652.)

Mr. Cooper's criticism of Dr. Laird's testimony is equally biased and irrelevant since he admits to ignoring accepted scientific criteria and replacing it with his own model formula in order to produce results that support his position. (2 Tr 203-204.) The testimony of Mr. Ruff and the exhibits of Commissioner Dedden also clearly show the falsity of Cooper's statement that the MDOT right of way provides a corridor free of occupied buildings and places of public assembly. (Wolverine Initial Brief, p 18.)

The testimony of Lansing's Fire Chief, Greg Martin, was challenged on pages 21-22 of Wolverine's Initial Brief. However, if we are to compare our respective experts concerning what damage could be done by a pipeline fire and the ability of Lansing to respond, who is in a

better position to judge, and who has more credibility? Lansing's Fire Chief who manages the department and is intimately familiar with the City's firefighting resources and has over 20 years of experience actually fighting fires; or Wolverine's hired witness who admittedly has never worked for a municipal fire department or actually fought a gasoline or oil fire? (2 Tr 385, 386.)

Wolverine's attempt to discredit Charles Green by saying his only qualifications for suggesting alternate routes are as a real estate appraiser is easily refuted by taking a look at his credentials. The record, which Wolverine chooses to ignore, demonstrates that Mr. Green has 20 years of experience selecting utility routes for the Northern Michigan Electric Company. (3 Tr 694, 695.) His job then, and now, is not to conduct environmental impact reviews but to point out alternate routes that minimize human exposure to public utilities. Unlike Wolverine, Mr. Green's concern is to select a route that will minimize the potential for damage to humans rather than ducks. (2 Tr 239, 240.)

Wolverine also attempts to discredit Mr. Dugan by pointing to the fact that he is unfamiliar with the location of wells in Meridian Township, even though that is like saying Michael Jordan is a bad athlete because he doesn't play football. (Wolverine's Initial Brief, p 28.) As Mr. Dugan explained, he is the special project manager of utilities for the *Lansing* Board of Water and Light – which does not include Meridian Township. His familiarity with Meridian Township water is, therefore, understandably limited to that which the BWL supplies to them. Therefore, it is pointless and irrelevant to ask him questions about water wells that are not part of his company's jurisdiction. (3 Tr 599.)

As for Wolverine's arguments concerning the testimony of the dueling geologists, both agree that well driller's logs are not a reliable indicator of the amount of clay or shale

protecting the Saginaw aquifer from contamination, but the BWL is the only party that has conducted its own drillings to determine with any degree of certainty what the true geology of the WHPA is. (Wolverine Initial Brief, pp 22-24; 2 Tr 294, 3 Tr 612-613, 641, 643-644.) Therefore, BWL's experts' testimony is that which should be relied upon by the Commission.

2. Route Selection

Wolverine asserts that the I-96 right of way is the safest place to put its pipeline because it will be "isolated" and less susceptible to third party damage. (Wolverine Initial Brief, p 31.) Their definition of "isolated" has already been challenged as has their failure to acknowledge the use of backhoes to clean the ditches in which the pipeline will be located. (2 Tr 367.) No one at either MPSC or Wolverine has bothered to ask why the state has heretofore had a policy against using road right of ways for utility placement. (2 Tr 216.) Could it be that it was not considered a safe or wise thing to do? Wolverine also admits it has not considered the impact of traffic or traffic vibrations on pipeline integrity and, therefore, it asserts that it is not a relevant factor. (2 Tr 149, 150, 366.) However, a lack of knowledge or data does not justify a conclusion that traffic vibrations or other "dynamic forces" will have no adverse effect, especially since the federal government seems to disagree. 49 CFR §195.256 requires that pipe at each highway crossing be installed so as to adequately withstand the dynamic forces exerted by anticipated traffic loads. Yet, despite the fact that the entire route Wolverine is proposing is along a major highway, the company is apparently taking no measures to comply with this regulation or otherwise deal with the added stress the proximity to heavy traffic will exert.

Equally incredulous is Wolverine's assertion that this route is superior to the Meridian Township route, which was mysteriously abandoned and replaced with the Lansing route when an impartial ALJ indicated he would rule against it. (Wolverine Initial Brief, pp 8, 29-32.) In its brief, Wolverine continues to claim that the Meridian route was withdrawn because it was deemed too highly congested. (Id.) However, although it is uncontested that the Lansing route has more people living nearby, it is deemed more desirable because the route follows the I-96 freeway. Wolverine states that because the pipeline would be constructed in the I-96 right of way, there would be less opportunity for third party damage to it. (Wolverine Initial Brief, p 31.)

Mr. Cole states that:

One factor was that a new route not be located in densely populated areas. . . Wolverine also sought a route that would be relatively safe from third party intrusion because most problems encountered by underground pipeline are caused by activities of third parties. *An example is damage that may result to a pipeline if it is struck by a backhoe or other type of construction equipment.* (2 Tr 402.) (Emphasis added.)

Despite purporting to consider these factors, Wolverine is proposing a route with constant traffic traversing the road right next to the pipeline and no knowledge of the effect vibrations from this traffic would have on the pipeline a mere 4 feet under the ground next to it; regular construction activity caused by the repair and replacement of the highway; and the knowledge that backhoes will be used to clean the ditch in which the pipe will reside. (2 Tr 366, 367.) Once again, Wolverine's assertions are not supported by the facts.

Why is Wolverine so reluctant to use one of the other admittedly viable alternate routes to construct its pipeline? According to the company, these alternate routes would be longer and require new easements (and thus cost the company more money). (Wolverine Initial Brief, pp 31, 34.) However, this same logic is miraculously absent when evaluating the route through Meridian Township, which is considerably shorter than the one now proposed through Lansing and where they already have a pipeline easement.

In addition, the assertion that the Meridian Township route puts more people at risk than the Lansing route is equally absurd. As pointed out by Commissioner Dedden's Initial Brief, no data has ever been submitted that demonstrates it is safer to put a pipeline by 50 houses within 100 feet of the pipeline than it is to put it by 3 houses within 50 feet of the pipeline. Where does this magic number come from?

The whole argument about relocating the pipeline through Lansing also makes no sense when given the fact that the Meridian Township residents already live by an existing pipeline! They presumably live there willingly and have already accepted the fact that they are at risk if the pipeline should fail. Wolverine's contention that the shorter route through Meridian Township where they currently have a pipeline was dropped because it is more densely populated than Lansing is simply not true and they cannot point to any evidence that substantiates it. Census data shows the tracts along the Lansing route are home to 1,330 more people and 1,235 more households. Mr. Ruff also testified to the number of homes and businesses along the Lansing route, and Ms. Dedden's photographic exhibit shows just how close some of these homes and businesses would be to the pipeline. (3 Tr 557-560.) Incessant repetition of

Wolverine's mantra that Meridian Township is more densely populated may lull one to sleep but it does not make it true.

Wolverine says that it has all sorts of safety policies and meets or exceeds MDOT and federal pipeline standards. So does that mean they did not follow these policies and ignored applicable standards when building and operating their Blackman Township pipeline? Or does it mean that even with the best safeguards possible, pipeline accidents do occur? Are we supposed to take their word for it that the pipeline proposed here will not leak like the one it owns and operates in Blackman Township?

Of course Wolverine trivializes the Blackman Township incident and characterizes Lansing's reference to it as a "catastrophe" as an exaggeration. Obviously then, this wonderful corporate citizen does not consider spilling 71,000 gallons of petroleum into the ground and rivers, having to evacuate 1,300 people from 580 homes and disconnecting electrical and natural gas service to surrounding homes and businesses to be a catastrophe. Apparently, Wolverine only considers the direct loss of life to be a bonafide catastrophe. Hopefully, the MPSC thinks differently.

Wolverine's arrogant response to Lansing's serious concerns over the pipeline's effect on local residents and businesses is to dismiss them under the rubric of "not in my backyard." (Wolverine Initial Brief, p 6.) Apparently, the fact that over 25,777 people live in this "backyard" is irrelevant and that the "backyard" supplies drinking water to over 220,000 people is also unworthy of consideration. However, when the "backyard" involved contained 24,447 people with a median income of \$82,325, it was somehow a more significant "backyard."

3. Federal Standards and Requirements

Wolverine consistently states that it will meet or exceed federal standards for pipeline safety and asserts that it is Wolverine's policy to use sound engineering practices. (Wolverine Initial Brief, pp 8, 9, 18, 20.) The MPSC Staff Initial Brief (at 16) also acknowledges Wolverine's responsibility to meet the same U.S. Department of Office of Pipeline Safety regulations (hereafter, Federal Safety Standards), which apparently is supposed to negate any criticism of its proposal. However, by simply making up its own population analysis criteria, Wolverine admits to violating a Federal Safety Standard in selecting this route. Furthermore, it not only explains away its failure to comply with the Federal Safety Standards relating to population density, it manages to convince the MPSC Staff to sanction this violation.

Specifically, Wolverine's violation is its failure to measure population proximity using the required Federal Safety Standard distance factors. Wolverine's witness Daniel Cooper states that the Federal Safety Standards require that "Pipeline right-of-way must be selected to avoid, as far as practicable, areas containing private dwellings, industrial, building and places of public assembly." (2 Tr 181.) He also states that under the Federal Safety Standards, the area of danger for measurement is dwelling units located within 1/8 mile of a pipeline. (2 Tr 201.) Mathematically, this is 660 feet ($1/8$ of 5,280 = 660'). The Federal Safety Standard further evaluates population density in relation to comparative classes of buildings within the 660 feet area. (2 Tr 201.) Mr. Cooper further explains that the safety evaluation is, therefore, limited to numbers of buildings and not the number of people who may live in them. (2 Tr 202.)

However, despite acknowledging this requirement, nowhere does Mr. Cooper, or any of Wolverine's other witnesses, calculate this measure or apply it in his safety analysis. (2 Tr

202.) Instead, Mr. Cooper comes up with a new population distance measure of his own design that substantiates the company's assertion that the Meridian Township route is more densely populated. (2 Tr 208.)

Conveniently, in evaluating the Lansing route, Mr. Cooper adopts the width of the I-96 expressway as the distance for his population density evaluation, *i.e.* "the actual strip of land that is – from right-of-way boundary to right-of-way boundary on the I-96 freeway." (2 Tr 203.) In this self-serving way, Mr. Cooper personally defines the area he evaluates as an area without occupied buildings (2 Tr 203). At the same time, Wolverine avoids any comparative residential evaluation of alternative routes using the required Federal Safety Standard. (2 Tr 204, 460-461.)

To further avoid dealing with this Federal Safety Standard requirement, Mr. Cooper engages in his own semantic interpretation of "practicable" under the applicable standard so as to avoid a comparative evaluation. Rather, he simply concludes that the federal standard requires "you make a reasonable effort to avoid areas containing private dwellings." (2 Tr 204.) What that "reasonable effort" apparently consists of is a dismissal of the federal requirements and the creation of a formula that removes from consideration any data that does not support the desired results. By applying this artifice, Wolverine is able to render the federal standard meaningless and to completely eliminate a meaningful comparison between the I-96 route and any other.

Further, such a personal limitation of the area evaluated, to solely the I-96 right-of-way, discredits Mr. Cooper's claim to have employed the comparative risk model developed by Dr. Muhlbauer. Dr. Muhlbauer's model, as he admitted, was explicitly based on the 660 feet federal residence standard, which Mr. Cooper did not employ. (2 Tr 208.)

Moreover, not only does Wolverine limit its analysis as to the affected population, but the MPSC Staff follows Wolverine's lead in departing from the recognized federal standards. Mr. Mazuchowski explains that "Generally, Staff would prefer to locate the pipeline away from populated areas." (3 Tr 745.) He then goes on to equate the I-96 corridor to be preferred over the route proposed in Case No. U-12234 because, in part, there are no residences in 50 feet of the freeway. (3 Tr 844; MPSC Initial Brief, p 12.)

The over reliance of the MPSC Staff on the right of way corridor concept is blatantly evident in its lack of investigation of empirical evidence of actual residence and population along the proposed line. Clearly ignoring readily available census data, Mr. Mazuchowski concludes that the I-96 right-of-way is isolated. This information does not support Mr. Mazuchowski's conclusion. As unimpeachably set forth in Lansing Planning Manager James A. Ruff's Rebuttal Testimony, there are 2,374 ± existing and potential dwelling units adjacent to the I-96 right of way. (3 Tr 566; MPSC Initial Brief, p 13.) Thus, an application of the required federal standard to current population data demonstrates the I-96 route is not suitable for construction of this pipeline.

It is of grave concern that Wolverine and the MPSC Staff propose to embark on such a significant departure from the past practice of prohibiting the placement of petroleum pipelines in the right of way of state expressways. But, it is of even greater concern that in supporting this application they do so without having fulfilled the requirements of United States Department of Transportation Pipeline Safety Regulations (49 CFR 195, *et seq*). While giving lip service to avoiding populated areas, this application and record cannot be found to meet the minimum evaluation of the public interest and public safety. Placing a pipeline along a route

where over 9,000 people live close by when six alternate routes exist with far fewer inhabitants does not comply with Federal Safety Standards that require a pipeline right of way to be selected to avoid as far as practicable areas containing private dwellings. (2 Tr 203.) That area, as defined by federal government standards, is 660 feet, not 50 feet from the right of way as Wolverine would like.

Given the importance of the water supply at issue, the testimony of experts and Wolverine's admitted failure to abide by federal regulations and its willingness to create self serving formulas, the MPSC should rule in favor of the public interest and safety of Lansing's residents instead of blindly supporting the convenience and cost considerations of the industry it is to regulate.

CONCLUSION

In conclusion, the City of Lansing continues to request that Wolverine Pipeline's application in this matter be dismissed or denied.

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