

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Complaint of
Cutter Exploration, Inc.,

Complainant,

v.

The East Ohio Gas Company d/b/a
Dominion East Ohio,

Respondent.

CASE NO. 09-1982-GA-CSS

ANSWER

Respondent The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") for its Answer to the Complaint responds as follows:

FIRST DEFENSE

1. In response to the first four unnumbered paragraphs of the Complaint, DEO admits that Complainant Cutter Exploration, Inc. ("Complainant") purports to bring an action under Ohio Revised Code Section 4905.26, and further alleges violations of Ohio Revised Code Section 4905.35 and DEO's tariff. DEO states that Ohio Revised Code Section 4905.01 *et seq.* and DEO's tariff speak for themselves. DEO denies that it has violated any statute, regulation, tariff provision, industry standard, or Commission rule or order. To the extent that the rest of the statements in these paragraphs contain legal conclusions, DEO need not respond. DEO otherwise denies the remaining allegations contained in these paragraphs.

Allegations, To All Counts

2. DEO admits the allegations contained in paragraph 1 of the Complaint.

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3. DEO admits that Complainant operates a number of oil and gas wells in Ohio, including wells in Geauga County, Stark County, and Summit County, but DEO denies the remainder of the allegations contained in paragraph 2 of the Complaint for lack of sufficient knowledge or information to form a belief as to the truth thereof.

4. DEO admits certain wells owned and/or operated by Complainant in Geauga County are operated as intermittent wells, that, during the operation of an intermittent well, an automatic valve opens on an intermittent basis allowing gas to flow from the well to the production receipt point and that intermittent wells do not use pump jacks, but DEO denies the remainder of the allegations contained in paragraph 3 of the Complaint for lack of sufficient knowledge or information to form a belief as to the truth thereof.

5. DEO admits that Complainant delivers natural gas to production receipt points in the DEO NM11 distribution system and the TPL14 transmission system, but DEO denies the remainder of the allegations contained in paragraph 4 of the Complaint for lack of sufficient knowledge or information to form a belief as to the truth thereof.

6. DEO states that Section 10.1 of its General Terms and Conditions of Transportation Service speaks for itself. DEO denies any remaining allegations contained in paragraph 5 of the Complaint.

7. DEO states that Section 10.4 of its General Terms and Conditions of Transportation Service speaks for itself. DEO denies any remaining allegations contained in paragraph 6 of the Complaint.

8. DEO states that Section 10.6 of DEO's General Terms and Conditions of Transportation Service speaks for itself. DEO denies any remaining allegations contained in this paragraph 7 of the Complaint.

9. DEO states that Section 10.8 of DEO's General Terms and Conditions of Transportation Service speaks for itself. DEO denies any remaining allegations contained in paragraph 8 of the Complaint.

10. DEO states that Section 10.11 of DEO's General Terms and Conditions of Transportation Service speaks for itself. DEO denies any remaining allegations contained in paragraph 9 of the Complaint.

11. DEO admits that it provided producers with options to change from paper chart measurement on production master meter stations to electronic gas measurement pursuant to an agreement (the "Agreement") with the Ohio Oil and Gas Association ("OOGA"). DEO states that the Agreement was unanimously ratified and adopted by the members of OOGA's Board of Trustees — including Complainant's counsel, Mr. Airey — on September 27, 2007. Pursuant to the terms of the Agreement, DEO offered producers three options with respect to **existing** orifice meters: (1) convert existing orifice meters to rotary meters with an electronic gas measurement corrector at DEO's cost; (2) convert existing orifice master meter stations using paper charts to electronic gas measurement at the producer's cost using DEO approved electronic gas measurement equipment for orifice meters, including Total Flow, Eagle, and New Flow; or (3) do nothing and continue to use existing orifice meters with paper chart gas measurement and integration. DEO further states that with respect to **new** meters, the Agreement specified that all such meters would be rotary meters with electronic gas measurement correction. DEO notified producers by letter dated July 28, 2008 that, "Effective September 1st, 2008, DEO will require all new production measurement stations on DEO Gathering, Distribution, and Transmission Systems to be rotary meters." DEO otherwise denies the remainder of the allegations contained in paragraph 10 of the Complaint.

12. DEO admits that, pursuant to the Agreement, Complainant chose to convert existing orifice meters in Geauga County to rotary meters. DEO further admits that Complainant arranged for DEO to install rotary meters at master meter stations for new wells drilled in Geauga County. DEO denies the remainder of the allegations contained in paragraph 11 of the Complaint.

13. DEO admits that measurement issues were discovered at three production receipt points with rotary meters. DEO additionally states that the measurement issues were caused solely by the absence of stricture plates; and that but for the damage caused by the absence of stricture plates, the meters were free of defect and capable of accurate measurement. DEO otherwise denies the remainder of the allegations contained in paragraph 12 of the Complaint.

14. DEO admits that a stricture plate is a device that can be installed after a rotary meter to prevent the meter from over-spinning and damaging the meter. DEO denies the remainder of the allegations contained in paragraph 13 of the Complaint.

15. DEO admits that, in July 2008, Complainant accepted a credit of approximately 16,000 Mcf to resolve the measurement issues at the three production receipt points without stricture plates. DEO denies the remainder of the allegations contained in paragraph 14 of the Complaint.

16. DEO admits that, pursuant to the DEO-OOGA Agreement, it requires rotary meters at new production receipt points collecting gas from Complainant's intermittent wells and that it requires rotary meters with stricture plates at new production receipt points. DEO further admits that it uses rotary meters with stricture plates at approximately 30 production

receipt points to measure gas from wells owned and/or operated by Complainant. DEO otherwise denies the remainder of the allegations contained in paragraph 15 of the Complaint.

17. DEO admits the allegations contained in paragraph 16 of the Complaint.

18. DEO denies the allegations contained in paragraph 17 of the Complaint.

19. DEO denies the allegations contained in this paragraph 18 of the Complaint.

20. DEO denies the allegations contained in paragraph 19 of the Complaint (including but not limited to subparagraphs a through d).

21. DEO denies that rotary meters are prone to stoppages and mechanical failure and denies the remainder of the allegations contained in paragraph 20 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

22. DEO admits that it has installed dual rotary meters in certain locations where gas flow exceeds single meter flow capacity and denies the remainder of the allegations contained in paragraph 21 of the Complaint.

23. DEO admits that dual meters are used to measure gas at the Kulp #1 station and denies the remainder of the allegations contained in paragraph 22 of the Complaint.

24. DEO admits that it places regulators upstream of rotary meters measuring gas flow into the NM11 system and that this regulator design is called low side measurement. DEO denies the remainder of the allegations contained in paragraph 23 of the Complaint.

25. DEO denies the allegations contained in paragraph 24 of the Complaint.

26. DEO denies the allegations contained in paragraph 25 of the Complaint.

27. DEO admits that, in or around September 2008, it allowed Complainant temporarily to place regulator pressure sensing lines after the rotary meter and stricture plate at

the P167 Monticello meter location. DEO states that it discovered that this arrangement allowed the meter to experience pressure higher than the maximum allowable pressure on the NM11 pipeline system and that consequently, DEO requested Complainant to return the sensing lines for the regulators upstream of the rotary meter. DEO denies the remainder of the allegations contained in paragraph 26 of the Complaint.

28. DEO admits that, in or around October 2008, it allowed Complainant temporarily to convert the P167 Monticello meter location to high side measurement by placing regulators downstream of the rotary meter and stricture plate. DEO states that it has requested Complainant to return this station to low side measurement, which Complainant refuses to do. DEO denies that it is allowing other producers, including Dominion Exploration and Production, to use high side measurement with rotary meters on new and existing metering stations connected to the NM11 distribution system. DEO admits that, due to operational considerations, and consistent with its treatment of all other Ohio producers, DEO will not permit Complainant to convert its metering stations to high side measurement. DEO denies the remainder of the allegations contained in paragraph 27 of the Complaint.

29. DEO denies the allegations contained in paragraph 28 of the Complaint.

30. DEO admits that, pursuant to the Agreement with OOGA, DEO allows the use of orifice meters at production receipt points where orifice meters were installed prior to September 1, 2008, and the producers did not elect to convert to rotary meters. DEO denies the remainder of the allegations contained in paragraph 29 of the Complaint.

31. DEO admits the allegations contained in paragraph 30 of the Complaint. DEO states that the meter previously at the location was an orifice meter installed prior to

September 1, 2008 and thus the installation of an electronic orifice meter, at Complainants' option and cost, was permitted under the DEO-OOGA Agreement.

32. DEO admits that, pursuant to the terms of the Agreement with OOGA, DEO has refused to allow Complainant to install or use orifice meters on new wells and existing wells with rotary meters feeding into the NM11 distribution system and the TPL14 transmission system. DEO denies the remainder of the allegations contained in paragraph 31 of the Complaint.

Count I – Violation of Tariff

33. In response to paragraph 32 of the Complaint, DEO hereby incorporates by reference paragraphs 1 through 32 of this Answer as though fully set forth.

34. DEO admits that it requires Complainant to install rotary meters on all new intermittent wells. DEO states that such a requirement arises from the DEO-OOGA Agreement. DEO further admits that it requires Complainant — and all producers — to use low-side measurement for production into the NM11 distribution system. DEO also admits that it allows orifice measurement at some production receipt points consistent with the terms of the Agreement; specifically, DEO permits orifice measurement on wells with orifice meters in place prior to September 1, 2008 where the producer elected to continue with an orifice meter with paper chart measurement, or convert the existing orifice meter to an orifice meter with electronic measurement at the producer's cost. DEO admits that, under the Agreement, it will not allow Complainant to convert existing rotary master meter stations measuring gas from intermittent wells to orifice measurement. DEO further admits that it will not permit Complainant to install orifice measurement on new master meter stations in contravention of the Agreement. DEO denies the remainder of the allegations contained in paragraph 33 of the Complaint.

35. DEO admits that it has approved orifice meters for use in the NM11 distribution system and the TPL 14 transmission system consistent with the terms of the DEO-OOGA Agreement; i.e., DEO has approved the use of orifice meters when an orifice meter was in place prior to September 1, 2008 and the producer elected either to: (1) continue with an orifice meter with paper chart measurement; or (2) convert to an orifice meter with electronic measurement at the producer's cost. DEO states that its tariff speaks for itself. DEO denies the remainder of the allegations contained in paragraph 34 of the Complaint.

36. DEO admits that it continues to require Complainant and all other Ohio producers to use low side measurement at production receipt points for intermittent wells. DEO states that its tariff speaks for itself. DEO denies the remainder of the allegations contained in paragraph 35 of the Complaint.

37. Apart from the provisions of DEO's tariff, which speak for themselves, DEO denies the allegations contained in paragraph 36 of the Complaint.

38. DEO denies the allegations contained in paragraph 37 of the Complaint.

Count II – Violation of Section 4905.35, Revised Code

39. In response to paragraph 38 of the Complaint, DEO hereby incorporates by reference paragraphs 1 through 38 of this Answer as though fully set forth.

40. DEO denies the allegations contained in paragraph 39 of the Complaint.

41. DEO admits that, in or around July 2009, at Complainant's request, DEO conducted an audit of production meters tied into the NM11 distribution system in Chester Township, Geauga County, Ohio. DEO denies that only the rotary meter stations for Complainant's wells had stricture plates. DEO states that, while some wells with rotary meters tied to the system do not have stricture plates, such meters were installed pursuant to 2004 specifications that did not require stricture plates. DEO further states that all rotary meters tied

to the NM11 distribution system will have stricture plates installed by the end of 2010. DEO denies the remainder of the allegations contained in paragraph 40 of the Complaint.

42. DEO admits that some other producers have rotary meters without stricture plates. DEO states that such meters were installed pursuant to 2004 specifications that did not require stricture plates. DEO also states that all rotary meters tied to the NM11 distribution system will have stricture plates installed by the end of 2010. DEO admits that some other producers have orifice meters. DEO further states that, pursuant to its Agreement with OOGA, DEO has approved the use of orifice meters when an orifice meter was in place prior to September 1, 2008 and the producer elected either to: (1) continue with an orifice meter with paper chart measurement; or (2) convert to an orifice meter with electronic measurement at the producer's cost. DEO admits that it will not allow Complainant to convert rotary meters to orifice meters, or to install orifice meters at new master meter stations in contravention of the Agreement. DEO denies the remainder of the allegations contained in paragraph 41 of the Complaint.

43. DEO admits that it does not permit Complainant to use high side measurement at its metering stations. DEO denies the remainder of the allegations contained in paragraph 42 of the Complaint.

44. DEO denies the allegations contained in this paragraph 43 of the Complaint.

45. DEO denies the allegations contained in paragraph 44 of the Complaint.

46. DEO states that Ohio Revised Code Section 4905.35 speaks for itself. DEO denies the remainder of the allegations contained in paragraph 45 of the Complaint.

47. DEO denies the allegations contained in paragraph 46 of the Complaint.

48. In response to the remaining unnumbered paragraphs of the Complaint, DEO states that these paragraphs contain legal conclusions and requests for relief that are not subject to denial or admission.

49. DEO denies any and all allegations contained in the Complaint not expressly admitted in this Answer.

SECOND DEFENSE

50. The Complaint fails to state a claim for which relief may be granted.

THIRD DEFENSE

51. DEO at all times has complied with all applicable statutes, regulations, industry standards, reliability guidelines, Commission rules and orders, and tariffs.

FOURTH DEFENSE

52. To the extent that DEO violated any applicable statute, regulation, industry standard, reliability guidelines, Commission rule or order, or tariff provision, which is expressly denied, such a violation was not the proximate cause of any damage or injury alleged by Complainant.

FIFTH DEFENSE

53. Some or all of Complainant's claims are limited or barred by the Agreement between DEO and OOGA.

SIXTH DEFENSE

54. Complainant's claims and/or damages are barred in whole or in part by the provisions of applicable tariffs.

SEVENTH DEFENSE

55. Some or all of Complainant's claims are limited or barred by the doctrine of unclean hands.

EIGHTH DEFENSE

56. Some or all of Complainant's claims are limited or barred by the doctrine of estoppel.

NINTH DEFENSE

57. Some or all of Complainant's claims are limited or barred by the doctrine of accord and satisfaction.

TENTH DEFENSE

58. Some or all of Complainant's claims are limited or barred due to Complainant's failure to mitigate damages.

ELEVENTH DEFENSE

59. DEO reserves the right to raise such other and further defenses as are warranted pursuant to additional discovery in this case.

WHEREFORE, DEO respectfully request that this matter be dismissed with prejudice and that DEO be given such other relief that the law, equity and justice require.

Respectfully submitted,



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Counsel for Respondent The East Ohio Gas
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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Answer was sent by Regular U.S. Mail to the following counsel this 11th day of January 2010.

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An Attorney for The East Ohio Gas Company d/b/a
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