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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

In the Application of the East Ohio Gas)
Company d/b/a Dominion East Ohio to) Case No. 10-2633-GA-AEC
Establish Competitive Response Rates.)

In the Application of the East Ohio Gas)
Company d/b/a Dominion East Ohio to) Case No. 10-2634-GA-ATA
Amend its Tariffs to Establish)
Competitive Response Rates.)

**MOTION TO INTERVENE AND PROTEST
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

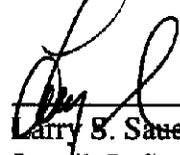
The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in these utility cases related to the East Ohio Gas Company's d/b/a Dominion East Ohio's ("Dominion" or "Company") Applications ("Applications") in which Dominion seeks the opportunity to adjust its rates for customers that allegedly have competitive options for distribution service.¹ OCC is filing on behalf of Dominion's approximately 1.1 million residential utility consumers and moves the Public Utilities Commission of Ohio ("Commission" or "PUCO") to grant the OCC's intervention in the above-captioned proceeding, pursuant to R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11. The reasons for granting the OCC's Motion are further set forth in the attached Memorandum in Support. In addition, OCC protests the Applications as proposed by Dominion, and the details of OCC's opposition to the Applications are discussed below.

¹ Applications at 1 (Dominion alleges that it has lost 642 distribution service customers representing annual volumes of 237,900 Mcf and annual revenues of \$340,768 to competing natural gas companies).

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Respectfully submitted,

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MEMORANDUM IN SUPPORT

These cases involve the Commission’s review of the reasonableness of Dominion’s Applications in which the Company is seeking approval of a Competitive Response Rate tariff schedule designed to mitigate alleged revenue losses results from the presence of competitive distribution service.² The OCC moves to intervene under its legislative authority to represent the interests of Dominion’s approximately 1.1 million residential natural gas utility customers. OCC opposes Dominion’s Applications to establish competitive response rates, and requests the Commission reject Dominion’s Applications. In the alternative, the PUCO should consider OCC’s arguments, and modify Dominion’s Applications accordingly.

I. INTERVENTION

R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of

² Applications at 1.

Dominion's residential consumers may be "adversely affected" by these cases, especially if the Company's proposal to implement a Competitive Response Rate tariff schedule is approved. Dominion claims that the Competitive Response Rate tariff schedule will permit the Company to offer a negotiated distribution rate, waive certain riders and reduce the unaccounted for gas percentage to eligible customers.³ Dominion's proposal puts all of the cost responsibility for the competitive response on the backs of Dominion's customers, and has the effect of further shifting business risk from shareholders to customers. Because of the negative impact of Dominion's proposal, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest are in representing residential consumers in these cases where the PUCO will consider, among other things, whether there are other components of the Company's tariffs that could be waived in order for Dominion to have a financial stake in the offer of the competitive response in an effort to retain the customer who has competitive options (e.g. waiving all or a portion of the

³ Applications at 3.

customer's base rate). This interest is different than that of any other party in these cases and especially different than that of the utility whose advocacy focuses on the financial interest of stockholders.

Second, OCC's advocacy for consumers will include advancing the position that Dominion's rates should be no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. OCC's position is therefore directly related to the merits of these cases that is pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio.

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of these cases with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding these cases in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a very real and substantial interest in these cases. The nature and extent of OCC's interest lies in preventing excessive or unjustified charges for residential natural gas commodity service and assuring that the provision of natural gas services will effectively and efficiently serve the energy needs of Dominion's residential consumers.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the “extent to which the person’s interest is represented by existing parties.” While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio’s residential utility consumers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed OCC’s right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC’s intervention and that OCC should have been granted intervention.⁴

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio residential consumers, the Commission should grant OCC’s Motion to Intervene.

II. PROTEST

As a preliminary matter, the PUCO should reject the Company’s Applications and instead direct the Company to submit its Applications as part of a rate case filing so that the PUCO could consider the reduced risk to Dominion’s shareholders from such waivers in the context of setting the Company’s rate of return. The PUCO acknowledged the

⁴ *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶13-20 (2006).

connection between a company's business decisions regarding customer retention and rate of return in the CG&E Rate Case stating:

We wish to make clear, also, that granting CG&E a rate of return at the top of the staff's range is based on our expectation that CG&E will make every effort to retain AK Steel as a customer at least to the termination of the contract at the end of 1998. In the event CG&E invokes its contractual right to void the AK Steel contract and impose the higher tariff rate, thereby driving AK Steel off the system, we will give serious consideration in future rate case filings by CG&E to adjusting the authorized rate of return significantly downward. We believe that it is a prudent management decision for CG&E to try to retain AK Steel as a customer and the company's failure to continue to honor the contract price, until at least the end of the current contract, may well be considered by this Commission to be an imprudent management decision, as noted by staff witness Maag's testimony.⁵

Moreover, the Company's Applications are deficient on their face because the Applications are long on claims and short on any documentation supporting the alleged claims of lost customers, lost volumes and lost revenues. Dominion claims that since 2005, it has lost 642 distribution service customers representing annual volumes of 237,900 Mcf and annual revenues of \$340,768 to competing natural gas companies.⁶ The Ohio Supreme Court has noted that the PUCO must make its decision based on the evidence in the record before it.⁷ At this point there is no evidence before the PUCO supporting the Company's Applications. Instead the record only contains claims that are yet to be proven. The alleged claims are inadequate for a number of reasons. First, there

⁵ *In the Matter of the Application of The Cincinnati Gas & Electric Company for an Increase in Its Rates for Gas Service to All Jurisdictional Customers*, Case No. 95-656-GA-AIR, Opinion and Order (December 12, 1996) ("1995 CG&E Rate Case") at 27 (In the CG&E rate case, the AK Steel contract was treated by the PUCO as a competitive response contract.).

⁶ Applications at 1.

⁷ *Tongren v. Pub. Util. Comm.* (1999), 85 Ohio St. 3d 87.

is no documentation that breaks down the alleged losses on an annual basis. In order to put the alleged losses in perspective, it is important to know what alleged losses occurred and when they occurred. Moreover, the alleged losses need to be considered in the context of Dominion's current number of customers, annual volumes and annual revenues to determine if the alleged loss of customers, volumes and revenues are sufficient to even warrant any PUCO action. According to its 2009 Annual Report Dominion had 1,046,857 transportation customers, who took 201,650,194 Mcf of gas and earned \$539,360,539 in revenues. Thus, Dominion's applications are based on alleged losses that account to 0.613% of transportation customers, 0.118 % of volumes and 0.0632 % of revenues.⁸ The PUCO should consider the Company's Applications in this context of alleged losses that appear diminimus.

Second, to the extent that Dominion had a rate case in 2007,⁹ then anything that occurred prior to that rate case is irrelevant to the Company's current rates. With regard to any alleged customer losses that have occurred after the 2007 rate case, the Company has the option to file a rate case if that alleged revenue erosion associated with the alleged customer erosion is sufficient to warrant it. However, to the extent that Dominion is now concerned that the various riders in place¹⁰ are causing customers to leave the system, then it has to be noted that the various riders exist only because the Company wanted

⁸ Dominion 2009 Annual Report filed with the Public Utilities Commission of Ohio at 40.1 and 50.

⁹ *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Service*, Case No. 07-829-GA-AIR, Opinion and Order (October 15, 2008).

¹⁰ Index of Gas Rate Schedules of Dominion East Ohio Filed with the Public Utilities Commission of Ohio at Large Volume General Sales Service (LVGSS) Ninth Revised Sheet No. LVGSS 1 Paragraph 3.3 ("Customers receiving service under this rate schedule shall be responsible for charges pursuant to East Ohio's Gross Receipts Tax Rider, Excise Tax Rider, Interim Emergency and Temporary PIP Plan Rider, Uncollectible Expense Rider, Transportation Migration Rider-Part B, AMR Cost Recovery Charge, PIR Cost Recovery Charge and Transportation Surcredit Rider as applicable (October 1, 2010).

them. Dominion and other local distribution companies (“LDCs”) asked for and supported riders because they were a tool to allow cost recovery outside the rate case process and a tool that would provide the Company with greater assurance of cost recovery. Now, it seems that Dominion is seeking a means of avoiding the fallout and costs associated with the imposition of those riders. In essence Dominion is seeking a rider waiver recovery mechanism. This would further insulate the Company and its shareholders from the repercussions of the business decisions that the Company made.

OCC raised the issue of revenue erosion associated with customer erosion resulting from the imposition of the Straight Fixed Variable (“SFV”) rate design in the most recent rate Dominion rate case and the rate cases of the other three large LDCs in Ohio that were filed in 2007.¹¹ However the PUCO did not address this issue in its various Opinion and Orders. The issue here is similar. The Company made a business decision to initiate, support and implement numerous riders and now is seeking a way to avoid the repercussion of its own business decision. The PUCO should not insulate Dominion from its own business decision, and thus should hold Dominion accountable for any alleged revenue erosion associated with alleged customer erosion caused by the existence of its riders.

¹¹ *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Gas Rates* (“Duke Rate Case”), Case No. 07-589-GA-AIR, et al., Pre-Filing Notice (June 18, 2007); *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Distribution Service* (“Dominion Rate Case”), Case No. 07-829-GA-AIR, et al., Pre-Filing Notice (July 20, 2007); *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Distribution Service* (“VEDO Rate Case”), Case No. 07-1080-GA-AIR, et al., Pre-Filing Notice (September 28, 2007); and *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Distribution Service* (“COH Rate Case”), Case No. 08-72-GA-AIR, et al., Pre-Filing Notice (February 1, 2008).

Third, the Applications failed to provide any documentation that supports the claim that certain transportation customers have left the system and are instead taking service from other Ohio natural gas LDCs.¹² Dominion has not identified the alleged customers lost, nor did the Company identify the competing LDCs. Other customers that may be asked to bear the burden of the additional costs created by the waiver of riders should know the identity of the LDCs who are allegedly able to provide distribution services at rates below Dominion's. Finally, the Company's Applications fail to provide any documentation supporting the alleged lost volumes and revenue calculations.

The Company's Applications are deficient, and as proposed will place an even greater hardship on Dominion's residential consumers who find it increasingly difficult to pay their utility bills in these dire economic times. The Applications propose a waiver of some rate components in response to an alleged competitive alternative which ultimately will be passed on to other Dominion customers. Before any such discounting authority is granted, it is imperative that the Company be required to document that the competitive alternative actually exists. Then any recovery should be limited to the customer class(es) from whom recovery is allowed and the sequence with which the Company waives various rate components should be subject to challenge by the OCC and other interested parties, prior to Commission approval.

More importantly, the Commission should slow down this process to allow interested parties an opportunity to more thoroughly investigate the Company's proposal.

¹² Applications at 2 ("Although DEO is a natural gas company with distribution rates regulated by the Commission, DEO is not the exclusive provider of distribution service because it does not have a statutorily-defined certified service territory. DEO is subject to competition from distribution providers that are also natural gas companies pursuant to R.C. 4905.03(A)(6) and public utilities as defined by R.C. 4905.02).

For example, it is unclear if the Company's proposal pertains only to offering a competitive response rate in an effort to maintain existing customers, or if the rate is available to new customers. If the rate is available to new customers, then that should be considered an economic development arrangement and the Company should not be entitled to 100 percent recovery of the delta revenues resulting from the waiver.¹³

OCC would ask the Commission to modify Dominion's Applications in several important ways.

A. The Commission Should Deny Dominion Recovery, From Other Customers, Of The Revenues Waived Through The Competitive Response Rate Or In The Alternative Place Limits On The Company's Recovery Proposal.

1. PUCO Precedent and Supreme Court Case Law Precludes Company Recovery of Competitive Response Discounts.

The issue of Competitive Response discounts is not a new one raised in Dominion's Applications. Rather the PUCO has dealt with the issue in prior cases involving natural gas companies. In the 1995 CG&E Rate Case, the PUCO found that the utility company should bear the responsibility of any lost revenues associated with Competitive Response discounts because such discounts lacked secondary benefits flowing to ratepayers.¹⁴ The PUCO also contrasted Competitive Response discounts from Economic Development. The PUCO adopted the Staff position that Economic Development discounts flowed secondary benefits to ratepayers in the form of increased

¹³ Delta Revenues are the difference between the revenues received by Dominion under the special contract and the revenues that would otherwise be received under the otherwise applicable tariff rates.

¹⁴ *In the Matter of the Application of The Cincinnati Gas & Electric Company for an Increase in Its Rates for Gas Service to All Jurisdictional Customers*, Case No. 95-656-GA-AIR, Opinion and Order (December 12, 1996) ("CG&E Rate Case") at 21-22.

jobs, potential increased taxes and other business opportunities that do not exist in the case of Competitive Response discounts.¹⁵

The Commission in the CG&E Rate Case, also limited recovery of the delta revenues to the customer class that from which the revenues otherwise would have been derived. The Commission stated:

In gas cases, however, the staff has recommended that an adjustment be made to the revenue assigned to the class from which the delta revenue was derived. * * * Mr. Maag indicated that the Staff's gas policy tends to give companies an incentive for renegotiating special contracts in order to capture some or all of the delta revenue.¹⁶

When this precedent is applied to the current Applications, then the PUCO should make it clear that the Company -- Dominion -- bears the cost responsibility associated with any lost revenues associated, with any waivers. If any recovery is allowed, then it should be limited to the customer class(es) from which the competitive response rates are offered.

2. If the PUCO Does Not Follow its Own Precedent, Then in the Alternative, Dominion Should Be Required To Document That The Competitive Alternative Exists.

In the event that the PUCO does not follow its own precedent, then prior to considering approval of Dominion's Competitive Response contract(s), Dominion should be required to fully document that the alleged competitive alternative, or threat actually exists before any waiver or discount is permitted. This requirement would act to provide some protection for other consumers -- including residential consumers -- who the Company will ask to pay the costs that Dominion waives due to the competitive response.

¹⁵ *CG&E Rate Case* at 22.

¹⁶ *Id.* at 22.

Consumers should be protected from competitive threats that are not legitimate. In addition, the Company should be required to include such documentation as part of the individual service agreement filing made with the Commission.¹⁷

3. If the Commission Does Not Follow Its Own Precedent, Then The Company Should Also be Required To Demonstrate That The Competitive Response Rate Is Necessary To Retain The Customer.

In the alternative circumstances where the PUCO does not follow its own precedent, then Dominion should not be permitted to pass on costs associated with the competitive response rate to other consumers unless the waiver is economically justified. In order to ensure economic viability, the Company should be required to perform an economic analysis to justify the competitive rate offer. Such analysis should include but not be limited to: an estimate of the capital cost to achieve customer retention, an estimate of the operating expenses associated with the competitive alternative, and an evaluation of the services offered and a comparison of those costs and services to Dominion's costs and services to determine if the competitive response rate is necessary to retain the customer, where such analysis is appropriate. The above analysis should be required by the Commission and formalized by a reporting requirement with protocols analogous to those included in the electric economic development arrangement rules.¹⁸

¹⁷ Applications at ¶6.

¹⁸ Ohio Adm. Code 4901:1-38-06 ("Each electric utility shall require each of its customers served under any reasonable arrangement established pursuant to this chapter to submit an annual report to the electric utility and staff no later than April thirtieth of each year. The format of that report shall be determined by staff such that a determination of the compliance with the eligibility criteria can be determined, the value of any incentives received by the customer(s) is identified, and the potential impact on other customers can be calculated.").

4. If the Commission Does Not Follow Its Own Precedent, Then The Commission Should Modify The Dominion Competitive Response Tariff Proposal.

- a. The Commission should require Dominion to waive the base distribution rate first and any riders, if necessary, only after the base distribution rate adjustments.**

The Company's Applications establish the rate components that are eligible for waiver. The Applications state: "The Competitive Response Rate tariff schedule will permit Dominion to offer a negotiated distribution rate, waive certain riders and reduce the unaccounted for gas percentage to eligible customers."¹⁹ In addition, the Applications states:

The terms and conditions of the Competitive Response Rate service agreements shall: (1) maintain distribution rates at or below the distribution rates approved by the Commission in D[ominion]'s most recent distribution base rate case; (2) not discount natural gas commodity rates, if applicable; (3) waive any or all other riders and charges excluding the Gross Receipts Tax, Excise Tax and Transportation Surcredit Riders; and (4) permit reductions in the unaccounted for gas percentage. In no event shall the volumetric charge be less than the variable cost of service.²⁰

Instead, the Commission should require the Company to first waive the base rate, and then only if necessary waive any or all of the other riders and charges as proposed by Dominion. This order is appropriate because waiving the base rates first will not provide an immediate impact on the rate paid by consumers, and will allow a review of the costs waived through the competitive response contracts that the other consumers may be asked to pay for to be reviewed by the Commission in a rate case.

Moreover, the Company should bear some risk and responsibility for the costs associated with providing the competitive alternative rate. By retaining customers and

¹⁹ Applications at ¶5.

²⁰ Applications at ¶7.

their load, the Company's shareholders benefit. Accordingly they should bear some of the business risk and cost associated with any response to competitive alternatives. To allow the Company to waive the riders, as proposed in the Applications, would enable the Company to disassociate itself from the impact and implications of its own business decision to create and impose the riders on customers. The Company's Applications will not put the Company at risk for any of the costs waived and does not hold the Company accountable for its business decision. The Company's Applications allow Dominion to deal with waiver of riders by merely increasing the rider rates for all other customers in order to recover the costs of waiving the riders to thwart the competitive threat. In these economic times, it is inappropriate for the Company to place the risk for the costs associated with the competitive alternative rates on the backs of the good paying customers. Therefore, the Commission should require the Company to first waive the base rate, and only if necessary waive any or all of the other riders and charges.

b. In the alternative, the Commission should require Dominion to waive the base distribution rate and any riders, on a pro-rata basis.

In the alternative, the Commission should require the Company to waive the base distribution rate on a pro-rata basis that any or all of the other riders and charges would be waived by Dominion. The reason is that by waiving both the base distribution rate and any riders on an equal basis will establish a balance between the waiver of the base distribution rates which delay the impact on the rate paid by consumers, and the riders which provide the Company immediate recovery of the cost to retain the customer. The alternative proposal also provides a sharing of the business risk associated with retaining the customer between Dominion and its consumers.

B. The Commission Should Place Additional Limits On The Company's Competitive Response Proposal.

1. The Competitive Response Rate Should Only Be Offered to Existing Customers.

The Company's Applications are silent on whether the Competitive Response Rate can be offered to a new customer. OCC maintains that the Competitive Response rate should only be offered in an effort to retain an existing customer. In the event Dominion was to offer the Competitive Response rate to a new customer the Commission should consider that transaction to be an economic development contract, and the Commission should limit the delta revenues created by the Competitive Response waiver that Dominion is entitled to recover. There is Commission precedent that has limited natural gas utilities offering economic development rates to recovery of 50 percent of the delta revenues.²¹

2. The Competitive Response Rate Should Not Be Available To A Dominion Affiliate.

The Commission should exclude any Dominion affiliates from eligibility for the competitive response rate. Other consumers should not be asked to cover the costs associated with the competitive response waiver offered to a Dominion affiliate. Furthermore, it is unlikely that a Dominion affiliate would seriously consider leaving Dominion distribution service. It is therefore, unnecessary to offer a discount to an affiliate will not likely pursue a competitive alternative.

²¹ CG&E Rate Case at 22.

3. The Competitive Response Rate Should Waive Unaccounted For Gas Only In Certain Situations.

The Company's Applications provides for a waiver of the unaccounted for gas percentage rate.²² The unaccounted for gas rate includes recovery for gas lost through distribution line leaks, errors in measurement and Company use. The Commission should modify the Applications as it pertains to the waiver of the unaccounted for gas component. First, the Commission should not permit Dominion to waive the component of the unaccounted for gas rate that pertains to Company use. All customers should be required to pay their share of this cost. Second, if a waiver of the unaccounted for gas rate is necessary to respond to the customer's competitive alternative rate, the Company should only waive the other components of the unaccounted for gas percentage -- recovery for gas lost through distribution line leaks and errors in measurement -- if and only if the customer has a dual purpose meter. The dual purpose meter is utilized for those customers who take service directly from the interstate transmission pipeline, and therefore is not subject to line losses and measurement errors.

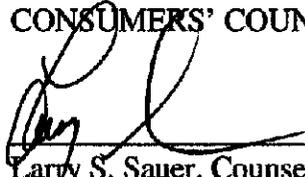
III. CONCLUSION

The Commission should grant OCC's Motion to Intervene. In addition, the Commission should modify the Applications in accordance with the issues raised in OCC's Protest.

²² Applications at ¶7.

Respectfully submitted,

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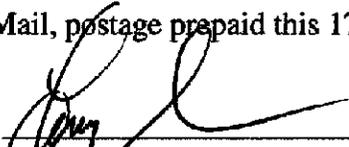
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene and Protest* was served on the persons stated below via first class U.S. Mail, postage prepaid this 17th day of December, 2010.



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