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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

PUCO

Complainant,)

Case No. 09-1982-GA-CSS

v.)

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

Respondent.)

**MOTION TO COMPEL DISCOVERY ON ISSUE
OF LOST AND UNACCOUNTED FOR GAS
BY CUTTER EXPLORATION, INC.**

Now comes Complainant, Cutter Exploration, Inc., ("Cutter Exploration") by and through counsel, pursuant to Rules 4901-1-12 and 4901-1-23 of the Ohio Administrative Code and hereby moves the Public Utilities Commission of Ohio ("PUCO" or "the Commission"), the legal director, or the attorney examiner assigned to the case to enter an order which compels The East Ohio Gas Company d/b/a Dominion East Ohio ("East Ohio" or "Respondent") to fully respond to **Interrogatory Nos. 59 and 60** and which compels East Ohio to produce the documents responsive to **Request for Production of Documents No. 66**. The reasons for granting this Motion are set forth in the attached Memorandum in Support.

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Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Through written discovery served upon East Ohio, Cutter Exploration seeks documents and information concerning the issue of “lost and unaccounted for gas.” Lost and unaccounted for gas is a term of art which refers to the difference in the amount of gas entering a utility’s distribution, gathering and/or transmission system(s) and the amount of gas measured that leaves the system(s). It is undisputed that, as a matter of ordinary course, utility companies such as East Ohio lose and/or cannot account for certain amounts of gas which have entered into their systems during any given period of time. As noted in a recent article from the American Gas Association, “[t]he primary cause of LUAF [lost and unaccounted for gas] is meter uncertainty.”¹ The article goes on to explain that different structures are used for utilities to recover the costs of lost and unaccounted for gas and in some instances, the regulator may “place a cap on the amount” of cost that may be accrued and recovered by the utility. *Id.* at 3.

It is Cutter Exploration’s contention that East Ohio through the use of the rotary meters it has mandated has been consistently under measuring the amount of gas it delivers to each production receipt point. If this contention is accurate, then East Ohio is receiving additional gas into its distribution system which is not being measured or paid for thereby creating a windfall for East Ohio. Upon information and belief, excess, unmeasured gas entering East Ohio’s system is available to replace lost and unaccounted for gas at no cost to East Ohio and/or it is available for transfer to an affiliate or other entity for consumption or sale. Cutter Exploration seeks discovery on this issue because it relates directly to the issue of accurate measurement of gas entering into East Ohio’s systems.

¹ Natural Gas Rate Round-Up, *Lost and Unaccounted for Gas Cost Recovery Mechanisms*, American Gas Association (December 2009). A true and accurate copy of this article is attached hereto as Exhibit “A.”

Moreover, when East Ohio was making proposals to the Ohio Oil and Gas Association (“OOGA”) in an effort to get the Association to agree with the use of rotary meters, it took the position that “measurement accuracy” is what “everyone wants” and that East Ohio “makes no money from inaccurate/low measurement.” Attached hereto as Exhibit “B” are two pages from an East Ohio presentation asserting this position. Cutter Exploration simply seeks discovery which is expected to show the opposite to be true, i.e., inaccurate, low measurement does provide a direct albeit unaccounted for benefit to East Ohio. Just as importantly, the issue of lost and unaccounted for gas is directly related to the issue of meter uncertainty.

East Ohio maintains records, audits and other documentation specifically tracking the amount of gas entering and leaving its systems. Cutter Exploration has sought discovery concerning East Ohio’s lost and unaccounted for gas for the past five years in order to obtain evidence concerning: (1) the scope of the problem and how much gas East Ohio has lost during the last five years; (2) whether the amount of lost and unaccounted for gas has increased or decreased over this period of time as rotary meters have been implemented; (3) to what degree East Ohio is compensated for the gas losses in its system and by what mechanism(s) and (4) extent to which East Ohio’s insistence that producers use rotary meters, instead of orifice meters, relates to the issue of lost and unaccounted for gas.

Unfortunately, East Ohio refuses to provide any of the information requested, which is discoverable. In re Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan, Case No. 08-920-EL-SSO, Entry October 1, 2008 at ¶8 (“[t]he Commission’s rules are designed to allow broad discovery of material that is relevant to the proceeding in question and to allow the parties to prepare thoroughly and adequately for hearing.”).

The information and documents sought via Interrogatory Nos. 59 and 60 and Document Requests No. 66 is not only reasonably calculated to lead to the discovery of admissible evidence, but the same is directly relevant to the claims at issue in these proceedings.

III. LAW AND ARGUMENT

A. Standard of Review

Section 4903.082, Revised Code states that "[a]ll parties and interveners shall be granted ample rights of discovery" and directs the Commission to ensure that parties are allowed "full and reasonable discovery" under its rules. Accordingly, the Commission has adopted Rule 49011-16(B) of the Ohio Administrative Code, which provides: "any party to a Commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject of the proceeding." Rule 4901-1-16(B) also states that "it is not 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."

Responding to discovery ensures that proceedings are not unduly delayed. The Commission has noted that "the policy of discovery is to allow the parties to prepare cases and to encourage them to prepare thoroughly without taking undue advantage of the other side's industry or efforts." See In re Investigation into the Perry Nuclear Power Plant, Case No. 85- 521-EL-001, Entry, March 17, 1987 at p. 10. The Commission's rules on discovery "do not create an additional field of combat to delay trials or to appropriate the Commission's time and resources; they are designed to confine discovery procedures to counsel and to expedite the administration of the Commission proceedings." *Id.*, citing Penn. Central Transportation Co. v. Armco Steel Corp., 27 Ohio Misc. 76, (1971).

The Supreme Court of Ohio has noted that the Commission's rule on discovery is very similar to Civ. R. 26(B)(1). Ohio Consumers' Counsel v. Pub. Util. Comm. (2006), 111 Ohio St.3d 300, 856 N.E.2d 213. As the Court explained, "Civ. R. 26(B) has been liberally construed to allow for broad

discovery of any unprivileged matter relevant to the subject matter of the pending proceeding. Id. at 320 citing Moskovitz v. Mt. Sinai Med. Ctr. (1994), 69 Ohio St.3d 638, 661, 635 N.E.2d 331 ("The purpose of Civ. R. 26 is to provide a party with the right to discover all relevant matters, not privileged, that are pertinent to the subject of the pending proceeding"). See also Disciplinary Counsel v. O'Neill (19%), 75 Ohio St.3d 1479, 664 N.E.2d 532 ("Pursuant to Civ. R. 26(B)(1), a party may obtain discovery regarding non-privileged information relevant to the claim or defense of a proceeding.").

Rule 4901-1-23(A) of the Ohio Administrative Code allows parties to seek a Commission Order compelling discovery regarding:

- (1) Any failure of a party to answer an interrogatory served under Rule 4901-1-19 of the Administrative Code;
- (2) Any failure of a party to produce a document or tangible thing or permit entry upon land or other property as requested under Rule 4901-1-20 of the Administrative Code;
- (3) Any failure of a deponent to appear or to answer a question propounded under Rule 4901-1-21 of the Administrative Code; or
- (4) Any other failure to answer or respond to a discovery request made under Rule 4901-1-19 to 4901-1-22 of the Administrative Code.

This Motion is being filed pursuant to East Ohio's failure to answer interrogatories and produce documents as required under Rules 4901-1-23(A)(1) and (A)(2) of the Ohio Administrative Code.

Rule 4901-1-23(C) of the Ohio Administrative Code sets forth the requirements of a motion to compel:

No motion to compel discovery shall be filed under this Rule until the party seeking discovery has exhausted all other reasonable means of resolving any differences with the party or person from whom discovery is sought. A motion to compel discovery shall be accompanied by:

- (1) A memorandum in support, setting forth:
 - (a) The specific basis of the motion, and citations of any authorities relied upon;
 - (b) A brief explanation of how the information sought is relevant to the pending proceedings;

- (c) Responses to any objections raised by the party or person from whom discovery is sought;
- (2) Copies of any specific discovery requests which are the subject of the motion to compel, and copies of any responses or objections thereto; and
- (3) An affidavit of counsel, or of the parties seeking to compel discovery if such party is not represented by counsel, setting forth the efforts which have been made to resolve any differences with the party or person from whom discovery is sought.

Documents satisfying Rules 4901-1-23(C)(2) and (3) of the Ohio Administrative Code are attached hereto as Exhibits 1 through 4 to the Affidavit of Attorney Keller attached hereto as Exhibit "C.". The basis of this motion and the reasons why the information being sought is necessary and is important to the preparation of Cutter Exploration's case are provided below.

B. All of the Discovery Sought is Relevant To This Proceeding.

Cutter is seeking full and complete responses to Interrogatory Nos. 59 and 60, and Document Request No. 66. Interrogatory No. 59 seeks to have East Ohio identify all programs, reports and memorandum, etc., prepared during the past five years addressing the subject of lost and unaccounted for gas:

INTERROGATORY NO. 59: Identify all programs, reports, presentations, analysis, white papers and/or memorandum prepared, created or drafted by any representative(s) of East Ohio during the past five years addressing, in whole or in part, the subject of lost and unaccounted for gas.

(Exhibit 1.) DEO's response, attached as Exhibit 2, was as follows:

DEO RESPONSE: Objection. The subject of lost and unaccounted for gas is irrelevant to any issue in this proceeding. Complainant makes no allegations regarding DEO's analysis or calculations of loss and unaccounted for gas, and to the extent which DEO experiences lost and unaccounted for gas on its systems has no bearing on the accuracy of its measurement of gas produced from Complainant's wells. This Interrogatory therefore seeks information which is irrelevant and not calculated to lead to the discovery of admissible evidence.

Interrogatory No. 60 seeks to have East Ohio identify its representatives who, during the past five years, have undertaken any calculation(s) or analysis concerning lost and unaccounted for gas involving East Ohio's gas transmission and distribution systems. This Interrogatory specifically provides:

INTERROGATORY NO. 60: Identify all East Ohio representative(s) who, during the past five years, have undertaken any calculation(s) or analysis concerning lost and unaccounted for gas involving any of East Ohio's gas transmission and distribution system.

(Exhibit 1.) DEO's response, attached as Exhibit 2, was as follows:

DEO RESPONSE: Objection. The subject of lost and unaccounted for gas is irrelevant to any issue in this proceeding. Complainant makes no allegations regarding DEO's analysis or calculations of loss and unaccounted for gas, and to the extent which DEO experiences lost and unaccounted for gas on its systems has no bearing on the accuracy of its measurement of gas produced from Complainant's wells. This Interrogatory therefore seeks information which is irrelevant and not calculated to lead to the discovery of admissible evidence.

In conjunction with the two foregoing Interrogatories, Cutter Exploration requested East Ohio to produce all documents identified in response to Interrogatory No. 59.

(Exhibit 2.) DEO's response was as follows:

DEO RESPONSE: See DEO's objection to Interrogatory No. 59. On January 14, 2011, counsel for Cutter Exploration sent a letter to East Ohio's counsel requesting full response to the foregoing discovery. (Keller Aff., Exhibit 3). As of this date, East Ohio refuses to provide any of the discovery requested and claims that lost and unaccounted for gas on East Ohio's system "has no relevance in this matter."

A copy of a letter received from East Ohio's counsel setting forth the reasons why this discovery is not being provided is submitted herewith. (Keller Aff., Exhibit 4).

East Ohio's objection that, "... to the extent ... DEO experiences lost and unaccounted for gas on its systems has no bearing on the accuracy of its measurement of gas produced ..." is not correct. As explained by the American Gas Association the primary cause for lost and

unaccounted for gas is meter uncertainty.² In its December, 2009 article, the American Gas Association further states that:

“[T]he orifice meter is an extremely accurate meter that is typically used at pipeline meter stations, while a less accurate meter, the diaphragm meter, is used at almost all residential and small commercial station. Diaphragm meters, which are inexpensive and reliable, have been the industry standard for the measurement of smaller volumes of gas delivered to residential and commercial customers for more than 100 years.

[. . .] the cost of LUAF [Lost and Unaccounted For Gas], the volume metric differs between gas received at the metering station and gas delivered at the residence or business, is dealt with through accounting and rate making measures, and the basis for cost recovery differs from state to state.

Id. Accordingly, although the American Gas Association article is not an engineering report, it sites the reality that meter uncertainty and, i.e., accuracy of measurement by meters is directly related to the issue of lost and unaccounted for gas. Unfortunately, East Ohio seeks to make its arguments that rotary meters are more accurate than orifice meters, that East Ohio has no incentive to allow systematic under measurement of gas from producers and that it is fully compensated for lost and unaccounted for gas, but at the same time, it refuses to allow Cutter Exploration to obtain discovery on these issues. Counsel for Cutter Exploration attempted to discuss the scope of this discovery with East Ohio's counsel but after such discussions on this issue, East Ohio simply refused to provide any information thereby necessitating Cutter Exploration having to prepare and file a Motion to Compel. This is unfortunate because East Ohio has reports it prepares concerning gas entering and leaving its system (which, upon information and belief, cover the issue of lost and unaccounted for gas), which could be easily produced. Furthermore, Cutter Exploration also believes that East Ohio closely reviews the issue of lost and

² See, Exhibit A at page 1.

unaccounted for gas to ascertain which specific points in its system are the cause for lost and unaccounted for gas. To the extent these reports, audits and memorandum relate to gas being measured at the production receipt points, the same is directly relevant and discoverable in this matter. But, East Ohio has not even been willing to communicate what specific documents and information it has and does not have on this issue. Therefore, Cutter Exploration had no choice but to file a Motion on this issue and it further intends to explore the issue of lost and unaccounted for gas in depositions of East Ohio personnel.

For all the foregoing reasons Cutter Exploration requests the Commission to enter an order that East Ohio be compelled to provide all the information responsive to Interrogatories Nos. 59 and 60 and documents responsive to Document Request No. 66.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing was served this 15th day of March, 2011, via regular U.S. Mail upon the following:

David A. Kutik
Meggan A. Rawlin
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Cleveland, OH 44114

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A handwritten signature in cursive script, reading "Sarah Daggett Morrison", written over a horizontal line.

Sarah Daggett Morrison #0068035

NATURAL GAS Rate Round-Up

A Periodic Update on Innovative Rate Designs

December 2009

LOST AND UNACCOUNTED FOR GAS COST RECOVERY MECHANISMS

Most states allow natural gas utilities to track and true-up the costs of lost and unaccounted for (LUAF) natural gas and to recover these costs between rate cases. These costs vary with gas commodity costs that utilities pay, with changes in volumes of gas customers consume, and with variations in measured gas volumes into and out of the utilities' gas system. These fluctuating costs and volumes are outside the control of utilities. This AGA Rate Round-Up describes mechanisms that allow utilities to recover and rebate the incremental costs of lost and unaccounted for gas that are not recovered from customers in the utilities' base rates. Currently, utilities in 47 states, the District of Columbia, and Canada have implemented mechanisms that pass through and true-up the costs of lost and unaccounted for natural gas.

WHAT ARE LOST AND UNACCOUNTED FOR NATURAL GAS COSTS?

Lost and unaccounted for gas is the difference between the gas measured into the distribution system and the gas measured out of the utility system or otherwise accounted for, including the change in volume of gas contained by the system (i.e., line pack). The primary cause of LUAF is meter uncertainty. Gases are more difficult to measure than liquids, as measured volumes are highly affected by temperature and pressure. Gas meters measure a defined volume of natural gas, regardless of the pressurized quantity or quality of the gas flowing through the meter. In order to calculate the amount and value of natural gas moving through a meter, temperature, pressure, and heating value adjustments must be made to the measurements.

The orifice meter is an extremely accurate meter that is typically used at pipeline meter stations, while a less accurate meter, the diaphragm type, is used at almost all residential and small commercial installations. Diaphragm meters, which are inexpensive and reliable, have been the industry standard for the measurement of smaller volumes of gas delivered to residential and commercial customers for more than 100 years. Diaphragm meters have well defined measurement compartments that alternately fill and empty as the meter rotates. By knowing the volume displaced by each meter revolution and by applying the proper gear ratio, the meter will read directly in cubic feet or cubic meters. The limits to which these meters must operate varies from state to state and are established by state and local regulators.

Orifice meters, on the other hand, have no measurement compartments to trap and then release the gas. These meters are inferential meters in that the volume passing through them is "inferred" by observing or measuring some physical characteristic. Huge volumes of gas are measured at the pipeline meter station, and as large sums of money are at stake, both the interstate pipeline and the local utility intensely monitor the accuracy of the orifice meters. AGA

EXHIBIT

A

issues an industry report¹ that deals with a broad range of issues relating to orifice metering of natural gas, and it provides an algorithm for calculating natural gas flow rates based on the differential pressure, static pressure, and temperature of a gas with a known composition.

This report is not an engineering analysis but a study of ratemaking and regulatory practices for the recovery of costs associated with LUAF natural gas. LUAF is an accounting and ratemaking issue, not an operational issue. A leak management system is in place for each utility and when identified, system leaks are repaired. Theft is also an operational issue and is dealt with through system surveillance and account audits. On the other hand, the cost of LUAF gas, the volumetric difference between gas received at the metering station and gas delivered at the residence or business, is dealt with through accounting and ratemaking measures, and the basis for cost recovery differs from state to state.

WHY DOES IT MATTER?

Natural gas distribution companies do not make a profit on the sale of the natural gas commodity that they acquire on behalf of their customers. Instead, utilities pass through the costs of natural gas supplies in base rates, which are set by state utility commissions, and through frequent rate adjustments, which are also approved by regulatory commissions. Because the cost of gas changes frequently, utilities need an approved method of updating their rates and passing through to customers supply costs that have been incurred on their behalf, but have changed since the last time those costs were approved for recovery in rates. Similarly, because the amount of LUAF natural gas is variable due to meter uncertainty, and because the costs of LUAF natural gas can be significant, utilities need a system of rate adjustments for the recovery of LUAF costs that have changed since those costs were authorized by regulators.

Timely cost recovery of prudently incurred expenditures is of utmost importance to the financial stability of natural gas utilities. Expenses that are recovered long after they are incurred cause the utility to bear carrying costs without the opportunity to recover these prudent expenditures. Credit agencies assign a lower credit rating to companies with lag in the recovery of their costs, which, with respect to utilities, ultimately translates into higher rates for customers. The only alternative is to file a rate case each year, which is a costly activity that also leads to higher rates for customers. Without a method of adjusting rates in response to fluctuating costs associated with meter uncertainty, LUAF would have a significant, negative impact on utilities.

RATE DESIGN SOLUTIONS FOR LUAF COST RECOVERY

Several rate design options are available for recovering expenses associated with the LUAF costs that utilities incur after rates have been set. Trackers recover costs in the time period in which they are incurred, while deferral accounts delay the recovery of expenses, and usually carrying costs, until a future period. Most utilities recover the cost of LUAF expenses in the purchased gas adjustment (PGA) account, which is a type of cost tracker. A few utilities use a second tracker that keeps the LUAF costs separate from the PGA tracker. Only three states require the recovery of LUAF costs entirely in base rates, without any mechanism for adjustments after rates have been set.

¹ AGA Report No. 3

Cost trackers are adjustments to rates that have been pre-approved by regulators in a rate case or a rate hearing. The utility tracks approved changes for specific events, then flows the actual costs – not forecast costs – through to customers. Customers and utilities benefit because there is no over- or under-recovery of costs. Additionally, customers and utilities both benefit when a new, time consuming and expensive rate case is not required. Regulatory oversight is maintained because rates are reviewed periodically and adjustments are made only to meet the pre-established and pre-approved targets covered by the tracker.

Another alternative is the deferred accounting mechanism. With this method, the utility treats LUAF costs that are not included in the utility's existing base rates in a segregated manner, thereby establishing a special deferred account. Often, these costs are deferred until the next rate case, at which time the costs are then amortized, recovered in rates, and the account balances are reduced or eliminated. In many cases, the assets in the deferral accounts accrue interest, and the interest is also amortized and recovered later in rates. The regulator may place a cap on the amount of LUAF costs that may be accrued. Only 15 utilities are in jurisdictions that place a cap on the amount of costs that may be recovered. Usually, the cap is assessed at the end of the year when the utility files its final true-up report.

In August 2009, AGA surveyed its members about the regulatory practices of their commissions in allowing recovery of LUAF gas costs. Commissions in 47 states, D.C., and the Canadian provinces of Manitoba, Ontario, and Quebec allow a gas utility to use expense trackers or accounting deferrals to recover LUAF gas costs in a timely manner. The vast majority of U.S. and Canadian natural gas utilities use these rate mechanisms to reduce the costs associated with filing new rate cases, and to rebate to customers over-recoveries of LUAF costs.

The most common structure for recovering LUAF gas costs from sales customers is a monthly or quarterly rate adjustment, with an annual true-up through the PGA account. While a few utilities use a separate, LUAF adjustment account, the vast majority of natural gas utilities track and recover their LUAF natural gas costs inside the PGA account. Each month, the volume of LUAF natural gas is measured and the dollar value of that gas is recorded in the utilities' accounts. If the utility recovers the LUAF costs through the PGA, an adjustment to rates is made contemporaneous with the adjustment for changes in gas supply costs. If the utility recovers the LUAF through a separate tracker or deferral account, the adjustment is made to that account. The sums in the LUAF tracker or deferral account are trued up or amortized in accordance with commission-authorized procedures, either monthly, quarterly, or annually.

Transportation customers buy their own natural gas and have it shipped to the utility's pipeline metering station. Even though transportation customers have separate contract arrangements for the delivery of their natural gas into the distribution system, the same problem exists of recovering the costs associated with variations in measured gas volumes into and out of the distribution system. Utilities recover LUAF expenses from transportation customers, whose cost of gas supplies is never recorded as part of the utilities' PGA accounts, by taking in-kind gas from the customer, or by charging a separate LUAF fee.

CONCLUSIONS

Lost and unaccounted for natural gas costs are caused by meter uncertainty; these costs vary with the amount of customer usage and with fluctuating commodity prices, all of which are outside the utilities' control. Utilities recover the costs of LUAF gas through the use of adjustment clauses, rate mechanisms that recover from, and rebate to, customers the changes

in costs incurred on their behalf. The vast majority of utilities recover LUAF through the PGA mechanism, or through in-kind gas. Utilities that do not recover the LUAF cost in the PGA mechanism, or in-kind, use a separate tracker or deferral account. Only three states do not allow utilities to recover the incremental costs of lost and unaccounted for gas that are not included in the utilities' base rates. Efficiency and equity are goals of regulation and LUAF true-up mechanisms equitably, efficiently, and accurately recover volatile supply costs and rebate savings in a timely manner.

LUAF TRUE UP MECHANISMS

1. AL	Alabama Gas	39. MD	Baltimore Gas & Electric
2. AL	Mobile Gas	40. MD	Columbia Gas of Maryland
3. AK	Enstar Natural Gas	41. ME	Bangor Gas
4. AR	Arkansas Western Gas	42. ME	Maine Natural Gas
5. AZ	Unisource Energy Services	43. MN	CenterPoint Energy - Minnesota Gas
6. AZ	Southwest Gas		Xcel Energy
7. CA	San Diego Gas and Electric	44. MN	Atmos Energy
8. CA	Southern California Gas	45. MS	CenterPoint Energy
9. CA	Southwest Gas Corporation	46. MS	Laclede Natural Gas
10. CO	Atmos Energy	47. MO	Black Hills Energy - Lincoln
11. CO	Colorado Springs Utilities	48. NE	Black Hills Energy -NE Metro
12. CT	Connecticut Natural Gas	49. NE	Black Hills Energy - NE
13. DC	Washington Gas	50. NE	Piedmont Natural Gas
14. DE	Delmarva Power	51. NC	Xcel Energy
15. FL	TECO	52. ND	Energy North (National Grid – New England)
16. GA	Atmos Energy	53. NH	Elizabethtown Gas
17. HI	The Gas Company		New Jersey Natural Gas
18. IA	Atmos Energy	54. NJ	South Jersey Gas
19. ID	Avista Utilities	55. NJ	New Mexico Gas
20. ID	Intermountain Gas Company	56. NJ	Consolidated Edison
21. IL	Nicor Gas	57. NM	National Fuel Gas
22. IN	Citizens Gas	58. NY	Niagara Mohawk Power
23. IN	Vectren - Indiana Gas Co	59. NY	Orange & Rockland
24. IN	Vectren - SIGECO	60. NY	Rochester Gas & Electric
25. KS	Atmos Energy	61. NY	National Grid NY - LI
26. KY	Columbia	62. NY	National Grid - NYC
27. KY	Duke Energy Kentucky	63. NY	Southwest Gas
28. KY	Louisville Gas & Electric Co.	64. NY	Dominion East Ohio
29. LA	Atmos – Trans Louisiana	65. NV	Columbia Gas of Ohio
30. LA	Atmos – Louisiana Gas	66. OH	Duke Energy Ohio
31. LA	Entergy	67. OH	Eastern Natural Gas
32. MA	Bay State Gas	68. OH	Pike Natural Gas
33. MA	NSTAR Gas	69. OH	Southeastern Natural Gas
34. MA	Boston Gas (Nat'l Grid)	70. OH	Vectren Energy Ohio
35. MA	Colonial Gas - Cape Cod (National Grid)	71. OH	Oklahoma Natural Gas
36. MA	Colonial Gas - Lowell (National Grid)	72. OH	Enbridge Gas Distribution
37. MA	Essex Gas (National Grid)	73. OK	Avista Utilities
38. MB	Manitoba Hydro	74. ON	NW Natural
		75. OR	
		76. OR	

77. PA	Philadelphia Gas Works	90. TX	Atmos Energy - Mid-Tex
78. PA	Dominion Peoples	91. UT	Questar Gas
79. PA	Equitable Gas	92. VA	Columbia Gas of Virginia
80. PA	National Fuel Gas	93. VT	Vermont Gas Systems
81. QB	Gaz Metro	94. WA	Avista Utilities
82. RI	National Grid	95. WA	NW Natural
83. SC	Piedmont Natural Gas	96. WI	Wisconsin Electric - Gas Ops
84. TN	Memphis Light Gas and Wa.	97. WI	Wisconsin Power and Light
85. TN	Piedmont Natural Gas	98. WI	Wisconsin Public Service
86. TX	CoServ Gas, Ltd	99. WI	Wisconsin Gas Company
87. TX	Texas Gas Service - Austin	100. WV	Dominion Hope
88. TX	Texas Gas Service - El Paso	101. WY	Questar Gas
89. TX	CenterPoint Energy Entex	102. WY	Wyoming Gas

ADDITIONAL INFORMATION

If you would like more information about a particular program or would like to speak to another AGA member regarding the details of the program, please contact: Cynthia Marple, AGA director of rates and regulatory affairs, cmarple@aga.org or 202-824-7228.



Ohio Production Measurement

Process Improvement for Production Measurement

© 2005 Dominion

EXHIBIT

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DEO 000000093

Goals

- Everyone wants Production Accuracy!
 - Dominion makes no money from inaccurate/low measurement
 - Exited the merchant function as of Nov 2006
 - In all actuality, low measurement hurts Dominions PEA revenues.
 - We have a responsibility to the producers and customers to get it as accurate as possible
- Oil and Gas Association has asked for
 - Expansion of the Measurement Operating Agreement program
 - Electronic Measurement Options
 - Calendar Production Periods

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

Complainant,)

Case No. 09-1982-GA-CSS)

v.)

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

Respondent.)

AFFIDAVIT BY COUNSEL

STATE OF OHIO)

SS:)

COUNTY OF STARK)

I, CLAY K. KELLER, being first duly sworn, deposes and says:

1. I am over twenty-one (21) years of age and am resident of Summit County, Ohio.

2. I am an attorney with the law firm Buckingham, Doolittle & Burroughs, LLP, I am admitted to practice in State of Ohio and I am one of the attorneys that represents Cutter Exploration, Inc. ("Cutter Exploration") in the proceeding pending before the Public Utilities Commission of Ohio ("PUCO" or "the Commission") captioned as In re: Cutter Exploration, Inc., v. The East Ohio Gas Company d/b/a Dominion East Ohio Case No. 09-1982-GA-CSS.

3. On November 26, 2010, Cutter Exploration served its Fifth Set of Interrogatories and Document Requests to Respondent The East Ohio Gas Company ("East Ohio"). Included in this written discovery are Interrogatory Nos. 59, 60 and Document Requests No. 66. A true and accurate copy of the foregoing written discovery is attached hereto as Exhibit "1."



4. On December 23, 2010, East Ohio served responses to Cutter Exploration's Fifth Set of Interrogatories and Document Requests. East Ohio objected to Interrogatory Nos. 59 and 60 and East Ohio objected to Document Request No. 66. A true and accurate copy of East Ohio's Responses to the Fifth Set of Interrogatories and Document Requests are attached hereto as Exhibit "2."

5. On January 14, 2011, I sent correspondence on behalf of Cutter Exploration to counsel for East Ohio requesting complete responses to Interrogatory Nos. 59 and 60 and further requesting that East Ohio produce all the document responsive to Document Request No. 66. A true and accurate copy of this letter is attached hereto as Exhibit "3."

6. On February 9, 2011, counsel for East Ohio sent written correspondence to me indicating that East Ohio would not provide responses to Interrogatory Nos. 59 and 60, nor would East Ohio produce any of the documents responsive to Document Request No. 66. A true and accurate copy of this letter is attached hereto as Exhibit "4."

7. On or around February 9, 2011, I also had a telephone conference with counsel for DEO to discuss various outstanding discovery issues, including East Ohio's Responses to the foregoing Interrogatories and Document Requests. East Ohio's counsel indicated that East Ohio would be maintaining its objections and will not provide any information responsive to Interrogatory Nos. 59 and 60, nor would it produce any documents responsive to Document Request No. 66.

8. By e-mail on February 22, 2011, I notified East Ohio's counsel that Cutter Exploration would be filing a Motion to Compel concerning these Interrogatories and Document Requests relating to the issue of lost and unaccounted for gas. I further indicated that Cutter

Exploration would be seeking an expedited ruling pursuant to Rule 4901-1-12. Counsel for East Ohio indicated they would object to the issuance of an expedited ruling.

FURTHER AFFIANT SAYETH NAUGHT.



CLAY K. KELLER

SWORN TO and subscribed in my presence this 14th day of March, 2011



NOTARY PUBLIC

«CT2:674909_1»



SARAH E. EADES
Notary Public, State of Ohio
My Commission Expires 04-02-2011

In the Matter of the Complaint of) Case No. 09-1982-GA-CSS
Cutter Exploration, Inc.)
)
Complainant,)
)
v.)
)
The East Ohio Gas Company d/b/a)
Dominion East Ohio,)
)
Respondent.)

ALL-STATE LEGAL
EXHIBIT
1

4. "Person" shall mean any natural person or entity.
5. "Document" is used herein in its broadest possible sense and includes any information or matter memorialized in any way, however stored, including without limitation, any information generated by or stored in a computer or on any other data storage device or medium, such as discs or tapes.
6. "Communication" is used herein in its broadest possible sense and means any occurrence in which information is related between Persons by transmittal of documents or information, of any nature whatsoever, including, without limitation, statements, discussions, conversations, meetings and remarks, whether written or oral. The term "Communication" includes, without limitation, communications that are face-to-face and those that are transmitted by media such as telephones (including voicemail), facsimile, instant messaging, text messaging, or e-mail.
7. The term "representative" as used herein shall mean and include all officers, employees, consultants and agents.
8. As used herein, (i) any reference to the masculine, feminine or neuter shall be construed to include the other two, (ii) the singular shall be construed to include the plural, and vice versa, as necessary, to give these interrogatories their broadest possible meaning, and (iii) in the term "any" shall be construed to mean each and every, and the term "all" shall be construed as all and each, and "each" shall be construed as all, whenever necessary to bring within the scope of the interrogatory or document request that which might otherwise be construed outside its scope.
9. "Identify" shall mean: (a) with respect to a natural person, to state his or her full name, his or her present or last, Pw address and telephone number, and his or her present or last

known position and employer or business affiliation; (b) with respect to an entity, to state its full name, the type of organization (e.g. corporation, limited partnership), its address and telephone number, and the identity of those natural persons who represent such entity and with whom DEO principally has had contact; (c) with respect to a Document, to state the date, the type of document (e.g. letter, memorandum), author(s), addressee(s), all recipients, and present or last known location or custodian; and (d) with respect to a Communication, to state its date and location(s), the type of communication (e.g., meeting, letter, e-mail, etc.), the Person(s) who participated in it or who was or were present during any part of it or have knowledge about it, and the subject matter of the Communication.

10. As used herein, reference to "metering stations" refers to those meter stations measuring gas flowing from production wells owned and/or operated by Cutter Exploration which includes without limitation the following stations: K974, K975, P014, P020, P094, P153, P158, P167, P221, P222, P223, P262, P332, P349, P368, P369, P399, P441, P449, P472, P473, P495, P513, P516, P554, P641, P651, P666, P697, P698, P702, P059. The term "metering station" further refers to and includes the plumbing, equipment and electronics comprising each production station meter set including without limitation the regulators, filters, stricture plates, valves, meters and Mini-Max instruments.

11. If DEO objects, to any interrogatory or document request, in whole or in part, as inquiring into privileged, protected or immune matters, set forth fully in DEO's objection: (a) the date of the applicable information; (b) the author or authors of the information; (c) the recipient or recipients of the information; (d) the type of information (e.g., document, telephone conversation, face-to-face conversation); (e) the subject matter of the information and the nature and basis of the privilege; and (f) the protection or immunity asserted.

12. If the answer to all or any part of any interrogatory is not presently known or available, include a statement to the effect and furnish any information currently known or available.

13. You are under a continuing duty to supplement your responses pursuant to Rule 4901-1-16(D) of the Commission's Rules of Practice as to expert witnesses and the subject matter of their testimony, responses discovered to be incorrect or materially deficient, and where the initial response indicated that the information sought was unknown or nonexistent by such information subsequently becomes known or existent.

14. If any Document responsive to any interrogatory or request for production of documents is no longer in DEO's possession or control, please state why the Document is no longer in DEO's possession or control, explain the circumstances surrounding the disposition of the Document, identify the individual responsible for the disposition of the Document, and state whether the Document or copies thereof still exist.

15. Please identify all responses to requests for production of documents by the number of the request.

INTERROGATORIES

INTERROGATORY NO. 53: Identify each and every East Ohio representative who was present in Chester Township on November 4, 2010.

ANSWER:

INTERROGATORY NO. 54: Identify each and every East Ohio representative that was at the metering station associated with the Kokay No. 1 well on October 20, 2010.

ANSWER:

INTERROGATORY NO. 55: With regard to each person identified in response to Interrogatory No. 54, please identify all other metering stations associated with Cutter Exploration wells that this person performed any type of inspection, maintenance, repairs or other work on, or at, on October 20, 2010.

ANSWER:

INTERROGATORY NO. 56: Identify each and every East Ohio representative that has been involved in any type of internal investigation or review concerning the fact that by November 9, 2010, the worker (operator) regulators on the metering stations associated with the Perelman No. 1 and Skirbunt No. 1 wells were set at 52 psi.

ANSWER:

INTERROGATORY NO. 57: With regard to each metering station associated with Cutter Exploration wells please provide the following information:

(a) identify each date that East Ohio has conducted an annual inspection of the metering station;

(b) identify each East Ohio representative(s) that was involved in conducting each past annual inspection; and

(c) identify the information and records East Ohio records and maintains concerning the annual inspections that were conducted.

ANSWER:

INTERROGATORY NO. 58: Identify each East Ohio representative(s) responsible for collecting, processing and maintaining the data recorded by the Mercury Mini-Max instruments used in conjunction with the rotary meters recording gas produced by Cutter Exploration wells during the period January 1, 2008 through the present.

ANSWER:

INTERROGATORY NO. 59: Identify all programs, reports, memorandum, presentations, analysis, white papers and/or memorandum prepared, created or drafted by any representative(s)

of East Ohio during the past five years addressing, in whole or in part, the subject of lost and unaccounted for gas.

ANSWER:

INTERROGATORY NO. 60: Identify all East Ohio representative(s) who, during the past five years, have undertaken any calculation(s) or analysis concerning lost and unaccounted for gas involving any of East Ohio's gas transmission and distribution systems.

ANSWER:

INTERROGATORY NO. 61: Identify all wells producing gas into the NM11 or TPL14 systems, which East Ohio has shut-in during the last 36 months due to "the presence of oil in the lines." For each well, provide the following information:

- (a) the name and location of the well;
- (b) the East Ohio representative(s) who made the decision to shut the well in;
- (c) the owner/producer of the well;
- (d) the date the well was shut-in;
- (e) the length of time the well was shut-in; and

(f) any corrective action East Ohio required of the producer before the well would be turned back on.

ANSWER:

INTERROGATORY NO. 62: Identify each East Ohio representative(s) who, during the past 12 months, has performed any inspection(s), investigation(s), maintenance or other work at any Cutter Exploration wells and/or metering stations associated with Cutter Exploration wells during the period January 1, 2010 to the present.

ANSWER:

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 63: Produce all documents reviewed or relied upon for purposes of responding to Interrogatory Nos. 53-62.

RESPONSE:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 64: Produce all documents concerning annual inspections that have been completed relating to metering stations associated with Cutter Exploration wells for the period January 1, 2008, through the present.

RESPONSE:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 65: Produce all records (including without limitation GPS records, time records, daily work sheet records, orders, field notes, e-mails, memorandum, etc.), showing what East Ohio representative(s) were present in Chester Township on November 4, 2010.

RESPONSE:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 66: Produce all documents identified in response to Interrogatory No. 59.

RESPONSE:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 67: Produce all documents concerning any inspection(s), investigation(s), maintenance and/or other work undertaken by any East Ohio representative(s) at Cutter Exploration wells and/or metering stations associated with Cutter Exploration wells during the period January 1, 2010 to the present. Such documents will include without limitation daily work sheet records, reports, memorandum, e-mails, letters and field notes.

RESPONSE:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 68: Produce all documents (including without limitation daily work sheet records, reports, memorandum, e-mails, letters and field notes) concerning the shut-in of the Kokay #1 well that occurred on or about October 20, 2010.

RESPONSE:

REQUEST FOR INSPECTION

REQUEST FOR INSPECTION NO. 2: Produce the tags removed on November 9, 2010, by East Ohio's representative from the regulators on the metering stations associated with the Perelman No. 1 and Skirbunt No. 1 wells which were marked "52."

RESPONSE:



Mark A. Skakun #0023475

Clay K. Keller #0072927

BUCKINGHAM, DOOLITTLE & BURROUGHS, LLP

4518 Fulton Drive, NW

P.O. Box 35548

Canton, OH 44735

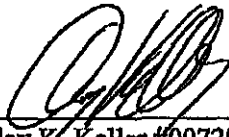
Counsel for Cutter Exploration, Inc.

CERTIFICATE OF SERVICE

A copy of the foregoing was served this 26th day of November, 2010, via e-mail upon the following:

David A. Kutik
Meggan A. Rawlin
Jones Day
North Point
901 Lakeside Avenue
Cleveland, OH 44114

Grant W. Garber
Jones Day
P.O. Box 165017
Columbus, OH 43216-5017



Clay K. Keller #0072927

«CT2:670403_v1»

**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

**RESPONDENT'S OBJECTIONS AND RESPONSES TO COMPLAINANT'S
FIFTH SET OF INTERROGATORIES AND DOCUMENT REQUESTS**

Pursuant to Rules 4901-1-16 and 4901-1-20, Ohio Administrative Code, Respondent The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") provides these objections and responses to Complainant Cutter Exploration, Inc.'s ("Complainant's") Fifth Set of Interrogatories and Document Requests.

GENERAL OBJECTIONS

1. DEO objects to each of Complainant's Interrogatories and Document Requests to the extent they seek information that is protected by the attorney-client privilege or that constitutes attorney work product.
2. Given that discovery in this case is on-going, DEO reserves the right to supplement its responses and objections to these Interrogatories and Document Requests.



INTERROGATORIES

INTERROGATORY NO. 53: Identify each and every East Ohio representative who was present in Chester Township on November 4, 2010.

RESPONSE: John Kutnar (Gas Operations Technician A) and Jason Ashba (Field Operator C).

INTERROGATORY NO. 54: Identify each and every East Ohio representative that was at the metering station associated with the Kokay No. 1 well on October 20, 2010.

RESPONSE: John Kutnar.

INTERROGATORY NO. 55: With regard to each person identified in response to Interrogatory No. 54, please identify all other metering stations associated with Cutter Exploration wells that this person performed any type of inspection, maintenance, repairs or other work on, or at, on October 20, 2010.

RESPONSE: None.

INTERROGATORY NO. 56: Identify each and every East Ohio representative that has been involved in any type of internal investigation or review concerning the fact that by November 9, 2010, the worker (operator) regulators on the metering stations associated with the Perelman No. 1 and Skirbunt No. 1 wells were set at 52 psi.

RESPONSE: Objection. This Interrogatory calls for information that is protected by the attorney-client privilege and that constitutes attorney work product. Subject to and without waiving these objections, DEO states: Brent Breon (Manager, Planning and Revenue Generation), Jeff Baker (Supervisor, Gas Operations), Jeff Pavlic (Supervisor, Gas Operations) and John Kutnar.

INTERROGATORY NO. 57: With regard to each metering station associated with Cutter

Exploration wells please provide the following information:

- (a) identify each date that East Ohio has conducted an annual inspection of the metering station;
- (b) identify each East Ohio representative(s) that was involved in conducting each past annual inspection;
- (c) identify the information and records East Ohio records and maintains concerning the annual inspections that were conducted.

RESPONSE: Objection. To the extent this Interrogatory seeks information that relates to time periods not at issue in this case (*i.e.*, before rotary meters were installed at metering stations located at Complainant's well sites), this Interrogatory seeks information that is not relevant to any issue in this case and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this objection, DEO states as follows:

Well / Meter Station Identification Number	Subpart (a)	Subpart (b)
P014	May 21, 2010	John Kutnar
P020	May 26, 2009	John Kutnar
P094	August 23, 2010	John Kutnar
P153	November 30, 2010	John Kutnar
P158	November 9, 2010	John Kutnar
P167	September 27, 2010	John Kutnar
P221	February 22, 2010	John Kutnar
P222	February 22, 2010	John Kutnar
P223	February 23, 2010	John Kutnar

P262	April 26, 2010	John Kutnar
P349	September 20, 2010	John Kutnar
P368	September 9, 2010	John Kutnar
P369	December 1, 2010	John Kutnar
P399	December 1, 2010	John Kutnar
P441	December 8, 2010	John Kutnar
P449	December 1, 2010	John Kutnar
P472	March 3, 2010	John Kutnar
P473	April 22, 2010	John Kutnar
P495	June 19, 2010	John Kutnar
P513	May 11, 2010	Gary Stoner (Field Operator A)
P516	May 24, 2010	John Kutnar
P554	August 17, 2010	John Kutnar
P641	October 20, 2010	John Kutnar
P651	October 21, 2010	John Kutnar
P666	January 8, 2010	Gerry Eimer
P697	April 1, 2010	Gerry Eimer (Gas Operations Technician A)
P702	May 11, 2010	John Kutnar
P059	May 17, 2010	John Kutnar

Documents requested in subpart (c) are labeled with Bates numbers DEO 11825 through DEO 11979, which are inspection report forms.

INTERROGATORY NO. 58: Identify each East Ohio representative(s) responsible for collecting, processing and maintaining the data recorded by the Mercury Mini-Max instruments used in conjunction with the rotary meters recording gas produced by Cutter Exploration wells during the period January 1, 2008 through the present.

RESPONSE: Objection. This Interrogatory is vague and ambiguous because the term "collecting" is undefined and subject to a variety of meanings. Subject to and without waiving this objection, DEO states: Jim Reinmann (Consulting Engineer).

INTERROGATORY NO. 59: Identify all programs, reports, memorandum, presentations, analysis, white papers and/or memorandum prepared, created or drafted by any representative(s) of East Ohio during the past five years addressing, in whole or in part, the subject of lost and unaccounted for gas.

RESPONSE: Objection. The subject of loss and unaccounted for gas is irrelevant to any issue in this proceeding. Complainant makes no allegations regarding DEO's analysis or calculations of lost and unaccounted for gas, and the extent to which DEO experiences lost and unaccounted for gas on its systems has no bearing on the accuracy of its measurement of gas produced from Complainant's wells. This Interrogatory therefore seeks information that is irrelevant and not calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 60: Identify all East Ohio representative(s) who, during the past five years, have undertaken any calculation(s) or analysis concerning lost and unaccounted for gas involving any of East Ohio's gas transmission and distribution systems.

RESPONSE: Objection. The subject of loss and unaccounted for gas is irrelevant to any issue in this proceeding. Complainant makes no allegations regarding DEO's analysis or calculations of lost and unaccounted for gas, and the extent to which DEO experiences lost and unaccounted for gas on its systems has no bearing on the accuracy of its measurement of gas produced from Complainant's wells. This Interrogatory therefore seeks information that is irrelevant and not calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 61: Identify all wells producing gas into the NM11 or TPL14 systems, which East Ohio has shut-in during the last 36 months due to "the presence of oil in the lines." For each well, provide the following information:

- (a) the name and location of the well;
- (b) the East Ohio representative(s) who made the decision to shut the well in;
- (c) the owner/producer of the well;
- (d) the date the well was shut-in;
- (e) the length of time the well was shut-in; and
- (f) any corrective action East Ohio required of the producer before the well would be turned back on.

RESPONSE:

Subpart (a)	Subpart (b)	Subpart (c)	Subpart (d)	Subpart (e)
Kokay #1 (P158)	John Kutnar	Complainant	October 20, 2010	November 9, 2010
Armstrong #1 (P349)	Gary Stoner	Complainant	August 4, 2010	Turned on September 30, 2010

Murfello #1 (P441)	Gary Stoner	Complainant	August 4, 2010	Turned on September 30, 2010
Assembly Products (K186)	John Kutnar	Alliance Petroleum	May 2, 2008	DEO is unable to verify the date on which this meter was turned back on.

In response to subpart (f), DEO states that in each instance, the producer was not permitted to deliver gas into DEO's system until after the producer had rectified the presence and/or cause of the oil and installed and/or ensured the proper functioning of appropriate filtering equipment.

INTERROGATORY NO. 62: Identify each East Ohio representative(s) who, during the past 12 months, has performed any inspection(s), investigation(s), maintenance or other work at any Cutter Exploration wells and/or metering stations associated with Cutter Exploration wells during the period January 1, 2010 to the present.

RESPONSE: Objection. This Interrogatory calls for information that is protected by the attorney-client privilege and that constitutes attorney work product. Subject to and without waiving these objections, see the documents labeled with bates numbers DEO 11817 through DEO 11979, which are inspection reports and work order forms.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 63: Produce all documents reviewed or relied upon for purposes of responding to Interrogatory Nos. 53-62.

RESPONSE: See the documents identified in DEO's responses to Interrogatory Nos. 53 through 62.

REQUEST FOR PRODUCTION NO. 64: Produce all documents concerning annual inspections that have been completed relating to metering stations associated with Cutter Exploration wells for the period January 1, 2008 through the present.

RESPONSE: See documents labeled with bates numbers DEO 11825 through DEO 11979, which are inspection report forms.

REQUEST FOR PRODUCTION NO. 65: Produce all records (including without limitation GPS records, time records, daily work sheet records, orders, field notes, e-mails, memorandum, etc.) showing what East Ohio representative(s) were present in Chester Township on November 4, 2010.

RESPONSE: See the documents labeled with bates numbers DEO 11813 through DEO 11816, which is a daily work report log and GPS reports associated with DEO field personnel working in or near Chester Township on that day.

REQUEST FOR PRODUCTION NO. 66: Produce all documents identified in response to Interrogatory No. 59.

RESPONSE: See DEO's objection to Interrogatory No. 59.

REQUEST FOR PRODUCTION NO. 67: Produce all documents concerning any inspection(s), investigation(s), maintenance and/or other work undertaken by any East Ohio representative(s) at Cutter Exploration wells and/or metering stations associated with Cutter

Exploration wells during the period January 1, 2010 to the present. Such documents will include without limitation daily work sheet records, reports, memorandum, e-mails, letters and field notes.

RESPONSE: Objection. This Interrogatory calls for information that is protected by the attorney-client privilege and that constitutes attorney work product. Subject to and without waiving these objections, see the documents labeled with bates numbers DEO 11817 through DEO 11979, which are inspection report forms.

REQUEST FOR PRODUCTION NO. 68: Produce all documents (including without limitation daily work sheet records, reports, memorandum, e-mails, letters and field notes) concerning the shut-in of the Kokay #1 well that occurred on or about October 20, 2010.

RESPONSE: DEO will provide a supplementation containing these documents on or before January 7, 2011.

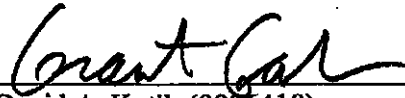
REQUEST FOR INSPECTION

REQUEST FOR INSPECTION NO. 2: Produce the tags removed on November 9, 2010, by East Ohio's representative from the regulators on the metering stations associated with the Perelman No. 1 and Skirbunt No. 1 wells which were marked "52."

RESPONSE: DEO will make these tags available for inspection at a location and time to be agreed upon by counsel.

Dated: December 23, 2010

Respectfully submitted,



David A. Kutik (0006418)

dakutik@jonesday.com

(Counsel of Record)

Meggan A. Rawlin (0074215)

mrawlin@jonesday.com

JONES DAY

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Grant W. Garber (0079541)

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Facsimile: (614) 461-4198

gwggarber@jonesday.com

ATTORNEYS FOR RESPONDENT THE
EAST OHIO GAS COMPANY d/b/a
DOMINION EAST OHIO

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Objections and Responses to Complainant's Fifth Set of Interrogatories and Document Requests was sent by e-mail and first class mail, postage prepaid, to the following this 23rd day of December, 2010:

Mark J. Skakun Clay K. Keller Buckingham, Doolittle & Burroughs, LLP 4518 Fulton Drive, NW P.O. Box 35548 Canton, Ohio 44735 mskakun@bdblawn.com ckeller@bwblawn.com	John W. Bentine Stephen C. Fitch Matthew S. White Chester Willcox & Saxbe LLP 65 E. State Street, Suite 1000 Columbus, Ohio 43215 jbentine@cwsllawn.com sfitch@cwsllawn.com mwhite@cwsllawn.com
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An Attorney for Respondent



BUCKINGHAM, DOOLITTLE & BURROUGHS, LLP

Attorneys & Counselors at Law

Experience. Service. Excellence.SM

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Facsimile: (330) 252-5377
Email: ckeller@bdblaw.com

January 14, 2011

VIA E-MAIL ONLY

Grant W. Garber, Esq.
Jones Day
325 John H. McConnell Boulevard, Suite 600
Columbus, Ohio 43215

Re: **In Re: Cutter Exploration, Inc., v. The East Ohio Gas Company**
dba Dominion East Ohio
Case No. 09-1982-GA-CSS

Dear Grant:

Cutter Exploration, Inc., ("Cutter") needs to obtain supplementation from The East Ohio Gas Company ("DEO") regarding Complainant's Fifth Set of Interrogatories and Document Requests. The specific Interrogatories and Requests for Production of Documents at issue are the following.

INTERROGATORY NO. 59

This Interrogatory seeks to have DEO identify all programs, reports, memorandum, etc., created or drafted by any representative(s) of DEO during the past five years addressing, in whole or in part, the subject of lost and/or accounted for gas.

DEO's objection that the request is irrelevant to any issues in the proceedings pending before the PUCO involving Cutter and DEO is without merit. It is well known and understood in the industry that DEO has to manage and deal with the issue of lost and unaccounted for gas. Of course, in its position as a transmission company, DEO is responsible for transporting *all of the gas* measured at the production receipt points delivered by producers including Cutter. Any gas lost while under the custody and control of DEO, becomes a concrete problem for DEO which has direct financial consequences. For example, if 1000 Mfc of gas is measured at a production



receipt point during one month, DEO is responsible for transporting all 1000 Mfc of the gas to the customer or entity receiving the same. If 100 Mfc becomes lost while in DEO's custody, DEO is responsible for making up the difference.

At the same time this ongoing issue is present, DEO is taking the position in the PUCO proceedings that it is accurately measuring all gas Cutter delivers to the production receipt points. Cutter takes the opposite view and has asserted, among its various claims, that DEO has been consistently under measuring the amount of gas Cutter delivers to each production receipt point. If Cutter's contention is true, which the evidence certainly supports, then DEO is receiving additional gas (which has not been measured or paid for) which serves as a convenient source of additional gas for DEO to use to make up for lost and unaccounted for gas. Regardless of whether DEO wants to admit it, there is an obvious incentive for DEO to allow a situation whereby more gas is actually delivered by producers to the production receipt points than is recorded.

Now DEO may disagree with these contentions and argue that Cutter is wrong in its assertions and position, but that does not give DEO the right to foreclose Cutter from obtaining discovery on this issue. There is no question that the issue of lost and unaccounted for gas is directly relevant or, at the very least, reasonably calculated to lead to discovery of admissible evidence.

We also assume that DEO intends to take the overall position that it is just the transporter of gas it receives. Thus, DEO will assert that its only incentive is to accurately measure *all* gas delivered to the production receipt points because it only gets paid for each Mof which is recorded. Such an assertion, however, ignores the known problem of lost and accounted for gas as discussed above. For this additional reason we need the information and documents sought concerning lost and unaccounted for gas.

Accordingly, please have DEO provide a full and complete response to Interrogatory No. 59.

INTERROGATORY NO. 60:

This Interrogatory seeks to have DEO identify all representatives who, during the past five years, have undertaken any calculation(s) or analysis concerning loss and unaccounted for gas involving any of DEO's gas transmission and distribution systems.

The information sought by this Interrogatory is directly relevant and discoverable for the same reasons stated above with respect to Interrogatory No. 59. Please have DEO supplement and provide the full and complete information responsive to this Interrogatory.

Grant W. Garber, Esq.
January 14, 2011
Page 3

REQUEST FOR PRODUCTION NO. 66:

This request seeks production of all documents identified in Interrogatory No. 59. For the same reasons discussed above, these documents are relevant and discoverable. Please have DEO supplement and produce all of the documents requested.

INTERROGATORY NO. 68:

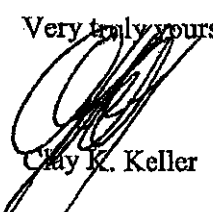
This request seeks production of all documents (including without limitation daily work sheets, reports, memorandum, e-mails, letters and field notes) concerning the shut-in of the Kokay No. 1 well that occurred on or about October 20, 2010.

DEO indicated in response to this request that it will provide supplementation, "containing these documents on or about January 7, 2011." To date, I do not believe this supplementation has been made. Please advise when we can expect to receive these documents.

If you want to discuss any of the foregoing Discovery Requests, please advise so we can schedule a telephone conference. If DEO is not willing to provide the supplementation requested, let me know so we can proceed as necessary with the PUCO.

Please note that this letter addresses only the last set of written discovery directed to DEO and Cutter reserves its rights with regard to all other outstanding discovery issues it has with DEO.

Very truly yours,



Clay K. Keller

CK:mc

cc: Mark J. Skakun, Esq.
John W. Bentine, Esq.
David A. Kutik, Esq.
Meggan A. Rawlin, Esq.

JONES DAY

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JP007123
276240-071238

February 9, 2011

VIA E-MAIL

Clay K. Keller, Esq.
Buckingham, Doolittle & Burroughs, LLP
4518 Fulton Drive, NW
P.O. Box 35548
Canton, Ohio 44735-5548

Re: Cutter Exploration, Inc. v. The East Ohio Gas Company d/b/a Dominion East Ohio,
PUCO No. 09-1982-GA-CSS

Dear Clay:

I write to address several outstanding issues. With respect to the items raised in your email dated January 3, 2011 and your letter dated January 11, 2011:

- Cutter may (i) inspect the meter removed from the Allyan site; (ii) take custody of a portion of the fluid samples taken from the Skirbunt and Perelman sites; and (iii) inspect the metal tags removed from the regulators at the Skirbunt and Perelman sites at DEO's Northeast Shop, which is located in Wickliffe, Ohio. We propose that those inspections take place on either February 15, 17, 21, 24 or 28. Please let me know if any of those dates are acceptable. This confirms that no alterations have been made to the meter, fluid samples or metal tags described above. Further, as I have discussed with you, DEO retained samples of the fluid removed from the meters at the Skirbunt and Perelman sites, not the entire volume of fluid removed from those meters.
- DEO is amenable to your proposal that we schedule removal of fluid from rotary meter gear boxes at Cutter's wells in conjunction with inspection of the orifice plates in Cutter's check meters. Specifically, DEO proposes that representatives of both parties witness and measure the total volume of fluid removed from those gear boxes. Following measurement of the fluid, DEO agrees that North Coast Labs may take custody of a portion of that fluid on behalf of Cutter. DEO will likely also take a portion of that fluid. We propose that these inspections begin in March. Please contact me to discuss the specific timing and logistics of those inspections.

COI-1453455v1

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With respect to the items raised in your letter dated January 14, 2011:

- Pursuant to the objections set forth in DEO's responses to Cutter's fifth set of discovery requests, DEO does not intend to provide responses to Cutter's discovery requests regarding lost and unaccounted for gas. Documents, calculations and analyses relating to lost and unaccounted for gas are irrelevant in this proceeding. Contrary to your assertion in your letter dated January 14, 2011, DEO has no incentive to "make up for" lost and unaccounted for gas using gas received from producers. DEO is fully compensated, at no profit to DEO, for any unaccounted for gas. In any event, the amount of lost and unaccounted for gas on DEO's system has no bearing on the reasonableness of DEO's decision to use rotary meters to measure production gas or the fact that rotary meters are demonstrably more accurate than orifice meters. Accordingly, Cutter's Interrogatory Nos. 59 and 60 and Request for Production No. 66 seek irrelevant information and documents, and DEO will not provide responses to those requests.
- All documents responsive to Cutter's Request for Production No. 68 have been produced. Specifically, those documents are labeled with bates numbers DEO 11882 through DEO 11884.

With respect to the items raised in your letter dated January 31, 2011:

- DEO is amenable to producing John Kutnar, Jeff Pavlic and Jeff Baker for deposition at Jones Day's office in Cleveland at some point during the first or second weeks of March. I am working with those individuals to identify specific dates on which they are available, and I will advise you of a proposed schedule later this week.
- Please provide Mike Cutter's and Mark Tirpak's availability for depositions during the first and second weeks of March.
- DEO is attempting to locate additional versions of maps of the TPL14 and NM11 systems. In the interim, and as we indicated in our initial response to Cutter's Request for Production No. 10, the system maps are confidential Critical Energy Infrastructure Information that we can provide only upon your execution of a protective agreement. Cutter's former counsel executed the agreement, but we have not received an executed version from you or the other new counsel. A copy of the previously executed agreement and a word version are enclosed. Please arrange for Cutter's new counsel to sign the protective agreement.
- Enclosed please find one excel file labeled "Cutter Audit Trails Oct 2010," which contains supplemental Minimax data downloaded through October 2010.

JONES DAY

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- We are working on supplementations to Cutter's Request for Production No. 56 and Interrogatory No. 52. I expect to have such supplemental responses to you no later than February 18, 2011.

Finally, I write to bring two additional items to your attention:

- DEO will conduct annual inspections of meter runs at the Halcik (P221), Hoenigman (P222) and Pizzino/Kaucic (P223) locations next week. DEO will begin those inspections on February 15 at 9 a.m. at the Halcik site and will continue with the inspections of the other locations throughout the day on February 15 and, if necessary, on February 16. Please advise whether Cutter will send an attorney to witness those inspections. I will advise of further inspection dates when they become available.
- Last week you and I discussed Cutter's proposal to temporarily replace rotary meters with orifice meters, or "plumb around" rotary meters so that an orifice meter is the sole measurement device, at approximately seven to eight Cutter well sites. This proposal is not acceptable to DEO. DEO installed those rotary meters pursuant to an agreement with the Ohio Oil & Gas Association and consistent with its installation of rotary meters at wells belonging to other producers. Cutter's filing of this litigation does not entitle it to an exemption from that agreement or from DEO's consistent practice of using rotary meters at production wells. Cutter is free to install check meters at its meter runs; indeed, Cutter has availed itself of this option at several locations. DEO will not, however, temporarily remove or "plumb around" the rotary meters in use at Cutter's well sites.

Very truly yours,



Grant W. Garber

cc: David Kutik, Esq.
Mark Skakun, Esq.
John Bentine, Esq.