

**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

PUCO

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RECEIVED-DOCKETING DIV.

**MOTION TO COMPEL
AND MOTION TO CONTINUE HEARING
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 ("DEO" or East Ohio") to immediately comply with pending discovery items which have already been agreed upon by the parties, but which East Ohio continues to ignore.


In summary, since the telephone conference held in this matter by the Commission over two weeks ago, no progress has been made on any of the discovery issues involving physical inspections and documents East Ohio was to provide to Cutter Exploration. A list of the open discovery items is set forth in the e-mail sent on March 7, 2011, which is attached hereto as Exhibit "A." With regard to the discovery issues set forth in Exhibit A, the depositions of John Kutnar, Jeff Baker and Jeff Pavlic were scheduled and these depositions were taken. None of

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the other scheduling issues have been addressed by East Ohio since the telephone conference held on March 3, nor has East Ohio provided any of outstanding documents and information (Exhibit A, items 3, 4, 5, 6). Unfortunately, counsel for Cutter Exploration has not received any response from East Ohio despite ongoing efforts.¹

Accordingly, Cutter Exploration respectfully moves the Commission to enter an order directing East Ohio to cooperate forthwith with for the completion of all of the open discovery items set forth in the Exhibit A e-mail and to adjust the hearing date and schedule in this matter so that Cutter Exploration is not prejudiced in its ability to prepare this matter for hearing. Counsel for Cutter Exploration is available for any telephone conference or hearing the Commission may want to conduct regarding the outstanding discovery and scheduling issues in this matter. A brief Memorandum in Support of this Motion is attached hereto.

Respectfully submitted,

By: 
John Bentine #0016388
Sarah Daggett Morrison #0068035
Stephen C. Fitch #0022322
CHESTER WILLCOX & SAXBE, LLP
65 East State Street, Suite 1000
Columbus, OH 43215
Telephone: (614) 334-6121
Facsimile: (614) 221-4012
jbentine@cwsllaw.com
smorrison@cwsllaw.com

And

Mark J. Skakun #0023475
Clay K. Keller #0072927

¹ See, *infra* at pp 4-5. Apparently, East Ohio and its counsel have had time to work on preparing a 31 page brief and multiple affidavits, but the efforts of Cutter Exploration's counsel to complete outstanding discovery owed to Cutter Exploration have been ignored.

BUCKINGHAM, DOOLITTLE
BURROUGHS, LLP
3800 Embassy Parkway, Suite 300
Akron, Ohio 44333-8332
Telephone: (330) 376-5300
Facsimile: (330) 258-6559
mskakun@bdblawn.com; ckeller@bdblawn.com

Attorneys for Cutter Exploration, Inc.

MEMORANDUM IN SUPPORT

On March 3, 2011, the attorney-examiner held a telephone conference with counsel at the request of Cutter Exploration. Cutter Exploration requested the telephone conference to address outstanding discovery items that will require a significant amount of time, scheduling and effort to complete. Unfortunately, since the telephone conference, very little progress has been made which has jeopardized Cutter Exploration's ability to complete its discovery and prepare for the hearing. A list of open discovery items is set forth in the e-mail sent on March 7, 2011, which is attached hereto as Exhibit "A."

Some of the critical discovery which still has not been addressed by East Ohio includes the following: (1) East Ohio has not produced extensive amounts of Mercury Mini Max computer data; (2) East Ohio has not responded to Interrogatory No. 52 regarding what Mini Max data East Ohio is not available to produce; and (3) East Ohio has failed to cooperate in scheduling inspections of dozens of rotary meters associated with Cutter Exploration wells. These discovery issues have been outstanding for many weeks and Cutter Exploration's right to obtain this discovery is not in dispute. Unfortunately, East Ohio refuses and/or has been unable to timely do what is necessary to complete this discovery.

After sending the e-mail of March 7 (Exhibit A), Cutter Exploration made further efforts to complete the discovery at issue. Attached hereto as Exhibit "B" is an e-mail exchange

between counsel regarding the most recent round of communications on open discovery items Cutter Exploration is seeking from East Ohio. East Ohio's counsel has not responded at all since sending an e-mail on March 9 stating that a response would be provided later that day or the next regarding the open discovery issues. (See, Exhibit B, e-mail from Attorney Grant Garber). Instead of responding as promised, East Ohio has provided no response at all regarding completing the open discovery items.²

Two especially critical, time-sensitive items concern the rotary meter inspections and the Mercury Mini Max computer data. With regard to the rotary meter inspections, there is no disagreement between the parties that all of the fluid in the rotary meter gear boxes for meters associated with Cutter Exploration wells is to be drained and turned over to third-party North Coast Laboratories for inspection and testing.³ But, other than some initial inspections that occurred on December 29, 2010, for rotary meters associated with the Allyn and Perelman sites, no further inspections have been accomplished.⁴

² On March 10, at the conclusion of Mr. Baker's deposition, the undersigned counsel inquired of Attorney David Kutik as to the status of the open discovery issues. Mr. Kutik simply directed the undersigned to contact Attorney Garber. That of course was done, but no response has been provided. See, Exhibit B (e-mail of March 11).

³ This agreed upon procedure was discussed during the telephone conference held with the attorney-examiners on March 3, 2011. As noted in the e-mail of March 14, 2010 (Exhibit B), it also appears that East Ohio may be going out and conducting inspections of the rotary meters, draining the oil, etc., without giving Cutter Exploration sufficient advance notice. East Ohio has not made response to this issue.

⁴ On December 29, 2010, East Ohio initially drained fluid from rotary meters located at the Allyn and Perelman sites. An East Ohio supervisor, Jeff Baker retained "samples" of the fluid drained from these meters. The fact that East Ohio retained only "samples" of the fluid drained represents an independent issue with regard to East Ohio's failure to preserve evidence in this matter. As noted in the e-mail exchange attached hereto as Exhibit "C," Cutter Exploration expressly requested that all of the evidence be preserved. East Ohio, through its counsel, responded by indicating that "we'll retain whatever parts, components, oil, etc." that are removed during that work. See, Exhibit C, e-mail dated December 28, 2010. East Ohio's counsel also indicated that if the oil would be changed in the gear boxes, East Ohio would discuss the proposal to have a third-party take custody of the oil/fluid removed. Contrary to what was discussed, the next day East Ohio drained oil/fluid from the rotary meters at the Allyn and Perelman sites without further discussion and apparently only "samples" of the fluid were retained. Cutter Exploration reserves its rights with regard to any additional claims or evidentiary issues that may arise due to East Ohio's failure to preserve evidence in this matter.

In fact, last month East Ohio had scheduled inspections for the rotary meters at the Halcik, Hoenigman and Pizzo/Kaucic meter run sites. The parties were in agreement with proceeding with these inspections on February 15, 2010, as shown in the e-mail attached hereto as Exhibit "D." After agreeing to the procedure for these inspections on February 14, East Ohio then cancelled the inspections later that evening by retracting its prior agreement to allow North Coast to take custody of all the gear box fluids. Attached as Exhibit "E" are communications between counsel regarding this specific issue.

As discussed during the telephone conference on March 3, East Ohio subsequently again agreed to proceed with the rotary meter inspections whereby North Coast will take custody of the oil/fluids removed from the gear boxes. To date, however, nothing has been scheduled to complete these inspections despite the efforts of Cutter Exploration's counsel. The end result is that another month has been lost due to East Ohio's failure to follow through as agreed upon and due to its machinations on this discovery issue. This is a very significant problem because it will be extremely difficult for the parties to complete the inspections of over 35 rotary meters in addition to completing all of the other discovery needed for this matter.

Moreover, East Ohio's failure to produce all of the Mercury Mini Max computer data has been a problem for an even longer period of time as referenced in Exhibit A (numbered item 4). The same pattern developed with regard to this discovery: East Ohio indicates it will provide what is requested and then it does not follow through. The more recent communications regarding the Mini Max data discovery shows the following.

1. On October 20, 2010, East Ohio indicated, through its counsel that, "DEO will provide periodic supplementations of Minimax data for the Cutter and Smail well sites for which data was provided on August 25 and September 24, 2010." A copy of this letter is attached hereto as Exhibit "F." In this same letter, East Ohio's counsel indicates that it would provide "an update" by November 5, 2010, regarding East Ohio's difficulties with

regard to not being able to provide some of the historical Mini Max data.
Id.

2. On October 11, 2010, Cutter Exploration served Interrogatory No. 52 which states:

For each metering station identified on Exhibit A, please identify by metering station the time period(s) for which Mini-Max electronic gas volume records are not available since the meter's install date. For each station for which Mini-Max electronic gas volume records are not available for any time period, please state the reason why the records are not available.

On October 29, 2010, East Ohio provided the following response:

ANSWER: DEO will provide a supplemental response with this information.

See, Exhibit G, attached hereto. East Ohio has never provided the supplemental response to Interrogatory No. 52. See, Exhibit A, numbered item 4.

3. On February 9, 2011, East Ohio finally provided *some* supplemental Mini Max computer data, but it is only through October of last year. None of the additional Mini Max data has been produced. See, Exhibit A, numbered item 4.
4. During the telephone conference held on March 3 with the Commission, this discovery was discussed and it was the understanding of Cutter Exploration's counsel that a response to Interrogatory 52 and the additional Mini Max data would be produced. To date, nothing further has been provided by East Ohio.

Extensive amounts of information regarding the gas measurement undertaken by the rotary meters in conjunction with the Mercury Mini Max computer recorders still has not been produced. It is not disputed that Cutter Exploration is entitled to receive this data and information, but East Ohio still has not provided the same.

Cutter Exploration does not want to get into protracted discovery disputes, nor is it interested in continuing to expend time and effort filing motions with the Commission on discovery issues. Nonetheless, Cutter Exploration has little choice because East Ohio has not

been able to provide the level of cooperation needed to complete discovery in a reasonable manner within the time remaining for the hearing.

For these reasons, Cutter Exploration respectfully moves the Commission to enter an order directing East Ohio to cooperate forthwith with the completion of all of the open discovery items set forth in the Exhibit A and to adjust the hearing date and schedule in this matter so that Cutter Exploration is not prejudiced in its ability to complete discovery and prepare for the hearing in this matter. Counsel for Cutter Exploration is available for any telephone conference and/or a hearing should the Commission may want to conduct the same regarding the outstanding discovery and scheduling issues in this matter.

Respectfully submitted,

By: 

John Bentine #0016388

Sarah Daggett Morrison #0068035

Stephen C. Fitch #0022322

CHESTER WILLCOX & SAXBE, LLP

65 East State Street, Suite 1000

Columbus, OH 43215

Telephone: (614) 334-6121

Facsimile: (614) 221-4012

jbentine@cwsllaw.com

smorrison@cwsllaw.com

And

Mark J. Skakun #0023475

Clay K. Keller #0072927

BUCKINGHAM, DOOLITTLE

BURROUGHS, LLP

3800 Embassy Parkway, Suite 300

Akron, Ohio 44333-8332

Telephone: (330) 376-5300

Facsimile: (330) 258-6559

mskakun@bdbl律.com; ckeller@bdbl律.com

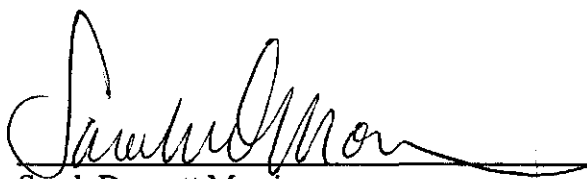
Attorneys for Cutter Exploration, Inc.

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Motion to Compel and Motion to Continue Hearing by Cutter Exploration, Inc.* was served by electronic and regular U.S. mail, postage prepaid this 18th day of March, 2011 upon the following:

David A. Kutik
Meggan A. Rawlin
Jennifer Brinkman Flannery
JONES DAY
901 Lakeside Avenue
Cleveland, OH 44114
Email: dakutik@jonesday.com
Email: mrawlin@jonesday.com
Email: jbflannery@jonesday.com

Grant W. Garber
JONES DAY
325 JH McConnell Blvd., Suite 600
Columbus, OH 43216-5017
Email: gwgarber@jonesday.com


Sarah Daggett Morrison

**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 SUMMIT)

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. Attached hereto as Exhibits A through F are true and accurate copies of written communications between counsel for Cutter Exploration and counsel for East Ohio in this matter.

4. Attached hereto as Exhibit G is a true and accurate copy of Interrogatory No. 52 and the response provided by East Ohio to the same. Since East Ohio provided the response to Interrogatory No. 52 on October 29, 2010, stating that "DEO will provide a supplemental response with this information," no supplemental response has been provided.

5. As set forth in Exhibits A through E, I have made multiple contacts with East Ohio's counsel in an effort to complete various discovery issues including physical inspections and obtaining additional documents and records which are listed in Exhibit A.

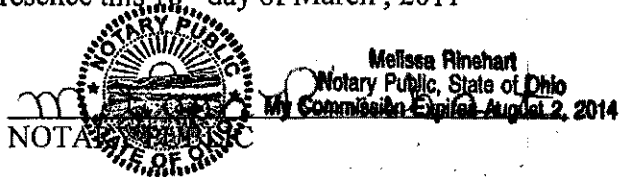
6. After e-mailing and calling East Ohio's counsel on March 14, 2010, regarding open discovery issues I have received no response from East Ohio's counsel.

FURTHER AFFIANT SAYETH NAUGHT.



CLAY K. KELLER

SWORN TO and subscribed in my presence this 18th day of March, 2011



Clay Keller

From: Clay Keller
Sent: Monday, March 07, 2011 10:44 AM
To: 'Grant W. Garber (gwggarber@jonesday.com)'
Cc: Mark Skakun; 'John Bentine (jbentine@cwsllaw.com)'; 'David A. Kutik'
Subject: Cutter Exploration, Inc., v. The East Ohio Gas Company d/b/a Dominion East Ohio
 Grant:

Please allow this e-mail to follow-up on issues discussed last week:

1. Deposition scheduling. We intend to start with John Kutinar this Thursday with a 9:00 a.m., start time. Upon completion of his deposition we can start with Jeff Baker. Mr. Pavlic will be last. Of course, we do not know how long each depositions will take, but my assumption is that we will be able to work together to get these completed on Thursday and Friday, i.e., if we get done with Mr. Kutinar at noon or so, Mr. Baker will then be available that afternoon. Please confirm the foregoing, or let me know if you or David anticipate any issues with proceeding in this manner.

Mark Tirpak will be available for his deposition on March 16th, at BDB's office in Akron. A start time of 9:00 a.m. will be fine with us.

Mike Cutter can be available for his deposition 6th, 7th or 8th of April at BDB's office in Akron. A start time of 9:00 a.m., is fine with us.

2. Inspections of rotary meters. As we discussed, we are waiting on dates from you to commence the inspections as agreed upon. As I mentioned, if we do not get this process started right away, we are not going to be able to complete this process. We are in agreement with utilizing North Coast labs to take custody of all fluid removed from the meters subject to the three conditions East Ohio asserted (1. DEO will be notified before North Coast does any type of testing of the fluid; 2. DEO will receive any test results and 3. Cutter will pay the expense).

3. For the inspections of the Allyn Meter and the regulator tags at DEO's Wickliffe shop, we propose the last week in April.

With regard to the fluid samples removed from the Allyn and Perelman meters, we would like to get them submitted to North Coast immediately.

4. Please advise when we are going to receive the outstanding Mini Max data and the information requested by Interrogatory No. 52. Months have passed and we still do not have information and data that was promised. Also, with regard to the data from the Mini Max computers, it does not appear that everything is being provided. It appears that only limited audit trail data is being provided. We want to receive the complete audit trail data/reports which includes the authorization reports, site reports, calibration reports and the activity log reports for each meter for the complete time period in question.

5. Please advise as the status of the documents on our "missing document list" and when we will obtain these documents and/or a privilege log.

6. Please advise when we will receive the full size drawings of DEO 321-322, 769 and 770.

7. Inspection of East Ohio production wells. We propose undertaking these inspections the week of March 28th. Please advise.

3/18/2011



Clay Keller

From: Clay Keller
Sent: Monday, March 14, 2011 1:29 PM
To: 'gwggarber@jonesday.com'
Cc: Mark Skakun; John Bentine (jbentine@cwslaw.com); 'Sarah D. Morrison'
Subject: RE: Cutter Exploration, Inc., v. The East Ohio Gas Company d/b/a Dominion East Ohio Grant:

Per my voicemail, please call me back. I received word that East Ohio started conducting inspections of meter stations today at the Pulgic, Edger and Grieve well sites which apparently includes the changing of the gear box oil. Please advise as to what exactly East Ohio is doing in the field today regarding inspections and/or changing of the oil in the gear boxes of rotary meters. Unless you notify us sufficiently in advance, we are not able to proceed as agreed upon with regard to North Coast taking custody of the gear box fluids.

Of course, we also still have not heard from you regarding any of the other issues listed below. We look forward to hearing from you today to address all of these outstanding issues without further delays.

From: Clay Keller
Sent: Friday, March 11, 2011 8:06 AM
To: 'gwggarber@jonesday.com'
Subject: Re: Cutter Exploration, Inc., v. The East Ohio Gas Company d/b/a Dominion East Ohio Grant:

I have not seen yet any response to my e-mail re outstanding discovery issues as promised. I asked David about the status yesterday and he directed me to you. Please advise b/c it does not appear we are making any progress.

From: Grant W Garber <gwggarber@jonesday.com>
To: Clay Keller
Sent: Wed Mar 09 10:04:50 2011
Subject: Re: Cutter Exploration, Inc., v. The East Ohio Gas Company d/b/a Dominion East Ohio

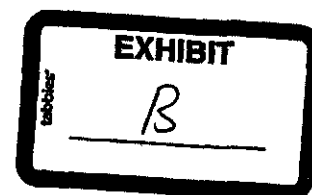
Clay,

Regarding the depositions starting tomorrow, we certainly want to work with you to get these completed in an efficient way, but we also do not want our witnesses to be sitting around waiting for the prior deposition to conclude. To that end, we'd like (i) a better general sense of how long you expect the depositions to take, if possible (e.g., Kutnar will take all of tomorrow morning, so Baker will start in the afternoon); and (ii) your agreement to give us around an hour's notice for when you'd like to begin the subsequent depositions, so we can give our folks enough time to travel to the Cleveland office.

I'll respond to the other items in your email later today or tomorrow.

Grant W. Garber
 Jones Day
 325 John H. McConnell Boulevard, Suite 600
 Columbus, Ohio 43215
 Phone: 614-281-3658

3/18/2011



Fax: 614-461-4198
gwggarber@jonesday.com

Mailing Address:
P.O. Box 165017
Columbus, OH 43216-5017

From: "Clay Keller" <CKeller@BDBLAW.com>
To: <gwggarber@jonesday.com>
Cc: "Mark Skakun" <MSkakun@BDBLAW.com>, <jbentine@cwslaw.com>, "David A. Kutik" <dakutik@JonesDay.com>
Date: 03/07/2011 10:43 AM
Subject: Cutter Exploration, Inc., v. The East Ohio Gas Company d/b/a Dominion East Ohio

Grant:

Please allow this e-mail to follow-up on issues discussed last week:

1. Deposition scheduling. We intend to start with John Kutinar this Thursday with a 9:00 a.m., start time. Upon completion of his deposition we can start with Jeff Baker. Mr. Pavlic will be last. Of course, we do not know how long each depositions will take, but my assumption is that we will be able to work together to get these completed on Thursday and Friday, i.e., if we get done with Mr. Kutinar at noon or so, Mr. Baker will then be available that afternoon. Please confirm the foregoing, or let me know if you or David anticipate any issues with proceeding in this manner.

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Mike Cutter can be available for his deposition 6th, 7th or 8th of April at BDB's office in Akron. A start time of 9:00 a.m., is fine with us.

2. Inspections of rotary meters. As we discussed, we are waiting on dates from you to commence the inspections as agreed upon. As I mentioned, if we do not get this process started right away, we are not going to be able to complete this process. We are in agreement with utilizing North Coast labs to take custody of all fluid removed from the meters subject to the three conditions East Ohio asserted (1. DEO will be notified before North Coast does any type of testing of the fluid; 2. DEO will receive any test results and 3. Cutter will pay the expense).

3. For the inspections of the Allyn Meter and the regulator tags at DEO's Wickliffe shop, we propose the last week in April.

With regard to the fluid samples removed from the Allyn and Perelman meters, we would like to get them submitted to North Coast immediately.

4. Please advise when we are going to receive the outstanding Mini Max data and the information requested by Interrogatory No. 52. Months have passed and we still do not have information and data that was promised. Also, with regard to the data from the Mini Max computers, it does not appear that everything is being provided. It appears that only limited audit trail data is being provided. We want to receive the complete audit trail data/reports which includes the authorization reports, site reports, calibration reports and the activity log reports for each meter for the complete time period in question.

5. Please advise as the status of the documents on our "missing document list" and when we will obtain

3/18/2011

these documents and/or a privilege log.

6. Please advise when we will receive the full size drawings of DEO 321-322, 769 and 770.

7. Inspection of East Ohio production wells. We propose undertaking these inspections the week of March 28th. Please advise.

Clay K. Keller, Esq.

Buckingham, Doolittle & Burroughs, LLP

Attorneys & Counselors at Law -- www.bdblawn.com

4518 Fulton Drive NW, P.O. Box 35548
Canton, OH 44735-5548

Phone: 330-491-5321

Direct Fax: 330-252-5377

Toll Free: 1-888-811-2825

CKeller@BDBLAW.com

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3/18/2011

Clay Keller

From: Grant W Garber [gwggarber@jonesday.com]
Sent: Tuesday, December 28, 2010 1:21 PM
To: Clay Keller
Cc: David A. Kutik; jbentine@cwsllaw.com; Mark Skakun
Subject: RE: In re: Cutter Exploration, Inc., v. Dominion East Ohio
 Clay,

I'm working with our folks to determine the exact schedule for tomorrow morning. Because of holiday vacations, I may not have a final schedule until first thing in the morning. In any case, we'll make sure to give your representative adequate time to arrive at the sites before we start the work.

We'll also retain whatever parts, components, oil, etc. that are removed during that work, if any. At this point, I'm not sure whether we intend to change the oil. If we do, we'll discuss your third-party-custody proposal.

Grant

Grant W. Garber
 Jones Day
 325 John H. McConnell Boulevard, Suite 600
 Columbus, Ohio 43215
 Phone: 614-281-3658
 Fax: 614-461-4198
 gwggarber@jonesday.com

Mailing Address:
 P.O. Box 165017
 Columbus, OH 43216-5017

From: "Clay Keller" <CKeller@BDBLAW.com>
To: "Grant W Garber" <gwggarber@jonesday.com>
Cc: <jbentine@cwsllaw.com>, "Mark Skakun" <MSkakun@BDBLAW.com>, "David A. Kutik" <dakutik@JonesDay.com>
Date: 12/28/2010 12:23 PM
Subject: RE: In re: Cutter Exploration, Inc., v. Dominion East Ohio

Grant:

Thank you for your e-mail below and sending the discovery via e-mail. Cutter Exploration will have its representative present tomorrow. Please advise which well site DEO representatives will be visiting first.

Of course, if DEO does perform any work on the meters in question, please be advised that DEO needs to preserve all evidence relating to these meters. For example, if the oil in the gear box is changed, the oil drained from the meter needs to be properly preserved in a clean, dry container so it can be tested. If fact, if DEO intends to drain the oil from the meter gear boxes, it would be preferable if an independent company

3/17/2011



takes possession of the drained oil so it can be tested.

North Coast Labs is willing to take custody of any oil drained from the meters so it can test the same. The contact information for North Coast Labs is set forth below. Please advise if DEO will be draining the oil from the meter gear boxes and, if so, if DEO is willing to have North Coast take custody of the oil which is drained so it can test the same.

Thank you.

North Coast Labs, NCEL

10100 Wellman Road

Streetsboro, OH 44241-1613 map *Nearest landmark: Frost Rd/I480*

(330) 342-3377

www.northcoastlabs.net

Clay K. Keller, Esq.

Buckingham, Doolittle & Burroughs, LLP

Attorneys & Counselors at Law -- www.bdblaw.com

4518 Fulton Drive NW, P.O. Box 35548
Canton, OH 44735-5548

Phone: 330-491-5321
Direct Fax: 330-252-5377
Toll Free: 1-888-811-2825
CKeller@BDBLAW.com
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[View my Biography](#)

[Privacy Notice](#)

From: Grant W Garber [<mailto:qwggarber@jonesday.com>]
Sent: Thursday, December 23, 2010 4:09 PM
To: Clay Keller
Cc: jbentine@cwslaw.com; Mark Skakun; David A. Kutik
Subject: In re: Cutter Exploration, Inc., v. Dominion East Ohio

3/17/2011

Counsel:

Attached are DEO's objections and responses to Cutter's fifth set of discovery requests and responsive documents labeled with bates numbers DEO 11813 through DEO 11979. These also are being served by mail.

Also, please be advised that DEO personnel will visit the Allyan and Perelman sites between 10 and 11am on December 29, 2010. I'll advise if this changes.

Grant W. Garber
Jones Day
325 John H. McConnell Boulevard, Suite 600
Columbus, Ohio 43215
Phone: 614-281-3658
Fax: 614-461-4198
gwggarber@jonesday.com

Mailing Address:
P.O. Box 165017
Columbus, OH 43216-5017

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3/17/2011

Clay Keller

From: Clay Keller

Sent: Monday, February 14, 2011 3:15 PM

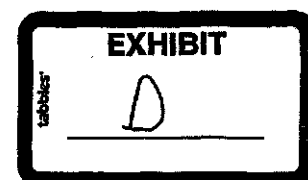
To: Grant W. Garber (gwggarber@jonesday.com)

Subject: In re: Cutter Exploration, Inc., v. The East Ohio Gas Company d/b/a Dominion East Ohio
Grant:

Per our conversation this morning, please allow this to confirm that North Coast will be appearing to take custody of all the oil/fluid drained from the rotary meters located at the Halcik (P221), Hoenigman (P222) and Pizzino/Kaucic (P223) meter runs tomorrow per Cutter's proposal. Per your letter of February 9, 2011, a representative of Cutter and a representative of North Coast will be at the Halcik site at 9:00 a.m. tomorrow morning. Thanks.

Clay

3/17/2011



Clay Keller

From: Clay Keller
Sent: Thursday, February 17, 2011 10:51 AM
To: 'Grant W Garber'
Cc: Mark Skakun; John Bentine (jbentine@cwslaw.com)
Subject: RE: In re: Cutter Exploration, Inc., v. The East Ohio Gas Company d/b/a Dominion East Ohio Grant:

DEO's 11th hour cancellation of the annual inspections early this week was quite a surprise; especially in light of the conversation we had early that day and all of our previous communications. Since the end of December Cutter Exploration, Inc., has been proposing the use of North Coast Laboratories to take custody of the oil/fluid from the rotary meters.

With regard to your questions below, something has obviously made certain rotary meters freeze and stop operating. Based upon what we know and can infer there is fluid, other than oil, which entered the gear boxes and greatly interfered with the operation of the rotary meters. Your client certainly is aware of this problem and all we want to do is look at the evidence so we can make our own assessment. Surprisingly, DEO has already failed to preserve all of the oil/fluid removed from the rotary meters at the end of December from the Allyn and Perelman despite our specific preservation request.

To provide a brief response to your questions below:

1. Measurement and analysis is going to be conducted to determine the overall volume of fluid removed from each rotary meter. Then a determination will be made as whether the fluid removed consists of only the gear box oil, or if other fluid such as water or brine entered the gear box. If substances other than oil was drained from the gear boxes, analysis will be conducted to determine type and amount(s) of the other substances found.
2. The relevance and discoverability of this information is obvious for many reasons, including without limitation, the following. When the rotary meters are not turning properly, it will directly effect the gas production and accurate measurement of the gas flowing from Cutter's wells which are two issues directly before the PUCO. DEO is insisting that producers, including Cutter, use rotary meters which are not appropriate for the application at issue. The fact that the rotary meters are freezing and not turning properly is more evidence on this issue and we are entitled to obtain discovery concerning the same.
3. North Coast Laboratories is a well know company which DEO should already be familiar with. But, information on the company, its personnel, its equipment, etc. can be found on the company's website www.northcoastlabs.com.

Please advise when we will proceed with the inspections as previously agreed upon.

Clay

From: Grant W Garber [mailto:gwgarber@jonesday.com]
Sent: Monday, February 14, 2011 5:06 PM
To: Clay Keller

3/17/2011



Subject: Re: In re: Cutter Exploration, Inc., v. The East Ohio Gas Company d/b/a Dominion East Ohio

Clay:

Please be advised that DEO will NOT go forward with the annual inspections of the Halcik, Hoenigman and Pizzino/Kaucic sites tomorrow. As I mentioned in my voicemail to you, DEO requires additional information regarding a number of aspects of the testing that Cutter proposes for the fluid and oil removed from those sites. Specifically, DEO requires (i) a description of the testing that Cutter intends to perform on those materials; (ii) the relevance of that testing to this litigation; and (iii) additional information regarding North Coast Labs and the qualifications of the lab personnel who would perform the testing. In order to allow time for these discussions among counsel regarding these items, DEO will postpone the annual inspections of the three sites listed above. No annual inspections will take place at those sites tomorrow and, accordingly, no DEO personnel will be present at the Halcik site at 9am tomorrow, as had been previously scheduled.

Grant W. Garber
Jones Day
325 John H. McConnell Boulevard, Suite 600
Columbus, Ohio 43215
Phone: 614-281-3658
Fax: 614-461-4198
gwggarber@jonesday.com

Mailing Address:
P.O. Box 165017
Columbus, OH 43216-5017

From: "Clay Keller" <CKeller@BDBLAW.com>
To: <gwggarber@jonesday.com>
Date: 02/14/2011 03:14 PM
Subject: In re: Cutter Exploration, Inc., v. The East Ohio Gas Company d/b/a Dominion East Ohio

Grant:

Per our conversation this morning, please allow this to confirm that North Coast will be appearing to take custody of all the oil/fluid drained from the rotary meters located at the Halcik (P221), Hoenigman (P222) and Pizzino/Kaucic (P223) meter runs tomorrow per Cutter's proposal. Per your letter of February 9, 2011, a representative of Cutter and a representative of North Coast will be at the Halcik site at 9:00 a.m. tomorrow morning. Thanks.

Clay

Clay K. Keller, Esq.

Buckingham, Doolittle & Burroughs, LLP

Attorneys & Counselors at Law -- www.bdblaw.com

4518 Fulton Drive NW, P.O. Box 35548
Canton, OH 44735-5548

Phone: 330-491-5321
Direct Fax: 330-252-5377
Toll Free: 1-888-811-2825
CKeller@BDBLAW.com
[Download my VCard](#)

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JONES DAY

325 JOHN H. MCCONNELL BOULEVARD, SUITE 600
COLUMBUS, OHIO 43215-2673
TELEPHONE: 614.469.3939 • FACSIMILE: 614.461.4198

MAILING ADDRESS:
P.O. BOX 165017
COLUMBUS, OHIO 43216-5017

Direct Number: (614) 281-3658
gwgarber@jonesday.com

JP007123
276240-071238

October 20, 2010

VIA E-MAIL AND FIRST CLASS MAIL

W. Jonathan Airey
Michael J. Settineri
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43215

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

Dear Counsel:

I write regarding several discovery items:

First, please provide availability for the deposition of Cutter's designated corporate representative(s). We had proposed any two consecutive days during the week of October 25. We had expected to hear back from you, but we have not heard from you. We are still available next week. If you and Mr. Cutter (and whomever else your client will designate to respond to our notice) are still available, please let us know immediately the dates on which the deposition will proceed. As we have previously indicated, we are amenable to have the deposition(s) taken in Jones Day's offices in Columbus or Cleveland. If Mr. Cutter (or any other designated witness) is not available next week, please let us know whether the witness(es) may be made available on November 3 and 4 or any day during the week of November 8. Also, as we have previously requested, please provide any written responses and objections to the topics listed in DEO's Amended Notice of Deposition. We would prefer to have these objections in advance of the first day of the corporate representative deposition.

Second, we are interested in taking the deposition of Mark Tirpak. Please let us know what dates he may be available for a deposition. We propose November 10, 11, 16 or 17 for this deposition. As with the corporate representative deposition, we are amenable to having that deposition take place at Jones Day's offices in Columbus or Cleveland.

Third, in Cutter's supplemental response to DEO's Interrogatory No. 18, Cutter indicated its belief that "another producer feeding into the NM11 distribution system has been allowed to place regulators downstream of the rotary meter station for the Cooper #1 well off Sherman Road in Chesterland, Ohio as recently as December 2009." The supplemental response also indicated that "[p]hotographs of that station are being produced in response to the below Request for Production No. 5." The response to Request for Production No. 5, however, broadly (and

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JONES DAY

W. Jonathan Airey
October 20, 2010
Page 2

improperly) referenced the entirety of Cutter's document production then to date (*i.e.*, "CUTTER00001 to CUTTER02572" and "CUTTER02573 to CUTTER03283"). Please indicate the specific page(s) in Cutter's document production that reflect the photographs you referenced in your supplemental response to Interrogatory No. 18. If such photographs have not been produced, please provide them. Please provide this information and/or photographs by October 26, 2010.

Fourth, in response to your letter dated October 12, 2010, DEO will provide periodic supplementations of Minimax data for the Cutter and Smail well sites for which data was provided on August 25 and September 24, 2010. We are aiming to provide the next such supplement to you by October 27. Also, we have confirmed that P332 and P560 are sub-meters associated with P094 (Kirby/Perko) and P158 (Kokay), respectively. Those sub-meters do not have Minimax units. Also, although the Minimax unit at the P697-02 meter appears to be accurately recording contemporaneous data, DEO has experienced technical difficulties in downloading the historical data. At this point, it appears unlikely that DEO will be able to retrieve that data, but we are attempting to do so. I will provide an update regarding these efforts by November 5, 2010.

Fifth, please provide clear versions of the pictures labeled with Bates numbers Cutter 772 through Cutter 778, Cutter 837 through Cutter 847, Cutter 865 through Cutter 871 and Cutter 892 through Cutter 898.

Sixth, please provide a privilege log for your production to date. Please provide this log, as well as clear versions of the pictures listed in item five above, by November 12, 2010.

Very truly yours,



Grant W. Garber

10/29

**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 FOURTH SET OF INTERROGATORIES AND DOCUMENT
REQUESTS AND SECOND SET OF REQUESTS FOR ADMISSION**

Pursuant to Rules 4901-1-16, 4901-1-19, 4901-1-20 and 4901-1-22, Ohio Administrative Code, Respondent The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") provides these Responses and Objections to Complainant Cutter Exploration, Inc.'s ("Complainant's") Fourth Set of Interrogatories and Document Requests and Second Set of Requests for Admission.

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.



INTERROGATORY NO. 51: Please Identify all orifice meter metering [sic] stations installed since September 1, 2008 for any production receipt point in Ohio. For each metering station identified, please identify the corresponding production well name (if any) and the corresponding DEO system.

RESPONSE: DEO installed one orifice meter at the P362 Henry-Smith Unit #1 meter station on September 8, 2008. The production well at that location is owned by Artex Oil Company ("Artex") and feeds into DEO's NPP1 system. In order to accommodate producers who had a substantial inventory of orifice meters prior to September 1, 2008, DEO agreed to allow any producer that submitted a tap request prior to that date to install orifice meters. Consistent with that approach, and because DEO received Artex's tap request for the P362 metering station on August 25, 2008, DEO allowed the installation of an orifice meter at that location. The P362 metering station is the only location where an orifice meter was installed at a production receipt point on DEO's system since September 1, 2008.

INTERROGATORY NO. 52: For each metering station identified on the attached Exhibit A, please identify by metering station the time period(s) for which Mini-Max electronic gas volume records are not available since the meter's install date. For each station for which Mini-Max electronic gas volume records are not available for any time period, please state the reason why the records are not available.

RESPONSE: DEO will provide a supplemental response with this information.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Objections and Responses to Complainant's Fourth Set of Interrogatories and Document Requests and Second Set of Requests for Admissions was sent by e-mail and first class mail, postage prepaid, to the following persons this 29th day of October, 2010:

John W. Bentine
Stephen C. Fitch
Matthew S. White
Chester Willcox & Saxbe LLP
65 E. State Street, Suite 1000
Columbus, Ohio 43215
jbentine@cwsllaw.com
sfitch@cwsllaw.com
mwhite@cwsllaw.com

Mark J. Skakun
Clay K. Keller
Buckingham Doolittle & Burroughs, LLP
4518 Fulton Drive NW
P.O. Box 35548
Canton, Ohio 44735-5548
mskakun@bdblawn.com
ckeller@bdblawn.com


An Attorney for Respondent

Ex. A

CUTTER EXPLORATION - ITEM DATA

STATION #	Well Name	Meter	County	Township	Install Date	Meter	Database
K974-03	Christ Presbyterian #1	7M1480	Geauga	Chester	11/20/2006	retrofit	41
P020-01	Kulp #1	3M740	Geauga	Chester	10/23/2008	retrofit	41
P020-02	Kulp #1	3M740	Geauga	Chester	10/23/2008	retrofit	210
P059-02	Alexander E #3	5M175	Geauga	Chester	5/24/2007	retrofit	41
P094-02	Kirby/Perko #1	7M175	Geauga	Chester	7/30/2008	retrofit	41
P094-03	Kirby/Perko #1	7M175	Geauga	Chester	9/2/2008	retrofit	41
P153-02	Palombo #1	5M175	Geauga	Chester	10/16/2007	new	41
P158-02	Kokay#1	5M175	Geauga	Chester	10/5/2007	new	41
P158-03	Kokay#1	5M175	Geauga	Chester	10/20/2009	new	210
P167-02	Monticello Nursery #1	7M175	Geauga	Chester	11/14/2007	new	41
P221-01	Halcik #1	5M175	Geauga	Chester	1/31/2008	new	41
P222-01	Hoeningman	5M175	Geauga	Chester	6/19/2008	new	41
P223-01	Plizzino/Kaucic #1	5M175	Geauga	Chester	1/10/2008	new	41
P368-01	Petronzio Mayfield #1	7M175	Geauga	Chester	9/23/2008	new	41
P368-02	Petronzio Mayfield #1	7M175	Geauga	Chester	10/20/2009	new	210
P369-01	Buca #1	7M175	Geauga	Chester	10/24/2008	new	41
P441-01	Murfello #1	7M175	Geauga	Chester	12/17/2008	new	41
P441-02	Murfello #1	7M175	Geauga	Chester	12/17/2008	new	41
P449-01	Komidar #1/Oberle #1	7M175	Geauga	Chester	12/17/2008	new	41
P449-02	Komidar #1/Oberle #1	7M175	Geauga	Chester	12/17/2008	new	41
P472-01	Skirbunt #1	7M175	Geauga	Chester	9/1/2009	new	41
P472-02	Skirbunt #1	7M175	Geauga	Chester	9/1/2009	new	210
P473-01	Metzenbaum #1	7M175	Geauga	Chester	4/8/2009	new	41
P473-02	Metzenbaum #1	7M175	Geauga	Chester	9/1/2009	new	210
P554-01	Mandalfino #1	5M175	Geauga	Chester	8/7/2009	new	210
P554-02	Mandalfino #1	5M175	Geauga	Chester	8/7/2009	new	210
P651-01	Perelman #1	5M175	Geauga	Chester	10/28/2009	new	210
P651-02	Perelman #1	5M175	Geauga	Chester	10/28/2009	new	210
P697-01	Puljec #1	5M175	Geauga	Russell	4/1/2010	new	210
P697-02	Puljec #1	5M175	Geauga	Russell	4/1/2010	new	No Data
P698-01	Radonech #1	7M175	Geauga	Chester	4/6/2010	new	210
P702-01	Lecurse #1	5M175	Geauga	Chester	5/11/2010	new	41
P702-02	Lecurse #1	5M175	Geauga	Chester	5/11/2010	new	41
K975-01	Noble #1	2M175	Mahoning	Berlin	5/16/2009	10830763	837 gauge
P014-01	Yabroff #1	5M175	Geauga	Chester	5/7/2008	10138769	210
P262-01	Dautartas #1	5M175	Geauga	Chester	2/2/2010	11817191	41
P262-02	Dautartas #1	5M175	Geauga	Chester	2/2/2010	11817181	41
P349-01	Armstrong #1	7M175	Geauga	Chester	9/9/2008	10181187	41
P349-02	Armstrong #1	7M175	Geauga	Chester	9/9/2008	10181186	41
P399-01	Miesz-Hood #1	7M175	Geauga	Chester	12/4/2008	10181225	41
P495-01	Allyn #1	7M175	Geauga	Chester	6/5/2009	10181271	41
P513-01	Greve #1	7M175	Geauga	Russell	4/2/2009	10181291	210
P516-01	Landis #1	7M175	Geauga	Chester	5/29/2009	10181286	41
P641-01	Valetta #1	5M175	Geauga	Chester	10/28/2009	10184775	210
P641-02	Valetta #1	5M175	Geauga	Chester	10/28/2009	10184751	210
P666-01	Ratajczak #1	5M175	Geauga	Chester	1/8/2010	10184622	210
P666-02	Ratajczak #1	5M175	Geauga	Chester	1/8/2010	10184630	210