

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**CUTTER EXPLORATION, INC.'S MOTION TO ISSUE A SUBPOENA AND  
MEMORANDUM IN SUPPORT**

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Attorneys for Cutter Exploration, Inc.

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**I. MOTION OF CUTTER EXPLORATION, INC. FOR ISSUANCE OF SUBPOENA**

Pursuant to Ohio Administrative Code Section 4901-1-25, Complainant Cutter Exploration, Inc. ("Cutter") by and through Counsel, respectfully moves the Commission to issue a subpoena to HPE, Inc., 2025 Harsh Avenue Southeast, Massillon, OH 44646-7127, for its appearance, testimony and production of documents for deposition in the above-captioned matter on March 22, 2011, commencing at 10 a.m. at the offices of Buckingham, Doolittle & Burroughs, LLP, 3800 Embassy Parkway, Suite 300, Akron, Ohio 44333. The documents requested in the subpoena may also be sent to attorney Clay Keller's attention at this address in lieu of HPE, Inc.'s appearance. The reasons in support of this Motion are set forth in the attached Memorandum in Support.

## II. MEMORANDUM IN SUPPORT

Section 4901-1-16 of the Ohio Administrative Code ("OAC") states, in part, as follows:

### **"4901-1-16 General provisions and scope of discovery**

(A) The purpose of rules 4901-1-16 to 4901-1-24 of the Administrative Code is to encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings. These rules are also intended to minimize commission intervention in the discovery process.

(B) Except as otherwise provided in paragraphs (G) and (I) of this rule, any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought would be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may be obtained through interrogatories, requests for the production of documents and things or permission to enter upon land or other property, depositions, and requests for admission. The frequency of using these discovery methods is not limited unless the commission orders otherwise under rule 4901-1-24 of the Administrative Code.

In turn, OAC 4901-1-25 states in pertinent part, as follows:

### **"4901-1-25 Subpoenas.**

(A) The commission, any commissioner, the legal director, the deputy legal director, or an attorney examiner may issue subpoenas, upon their own motion or upon motion of any party. A subpoena shall command the person to whom it is directed to attend and give testimony at the time and place specified therein. A subpoena may also command such person to produce the books, papers, documents, or other tangible things described therein. A copy of the motion for a subpoena and the subpoena itself should first be submitted to the attorney examiner assigned to the case, or to the legal director or deputy legal director, for signature of the subpoena. After the subpoena is signed, a copy of the motion for a subpoena and a copy of the signed subpoena shall then be docketed and served upon the parties to the case. The person seeking the subpoena shall retain the original signed subpoena and make arrangements for its service.

\* \* \*

(D) A subpoena may require a person, other than a member of the commission staff, to attend and give testimony at a deposition, and to produce designated books, papers, documents, or other tangible things within the scope of discovery set forth in rule 4901-1-16 of the Administrative Code. Such a subpoena is subject

to the provisions of rule 4901-1-24 of the Administrative Code as well as paragraph (C) of this rule.

(E) Unless otherwise ordered for good cause shown, all motions for subpoenas requiring the attendance of witnesses at a hearing must be filed with the commission no later than five days prior to the commencement of the hearing.

HPE has information and documents relating to the design and fabrication of the Lil Fed equipment that East Ohio has had producers, including Cutter, install in conjunction with the rotary meters. As part of the rotary meter run design from East Ohio, this equipment has caused operational problems for Cutter. Cutter believes that there have been design modifications to the Lil Fred equipment which were directed at attempting to correct operational problems. HPE is the fabrication company that builds this equipment, and it will have documents and information concerning the specifications, design and/or any modifications made to the design of this equipment. Also, HPE should have various communications relating to the problems this equipment has caused producers such as Cutter Exploration.


Therefore, this request for the issuance of a subpoena clearly falls within the scope of OAC 4901-1-16.

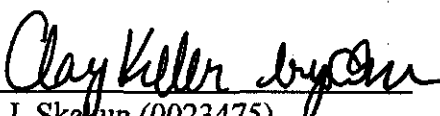
### **III. CONCLUSION**

For the foregoing reasons, Cutter moves the Commission to immediately issue a subpoena to HPE, Inc. for its appearance for deposition on March 22, 2011 at the offices of Buckingham, Doolittle & Burroughs, LLP, 3800 Embassy Parkway, Suite 300, Akron, Ohio 44333 at 9:00 a.m. The documents requested in the subpoena can also be sent to attorney Clay Keller's attention at this address in lieu of HPE, Inc.'s appearance.

If such subpoena cannot be issued and served to HPE, Inc. in time for it to appear with documents and provide deposition testimony on March 22, 2011, Cutter requests that the

Commission issue subpoena depositions at dates and times acceptable to all parties and to HPE,  
Inc.

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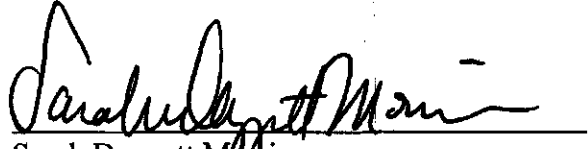
**Attorneys for Cutter Exploration, Inc.**

**CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing *Motion to Issue a Subpoena and Memorandum in Support* was served upon the following persons listed below by electronic and regular U.S. mail, postage prepaid, on March 10, 2011:

David A. Kutik  
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\_\_\_\_\_  
Sarah Daggett Morrison

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

SUBPOENA DUCES TECUM

TO:

HPE, Inc.  
Attn: Records Custodian  
2025 Harsh Avenue Southeast  
Massillon, OH 44646-7127

Upon application of Cutter Exploration, Inc. you are hereby required to appear at the offices of Buckingham, Doolittle & Burroughs, LLP, in the following proceeding:

Case No. 09-1982-GA-CSS

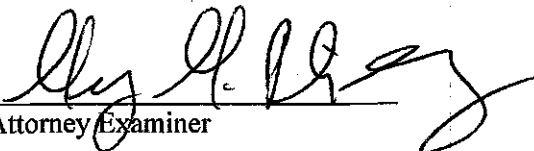
Case Title: *In the Matter of the Complaint of Cutter Exploration, Inc. v. The East Ohio Gas Company d/b/a Dominion East Ohio.*

You are to appear at the offices of Buckingham, Doolittle & Burroughs, LLP, 4518 Fulton Drive, NW, Canton, Ohio 44735 on March 22, 2011 at 10:00 o'clock a.m. The documents requested in this subpoena can also be sent to attorney John Bentine's attention at this address in lieu of your appearance.

You shall bring the following:

All documents set forth in the attached Exhibit A.

Dated at Columbus, Ohio this 10<sup>th</sup> day of March, 2011.

  
\_\_\_\_\_  
Attorney Examiner

Notice: If you are not a party or an officer, agent, or employee of a party to this proceeding then witness fees for attending under this subpoena are to be paid by the party at whose request the witness is summoned. Every copy of this subpoena for the witness must contain this notice.

### **Exhibit A**

Please produce the following documents:

1. All documents reflecting communications between The East Ohio Gas Company d/b/a Dominion East Ohio or any of its subsidiaries and affiliates ("DEO") and HPE, Inc., concerning the "LiL Fred Vert," aka Kimray Vertical Separator(s) (the "LiL Fred") fabricated and/or manufactured by HPE. A copy of a drawing for the 'LiL Fred is attached hereto for reference.
2. All documents concerning communications between and among HPE, Inc., Kimray, Inc., and/or any of Kimray's distributors concerning the design and specifications for the Lil Fred and any re-design and/or modification(s) to the Lil Fred.
3. A copy of any drawings of the Lil Fred which are different than the drawing attached hereto.
4. Accounting records, summaries or invoices showing the number of Lil Freds sold to Ohio oil and gas producers.
5. All documents reflecting communications between DEO and HPE, Inc., concerning the design, fabrication, purchase and/or installation of any equipment, heaters and/or enclosures DEO has ordered or purchased for use with rotary meters for measurement of production gas.
6. All design drawings and specifications concerning any rotary meter stations, meter sets or equipment HPE has fabricated, assembled or constructed (or is in the process of fabricating, assembling or constructing) for DEO during the past 3 years.