

02-1112-CD  
Power Gas vs Dorothy Rowles

02

02-1112-CD  
POWER GAS MARKETING & TRANS., INC vs ROWLES, DOROTHY

POWER GAS MARKETING &  
TRANSMISSION, INC.,

Plaintiff,

vs.

DOROTHY V. ROWLES,

Defendant.

: IN THE COURT OF COMMON PLEAS

: CLEARFIELD CO., PENNSYLVANIA

:

: CIVIL ACTION - LAW

: NO. 02-1112-CO

:

: Type of Pleading:

: Complaint

:

: Filed on behalf of:

: Power Gas Marketing & Transmission, Inc.

:

: Counsel of Record:

: Michael S. Delaney, Esquire

: 936 Philadelphia Street

: Indiana, PA 15701

: 724-349-2255

: ID#25537

:

:

: Patrick Dougherty, Esquire

: 936 Philadelphia Street

: Indiana, PA 15701

: 724-349-2255

: ID#85832

**FILED**

JUL 18 2002 Atty Dougherty  
PC <80.00

01112712cc Sherry

William A. Shaw  
Prothonotary

cc atty Delaney

POWER GAS MARKETING & : IN THE COURT OF COMMON PLEAS  
TRANSMISSION, INC., :  
Plaintiff, : CLEARFIELD CO., PENNSYLVANIA  
vs. :  
DOROTHY V. ROWLES, : CIVIL ACTION - LAW  
Defendant. : NO. \_\_\_\_\_

**N O T I C E**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

David S. Meholic  
Court Administrator  
One N. 2<sup>nd</sup> Street  
Clearfield PA 16830  
TELEPHONE: (814)765-2641 Ext 5982

BY: Patrick Dougherty  
PATRICK DOUGHERTY, ESQUIRE  
Attorney for Plaintiff

POWER GAS MARKETING & : IN THE COURT OF COMMON PLEAS  
TRANSMISSION, INC., :  
Plaintiff, : CLEARFIELD CO., PENNSYLVANIA  
vs. :  
DOROTHY V. ROWLES, : CIVIL ACTION - LAW  
Defendant. : NO. \_\_\_\_\_

## COMPLAINT

AND NOW, comes Plaintiff, Power Gas Marketing & Transmission, Inc., by and through its Attorneys, Michael S. Delaney, Esquire, and Patrick Dougherty, Esquire, and files the following Complaint, and in support thereof, avers as follows:

1. Plaintiff, Power Gas Marketing & Transmission, Inc., is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business at Gulf Tower, 32nd Floor, 707 Grant Street, Pittsburgh, Pennsylvania, 15219.

2. The Defendant, Dorothy V. Rowles is an individual residing at RD 2, Box 228, Curwensville, Pennsylvania, 16833.

3. The Defendant, Dorothy V. Rowles and Denton B. Rowles, her husband, are the assessed owners of 75 acres, more or less, situate in Ferguson Township, Clearfield County, Pennsylvania, title to which became vested in Denton B. Rowles and Dorothy V. Rowles, his wife, by deed of Raymond L. Rowles, dated October 12, 1965, and recorded in the Recorder's Office of Clearfield County, Pennsylvania, in Book Number 518, page 24. The property is known as Clearfield County Tax

Assessment Parcel 113-F14-2. It is believed that Denton B. Rowles is deceased as of November 14, 1991, however, there is no estate of record in Clearfield County for Denton B. Rowles.

4. That by Oil and Gas Lease dated January 24, 1976, and recorded in the Recorder's Office of Clearfield County, Pennsylvania, in Book 1042, page 396, Denton B. Rowles and Dorothy V. Rowles, his wife, leased for oil and gas production purposes 222 acres, more or less, situate in Ferguson Township, Clearfield County, Pennsylvania. A copy of said Oil and Gas Lease is attached hereto and marked as Exhibit "A."

5. Plaintiff, Power Gas Marketing & Transmission, Inc., became the owner of the above-referenced Oil and Gas Lease.

6. Under the terms of the January 24, 1976, lease, Plaintiff now operates two (2) wells on the Defendant's property.

#### COUNT I

#### DECLARATORY JUDGMENT

7. Paragraphs 1 through 6 of this Complaint are incorporated herein by reference.

8. Pursuant to the Oil and Gas Lease entered into on January 24, 1976, between Denton B. Rowles and Dorothy V. Rowles, his wife, and Cabot Corporation (attached hereto and marked Exhibit "A"), it was agreed that free gas would be provided pursuant to the following:

"6. Lessor reserves 200,000 cubic feet of gas per annum for domestic use, to be taken through his own appliances at any producing gas well,

and agrees to pay Lessee a fair domestic rate for any gas used in excess thereof. Lessor further covenants and agrees that his taking and use of gas shall be wholly at his own risk, the Lessee not to be held liable for any accident or damage caused thereby, nor shall Lessee be liable for any shortage or failure in the supply of gas for said domestic use."

9. Pursuant to a Free Gas Amendment dated February 17, 1995, between Shawmut Development Corporation and Dorothy Rowles, the parties agreed to provide Dorothy Rowles 600,000 cubic feet of free gas annually instead of the 200,000 cubic feet called for in paragraph 6 of the 1976 Oil and Gas Lease agreement, this was done in exchange for a damage settlement. A Copy of said Free Gas Amendment is attached hereto as Exhibit "B."

10. At some point during 1999, Defendant's connection to Plaintiff's gas well developed a leak which caused Defendants to go in excess of their 600,000 cubic feet free gas allotment.

11. Under the terms of said Oil and Gas Lease agreement Plaintiff sent an Invoice for excess gas used by Defendant.

12. As of the date of this Complaint, the Defendant currently has a balance due and owing to Plaintiff in the amount of THREE THOUSAND TWO HUNDRED THIRTY-FOUR and 75/100 DOLLARS (\$3,234.75) for excess gas used by the Defendant.

13. As of the date of this Complaint, Defendant has failed to pay the amount due and owing in full for the excess gas used under the terms of the 1976 Oil and Gas Lease along with the 1995 Amendment to said Lease.

WHEREFORE, Plaintiff requests that:

(A) The Court enters judgment declaring that Plaintiff is entitled to receive a fair domestic rate from Defendant for excess gas used under the 1976 Lease and 1995 Free Gas Amendment;

(B) That the Defendant is responsible for the maintenance and upkeep of her own appliances used to connect to the well for the purpose of delivering the free gas to Defendant.

(C) Defendant is ordered to pay costs of this suit to the Plaintiff; and any other remedy or further relief as the Court deems proper.

COUNT II

NON-PAYMENT FOR EXCESSIVE GAS USE

14. Paragraphs 1 through 13 of this Complaint are incorporated herein by reference.

15. Defendant has consumed, for domestic purposes natural gas produced from Plaintiff's system as follows:

| <u>Year</u> | <u>Free Gas Allotment</u> | <u>Total Natural Gas Used</u> | <u>Excess used</u> |
|-------------|---------------------------|-------------------------------|--------------------|
| 1999        | 600 mcf                   | 903 mcf                       | 303 mcf            |
| 2000        | 600 mcf                   | 715 mcf                       | 115 mcf            |

16. Based upon the above consumption of natural gas by Defendant from 1999 through present, Defendant owes Plaintiff the sum of THREE THOUSAND TWO HUNDRED THIRTY-FOUR and 75/100 DOLLARS (\$3,234.75).

17. WHEREFORE, Plaintiff requests that:

(A) Plaintiff have judgment against Defendant in the amount of THREE THOUSAND TWO HUNDRED THIRTY-FOUR and 75/100 DOLLARS (\$3,234.75) for gas used from Plaintiff's system, in excess of the 1976 Lease Agreement and the 1995 Free Gas Amendment;

(B) The Court issues such other and further relief as the Court deems proper.

Dated: July 9 2002

Respectfully submitted:

BY:

  
MICHAEL S. DELANEY, ESQUIRE  
Attorney for Plaintiff  
936 Philadelphia Street  
Indiana, PA 15701  
(724) 349-2255  
ID#25537

BY:

  
PATRICK DOUGHERTY, ESQUIRE  
Attorney for Plaintiff  
936 Philadelphia Street  
Indiana, PA 15701  
(724) 349-2255  
ID#85832

## VERIFICATION

I, PHILLIP KHOURY, on behalf of POWER GAS MARKETING & TRANSMISSION, INC., do hereby state that POWER GAS MARKETING & TRANSMISSION, INC., is the Plaintiff in the above foregoing action and that the statements of fact made in the foregoing COMPLAINT are true and correct upon personal knowledge and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

POWER GAS MARKETING &  
TRANSMISSION, INC.

BY:   
PHILLIP KHOURY

DATE: July 9, 2002

**EXHIBIT "A"**

## OIL AND GAS LEASE

AGREEMENT, made and entered into this 24th day of January A. D. 1976  
by and between Denton B. Rowles and Dorothy V. Rowles, his wife

of Curwensville, PA.

party of the first part, hereinafter called Lessor (whether one or more),

and CABOT CORPORATION

party of the second part, hereinafter called Lessee;

1. WITNESSETH: That the Lessor, in consideration of the sum of One Dollar, the receipt of which is hereby acknowledged, and the covenants and agreements hereinafter contained, does hereby grant unto the Lessee all of the oil and gas and all of the constituents of either oil and under the land hereinafter described, together with the exclusive right to drill for, produce and market oil and gas and their constituents and of storing gas of any kind in any formation underlying the land, and also the right to enter thereon at all times for the purpose of drilling and operating for oil, gas and water, laying pipe lines, erecting tanks, machinery, powers and structures, and to possess, use, and occupy so much of said premises as is necessary and convenient for said purposes and to convey

the above named products therefrom or there to by pipe lines or otherwise; said land being situate in Ferguson Township, County of Clearfield, State of Pennsylvania, and described as follows, to-wit: Bounded on the

NORTH by lands of K. Fink; W. Ross; R. Blackburn; M. Summers

EAST by lands of M. Summers; R.H. Dunlap; R. Blackburn

SOUTH by lands of K. McGee; M. Straw

WEST by lands of P. Barrett; Ruby Shoff

Containing two hundred twenty-two (222) acres, more or less and being the same land conveyed to Lessor by Raymond Rowles by deed dated 10-12-65 and recorded in said county records in deed Book No. 516 Page 24

2. It is agreed that this lease shall remain in force for a primary term of ten (10) years from this date and as long thereafter as operations for oil or gas are being conducted on the premises, or oil or gas is found in paying quantities, or any formation underlying the herein leased land is used for storage of gas as provided under paragraph 7 herein.

3. The Lessee shall deliver to the credit of the Lessor free of cost, in the pipe line to which he may connect his well, as equal one-eighth ( $\frac{1}{8}$ ) part of all oil produced and saved from the leased premises, and shall pay Lessor One eighth (1/8) of the market value at the well, provided the royalty is one eighth (1/8) of the amount realized. for all gas and casing head gas produced and sold from the premises, payable monthly; provided, Lessee shall pay Lessor a royalty at the rate of Fifty Dollars per year on each gas well while, through lack of market, gas therefrom is not sold or used off the premises, and while said royalty to paid said well shall be held to be a paying well under paragraph 2 hereto.

4. The Lessee shall commence operations for a well on the premises on or before February 29, 1976, unless Lessee pays thereafter a rental of One Dollar (\$1.00) per acre for each Twelve (12) months that operations are delayed from the time above mentioned. The consideration just recited herein, the down payment shall cover not only the privilege granted to the date when last said rental is payable as aforesaid, but also the Lessee's option of extending that period as aforesaid, and any and all other rights conferred. The drilling of a non-productive well shall be accepted by the Lessor in lieu of delay rental for a period of one year after its completion, and following the relinquishment or abandonment of all wells the Lessee shall have the right for a period of one year to resume the payment of delay rental or commence operations for another well. Upon the resumption of payment of rental the provisions hereof governing such payment and the effect thereof shall continue in force as though they had not been interrupted.

5. All moneys coming due hereunder shall be paid or tendered to Denton B. Rowles direct, or by check payable to his (or her) order mailed to R.F.D. 2 Curwensville, PA. 16533 and no default shall be declared against the Lessee by the Lessor for failure of the Lessee to make any payment or perform any conditions provided for herein unless the Lessee shall refuse or neglect to pay or perform the same for ten days after having received written notice by registered mail from the Lessor of his intention to declare such default.

6. Lessor reserves 200,000 cubic feet of gas per annum for domestic use, to be taken through his own appliances at any producing gas well, and agrees to pay Lessee a fair domestic rate for any gas used in excess thereof. Lessor further covenants and agrees that no taking and use of gas shall be wholly at his own risk, the Lessee not to be held liable for any accident or damage caused thereby, nor shall Lessee be liable for any shortage or failure in the supply of gas for said domestic use.

7. Lessee shall have the right to use any formation underlying the leased premises for the storage of gas and shall have all rights and rights-of-way necessary to store and produce such stored gas. As full payment for such storage rights, the Lessee shall pay to the Lessor a rental at the rate of 32.00 per acre per year, while the premises are so used, and so long as the storage payment is made, all provisions of this lease shall remain in full effect.

8. Lessor further grants to the Lessee, his heirs and assigns, the right to unitize this lease with other leases to form a drilling unit or units according to the rules and regulations which may be adopted for the proper development and conservation of the field, in the event this lease is so unitized, the Lessee agrees to accept, in lieu of the royalty hereinbefore recited, such proportion of the royalty above provided, as the acreage covered by this lease bears to the total acreage comprising the unit.

9. If said Lessor owns a less interest in the above described land than the undivided fee simple estate therein, then the royalties and rentals herein provided shall be paid the Lessor only in the proportion which his interest bears to the whole and undivided fee.

10. No well may be drilled nearer than 200 feet to the house or barn now on said premises without the written consent of Lessor. Lessee shall have and enjoy all rights and privileges necessary and convenient for the proper use and development of this lease, and shall have the right to use, free of cost, gas, oil and water produced on said land for its operations thereon, except water from wells of Lessor. Lessee shall also have the right at any time to remove all or any part of the machinery, fixtures or structures placed on said premises, including the right to draw and remove casing. Lessee shall pay for damages caused by its operations to growing crops on said lands, and, when requested by Lessor, shall bury its pipe lines below plow depth.

11. The interest or estate of either party hereto may be assumed, the privilege of assigning in whole or in part being expressly allowed. In event this lease shall be assigned as to any part or parts of the above described land and the assignee or assignees of such part or parts shall fail or make default in the payment of the proportionate part of the rents due from him or them, such default shall not operate to defeat or affect this lease insofar as it covers a part or parts of said land upon which the said Lessee or any assignee thereof shall make due payment of said rental. No change of ownership in the land or in the rentals or royalties shall affect any party thereto.

12. At any time, Lessee, its successors or assigns, shall have the right to surrender this lease or any part thereof for cancellation, after which all payments and liabilities hereunder thereafter shall cease and determine, and if the whole is surrendered, then this lease shall become absolutely null and void. This surrender may be made to the Lessor, or if more than one Lessor, then to any one of them, or to the heirs or assigns of any one of them by delivery of a duly executed surrender thereof in person or by mail addressed to the post office address of such person, or by recording a duly executed surrender thereof in the Recorder's office of the County in which the land is located.

13. Lessor hereby warrants and agrees to defend the title to the land herein described and agrees that the Lessor at its option may pay, discharge or redeem any taxes, mortgages, or other liens existing, levied, or assessed on or against the above described lands, and in event it exercises such option, it shall be subrogated to the rights of any holder or holders thereof and may reimburse itself by applying any royalty or rentals accruing hereunder to the discharge of any such taxes, mortgages or other liens.

14. It is expressly agreed that if the Lessee shall commence drilling operations at any time while this lease is in force, it shall remain in force and its terms continue so long as such operations are prosecuted, and if production results therefrom, then as long as production continues. If after the expiration of the term of this lease production from the leased premises shall cease from any cause, this lease shall not terminate provided Lessee resumes operations within sixty days from such cessation, and this lease shall remain in force during the prosecution of such operations, and, if production results therefrom, then as long as oil or gas is pro-

13. This lease embodies the entire contract and agreement between Lessor and Lessee, and no warranties, representations, promises or inducements not herein expressed have been made or relied upon by either party. The terms, conditions and stipulations hereof shall extend to the respective heirs, executors, administrators, successors and assigns of the parties herein.

Witness the hands and seals of the parties herein the day and year first above written.

WITNESS:

Ralph W. Rhodes  
Ralph W. Rhodes

Denton B. Rowles (SEAL)  
Dorothy V. Howles (SEAL)  
(SEAL)  
(SEAL)  
(SEAL)  
(SEAL)  
(SEAL)  
(SEAL)

COMMONWEALTH OF PENNSYLVANIA,  
County of Clearfield

On this 22<sup>nd</sup> day of August, 1985, before me, the subscriber, a Notary Public in and for said County, came the within named

Dorothy V. Rowles, widow and duly acknowledged the foregoing instrument to be her act and deed, and desired to be recorded as such.

Witness my hand and Notarial seal.

*Frederick J. S. Hause*  
Notary Public

FREDERICK J. S. Hause  
NOTARY PUBLIC  
My commission expires:  
November 28, 1988

COMMONWEALTH OF PENNSYLVANIA,  
County of Clearfield

On this 30<sup>th</sup> day of January, 1976, before me, personally came Ralph W. Rhodes, the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides at Box 423 Ripley, West Virginia 25271

that he knows Denton B. Rowles and Dorothy V. Howles, his wife

to be the individuals described in and who executed the foregoing instrument; that he, the said subscribing witness, was present and saw said individuals execute the same; and that he, Raymond F. Hause, at the same time, subscribed his name as witness thereto.

My Commission Expires  
on Monday Jan. 1978

*Raymond F. Hause*  
Raymond F. Hause, Prothonotary

Globe Form 100 - Rev.  
(Standard Ohio & W. Va.)

Oil and Gas Lease

|                         |             |        |          |  |
|-------------------------|-------------|--------|----------|--|
| Time                    | 10:20 AM    | 1-3-76 | TO       |  |
| By                      | Cabot Corp. |        | Acres    |  |
| Fees                    | 710         |        | Location |  |
| Codi A. Burns, Recorder |             |        | Term     |  |
| RECORDING DATA          |             |        |          |  |

Globe Printing & Binding Co., Pittsburgh, W. Va.

CLEARFIELD CO. SS  
ENTERED OF RECORD

Time 10:20 AM 1-3-76  
By Cabot Corp.  
Fees 710  
Codi A. Burns, Recorder

Entered of Record Feb 13 1976 At 10620 Bell Avenue Pittsburgh

This instrument prepared by LeeMac Associates, Ripley, West Virginia

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## **EXHIBIT "B"**

## SHAWMUT DEVELOPMENT CORPORATION

MEMO

TO: LEASE RECORDS DATE: FEBRUARY 17, 1995  
FROM: WAF  SUBJECT: FREE GAS AMMENDMENT

Please note that in exchange for damage settlement consideration Ms. Dorothy Rowles is granted 600.0 MCF of free gas annually instead of 200.0. This ammends the original terms of the lease dated January 24, 1976 between Denton B. Rowles and Dorothy V. Rowles, his wife and Cabot Corporation for 222 acres more or less in Ferguson Township, Clearfield County, PA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

POWER GAS MARKETING & :  
TRANSMISSION, INC., :  
Plaintiff :  
VS. : No. 02-1112-CD  
DOROTHY V. ROWLES, :  
Defendant :  
:

Type of Pleading:  
ANSWER TO COMPLAINT AND  
COUNTERCLAIM

Filed on behalf of:  
DEFENDANT:  
DOROTHY V. ROWLES

Counsel of record for this  
party:

Warren B. Mikesell, II  
PA I.D. No. 63717

115 East Locust Street  
Clearfield, PA 16830  
(814) 765-6605

**FILED**

AUG 26 2002  
Olaqsinock  
William A. Shaw  
Prothonotary *GRS*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

POWER GAS MARKETING & :  
TRANSMISSION, INC., :  
Plaintiff :  
VS. : No. 02-1112-CD  
DOROTHY V. ROWLES, :  
Defendant :  
:

ANSWER TO COMPLAINT  
AND COUNTERCLAIM

NOW COMES the Defendant, DOROTHY V. ROWLES, by and through her attorney, Warren B. Mikesell, II, and sets forth the following Answer to Complaint, and in support thereof would aver as follows:

1. Paragraph one - Defendant is without sufficient knowledge to either admit or deny this averment.
2. Paragraph two is admitted.
3. Paragraph three is admitted in part and denied in part. It is admitted that Denton B. Rowles is deceased. It is denied that Denton B. Rowles passed away on November 14, 1991; Denton B. Rowles actual date of death was May 3, 1982.
4. Paragraph four is admitted.
5. Paragraph five - Defendant is without sufficient knowledge to either admit or deny this averment.
6. Paragraph six is admitted.

7. Paragraph seven - no answer is required.
8. Paragraph eight is admitted.
9. Paragraph nine is admitted.
10. Paragraph ten is admitted in part and denied in part.

It is admitted that a leak in Defendant's private line from the gas well to the residences may have developed; however it is unknown exactly when the same occurred and exactly how much natural gas was used. Proof of actual use is demanded at trial.
11. Paragraph eleven is admitted in part and denied in part. It is admitted that Plaintiffs forwarded an invoice to Defendants for over usage of gas allotment; it is denied that said invoice reflects an accurate accounting of gas utilized and/or the rate charged therein is a fair market rate. Proof of same is demanded at trial.
12. Paragraph twelve is admitted in part and denied in part. It is admitted that Defendant may owe Plaintiff's for actual gas over usage; however it is denied that Defendant owes the amount charged because there is not evidence of the fair market value for gas charged. Proof of same is demanded at trial.
13. Paragraph thirteen is denied and proof of this averment is demanded at trial.

14. Paragraph fourteen - no answer is required.
15. Paragraph fifteen - Defendant is without sufficient knowledge to admit or deny this averment. Proof of same is demanded at trial.
16. Paragraph sixteen is denied. Proof of over use and a fair market rate is demanded at trial.

**WHEREFORE**, it is requested that this Honorable Court schedule this matter for trial to determine the amount of over usage and the fair market value of gas utilized.

MIKESELL & MIKESELL



Warren B. Mikesell, II, Esquire  
Attorney for Defendant

**COUNTERCLAIM**

NOW COMES the Defendant, DOROTHY V. ROWLES, by and through her attorney, Warren B. Mikesell, II, Esquire, and sets forth the following Counterclaim, and in support thereof would aver as follows:

17. Paragraph one through sixteen of Defendant's Answer to Complaint are incorporated herein by reference and made a part hereof as though set forth in full.

18. Paragraph three (g) of the Oil and Gas Lease dated January 24, 1976, states that a royalty payment of 1/8 of the market value at the well gas produced with said royalty payment to be made monthly.

19. Paragraph five of the Oil and Gas Lease dated January 24, 1976, states

"All monies coming due hereunder shall be paid or tendered to Denton B. Rowles direct, or by check payable to his (or her) order mailed to R.F.D.2 Curwensville, PA. 16833 and no default shall be declared against the Lessee by the Lessor for failure of the Lessee to make any payment or perform any conditions provided for herein unless the Lessee shall refuse or

neglect to pay or perform the same for ten days after having received written notice by registered mail from the Lessor of his intention to declare such default."

20. Since 1999, the Plaintiff, Power Gas Marketing & Transmissions, Inc., have failed to pay monthly royalties in accordance with the aforesaid Oil and Gas Lease dated January 24, 1976, and instead deducted from royalty checks an amount determined by Plaintiff to be a fair market value being in dispute by Defendant.

21. That nowhere in the aforesaid Oil and Gas Lease dated January 24, 1976, is there a provision authorizing Plaintiff to surcharge monthly royalty payments for over usage of gas.

22. That Defendant gave notice of default of failure to pay royalties in accordance with the lease - said notice being by letter dated February 4, 2002, delivered by registered mail (a copy of said letter and receipt notice is attached hereto as Exhibit "1"). That Plaintiff has failed to make good royalty payments wrongfully withheld in accordance with the aforesaid Oil and Gas Lease dated January 24, 1976.

23. That Plaintiff's have failed to provide the Defendant, Dorothy Rowles, the actual monthly over usage of gas together with the rate being charged thereto for over usage.

24. That the amount of gas over usage by month and the

amount of payment for said gas has been disputed and Plaintiff, Power Gas Marketing & Transmissions, Inc., has failed to provide the Defendant, Dorothy Rowles, with accurate accounting of said gas and/or the rate charged for same an unilaterally set a rate without explanation.

25. That Plaintiff's had an obligation to make the monthly royalty payment pursuant to the terms and conditions of the Oil and Gas Lease dated January 24, 1976, and that failure to make said payments places Plaintiff in default after due and proper notice thereof.

26. That due to Plaintiff's, Power Gas Marketing & Transmissions, Inc., default, the aforesaid Oil and Gas Lease dated January 24, 1976, is void and terminated.

27. That Plaintiff, Power Gas Marketing & Transmissions, Inc., has continued to operate a gas well on the property owned by Defendant, Dorothy Rowles, since March, 1, 2002 without a valid Lease.

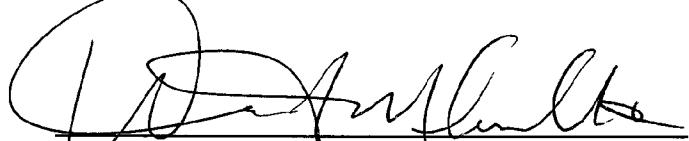
WHEREFORE, the Defendant respectfully requests that:

(a) this Honorable Court to award her damages in the amount of gas actually removed from her property from March 1, 2002, at the market rate; and,

(b) this Honorable Court order Plaintiff to pay costs of this suit to Defendant; and,

(c) this Honorable Court issue such other relief as it shall deem proper.

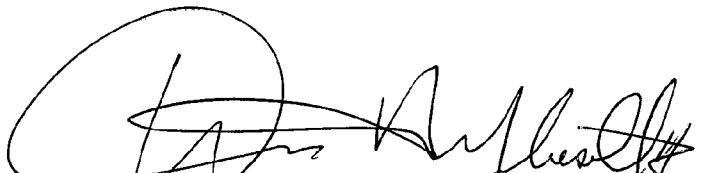
MIKESELL & MIKESELL



Warren B. Mikesell, II, Esquire  
Attorney for Defendant

I verify that the statements made in this Complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 PaC.S. §4904, relating to unsworn falsification to authorities.

Date: 8-7-02



Warren B. Mikesell, II Esquire  
Attorney for Defendant

**In The Court of Common Pleas of Clearfield County, Pennsylvania**

Sheriff Docket # 12801

POWER GAS MARKETING & TRANSMISSION, INC.

02-1112-CD

VS.

ROWLES, DOROTHY V.

**COMPLAINT**

**SHERIFF RETURNS**

**NOW JULY 22, 2002 AT 10:05 AM DST SERVED THE WITHIN COMPLAINT ON  
DOROTHY V. ROWLES, DEFENDANT AT RESIDENCE, RD#2 BOX 228,  
CURWENSVILLE, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO  
DOROTHY V. ROWLES A TRUE AND ATTESTED COPY OF THE ORIGINAL  
COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.**

**SERVED BY: RYEN**

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**Return Costs**

| <b>Cost</b>  | <b>Description</b>                  |
|--------------|-------------------------------------|
| <b>21.90</b> | <b>SHFF. HAWKINS PAID BY: ATTY.</b> |
| <b>10.00</b> | <b>SURCHARGE PAID BY: ATTY.</b>     |

**Sworn to Before Me This**

29 Day Of August 2002  
William A. Shaw

**So Answers,**

  
Chester A. Hawkins  
Sheriff

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2006  
Clearfield Co., Clearfield, PA

**FILED**

*AS*  
AUG 29 2002  
0/9/03 BT  
William A. Shaw  
Prothonotary

POWER GAS MARKETING &  
TRANSMISSION, INC.,

Plaintiff,

vs.

DOROTHY V. ROWLES,

Defendant.

: IN THE COURT OF COMMON PLEAS

: CLEARFIELD CO., PENNSYLVANIA

: CIVIL ACTION - LAW

: NO. 02-1112-CD

: Type of Pleading:

: Reply to Defendant's Counter-Claim

: Filed on behalf of:

: Power Gas Marketing & Transmission, Inc.

: Counsel of Record:

: Michael S. Delaney, Esquire

: 936 Philadelphia Street

: Indiana, PA 15701

: 724-349-2255

: ID#25537

: Patrick Dougherty, Esquire

: 936 Philadelphia Street

: Indiana, PA 15701

: 724-349-2255

: ID#85832

FILED

SEP 06 2002

M 10:53 / cc atty Delaney  
William A. Shaw  
Prothonotary

POWER GAS MARKETING & : IN THE COURT OF COMMON PLEAS  
TRANSMISSION, INC., :  
Plaintiff, : CLEARFIELD CO., PENNSYLVANIA  
vs. :  
DOROTHY V. ROWLES, : CIVIL ACTION - LAW  
Defendant. : NO. 02-1112-CD

**REPLY TO DEFENDANT'S  
COUNTER-CLAIM**

AND NOW, comes the Plaintiff, Power Gas Marketing & Transmission, Inc., by and through their attorneys, Michael S. Delaney, Esquire, and Patrick Dougherty, Esquire, and sets forth the following Reply to Defendant's Counter-Claim, and in support thereof would aver as follows:

1. Paragraph 17 of Defendant's Counter-Claim is an incorporation paragraph to which no reply is required.
2. Paragraph 18 is admitted.
3. Paragraph 19 is admitted.
4. Paragraph 20 is denied. Plaintiff, Power Gas Marketing & Transmission, Inc., has paid monthly royalties in accordance with the January 24, 1976, Oil and Gas Lease.
5. Paragraph 21 is admitted.

6. Paragraph 22 is admitted in part and denied in part. Specifically Plaintiff admits that the Defendant did send a letter dated February 4, 2002, however, it is specifically denied that Plaintiff has failed to make good royalty payments wrongfully withheld, to the contrary, Plaintiff has provided Defendant with royalty payments pursuant to the January 24, 1976, Oil and Gas Lease.

7. Paragraph 23 of Defendant's Counter-Claim is denied. Plaintiff at all times has provided to the Defendant, Dorothy Rowles, the actual monthly over usage of gas together with the rate being charged for said over usage.

8. Paragraph 24 of Defendant's Counter-Claim is denied. Specifically Plaintiff has provided the Defendant with an accurate accounting of said gas and the rate charged pursuant to the terms of the January 24, 1976, Oil and Gas Lease.

9. Paragraph 25 of Defendant's Counter-Claim is denied. Specifically Plaintiff has made monthly royalty payments to the Defendant pursuant to the terms of the Oil and Gas Lease dated January 24, 1976.

10. Paragraph 26 of Defendant's Counter-Claim is denied. At no time did Power Gas Marketing & Transmission, Inc., default under the terms of the January 24, 1976, Lease Agreement, therefore the Lease is not void and terminated.

11. Paragraph 27 of the Defendant's Counter-Claim is admitted in part and denied in part. Specifically Plaintiff admits that they have continued to operate a gas well on the property owned by the Defendant since March 1, 2002, however, it is specifically denied that they did so without a valid Lease Agreement.

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court enter judgment in favor of the Plaintiff and against the Defendant.

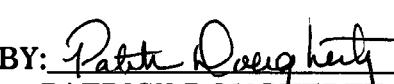
Dated:

Respectfully submitted:

BY:

  
MICHAEL S. DELANEY, ESQUIRE  
Attorney for Plaintiff  
936 Philadelphia Street  
Indiana, PA 15701  
(724) 349-2255  
ID#25537

BY:

  
PATRICK DOUGHERTY, ESQUIRE  
Attorney for Plaintiff  
936 Philadelphia Street  
Indiana, PA 15701  
(724) 349-2255  
ID#85832

## VERIFICATION

I, PHILLIP KHOURY, on behalf of POWER GAS MARKETING & TRANSMISSION, INC., do hereby state that POWER GAS MARKETING & TRANSMISSION, INC., is the Plaintiff in the above foregoing action and that the statements of fact made in the foregoing REPLY TO DEFENDANT'S COUNTER-CLAIM are true and correct upon personal knowledge and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

POWER GAS MARKETING &  
TRANSMISSION, INC.

BY:   
PHILLIP KHOURY

DATE: 9-5 -02, 2002

POWER GAS MARKETING & : IN THE COURT OF COMMON PLEAS  
TRANSMISSION, INC., :  
Plaintiff, : CLEARFIELD CO., PENNSYLVANIA  
vs. :  
DOROTHY V. ROWLES, : CIVIL ACTION - LAW  
Defendant. : NO. 02-1112-CD

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within  
**REPLY TO DEFENDANT'S COUNTER-CLAIM** was served on the following counsel  
through the United States Mail, first class, postage prepaid, this 5<sup>th</sup> day of  
September, 2002:

Warren B. Mikesell, II, Esquire  
Mikesell & Mikesell  
115 East Locust Street  
Clearfield, PA 16830  
(814) 765-6605

  
PATRICK DOUGHERTY, ESQUIRE

Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

POWER GAS MARKETING & :  
TRANSMISSION, INC. :  
-vs- : No. 02-1112-CD  
DOROTHY V. ROWLES :

**ORDER**

NOW, this 31<sup>st</sup> day of July, 2003, following status conference in the above-captioned matter, and in order to provide the parties with an opportunity to resolve outstanding issues, it is the ORDER of this Court that the Court Administrator shall reschedule a further status conference thirty (30) days from date hereof.

By the Court,

President Judge

**FILED**

JUL 31 2003

William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

JUL 31 2003

0/310/ *ES*  
William A. Shaw

Prothonotary/Clerk of Courts

Chair to Atty Delaney

Chair to Atty Mikesell

Date: 09/04/2003

**Clearfield County Court of Common Pleas**

User: DGREGG

Time: 09:45 AM

**ROA Report**

Page 1 of 1

Case: 2002-01112-CD

Current Judge: John K. Reilly Jr.

Power Gas Marketing Transmission, Inc. vs. Dorothy V. Rowles

Civil Other

| Date       | Judge   |                    |
|------------|---|--------------------|
| 07/18/2002 | <input checked="" type="checkbox"/> Filing: Civil Complaint Paid by: Michael S. Delaney, Esquire Receipt number: 1845691 Dated: 07/18/2002 Amount: \$80.00 (Check) One CC Attorney Delaney                        | No Judge           |
| 08/26/2002 | <input checked="" type="checkbox"/> Answer to Complaint and Counterclaim. filed by Warren B. Mikesell, II, Esq. Verification s/Warren B. Mikesell, II, Esq. no cc   | No Judge           |
| 08/29/2002 | <input checked="" type="checkbox"/> Sheriff Returns: Now July 22, 2002 Complaint served on Dorothy V. Rowles at residence. Sheriff costs \$21.90. Surcharge \$10.00   | No Judge           |
| 09/06/2002 | <input checked="" type="checkbox"/> Reply to Defendant's Counter-Claim filed by Atty. Delaney and Certificate of service. 1 CC to Atty. Delaney.  | No Judge           |
| 07/31/2003 | <input checked="" type="checkbox"/> ORDER, NOW, this 31st day of July, 2003, re; CA to reschedule a further status conference 30 days from date hereof. by the Court, s/JKR,JR.,P.J. cc to Atty Delaney, Mikesell | John K. Reilly Jr. |

## SETTLEMENT AGREEMENT

POWER GAS MARKETING & TRANSMISSION, INC., a Pennsylvania Corporation, with its principal place of business at 32<sup>nd</sup> Floor, 707 Grant Street, Pittsburgh, Allegheny County, Pennsylvania, (hereinafter referred to as Party of the First Part);

**FILED**

OCT 17 2003

AND

William A. Shaw  
Prothonotary/Clerk of Courts

DOROTHY V. ROWLES of RD #2, Box 228, Curwensville, Clearfield County, Pennsylvania, 16833, (hereinafter referred to as Party of the Second Part);

02-1112-CD

for valuable consideration and intending to be legally bound, both parties agree to the following:

1. Party of the Second Part shall pay to Party of the First Part the sum of ONE THOUSAND FIVE HUNDRED AND NO/100 (\$1,500.00) DOLLARS as total and complete settlement of damages arising out of Clearfield County Court of Common Pleas, Civil Division, Docket No. 02-1112-CD.

2. Party of the First Part and Party of the Second Part further agree that if the Party of the Second Part exceeds 600,000 cubic feet of free gas usage per year as provided for in the Oil and Gas Lease recorded in the Recorder's Office of Clearfield County, Pennsylvania, in Deed Book Volume 1042, Page 396, together with a damage memo dated February 17, 1995, between Party of the Second Part and Shawmutt Development Corporation (a predecessor in interest to Party of the First Part), Party of the Second Part shall have the option of the following:

a. Party of the Second Part shall have the option of paying the Party of the First Part for gas usage over the allotment as per the aforesaid Lease Agreement; or

b. Party of the Second Part shall notify Party of the First Part that it does not wish to incur payment for gas in accordance with the aforesaid Lease and the Party of the First Part then shall immediately disconnect the gas line(s) of the Party of the Second Part from their system for the remainder of the calendar year. Party of the Second Part will then reconnect the aforesaid gas line(s) at the beginning of the next calendar year. All other terms remain the same.

3. Party of the Second Part certifies that the gas provided for in the free gas allotment is used for domestic purposes only.

4. Party of the First Part and Party of the Second Part agree to have the action at No. 02-1112-CD marked settled, satisfied and discontinued.

5. Except as provided herein, this agreement does not change, alter or modify any existing leases or the agreements previously entered by the parties or their predecessors.

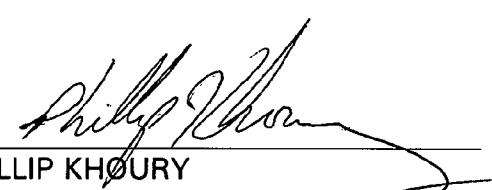
6. This Agreement includes the entire understanding of the parties, and it is agreed that any modification must be done in writing.

INTENDING TO BE LEGALLY BOUND this 2nd day of October,  
2003.

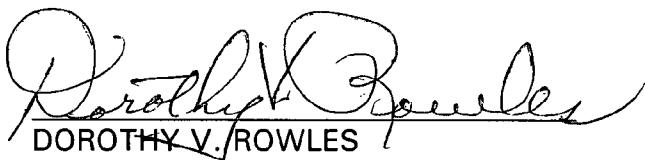
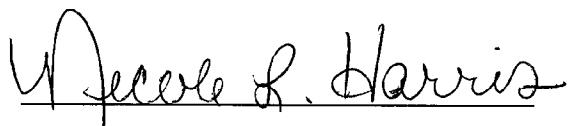
Attest:

POWER GAS MARKETING &  
TRANSMISSION, INC.



BY:   
PHILLIP KHOURY

Witness:

  
DOROTHY V. ROWLES

FILED 4CC Atty Miksell  
Oct 17 2003 *W.A. Shaw*  
*W.A. Shaw*

William A. Shaw  
Prothonotary/Clerk of Courts