

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
CITY OF LANSING AND DAVID C. HOLLISTER, MAYOR,
RESPONSE TO WOLVERINE PIPELINE COMPANY'S
MOTION TO STRIKE PORTIONS OF THE CITY'S
AND DEDDEN'S REPLY BRIEFS**

Intervenors City of Lansing and David C. Hollister, Mayor (collectively, the City), hereby respond to Wolverine Pipeline Company's (Wolverine) Motion to Strike certain portions of the Reply Briefs filed by the City and Lisa Dedden (Dedden). In support of its response to deny such relief, the City states as follows:

1. The City denies for the following reasons. Wolverine's Motion is merely an attempt to remove any statements in the pleading that disagree with its position. Throughout its brief, the City followed applicable court rules and cited testimony that supports its interpretation of evidence and testimony. In its testimony Wolverine referenced census data to support its position and now objects when the City incorporates actual census data that refutes its assertions. It would be grossly unfair and contrary to MCR 5.113(B)(1)(c) to allow Wolverine to place into evidence testimony based on census data and then deny the City the opportunity to refer to that same data to impeach Wolverine's testimony. In its reply brief the City cited Mr. Koster's reference to census

data to support his position. The City included a copy of that census data to impeach his testimony and prove his assertions were false. It would, therefore, be harmful error to allow Wolverine to open the door and place this testimony into evidence and then deny the City the opportunity to use this same evidence to support its position.

MPSC R460.17325(1) states in part that “. . .the commission *may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.*” (Emphasis added.) The census data submitted in the City’s reply brief was discussed several times during the hearing and it is what reasonably prudent persons use to determine state, county and city populations. Furthermore, R460.17327 states that the Commission “*may take notice of general, technical, or scientific facts within the commission’s specialized knowledge. . . . The commission may use its experience, technical competence, and specialized knowledge in the evaluation of evidence presented to it.*” (Emphasis added.) The evidence provided to the Commission in the City’s reply brief is exactly the type of information contemplated under this rule. The Commission should not strike this evidence, but simply give it probative effect and decide what weight to give it.

2. The City denies for the following reasons. Contrary to MCR 2.119(A)(1)(b) the allegations set forth in Paragraph 2 are not specific and are incapable of answer except in a general manner. All of the City’s arguments are supported by authority or transcript references and the photographs submitted by the County Commissioner are merely pictorial representations of verbal evidence and testimony previously placed on the record.

Furthermore, Wolverine’s reference to Rule 207 appears irrelevant as it does not support its argument since the City made no 207 comments.

3. a. The City denies for the following reasons. The City cited the record which shows that during the cross-examination, Mr. Cooper admits to having disregarded a part of

the Muhlbauer model and replaced it with his own formula. (2 Tr 205 - 212.) Wolverine's assertion that this alteration to an accepted scientific formula is an "improvement" and should, therefore, invalidate the City's argument is not supported by any evidence and is merely another attempt to eliminate from the record evidence that contradicts its position.

b. Wolverine's definition of "corridor" pertains specifically and myopically to the portion of I-96 that extend 50feet from the center of the roadway (3 Tr 844; MPSC Initial Brief, p 12), whereas the City's definition of "corridor" includes that area of land that abuts the I-96 highway. Mr. Ruff's testimony shows he is concerned that present and future development along that portion of I-96 could damage any pipeline in that area.

c. The City denies for the following reasons. The City supports its arguments with cites and transcript references and the Commission is free to judge whether it agrees with the City's interpretation of the evidence or Wolverine's. As the City points out, it is clear that Mr. Sara did not testify as to the accuracy of the well driller logs and he is not sure whether or not any of the logs were actually prepared by trained geologists. (2 Tr 294 - 299.) The City's witness also testified that well driller logs are not reliable. (3 Tr 612 - 613.)

d. The City denies for the following reasons. Wolverine's own safety expert, Mr. Cooper, admits that he has had no discussion whatsoever with the MDOT regarding the siting of the proposed pipeline. (2 Tr 219 - 224.) Despite this, Wolverine is asserting to the Commission that the I-96 corridor is a good site because it is isolated and free from third party damage. The City's brief merely points out the fact that Wolverine claims that the I-96 corridor is isolated is contradicted by the record, which shows that unsupervised third parties will be working within the area with backhoes.

e. The City denies for the following reasons. The City has no obligation to ask the same question of every adverse witness so as to give Wolverine the opportunity to find

someone who can answer it. The fact is, there is nothing on the record that shows that Wolverine has considered the impact of traffic vibrations on its pipeline. Mr. Cooper admits he knows of no body of knowledge relating to pipeline safety along an interstate highway in Michigan. (2 Tr 216.) It is not incumbent on the City to give Wolverine the opportunity to remedy its lack of diligence in this area.

f. The City denies for the following reasons. Mr. Cooper admits he did not follow the Muhlbauer model formula to calculate population proximity, and yet he attempts to use his altered version of this formula to support Wolverine's argument that the pipeline does not endanger significant areas of population. Wolverine's new assertion that the unilaterally altered formula is an improvement is just as valid as the City's assertion that the change completely invalidates the formula. Furthermore, the record shows that Wolverine has failed to follow accepted Pipeline Safety Regulations.

4. The City agrees that this matter is no longer before the ALJ and that the request that the full Commission address Wolverine Pipeline Company's motion to strike the City's and Dedden's reply briefs is appropriate.

CONCLUSION AND RELIEF REQUESTED

Wolverine's entire motion is an effort to eliminate from the pleadings any reference that illustrates the deficiencies in its case. However, the City's reply brief follows Michigan Court Rules which require each party to argue its case with references to pleadings, transcripts and the like. (MCR 7.206(E)(2)(b) and MCR 7.212(D).) In particular, the City has paid special attention to MCR 7.212(D)(3)(b), which states that a party is to include:

a counter statement of facts, pointing out the inaccuracies and deficiencies in the appellant's statement of facts without repeating that statement and with specific page references to the transcript, the pleadings or other document or papers filed with the trial court, to support the appellee's assertions.

Wolverine may not like the City's statement of facts and the way it points out the deficiencies and inaccuracies of Wolverine's case, but this is precisely what the court rules require an advocate to do.

Under MCR 2.115(B) portions of a pleading may be stricken which are "redundant, immaterial, impertinent, scandalous or indecent. . ." Wolverine has not alleged or demonstrated any reason under this rule that justifies striking any portion of the City's reply brief. Therefore, Wolverine's motion is without merit and should be denied in its entirety.

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

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