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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

SUPPLEMENT TO
MOTION TO COMPEL
AND MOTION TO CONTINUE HEARING
BY CUTTER EXPLORATION, INC.
FILED ON MARCH 18, 2011

On March 18, 2011, Complainant, Cutter Exploration, Inc., ("Cutter Exploration") by and through counsel, filed a Motion to Compel Discovery and to Continue the Hearing pursuant to Rules 4901-1-12 and 4901-1-23 of the Ohio Administrative Code ("the Motion"). At or around 4:00 p.m., after the undersigned counsel had finalized the Motion and sent it for filing, counsel for East Ohio sent an email to Cutter Exploration addressing some of the outstanding issues raised in the Motion ("the March 18 email", a copy of which is attached hereto). Accordingly, Cutter Exploration supplements the Motion as follows.

While East Ohio has now responded with some information and promises of more, there is still significant outstanding information to be produced to Cutter Exploration. For example, the March 18 email promises to provide current Mercury Mini Max data on March 25, 2011, but this information is already long overdue.

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Moreover, to the extent that East Ohio has finally started to cooperate with the scheduling of inspections of rotary meters associated with Cutter Exploration wells, this does not solve the problem regarding how the schedule in this case has been impacted. Further, in the March 18 email, which was sent at 3:55 p.m. on a Friday, East Ohio demanded that Cutter Exploration provide a list of the metering stations to be inspected by the close of the next business day. East Ohio further added for the first time that it may have a lawyer present for the inspections and added a threat that it might shut-in some of Cutter Exploration's wells as a result of the inspections. Cutter Exploration will address these issues in more detail when it files its reply in support of its Motion to Compel and for Expedited Ruling but, for purposes of the Motion, it is sufficient to note that the scheduling issues have not been fully resolved.

Finally, even assuming that the discovery is produced as promised in the March 18 email, East Ohio's foot dragging necessitates that Cutter Exploration continue to seek to move the hearing date and to adjust the schedule in this matter so that it is not prejudiced in its ability to complete discovery and prepare for the hearing. As discussed in the Motion, the discovery has been outstanding for many weeks and, in the March 18 email, East Ohio has said that it will be yet another week before data is produced. Once produced, the Mini Max data will likely be extensive requiring significant time for review and any potential follow up discovery. Similarly, even when the continuing inspection scheduling problems are resolved, Cutter Exploration will need sufficient time to review test results and prepare for the hearing.

In sum, East Ohio's delays with regard to the issues addressed in the Motion necessitate Cutter Exploration moving forward with the Motion so that the Commission, the legal director, or the attorney examiner assigned to the case can enter an order compelling East Ohio to immediately provide the documents and materials outstanding and so that the Commission can

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.

Respectfully submitted,

By: 

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Attorneys for Cutter Exploration, Inc.

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Supplement to Motion to Compel and Motion to Continue Hearing by Cutter Exploration, Inc. Filed March 18, 2011* was served by electronic and regular U.S. mail, postage prepaid on March 22, 2011 upon the following:

David A. Kutik
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A handwritten signature in cursive script, reading "Sarah Daggett Morrison", followed by a horizontal line.

Sarah Daggett Morrison

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

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v.

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

Respondent.

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Case No. 09-1982-GA-CSS

AFFIDAVIT BY COUNSEL

STATE OF OHIO

COUNTY OF SUMMIT

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)
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SS:

I, SARAH DAGGETT MORRISON, being first duly sworn, deposes and says:

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

2. I am an attorney with the law firm Chester, Willcox & Saxbe, 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 Exhibit H is a true and accurate copy, without the attachments, of the email that I received from counsel for East Ohio in this matter on March 18, 2011.

EXHIBIT

H

FURTHER AFFIANT SAYETH NAUGHT.



Sarah Daggett Morrison

SWORN TO and subscribed in my presence this 22nd day of March, 2011


NOTARY PUBLIC



Christine L. Schulenberg
Notary Public, State of Ohio
My Commission Expires on 10/24/12

Sarah D. Morrison

From: Grant W Garber [gwgarber@jonesday.com]
Sent: Friday, March 18, 2011 3:55 PM
To: ckeller@bdblawn.com
Cc: John W. Bentine; smorrison@; mskakun@bdblawn.com; Stephen C. Fitch; David A. Kutik; Jennifer B. Flannery
Subject: Cutter v. DEO -- update on pending items
Attachments: Chart.pdf; Documents.pdf

Clay:

Here is the updated status regarding several pending discovery items:

1) DEO is prepared to begin the inspections of Cutter's rotary meters on Wednesday March 23. Please let me know by COB Monday if that date works for you. If so, we'll provide a specific time and location to meet. To avoid confusion about which sites we're inspecting, please provide me a list of the metering stations you want to include in this process by COB Monday, so we can schedule the order of the inspections. Our folks need 48 hours notice to arrange the schedule, so to the extent we can't finalize arrangements until next Tuesday, we'll begin the inspections on Thursday March 24. Also, DEO may have a lawyer present for the inspections. I'll confirm one way or the other next week.

At each site, the inspection will consist of the following: (i) prover testing the rotary meter, followed by (ii) changing the rotary meter gear box oil, with North Coast present to take custody of the drained oil, subject to the conditions we agreed upon--namely, that (a) DEO will be notified in advance of any testing that North Coast intends to perform on the gear box fluid and will have the right to object, initiate motion practice with the Examiner, and receive a ruling from the Examiner before the proposed testing takes place; (b) DEO will receive the results of any testing performed by North Coast; and (c) the cost of any testing and related work performed by North Coast will be paid by Cutter. Be advised that if DEO discovers oil or other prohibited fluids or materials in the rotary meter or lines during these inspections, those sites will be shut-in, consistent with DEO's enforcement of its tariff and gas quality specifications.

2) DEO is in the process of rescheduling the annual inspections that were previously postponed, and I expect the first of those inspections will be rescheduled for next week. I'll provide you with advance notice of those dates as they are available.

3) On Monday March 14, DEO investigated reports of non-registering meters (i.e., meters that were not registering flow) at the Puljic / Eger (P697) and Greve (P513) sites. In connection with the investigation at the Puljic / Eger site, DEO changed the gear box oil at the rotary meter serving that location. Some of the confusion arose because there was no clear signage at that location indicating that Cutter owns/operates that well. The oil removed from the gear box at that site was discarded. DEO determined that the meter at Puljic / Eger was functioning properly. Going forward, we'll ensure that Cutter receives advance notice anytime DEO intends to change the gear box oil at a meter associated with a Cutter-owned/operated well, excepting emergencies. In any case, we agree that this site can be inspected as part of #1, above.

With respect to the Greve site (P513), DEO personnel did not change the gear box oil at that site. DEO determined that the meter serving that location was functioning properly.

4) The Allyn meter and regulator tags are available for inspection anytime. Please provide a date certain and DEO will provide access for inspection on that day, so long as we have two days advance notice.

5) Please let us know how DEO should provide the Allyn and Perelman fluid samples to North Coast. It may make sense to simply provide those samples to North Coast at the first day of the inspections discussed in #1, above.

6) We're in the process of downloading current MiniMax data from the Cutter sites. I'll provide the new data, with the expanded files you requested, on March 25. On that day, I'll also provide the expanded files you requested that are associated with the October 2010 data and a response to Interrogatory No. 52.

7) DEO is available to provide access for Cutter's inspections (i.e., videos and photographs) of the Dominion Field Services wells specified in Cutter's Request for Entry No. 1 on March 28, 2011. Those sites are: Smith#2, Corbin#2,

Miller #3 and #4, Miller #2, DEO Unit #1, DEO Unit #2, Kormish#4, Robli#3, Robli#4, Colloca#1, Dento, Kunkle#2, Smith#1, Sebe, Metro Parks, Haers#1 and Kormish#2. We propose to meet you at 8:30 a.m. on March 28 at the corner of Cleveland Massillon Road and Clinton Road in Clinton, Ohio, to begin these site visits.

8) With respect to the DEO documents you characterized as "missing," please see the attached chart. The first document, DEO 539, appears on the privilege log provided to Cutter's former counsel on May 21, 2010. The other documents already have been provided to Cutter's former counsel. As a courtesy, the smaller-sized documents (e.g. emails) are attached to this email, as indicated on the chart. However, several of the bates ranges you identified span hundreds of pages, all of which were provided to Cutter's former counsel. The attached chart indicates when those materials were provided. Please check again to see if you have those materials or can obtain them from your client's former counsel.

9) We are working to determine whether "full-sized" drawings of DEO 321-322 and 769-770 exist. If they do, we'll provide those by March 25.

10) We've agreed that the depositions of Brent Breon, Jim Reinmann and Matt Dye will take place on April 18 and 19. Please let me know the order in which those depositions will proceed. Also, we propose to begin the deposition of Mike Cutter on April 20th. This deposition will last at least two days. Please let me know if April 20 - 22 (to be safe) works for Mr. Cutter.

11) We're working on the outstanding verifications for DEO's responses to Cutter's interrogatories. We'll provide those by March 25.

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