Docket #0014 Date Filed: 4/29/2020

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: WELDED CONSTRUCTION, L.P., Debtor.	Bankruptcy Case No.: 18-12378 (CSS) Chapter 11 Jointly administered
EARTH PIPELINE SERVICES, INC., Plaintiff, vs. COLUMBIA GAS TRANSMISSION, LLC, Defendant.	Adv. Pro. No. 19-50274 (CSS) Adv. Proc. No. 19-50275 (CSS)
COLUMBIA GAS TRANSMISSION, LLC, Counter-Claimant, vs. EARTH PIPELINE SERVICES, INC., Counter-Defendant.	Adv. Pro. No. 19-50274 (CSS) Adv. Proc. No. 19-50275 (CSS)

ANSWER AND AFFIRMATIVE DEFENSES
TO FIRST AMENDED COUNTERCLAIM

AND NOW COMES, Earth Pipeline Services, Inc. ("EPS"), by and through its undersigned counsel, and hereby files the following Answer and Affirmative Defenses to the First Amended Counterclaim of Columbia Gas Transmission, LLC ("CGT"), stating as follows.

1. Admit.

2. Admit.

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3. Admitted in part and denied in part. EPS is a Wyoming corporation licensed to do business in Pennsylvania. It is admitted that EPS has its principal place of business in Pennsylvania.

4. Paragraph 4 refers to written documents, the contents of which speak for themselves. To the extent the allegations differ from, paraphrase or attempt to re-characterize the nature and/or contents of the written documents, the allegations contained in Paragraph 4 are denied. It is further denied that EPS did not provide all contractually required work and strict proof thereof is demanded.

5. Paragraph 5 contains legal conclusions for which no response is required and which are deemed denied by operation of law. The remaining averments of this paragraph refer to written documents which speak for themselves itself. To the extent the allegations differ from, paraphrase or attempt to re-characterize the nature and/or contents of the written document, the allegations contained in Paragraph 5 are denied.

6. Paragraph 6 contains legal conclusions for which no response is required and which are deemed denied by operation of law. The remaining averments of this paragraph refer to written documents which speak for themselves. To the extent the allegations differ from, paraphrase or attempt to re-characterize the nature and/or contents of the written documents, the allegations contained in Paragraph 6 are denied.

7. Paragraph 7 refers to written documents, the contents of which speak for themselves. To the extent the allegations differ from, paraphrase or attempt to re-characterize the nature and/or contents of the written documents, the allegations contained in Paragraph 7 are denied.

8. Paragraph 8 refers to written documents, the contents of which speak for themselves. To the extent the allegations differ from, paraphrase or attempt to re-characterize the nature and/or contents of the written documents, the allegations contained in Paragraph 8 are denied.

9. Paragraph 9 contains legal conclusions for which no response is required and which are deemed denied by operation of law. The remaining averments of this paragraph refer to written documents which speaks for themselves. To the extent the allegations differ from, paraphrase or attempt to re-characterize the nature and/or contents of the written document, the allegations contained in Paragraph 9 are denied.

10. Paragraph 10 refers to written documents, the contents of which speak for themselves. To the extent the allegations differ from, paraphrase or attempt to re-characterize the nature and/or contents of the written documents, the allegations contained in Paragraph 10 are denied.

11. Paragraph 11 refers to written documents, the contents of which speak for themselves. To the extent the allegations differ from, paraphrase or attempt to re-characterize the nature and/or contents of the written documents, the allegations contained in Paragraph 11 are denied. By way of further answer, EPS denies that it made any false representations to CGT.

12. The allegations contained in Paragraph 12 are denied and strict proof thereof is demanded. By way of further answer, Paragraph 12 refers to a written communication, the contents of which speaks for itself. To the extent the allegations differ from, paraphrase or attempt to re-characterize the nature and/or contents of that written communication, the allegations contained in Paragraph 12 are denied. By way of further answer, EPS denies the

allegations set forth in the referenced written communication to the extent such allegations are incorporated into paragraph 12 and require a response.

13. The allegations contained in Paragraph 13 are denied and strict proof thereof is demanded.

14. It is admitted that on or about June 13, 2018 a Komatsu 240 Robotec operated by an employee of EPS tipped over on Hill 90 of MXP Spread 1. By way of further answer, the amended Counterclaim does not define a "roll over" incident and to the extent such description differs from the incident that occurred on June 13, 2018, the allegations of paragraph 14 are denied. All other allegations contained in Paragraph 14 are denied and strict proof is demanded.

15. It is admitted that EPS employee, Logan Hammel, was operating the Komatsu at the time of the referenced incident on June 13, 2018. All other allegations contained in Paragraph 15, including any and all allegations regarding causation, are denied and strict proof is demanded.

16. The allegations contained in paragraph 16 are denied and strict proof thereof is demanded. By way of further answer, Paragraph 16 references a "steep slope plan" that is undefined and, therefore, any and all allegations referring to said "steep slope plan" are denied and strict proof thereof is demanded. To the extent CGT is referring to a written document, said document would speak for itself and to the extent that any allegations differ from, paraphrase or attempt to re-characterize the nature and/or contents of any such written document, the allegations contained in Paragraph 16 are denied.

17. Paragraph 17 refers to a photograph, the contents of which speaks for itself. To the extent the allegations differ from, paraphrase or attempt to re-characterize the nature and/or

contents of the photograph, the allegations contained in Paragraph 17 are denied. By way of further answer, EPS is not aware of who took this photograph and is therefore without knowledge as to its validity or authenticity and to the extent it depicts anything contrary to actual occurrences or conditions, paragraph 17 is denied and strict proof is demanded.

18. The allegations contained in Paragraph 18 are denied and strict proof thereof is demanded.

19. Paragraph 19 contains legal conclusions for which no response is required and which are deemed denied by operation of law. By way of further answer, Paragraph 19 references a "steep slope plan" that is undefined and, therefore, any and all allegations referring to said "steep slope plan" are denied and strict proof thereof is demanded. To the extent Paragraph 19 refers to written documents, the contents of any such documents speak for themselves. To the extent the allegations differ from, paraphrase or attempt to re-characterize the nature and/or contents of the written documents, the allegations contained in Paragraph 19 are denied. By way of further answer, EPS denies that it failed to use commonly agreed upon best practices in performing work on MXP Project.

20. The allegations contained in Paragraph 20 are denied and strict proof thereof is demanded.

21. It is admitted that a safety stand down was implemented on MXP Spread 1 on June 14, 2018. The remaining averments of paragraph 21 either constitute conclusions of law that require no response or assert allegations regarding which EPS lacks sufficient information to either admit or deny and, therefore, all such remaining averments are denied and strict proof is demanded.

22. It is admitted that CGT and EPS held a safety meeting on or around June 18, 2018. All other averments of paragraph 22 are denied and/or constitute conclusions of law for which no response is required and which are deemed denied by operation of law.

23. It is admitted that on or about June 20, 2018, EPS was notified that its subcontract with Welded was purportedly being terminated. The remaining averments of paragraph 23, including any and all allegations regarding causation, the alleged legal or factual basis of the purported termination and/or the legal effect of the purported termination are denied and strict proof is demanded.

24. The allegations of paragraph 24 are denied and strict proof is demanded.

25. Paragraph 25 constitutes a legal conclusion for which no response is required and which are deemed denied by operation of law. To the extent Paragraph 25 refers to written documents, the contents speak for themselves. To the extent the allegations differ from, paraphrase or attempt to re-characterize the nature and/or contents of the written documents, the allegations contained in Paragraph 25 are denied.

26. Paragraph 26 constitutes a legal conclusion for which no response is required and which are deemed denied by operation of law. To the extent Paragraph 26 refers to written documents, the contents speak for themselves. To the extent the allegations differ from, paraphrase or attempt to re-characterize the nature and/or contents of the written documents, the allegations contained in Paragraph 26 are denied.

27. Paragraph 27 contains a legal conclusion for which no response is required and which are deemed denied by operation of law. To the extent Paragraph 27 refers to written documents, the contents speak for themselves. To the extent the allegations differ from,

paraphrase or attempt to re-characterize the nature and/or contents of the written documents, the allegations contained in Paragraph 27 are denied.

28. EPS denies that it is not entitled to the referenced change order. EPS admits that it represented that it had the requisite competence and skill to perform work on the slopes of the MXP Project and that it received a copy of a purported steep slope plan prior to submitting its change order. By way of further answer, Paragraph 28 references a "steep slope plan" that is undefined and, therefore, any and all allegations referring to said "steep slope plan" are denied and strict proof thereof is demanded. The remaining averments of Paragraph 28 constitute legal conclusions for which no response is required and which are deemed denied by operation of law. To the extent Paragraph 28 refers to written documents, the contents speak for themselves. To the extent the allegations differ from, paraphrase or attempt to re-characterize the nature and/or contents of the written documents, the allegations contained in Paragraph 28 are denied.

29. The averments of Paragraph 29 are denied and strict proof is demanded. By way of further answer, to the extent Paragraph 29 refers to written documents, the contents speak for themselves. To the extent the allegations differ from, paraphrase or attempt to re-characterize the nature and/or contents of the written documents, the allegations contained in Paragraph 29 are denied.

30. The averments of Paragraph 30 are denied and strict proof is demanded. By way of further answer, to the extent Paragraph 30 refers to written documents, the contents speak for themselves. To the extent the allegations differ from, paraphrase or attempt to re-characterize the nature and/or contents of the written documents, the allegations contained in Paragraph 30 are denied.

31. The averments of Paragraph 31 are denied and strict proof is demanded. By way of further answer, to the extent Paragraph 31 refers to written documents, the contents speak for themselves. To the extent the allegations differ from, paraphrase or attempt to re-characterize the nature and/or contents of the written documents, the allegations contained in Paragraph 31 are denied.

First Cause of Action – Slander of Title

32. EPS incorporates its answers to paragraphs 1-31 above as if fully set forth herein.

33. EPS admits that it filed a Notice of Mechanic's Lien in Marshall County, West Virginia. Said Notice is a written document, the contents of which speaks for itself. To the extent the allegations differ from, paraphrase or attempt to re-characterize the nature and/or contents of the written documents, the allegations contained in Paragraph 33 are denied.

34. Paragraph 34 refers to written documents, the contents of which speak for themselves. To the extent the allegations differ from, paraphrase or attempt to re-characterize the nature and/or contents of the written documents, the allegations contained in Paragraph 34 are denied. By way of further answer, EPS denies that said documents make any false claims and strict proof thereof is demanded.

35. The averments of paragraph 35 are denied and strict proof is demanded.

36. The averments of paragraph 36 are denied and strict proof is demanded.

37. Paragraph 37 constitutes legal conclusions for which no response is required and which are deemed denied by operation of law.

38. Paragraph 38 constitutes legal conclusions for which no response is required and which are deemed denied by operation of law.

39. Paragraph 39 constitutes legal conclusions for which no response is required and which are deemed denied by operation of law.

Second Cause of Action – Breach of Representation and Warranty

40. EPS incorporates its answers to paragraphs 1-39 above as if fully set forth herein.

41. Paragraph 41 constitutes a legal conclusion for which no response is required and which is deemed denied by operation of law. Paragraph 41 also refers to written documents, the contents of which speak for themselves. To the extent the allegations differ from, paraphrase or attempt to re-characterize the nature and/or contents of the written documents, the allegations contained in Paragraph 41 are denied.

42. Paragraph 42 refers to written documents, the contents of which speak for themselves. To the extent the allegations differ from, paraphrase or attempt to re-characterize the nature and/or contents of the written documents, the allegations contained in Paragraph 42 are denied.

43. The averments of paragraph 43 are denied and strict proof is demanded.

44. The averments of paragraph 44 are denied and strict proof is demanded.

45. Paragraph 45 constitutes a legal conclusion for which no response is required and which is deemed denied by operation of law.

Third Cause of Action – Breach of Contract

46. EPS incorporates its answers to paragraphs 1-45 above as if fully set forth herein.

47. Paragraph 47 constitutes legal conclusions for which no response is required and which are deemed denied by operation of law.

48. Paragraph 48 contains legal conclusions for which no response is required and which are deemed denied by operation of law. Paragraph 48 also refers to written documents, the contents of which speak for themselves. To the extent the allegations differ from, paraphrase or attempt to re-characterize the nature and/or contents of the written documents, the allegations contained in Paragraph 48 are denied. By way of further answer, EPS denies that it failed to timely perform under the Subcontracts.

49. Paragraph 49 contains legal conclusions for which no response is required and which are deemed denied by operation of law. Paragraph 49 also refers to written documents, the contents of which speak for themselves. To the extent the allegations differ from, paraphrase or attempt to re-characterize the nature and/or contents of the written documents, the allegations contained in Paragraph 49 are denied. By way of further answer, EPS denies that it failed to work in accordance with any CGT protocols.

50. Paragraph 50 constitutes a legal conclusion for which no response is required and which is deemed denied by operation of law.

Fourth Cause of Action - Negligence

51. EPS incorporates its answers to paragraphs 1-51 above as if fully set forth herein.

52. Paragraph 52 contains legal conclusions for which no response is required and which are deemed denied by operation of law.

53. Paragraph 53 contains legal conclusions for which no response is required and which are deemed denied by operation of law.

54. Paragraph 54 contains legal conclusions for which no response is required and which are deemed denied by operation of law.

55. Paragraph 55 contains a legal conclusions for which no response is required and which is deemed denied by operation of law.

56. Paragraph 56 contains legal conclusions for which no response is required and which are deemed denied by operation of law.

Prayer

57. Paragraph 57 is a request directed at the Court and requires no response from EPS. To the extent that any response is required, EPS denies that CGT is entitled to the requested relief.

58. Paragraph 58 is a request directed at the Court and requires no response from EPS. To the extent that any response is required, EPS denies that CGT is entitled to the requested relief.

59. Paragraph 59 is a request directed at the Court and requires no response from EPS. To the extent that any response is required, EPS denies that CGT is entitled to the requested relief.

AFFIRMATIVE DEFENSES

60. CGT fails to state a claim upon which relief may be granted against EPS.

61. CGT's claims are barred by the doctrine of estoppel.

62. CGT's claims are barred by applicable statutes of limitations.

63. CGT is barred from recovery because it failed to reasonably mitigate any alleged damages.

64. There is no causal connection between the damages alleged by CGT and the actions of EPS.

65. CGT's recovery if barred in whole or in part by the doctrines of comparative fault, contributory negligence, and/or assumption of the risk.

66. To the extent CGT alleges causes of action based on alleged misrepresentations, such causes of action are barred for failure to plead with specificity.

67. CGT's claims are barred by the doctrine of unclean hands.

68. CGT's claims are barred by the doctrine of laches.

69. CGT lacks standing to bring the asserted claims against EPS.

70. CGT's claims are barred, in whole or in part, for lack of legal privity.

71. All or some of the claims are barred because CGT sustained no damages as the result of the conduct of EPS.

72. EPS reserves all defenses available under Rules 8 and 12 of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rules 7008 and 7012, to the extent discovery dictates the applicability of any such defenses.

73. EPS expressly reserves the right to add separate or additional affirmative defenses, and to modify those asserted, in response to new knowledge or information obtained through investigation or discovery.

WHEREFORE, EPS requests that the Court dismiss all four Causes of Action asserted by CGT in its First Amended Counterclaim with prejudice and enter any further relief that the Court deems proper.

Date: April 29, 2020

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2020, I caused a true and correct copy of the foregoing to be served upon the on the parties identified below via email and by the Court's CM/ECF System:

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Dated: April 29, 2020

CAMPBELL & LEVINE, LLC

/s/ Mark T. Hurford
Mark T. Hurford (Bar No. 3299)