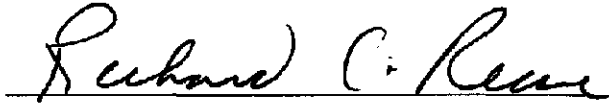




Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

A handwritten signature in cursive script, reading "Richard C. Reese".

Richard C. Reese, Counsel of Record  
Assistant Consumers' Counsel

**Office Of The Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

(614) 466-8574 (T)

(614) 466-9475 (F)

[reese@occ.state.oh.us](mailto:reese@occ.state.oh.us)

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The	)	
East Ohio Gas Company d/b/a Dominion	)	
East Ohio for Adjustment of its Interim	)	Case No. 09-2011-GA-PIP
Emergency and Temporary Percentage of	)	
Income Payment Plan Rider	)	

**MEMORANDUM IN SUPPORT**

**I. INTRODUCTION**

On December 31, 2009, DEO filed an application for a significant increase to its percentage of income payment plan rider ("PIPP rider"). DEO stated that its Application is made pursuant to the provisions of a prior Commission Finding and Order.<sup>2</sup> On January 25, 2010, OCC filed a Motion to Intervene and Motion to Suspend.

On February 3, 2010, DEO filed a Supplement to Application. DEO proposed that an "interim refund" received by DEO due to a settlement of Federal Energy Regulatory Commission ("FERC") proceedings involving Tennessee Gas Pipeline Company ("TGPC") be credited to the balance of unrecovered PIPP arrearages.<sup>3</sup>

OCC served requests for discovery on DEO on January 26, 2010, and has received no response to its requests<sup>4</sup>. During a telephone call that took place on February 25, 2010, DEO's counsel indicated that DEO has no plans to respond to OCC's discovery because of the automatic approval process involved with consideration of the Company's Application.

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<sup>2</sup>Application at 1, citing *In the Matter of the Review of the Interim Emergency and Temporary PIP Plan Riders Contained in the Approved Rate Schedules of Electric and Gas Companies*, Case No. 88-1115-GE-PIP, et al., Finding and Order (December 2, 1993).

<sup>3</sup> DEO Supplement to Application at 2. The settlement and accompanying refund were due to TGPC's over-recovery through rates charged to customers for the removal of certain hazardous substances from its pipeline system. The stipulation provided for interim refunds to shippers.

<sup>4</sup> Attachment A.

Finally, by attorney examiner Entry dated February 10, 2010, DEO's Application was suspended.

## II. ARGUMENT

OCC is entitled to timely and complete responses to its discovery inquiries. Ohio law provides that "[a]ll parties and intervenors shall be granted ample rights of discovery." Discovery is important in this case where DEO is seeking to significantly increase its collections from customers. As the statutory representative of DEO's 1.1 million residential consumers, OCC has a vital interest in obtaining responses to the discovery requests served upon DEO in January, but is unable to do so without the Commission compelling such a result. In a case that dealt, in part, with the PUCO denying OCC the right to discovery, including the denial of an OCC Motion to Compel, the Supreme Court of Ohio found that the Commission erred in its decision.<sup>5</sup> The Supreme Court also based its decision in part on its interpretation of R.C. 4903.082 "Without limiting the commission's discretion the Rules of Civil Procedure should be used wherever practicable."<sup>6</sup> The Commission should grant the OCC's Motion to Compel.

The OCC is entitled to discovery within the scope provided by the Commission's rules: "[A]ny party to a commission proceeding may obtain discovery of any matter, not

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<sup>5</sup> *Ohio Consumers' Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶83 (2006). "The text of Ohio Adm.Code 4901-1-16(B), the commission's discovery rule, is similar to Civ.R. 26(B)(1), which governs the scope of discovery in civil cases. 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. *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").

<sup>6</sup> *Id.* at ¶82.

privileged, which is relevant to the subject matter of the proceeding.<sup>7</sup>” DEO has not provided information responsive to OCC’s discovery inquiries. DEO has not moved for a protective order pursuant to Ohio Adm. Code 4901-1-24, and its non-responsiveness to OCC’s requests is inappropriate.

DEO has not alleged that OCC’s discovery requests concern a matter that is privileged or that OCC’s inquiries are not relevant to the matters at issue in this case. Under these circumstances, a timely and complete response to OCC’s inquiries is essential and timely treatment of OCC’s Motion to Compel is needed. The information sought by OCC is critical to:

- Ensuring the sufficiency of data to thoroughly evaluate the cost of PIPP and potential future impacts;
- Understanding PIPP credit and collection policies and practices;
- Evaluating the reasonableness of alternative methods to defer PIPP financial balances;
- Determining if the Company’s method to forecast volumes is reasonable.
- Comparing the deferred PIPP and Pre-PIPP arrearage balances eligible for recovery to the Company’s actual financial records;
- Ensuring that the accounting for the deferral of PIPP arrearages and the recoveries from customers charged the PIPP rider has been treated appropriately; and
- Ensuring that the actual cost of debt net of tax effects is properly applied in calculating the Carrying Charges on the Monthly Average Balance and the Carrying Charge Rate.

DEO should provide full responses to OCC’s discovery requests and provide copies of all documents requested by OCC, particularly in light of the suspension of the

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<sup>7</sup> Ohio Adm. Code 4901-1-16.

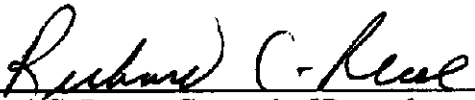
Company's pending Application. The Commission should order DEO to provide an immediate response to OCC's requests for the production of documents. An affidavit describing OCC's contact with counsel for DEO seeking responses to OCC's discovery is attached.<sup>8</sup>

### III. CONCLUSION

DEO's application, as well as its supplemental application, provide for unprecedented increases to the amount of the PIPP rider—increases that DEO seeks to collect from customers. OCC should have before it the information needed to analyze the Application. OCC's Motion to Compel should be granted to provide a process that will permit the OCC to fully participate in this proceeding.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

  
Richard C. Reese, Counsel of Record  
Assistant Consumers' Counsel

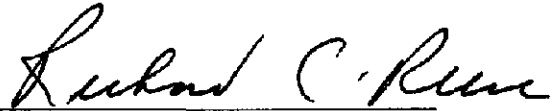
**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-8574 (T)  
(614) 466-9475 (F)  
[reese@occ.state.oh.us](mailto:reese@occ.state.oh.us)

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<sup>8</sup> Attachment B.

**CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing *Motion To Compel Discovery by the Office of the Ohio Consumers' Counsel*, was served via regular U.S. Mail, postage prepaid upon the parties of record identified below on this 5th day of March, 2010.



Richard C. Reese  
Assistant Consumers' Counsel

**SERVICE**

**Duane Luckey**  
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[sechler@carpenterlipps.com](mailto:sechler@carpenterlipps.com)

*Attorneys for Dominion East Ohio*

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The	)	
East Ohio Gas Company d/b/a Dominion	)	
East Ohio for Adjustment of its Interim	)	Case No. 09-2011-GA-PIP
Emergency and Temporary Percentage of	)	
Income Payment Plan Rider.	)	

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**THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S  
INTERROGATORIES AND  
REQUEST FOR PRODUCTION OF DOCUMENTS  
PROPOUNDED UPON DOMINION EAST OHIO,  
FIRST SET  
(DATED JANUARY 26, 2010)**

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The Office of the Ohio Consumers' Counsel in the above-captioned proceedings before the Public Utilities Commission of Ohio submits the following Interrogatories and Requests for Production of Documents pursuant to Sections 4901-1-19, 4901-1-20 and 4901-1-22 of the Ohio Adm. Code for response from Dominion East Ohio ("DEO") within 20 days, and no later than any shorter period required by the Public Utilities Commission of Ohio or its authorized representative. An electronic response should be provided to the extent possible to the Office of the Ohio Consumers' Counsel at the following addresses:

Richard C. Reese  
Assistant Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-8574 (T)  
[reese@occ.state.oh.us](mailto:reese@occ.state.oh.us)



Additionally, DEO must follow the instructions provided herein in responding to the inquiries. Definitions are provided that are used in the Office of the Ohio Consumers' Counsel's discovery.

### **DEFINITIONS**

As used herein the following definitions apply:

1. "Document" or "Documentation" when used herein, is used in its customary broad sense, and means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control regardless of where located; including any kind of printed, recorded, written, graphic, or photographic matter and things similar to any of the foregoing, regardless of their author or origin. The term specifically includes, without limiting the generality of the following: punchcards, printout sheets, movie film, slides, PowerPoint slides, phonograph records, photographs, memoranda, ledgers, work sheets, books, magazines, notebooks, diaries, calendars, appointment books, registers, charts, tables, papers, agreements, contracts, purchase orders, checks and drafts, acknowledgments, invoices, authorizations, budgets, analyses, projections, transcripts, minutes of meetings of any kind, telegrams, drafts, instructions, announcements, schedules, price lists, electronic copies, reports, studies, statistics, forecasts, decisions, and orders, intra-office and inter-office communications, correspondence, financial data, summaries or records of conversations or interviews, statements, returns, diaries, workpapers, maps, graphs, sketches, summaries or reports of investigations or negotiations, opinions or reports of consultants, brochures, bulletins, pamphlets,

articles, advertisements, circulars, press releases, graphic records or representations or publications of any kind (including microfilm, videotape and records, however produced or reproduced), electronic (including e-mail), mechanical and electrical records of any kind and computer produced interpretations thereof (including, without limitation, tapes, tape cassettes, disks and records), other data compilations (including, source codes, object codes, program documentation, computer programs, computer printouts, cards, tapes, disks and recordings used in automated data processing together with the programming instructions and other material necessary to translate, understand or use the same), all drafts, prints, issues, alterations, modifications, changes, amendments, and mechanical or electric sound recordings and transcripts to the foregoing. A request for discovery concerning documents addressing, relating or referring to, or discussing a specified matter encompasses documents having a factual, contextual, or logical nexus to the matter, as well as documents making explicit or implicit reference thereto in the body of the documents. Originals and duplicates of the same document need not be separately identified or produced; however, drafts of a document or documents differing from one another by initials, interlineations, notations, erasures, file stamps, and the like shall be deemed to be distinct documents requiring separate identification or production. Copies of documents shall be legible.

2. "Communication" shall mean any transmission of information by oral, graphic, written, pictorial, or otherwise perceptible means, including, but not limited to, telephone conversations, letters, telegrams, and personal conversations. A request seeking the identity of a communication addressing, relating or referring to, or

discussing a specified matter encompasses documents having factual, contextual, or logical nexus to the matter, as well as communications in which explicit or implicit reference is made to the matter in the course of the communication.

3. The "substance" of a communication or act includes the essence, purport or meaning of the same, as well as the exact words or actions involved.
4. "And" or "Or" shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.
5. "You," and "Your," or "Yourself" refer to the party requested to produce documents and any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venturer of such party.
6. Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.
7. Words expressing the masculine gender shall be deemed to express the feminine and neuter genders; those expressing the past tense shall be deemed to express the present tense; and vice versa.
8. "Person" includes any firm, corporation, joint venture, association, entity, or group of natural individuals, unless the context clearly indicates that only a natural individual is referred to in the discovery request.
9. "Identify," or "the identity of," or "identified" means as follows:
  - A. When used in reference to an individual, to state his full name and present or last known position and business affiliation, and his position and business affiliation at the time in question;

- B. When used in reference to a commercial or governmental entity, to state its full name, type of entity (e.g., corporation, partnership, single proprietorship), and its present or last known address;
  - C. When used in reference to a document, to state the date, author, title, type of document (e.g., letter, memorandum, photograph, tape recording, etc.), general subject matter of the document, and its present or last known location and custodian;
  - D. When used in reference to a communication, to state the type of communication (i.e., letter, personal conversation, etc.), the date thereof, and the parties thereto and the parties thereto and, in the case of a conversation, to state the substance, place, and approximate time thereof, and identity of other persons in the presence of each party thereto;
  - E. When used in reference to an act, to state the substance of the act, the date, time, and place of performance, and the identity of the actor and all other persons present.
  - F. When used in reference to a place, to state the name of the location and provide the name of a contact person at the location (including that person's telephone number), state the address, and state a defining physical location (for example: a room number, file cabinet, and/or file designation).
10. The terms "PUCO" and "Commission" refer to the Public Utilities Commission of Ohio, including its Commissioners, personnel (including Persons working for the PUCO Staff as well as in the Public Utilities Section of the Ohio Attorney General's Office), and offices.

11. The term "e.g." connotes illustration by example, not limitation.
12. "OCC" means the Office of the Ohio Consumers' Counsel.
15. "DEO" means The East Ohio Gas Company d/b/a Dominion East Ohio.

### **INSTRUCTIONS FOR ANSWERING**

1. All information is to be divulged which is in your possession or control, or within the possession or control of your attorney, agents, or other representatives of yours or your attorney.
2. Where an interrogatory calls for an answer in more than one part, each part should be separate in the answer so that the answer is clearly understandable.
3. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them.
4. If any answer requires more space than provided, continue the answer on the reverse side of the page or on an added page.
5. Your organization(s) is requested to produce responsive materials and information within its physical control or custody, as well as that physically controlled or possessed by any other person acting or purporting to act on your behalf, whether as an officer, director, employee, agent, independent contractor, attorney, consultant, witness, or otherwise.
6. Where these requests seek quantitative or computational information (e.g., models, analyses, databases, and formulas) stored by your organization(s) or its consultants in computer-readable form, in addition to providing hard copy (if an electronic response is not otherwise provided as requested), you are requested to produce such computer-readable information, in order of preference:
  - A. Microsoft Excel worksheet files on compact disk;

- B. other Microsoft Windows or Excel compatible worksheet or database diskette files;
  - C. ASCII text diskette files; and
  - D. Such other magnetic media files as your organization(s) may use.
7. Conversion from the units of measurement used by your organization(s) in the ordinary course of business need not be made in your response; e.g., data requested in kWh may be provided in mWh or gWh as long as the unit measure is made clear.
8. Unless otherwise indicated, the following requests shall require you to furnish information and tangible materials pertaining to, in existence, or in effect for the whole or any part of the period from January 1, 2000 through and including the date of your response.
9. Responses must be complete when made, and must be supplemented with subsequently acquired information at the time such information is available.
10. In the event that a claim of privilege is invoked as the reason for not responding to discovery, the nature of the information with respect to which privilege is claimed shall be set forth in responses together with the type of privilege claimed and a statement of all circumstances upon which the respondent to discovery will rely to support such a claim of privilege (i.e. provide a privilege log). Respondent to the discovery must a) identify (see definition) the individual, entity, act, communication, and/or document that is the subject of the withheld information based upon the privilege claim, b) identify all persons to whom the information has already been revealed, and c) provide the basis upon which the information is being withheld and the reason that the information is not provided in discovery.

### **INTERROGATORIES**

INT-1. Please define the term *Deferred PIPP Arrearages* as referenced in the Application on Attachment 2, Column B.

**RESPONSE:**

INT-2. Please define the term *PIPP Recoveries* as referenced in the Application on Attachment 2, Column C.

**RESPONSE:**

INT-3. Please define the term *Net Incremental Deferral* as referenced in the Application on Attachment 2, Column E.

**RESPONSE:**

INT-4. Please define the term *Billed PIPP Running Balance* as referenced in the Application on Attachment 2, Column F.

**RESPONSE:**



INT-5. For each month in 2008 and 2009, what was the total cost of natural gas service for all PIPP customers (i.e., the total bill for providing service to all PIPP customers and not the income-based bills that were rendered to PIPP customers)?

**RESPONSE:**

INT-6. For each month in 2008 and 2009, what was the total amount billed to PIPP customers as PIPP payments (i.e., the income-based payments)?

**RESPONSE:**

INT-7. For each month in 2008 and 2009, what was the total value of payments received from PIPP customers?

**RESPONSE:**

INT-8. For each month in 2008 and 2009, what was the total value of payments received from HEAP or other financial assistance organizations on behalf of PIPP customers?

**RESPONSE:**

INT-9. For each month in 2008 and 2009, what was the total amount of revenues that were billed through the PIPP rider?

**RESPONSE:**

INT-10. For each month in 2008 and 2009, what were the total revenues collected through the PIPP Rider?

**RESPONSE:**

INT-11. Referring to the Application, paragraph 3, please define the terms “accumulated unrecovered PIPP arrearages”, “pre-PIPP balances” and “post PIPP balances”.

**RESPONSE:**

INT-12. For each month in 2008 and 2009, what was the total value of pre-PIPP balances?

**RESPONSE:**

INT-13. For each month in 2008 and 2009, what was the total value of the post PIPP balances?

**RESPONSE:**

INT-14. What are the total carrying charges that the Company has collected through the PIPP Rider in 2005, 2006, 2007, 2008, and 2009?

**RESPONSE:**

INT-15 Referring to the Application, Paragraph 4, provide the rationale why the Company is seeking to adjust the PIPP rate now as opposed to waiting until after the PIPP-Plus program is underway?

**RESPONSE:**

INT-16. Does the Company intend to seek recovery of expenses related to implementing the PIPP-Plus program through the PIPP Rider?

**RESPONSE:**

**INT-17.** In regards to the Company commitment for adjusting the PIPP rate every December on an on-going basis as reflected in the Application, why didn't the Company seek recovery of these costs sooner to help mitigate the impact of the PIPP rider on residential consumers?

**RESPONSE:**

**INT-18.** Of the 114,062 PIPP customers that are referenced in the Application, how many of these customers were on the zero-income PIPP program?

**RESPONSE:**

**INT-19.** For 2007, 2008, and 2009, what was the average number of months that zero-income PIPP customers were on the zero-income PIPP program?

**RESPONSE:**

**INT-20.** What was the average PIPP payment amount by month for 2007, 2008, and 2009?

**RESPONSE:**

INT-21. Referring to paragraph 11 in the Application, please identify each of the instances in the last five years where DEO was either “formally or informally” required to avoid disconnection of service due to Commission-ordered moratoriums?

**RESPONSE:**

INT-22. Referring to the Application, Attachment 1, how did the Company calculate the interest charge of \$12,222,946.49?

**RESPONSE:**

INT-23. Referring to the Application, Attachment 1, how did the Company calculate the Carrying Costs over 12 months at \$298,098.09

**RESPONSE:**

INT-24 Referring to the Application, Attachment 2, how did the Company calculate the Carrying Charge Rate in January 2010 at \$0.0827?

**RESPONSE:**

**REQUEST FOR PRODUCTION OF DOCUMENTS**

RPD-1      Please provide a copy of all credit and collection policies and procedures  
that are related to providing service to PIPP customers.

**CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing *Ohio Consumers' Counsel's Interrogatories and Request for Production of Documents Propounded Upon Dominion East Ohio, First Set*, was served upon the persons listed below by regular U.S. Mail (also electronically upon DEO) this 26th day of January 2010.

  
Richard C. Reese  
Assistant Consumers' Counsel

**PERSONS SERVED**

**Duane Luckey, Esq.**  
Attorney General's Office  
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**Mark A. Whitt**  
**Christopher T. Kennedy**  
**Joel E. Sechler**  
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[sechler@carpenterlipps.com](mailto:sechler@carpenterlipps.com)

*Attorneys for the East Ohio  
Gas Company d/b/a Dominion  
East Ohio*

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The       )  
East Ohio Gas Company d/b/a Dominion       ) Case No. 09-2011-GA-PIP  
East Ohio for Adjustment of its Interim       )  
Emergency and Temporary Percentage of       )  
Income Payment Plan Rider                    )

**Affidavit**

**Of**

**Richard C. Reese**

**On behalf of**

**The Office of the Ohio Consumers' Counsel**

**March 5, 2010**



**BEFORE**  
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The                     )  
East Ohio Gas Company d/b/a Dominion                     ) Case No. 09-2011-GA-PIP  
East Ohio for Adjustment of its Interim                     )  
Emergency and Temporary Percentage of                     )  
Income Payment Plan Rider                                     )

**AFFIDAVIT OF RICHARD C. REESE**

I, Richard C. Reese, trial counsel for the Ohio Consumers' Counsel ("OCC") in the above-captioned case, being first duly sworn, depose and say:

1. That, on January, 26, 2010, OCC served discovery on Dominion East Ohio ("DEO") in the above-captioned case. OCC requested responses to the discovery requests within twenty days due to the pendency of the potential automatic approval of the Percentage of Income Payment Plan ("PIPP") rider increase sought by DEO and as contemplated by the Commission's discovery rules.<sup>1</sup>
2. That, on February 25, 2010, I contacted Mark A. Whitt, counsel for DEO, telephonically and asked if DEO intended to respond to OCC's outstanding discovery requests. This contact was made thirty days after discovery was served on DEO. During that conversation, Mr. Whitt stated that DEO would not be responding to OCC's discovery request. Mr. Whitt

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<sup>1</sup> Ohio Adm. Code 4901-1-19(A).

indicated that responses to the discovery requests were deemed not to be appropriate due to the existence of an automatic approval process for consideration of the Company's Application. I notified Mr. Whitt during the conversation that OCC intended to file a Motion to Compel in the near future.

3. Mr. Whitt acknowledged that he understood OCC would be filing a Motion to Compel.
4. That, considering the response of counsel for DEO to my telephonic inquiry, I do not believe that DEO will transmit substantive responses to any discovery requests without action by the Commission that compels DEO's response.

STATE OF OHIO

COUNTY OF FRANKLIN

The undersigned, being of lawful age and duly sworn on oath, hereby certifies, deposes and stated the following:

I have caused to be prepared the attached written affidavit for OCC in the above referenced docket. This affidavit is true and correct to the best of my knowledge, information, and belief.

Further Affiant sayeth not.

*Richard C. Reese*

Richard C. Reese, Affiant

Subscribed and sworn to before me this 5th day of March, 2010.

*Debra Jo Bingham*

Notary



Debra Jo Bingham, Notary Public  
Union County, State of Ohio  
My Commission Expires June 13, 2010