

03-1324-CD
POWER GAS MARKETING & TRANSMISSION vs. HARRY T. RANDOLPH

Current Judge: Fredric Joseph Ammerman

Power Gas Marketing && Transmission, Inc. vs. Harry Thomas Randolph, Sherry E. Randolph

Civil Other

Date	Judge
9/8/2003	X Filing: Civil Complaint Paid by: Michael S. Delaney, Esq. Receipt number: No Judge 1865776 Dated: 09/08/2003 Amount: \$85.00 (Check)
9/17/2003	X Acceptance of Service, Complaint on behalf of the Defendants. s/Robin Jean Foor, Esq. 2 cc Atty Foor
10/6/2003	X Answer and Counterclaims filed by Atty. Foor. 3 CC to Atty.
10/8/2003	X Certificate of Service, filed by Atty. Foor Served copy of Defendants A & C on Plaintiff's Atty.
12/1/2003	X Reply to Defendants' Counterclaims. filed by, s/Michael S. Delaney, Esquire Verification s/Phillip Khoury Certificate of Service no cc
7/15/2004	X Praeclipe to List for Non-Jury Trial, filed by s/Robin Jean Foor Two CC Attorney Foor
8/12/2004	X Certificate of Service, Pre-Trial Statement, was served on Robin Jean Foor, Fredric Joseph Ammerman Esq., No cc.
8/13/2004	X Order, NOW this 12th day of August, 2004, following Pre-Trial Conference with counsel for the parties and the Court, it is the ORDER of this Court as follows: 1. Non-Jury Trial be scheduled for one day, on the 8th day of December, 2004, beginning at 9:00 a.m. in Courtroom No. 1, Clfd. Co. Courthouse, Clfd. Pa. 2. Both counsel have agreed that the Defendants may supplement documentation relative damages and their claim therefore up to a point no later than thirty (30) days prior to the date scheduled for trial above. BY THE COURT /s/Fredric J. Ammerman, President Judge. 2cert. cop. to Patrick Dougherty, Esq., 2 cert. copies to Robin J. Foor, Esq., 1 copy to President Judge Ammerman, 1 copy to Court Administrator.
12/10/2004	X Order, AND NOW, this 8th day of Dec., 2004, following nonjury trial in the above-captioned matter, it is the ORDER of this Court that counsel provide the Court with briefs in no more than 30 days from this date. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 2 CC Atty Foor, 1CC Atty Dougherty
2/1/2005	X Opinion and Order, NOW, this 1st day of February, 2005, consistent with the foregoing Opinion, it is the Order of this Court as follows: 1. Plaintiff's request for Declaratory Relief is hereby granted. It is the finding of this Court that under the terms of the oil and gas lease Defendants are entitled only to receive 200,000 cubic feet per year of "free gas"; 2. Defendants are liable for the fair market cost of excess gas used, in the total amount of \$2,060.73 plus interests and costs of suit; 3. Defendants counterclaim(s) is hereby dismissed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Foor One CC P. Dougherty
2/11/2005	X Petition for Reconsideration filed by Atty. Foor. 3 CC to Atty.
2/17/2005	X Order, NOW, this 17th day of Feb., 2005, the Court hereby GRANTS the Defendants Petition for Reconsideration and Orders reconsideration of its Order of Feb. 1, 2005. Argument on the issue contained within the said Petition shall be held before the Court on the 10th day of March, 2005, at 3:00 p.m. in Courtroom No. 1 of the Clfd. Co. Courthouse. BY THE COURT, /s/ Fredric J. Ammerman, President Judge. 3CC Atty Foor
3/11/2005	X ORDER FILED. Cert. to Atty. Dogherty & Foor NOW, this 10th day of March, 2005, Re: Argument on the Petition for Reconsideration.

List of Jurors for Civil
Scheduled for Thursday, April 3, 2008 at 8:45AM in Court Room 1

Number of Jurors Selected 225

Session # 7

Address Line 1

1455 TREASURE LAKE
4560 MICMULLEN, CAROL JEAN

Page 8
Date Printed 01/23/2008

Address Line 2

DUBOIS PA 15801

Address Line 3

CLEARFIELD PA 16830

MADERA PA 16661

DUBOIS PA 15801

MORRISDALE PA 16881

CLEARFIELD PA 16830

WOODLAND PA 16881

CLEARFIELD PA 16830

DUBOIS PA 15801

PO BOX 33

SMOKE RUN PA 16661

CLEARFIELD PA 16830

CURWENSVILLE, PA. 16833

318 ANDERSON ST.

DUBOIS PA 15801

CLEARFIELD PA 16830

MAHAFFEY PA 15757

CLEARFIELD PA 16830

DUBOIS PA 15801

WEST DECATUR PA 16878

152 2497 PETERS, RODNEY Et. 3 3 -08 1502 VALLEY RD

151 4606 PEGHIER, DEBORAH L. 1695 TREASURE LAKE

150 2342 PERINCE, GARY W. Et. 2 -21 -08 5806 COLONEL DRAKE HWY MAHAFFEY PA 15757

149 279 PAGNOTTO, PATRICIA 71-2 - 605 HANNAH ST

148 2837 OWENS, RANDY 7713 RIDGE ROAD

147 1713 OWENS, DELORES R. Et. 2 -21 -08 2008 GREEN GLEN DR CLEARFIELD PA 16830

146 795 OSUNDIKE, OLUOSOLA Et. 2 -21 -08 2518 MEADOW RD

145 480 OLSON, JOAN 1527 VILLAGE RD

144 1692 NELSON, DEBORAH A

143 2273 MYERS, RICHARD D. Deceased Et. 2 -21 -08 71 CHRUNER ROAD

142 4583 MURRELL, GLORIA 427 TREASURE LAKE

141 3797 MULLEN, MRS. RAYMOND Et. 2 -27 -08 400 POPLAR AVE

140 2630 MULLEN, JOHNE Et. 2 -27 -08 R.D. BOX 100

139 1669 MORGAN, HARRIET J 816 BARCLAY ST

138 4023 MURDOCK, GEORGE JOHN Et. 3 -19 -08 P.O. BOX 221

137 771 MURVICH, THOMAS W. Et. 3 -11 -08 508 SPRING AVE

134 2387 MIHALKO, CAROL

POWER GAS MARKETING & TRANSMISSION, INC.,

Plaintiff,

VS.

HARRY THOMAS RANDOLPH
and SHERRY E. RANDOLPH,
his wife.

Defendant.

: IN THE COURT OF COMMON PLEAS

: CLEARFIELD CO., PENNSYLVANIA

REFERENCES AND NOTES

NO. 03-1324-CD

: 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

SFP 08 2003

William A. Shaw
Prothonotary

POWER GAS MARKETING &
TRANSMISSION, INC., : IN THE COURT OF COMMON PLEAS
Plaintiff, :
vs. : CLEARFIELD CO., PENNSYLVANIA
HARRY THOMAS RANDOLPH :
and SHERRY E. RANDOLPH, :
his wife, :
Defendant. : CIVIL ACTION - LAW
: 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. 2nd 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.	:	
	:	
	:	CIVIL ACTION - LAW
HARRY THOMAS RANDOLPH	:	
and SHERRY E. RANDOLPH,	:	
his wife,	:	NO. _____
	:	
Defendant.	:	

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 Defendants, Harry Thomas Randolph and Sherry E. Randolph, his wife, are individuals residing at 4716 Patchin Highway, Cherry Tree, Pennsylvania, 15724.
3. The Defendants, Harry Thomas Randolph and Sherry E. Randolph, his wife, are the assessed owners of 45.301 acres, more or less, situate in Burnside Township, Clearfield County, Pennsylvania, title to which became vested in Harry Thomas Randolph and Sherry E. Randolph, his wife, by deed of Daniel P. Engle, Sr.,

dated January 8, 1996, and recorded in the Recorder's Office of Clearfield County, Pennsylvania, in Record Book 1729, page 435. The property is known as Clearfield County Tax Assessment Parcel No. 108-B15-000-00085. A copy of said deed is attached hereto as Exhibit "E".

4. That by Oil and Gas Lease dated September 22, 1971, and recorded in the Recorder's Office of Clearfield County, Pennsylvania, in Book No. 161, page 37, Aaron P. Clark and J. O. Clark, Jr., and Carolyn S. Clark, his wife, leased for oil and gas production purposes 2,535 acres, more or less, situate in Burnside Township, Clearfield County, Pennsylvania. A copy of said Oil and Gas Lease is attached hereto and marked as Exhibit "A".

5. The oil and gas rights under Parcel No. 108-B15-000-00085 are a part of the above-mentioned oil and gas lease and have been severed and are currently vested in Ronald J. Mozick by Order of Court dated January 13, 1998. A copy of said Order of Court is attached hereto as Exhibit "B".

6. Plaintiff, Power Gas Marketing & Transmission, Inc., is now the owner of the above-referenced Oil and Gas Lease.

7. Under the terms of the September 22, 1971, lease, Plaintiff now operates one (1) well on the Defendants' property.

COUNT I

DECLARATORY JUDGMENT

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

9. Pursuant to the Oil and Gas Lease entered into on September 22, 1971,

between Aaron P. Clark, et al., and C. E. Beck, it was agreed that free gas would be provided pursuant to the following:

“ Lessor shall have gas free of charge for his principal dwelling house up to 200,000 cubic feet per year from any well on leased premises producing gas by making his own connections with the well. The use of said gas is to be at lessor's sole risk and expense.”

10. Since January 8, 1996, Plaintiff and/or their predecessors in title have provided the free gas allotment provided for in the September 22, 1971, Oil and Gas Lease to the dwelling currently owned by Defendants.

11. In 2002, Defendants consumed in excess of the 200,000 cubic feet free gas allotment as provided in the Lease Agreement.

12. Plaintiff sent Defendant Invoices for the amount of excess gas used. Copies of said invoices are attached hereto as Exhibit “C”.

13. After receiving the Invoice for excess gas used, Defendants provided to Plaintiff a Real Estate Sales Agreement dated October 20, 1995, between Daniel Engle and Harry T. Randolph and Sherry E. Randolph, his wife, which provides in paragraph 5(b) of that Agreement the following:

“This sale does not transfer coal, gas, or mineral rights other than the unlimited free gas specified in the Seller's Lease. (A copy of said Sales Agreement is attached hereto as Exhibit “D”.)

14. As of the date of this Complaint, the Defendants currently have a balance due and owing to Plaintiff in the amount of TWO THOUSAND SIXTY AND 73/100 DOLLARS (\$2,060.73) for excess gas used by the Defendants.

15. As of the date of this Complaint, Defendants have failed to pay the

amount due and owing in full for the excess gas used under the terms of the September 22, 1971, Oil and Gas Lease.

WHEREFORE, Plaintiff requests that:

- (A) The Court enter judgment declaring that Plaintiff is entitled to receive compensation from the Defendants for the excess gas used under the September 22, 1971 Lease;
- (B) That the Defendants are only entitled to 200,000 cubic feet per year for use in their principal dwelling house;
- (C) That Defendants are not entitled to unlimited free gas as provided in the Sales Agreement between Defendants and Engle; and
- (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

16. Paragraphs 1 through 15 of this Complaint are incorporated herein by reference.

17. Defendants have 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>
2001	200 mcf	451 mcf	251 mcf

18. Based upon the above consumption of natural gas by Defendants from the year 2002, Defendants owe Plaintiff the sum of TWO THOUSAND SIXTY AND 73/100 DOLLARS (\$2,060.73).

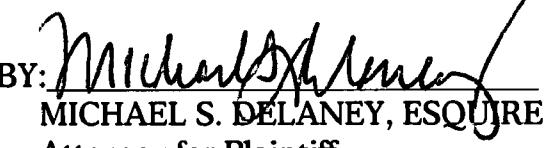
WHEREFORE, Plaintiff requests that:

(A) Plaintiff have judgment against Defendant in the amount of TWO THOUSAND SIXTY AND 73/100 DOLLARS (\$2,060.73) for gas used from Plaintiff's system, in excess of the 1971 Oil and Gas Lease Agreement;

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

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 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: Philip Khoury Bus. Mgr
PHILIP KHOURY

DATE: August 25, 2003

EXHIBIT

“A”

See Disagreement in Part 1 - filed by D.F.T. - 32 - 1950 - 50
See Open and Mfg. Disagreement, Security Report dated January 1956
Part 3

and 632-1 File No. 21-1-2-22

OIL AND GAS LEASE

c/o Aaron P. Clark, Penn Lamp Mill, County of Indiana and
State of Pennsylvania 15212, address of the firm part, hereinabove called the Lessor, and C. E. Beck
3122 st. Holyoke road, Columbus, Ohio 43221

party of the second part, hereinbefore called the Lessor. **WITNESSETH:**
1. That Lessor, for and in consideration of the sum of One Dollar (\$1.00) as aforesaid paid, and of the covenants and agreements hereinbefore contained, to be performed by Lessor, has the right granted and hereby grants to Covenantee, under Lessor's will, to all and any land which may be subsequently described and, and which may be so described, and which may be so described, for the purpose and for the exclusive right to explore for and extract oil and gas, and coal and mineral veins, and to mine, build wells and roads, erect and maintain, any and all structures, equipment and improvements, and to remove same, and to do other work, and to build under structures, where necessary to explore, mine and work all such premises.
All of that certain tract of land situated in the Township of Burtside, Perry County, Pennsylvania, Bearfield

Descriptive attachment to Oil & Gas lease dated 9/22/71 from Aaron P. Clark, et al to C. E. Beck, -lessee and made a part of the lease herein.

All located in Clearfield County, Pennsylvania

Burnside Township and Burnside Corp

Bounded on: _____ 140-174449 N00099 4537 acres _____

North: H. S. Clark, Joseph Penzie, D. Sherwin, and Joseph Gregg
East: Susquehanna River, Joseph Gregg, John Baker, Ralph Fulton,
 Tomie Campbell, Petty Elias and R. B. West
South: Harvey Fly, Sarah Tonkin, Braggers Club, Joseph Tonkin
West: Indiana County, Frank Smith, W. C. Short, Jr. and Frank Bellella
less and except 2 -50 acre tracts in the form of a square and located on
108-El5-38 and being tracts held by production of T. W. Phillips Oil and
Gas Company, Butler, Pennsylvania

Tract # 2 108-AL3-9 lot 2 and 108-AL3-11 & 12 280 acres

North: Raymond Barrett,
East : Nancy Mitchell and Stanley Minia
South : Anthony Caccino, James Stauffer and Village of Burnsides
West : John Zinga and Mark Bowles

Tract # 3 2-413-25 37 acres

North : Mark Bowles
East : John Zinga
South : Bracken Lumber Company
West : Bracken Lumber Company

August 1879/327 10/2/17

Plumbeous Pine Grosbeak (♂) page 549

Ein Auskunftsblatt aus dem Archiv der Stadt Berlin
3. 1925. 13. 3. 1933

THE USE OF METAL-CONTAINING POLYMERS IN MEDICAL TECHNOLOGY

2. *Leucosia* *leucostoma* *leucostoma* *leucostoma*

Education and the Environment

Plano

Document 101/407

Descriptive attachment made a part of the lease hereof *4-16-0-e/c*

North

East

South

West

concerning 2952 acres, more or less, in addition to the above described land, any and all strings or parcels of land adjoining or contiguous to the above described land and owned or claimed by Lessor are hereby leased to Lessor.

Lessor shall be responsible for any damage to growing crops, fences and buildings which may result from said operations. No well shall be drilled within 300 feet of any house or barn now on said premises. Lessor agrees that Lessor may enter upon leased premises, search for and clean out any abandoned oil or gas well, and rock well shall then be considered to have been drilled under the terms of this lease. The same may be properly plugged and abandoned again or re-used and utilized by Lessor for the production or storage of gas or oil. Lessor shall have the right to use free of cost, gas, oil, and water found on said land (except from Lessor's wells) necessary for the operations described herein.

2. Lessor hereby covenants that he is privy of an indefeasible fee simple estate in the lands hereinabove described, subject to existing assessments, together with all the oil and gas underlying the same, and that he will forever warrant and defend the leasehold estate hereby demised unto the Lessee against the lawful claims and demands of all persons whomsoever, and that Lessor shall have the exclusive, full, free and quiet possession of said described premises for the purpose and during the term herein set forth. Lessor further agrees that the land, as it exists at the option, may pay and discharge, when deflated, any taxes, mortgages or other liens existing, levied or assessed on or against the above described lands, and in the event it exercises such option, it shall be subrogated to the rights of any holder or holders thereof and may reimburse itself by applying to the discharge of any such mortgage, tax or other lien, any royalty or mensa accruing hereunder.

3. It is agreed that this lease shall remain in force for the term of ten years from the above date and as long thereafter as the above described land, or any portion thereof, or any other land pooled or unitized therewith as provided in paragraph 4 hereof, is operated by the Lessee in the search for or production of oil or gas, or as long as gas is being stored, held in storage or withdrawn from the premises by Lessor, or as long as this lease is extended by any other provisions contained herein. It is agreed that the cessation of production from wells on the leased premises or upon other lands unitized therewith, after the expiration of the original term, shall not terminate this lease whether the pooling unit have been dissolved or not, if the land is used for the storage of gas prior to the plugging and abandonment of wells from which oil or gas has been produced. A well need not be drilled on the premises to permit the storage of gas.

4. Lessor is hereby granted the right to pool and unitize any strata or strata under all or any part of the land described above with any other lease or leases, land or lands, mineral interests or any of them, whether owned by the Lessor or others, so as to create one or more drilling or production units. Such drilling or production unit shall not exceed 640 acres in extent if gas or condensate is produced and 40 acres if oil is produced and shall conform to the rules and regulations of any lawful governmental authority having jurisdiction in the premises, and with good drilling and production practices in the area in which the land is located. In the event of the abandonment of the whole or any part of the land covered by this lease, Lessor shall before or after the completion of a well, record a copy of its unit operation designation in the County wherein the leased premises are located, and mail a copy thereof to the Lessor in order to give effect so the known limits of the oil and gas pool, as such limits may be determined from available geological or scientific information or drilling operations. Lessor may at any time increase or decrease that portion of the acreage covered by this lease which is included in any drilling or production unit, or exclude it altogether, provided that written notice thereof shall be given to Lessor promptly. At any such drilling or production unit designated by the Lessor, the Lessor agrees to accept and shall receive out of the production or the proceeds from the production from such unit, such proportion of the royalties specified herein, as the number of acres out of the lands covered by this lease which may be included from time to time in any such unit, bears to the proportion of the royalties specified herein. The commencement, drilling, completion or production from a well, whether drilled before or after unitization, in any portion of the unit created under the terms of this paragraph shall have the same effect upon the terms of this lease as if a well were commenced, drilled, completed or producing on the land described herein.

5. In consideration of the premises the Lessor covenants and agrees to pay the following royalties:

(OIL): To deliver to the credit of the Lessor, his heirs or assigns, free of cost, in pipelines to which Lessor may connect its wells, a royalty of the equal one eighth (1/8) part of all oil produced and saved from the leased premises, Lessor at its option may pay to the Lessor for such one eighth royalty the market price for oil of like grade and gravity prevailing on the day such oil is run into the pipeline, or into storage tank.

(GAS): To make the following payments of royalty for or on account of wells producing gas from subsurface strata not utilized for the storage of gas, namely: To pay a royalty equal to one eighth (1/8) of the value of all gas (except storage gas) produced, saved and marketed, calculated at the price paid at the connecting point by the pipeline operator.

The time and method of marketing production from any well on the leased premises and the amount thereof that shall be used or marketed within any period of time shall be entirely within the discretion of the Lessor, and this lease shall not lapse pending the marketing or during any interruption of marketing of such production.

The time and method of marketing production from any well on the leased premises and the amount thereof that shall be used or marketed within any period of time shall be entirely within the discretion of the Lessor, and this lease shall not lapse pending the marketing or during any interruption of marketing of such production.

If operations for drilling are not commenced on said land, or on acreage pooled therewith as herein provided, on or before 12 months from this date, the lease shall terminate as to both parties, unless on or before such date Lessor shall pay or tender to Lessor, or on the credit of Lessor, a delay rental at the rate of

1.00 per acre per year in advance, beginning 12 months from this date which shall cover the privilege

of deferring commencement of drilling operations for a period of 12 months, in like manner and upon like payments or tender the commencement of drilling operations may be further deferred for successive periods of 12 months each during the primary term or until a well yielding royalty to the Lessor is drilled.

As full compensation for the storage rights herein granted, and in lieu of all royalty or other payments due or to become due for the right to produce or the production of any oil or other hydrocarbons substances produced therewith from the strata or strata utilized for gas storage purposes, Lessor agrees to pay Lessor an annual rental of One Dollar (\$1.00) per acre for each acre utilized for such gas storage purposes, in advance, commencing with the date it notifies Lessor that it elects to use any strata for storage purposes, and for so long thereafter as any such strata is so utilized. Lessor further agrees to pay Lessor, as liquidated damages for the drilling, operation and maintenance of each well on leased premises which is utilized for storage of gas, as well as for the necessary or useful surface rights and privileges relating thereto, for the entire term of this agreement, the sum of One Hundred Dollars (\$100.00) payable in one sum within three months after each well now existing or hereafter drilled upon leased premises is so utilized. The storage rights may be exercised in conjunction with other leases in the general vicinity.

Lessor shall have gas free of charge for his principal dwelling house up to 200,000 cubic feet per year from any well on leased premises producing gas by making his own connections with the well. The use of said gas is to be at Lessor's sole risk and expense. *Farmers and*

6. All payments hereunder may be made direct to Lessor or deposited to his credit, or the credit of his respective heirs or assigns in Aaron P. Clark
Merchants (Bank) of Cherry Tree, Pennsylvania 15721 or by check or draft payable to the order of Glen Campbell, Pennsylvania 15722
and J. O. Clark, Jr. and mailed to

Lessor must be satisfied in writing of any change in title or ownership or in the party to whom, or place where, payment of money are to be made. Failure to pay or enter into paying any rental or other payment due hereunder shall not constitute a ground for forfeiture of this lease and shall not affect Lessor's obligation to make such payment, but Lessor shall not be considered in default on account thereof until Lessor has first given Lessor written notice of the non-payment and Lessor shall have failed for a period of thirty days after receipt of such notice to make payment.

7. If at the expiration of the primary term hereof, there is no production of oil or gas on the leased lands, but Lessor is engaged in operations for drilling, reworking, plugging back, or deepening a well thereon, this lease shall remain in force and in term shall continue for so long as such operations, or additional drilling, reworking, plugging back, or deepening operations commenced while such operations are in progress within thirty days after the cessation thereof, are prosecuted, and if production remains therefrom, then until it is marketed and so long as production continues. If, after the expiration of the primary term of this lease, production on the leased premises ceases, this lease shall not terminate, provided that Lessor commences operations for drilling, reworking, plugging back, or deepening a well within 60 days from such date, and this lease shall remain in force during the prosecution of such operations or additional drilling, reworking, plugging back, or deepening operations commenced while such operations are in progress or within 30 days after the cessation thereof, and if production ceases therefrom, then until it is succeeded and so long as production continues.

8. Lessor, at any time, and from time to time, may surrender this lease as to all or any part or parts of leased premises by rendering an appropriate instrument of surrender to the Lessor, and thereupon this lease, and the rights and obligations of the parties hereunder, shall terminate as to the part or parts so surrendered. Upon such surrender as to any part or parts of leased premises the rental specified above shall be proportionately reduced on an acreage basis, and Lessor shall have reasonable successive rights in the existing pipelines or roadways on the lands surrendered for the purpose of continuing operations on the lands retained. Lessor shall have the right at any time during or after the expiration of this lease to remove all machinery, fixtures, buildings or other structures placed on said premises, including the right to pull and remove all existing

9. Said Lessor shall not be required in any event to increase the delay rental, storage rental, or the gas or oil royalty payments hereunder by reason of any royalty or interest in

505895

THIS INDENTURE, made this 22nd day of September A. D. 1971 by and between Janice Clark, a single woman, Jessica Clark Caldwalder and Roger Caldwalder, her husband, and Winifred Clark Givens and Vernon Givens, her husband parties of the First Part and C. E. Beck party of the second part;

TO HAVE AND TO HOLD the said lease hold and other estate to the said C. E. Beck, his successors and assigns for the unexpired portion of the term of said lease or grant and/or all modifications and extensions subject to the terms and limitations thereof.

Witness:

Witness:
Marilynn R. Hensell Jane Clark
Marilynn R. Hensell Jane Clark
Marilynn R. Hensell Jessica Clark Cadwalader
Marilynn R. Hensell Jessica Clark Cadwalader
Marilynn R. Hensell Roger Cadwalader
Marilynn R. Hensell Roger Cadwalader
Marilynn R. Hensell Winifred Clark Givens
Marilynn R. Hensell Winifred Clark Givens
Marilynn R. Hensell Vernon Givens

Acknowledgement

County of Harris State of Texas ss.

I, Edna S. Rote in and for said County in the
State aforesaid, do hereby certify that

Janice Clark, Jessica Clark Cadwalader, Roger Cadwalader, Winifred Clark

Givens and Vernon Givens

personally known to me to be the same persons whose names subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, and desired the same to be recorded as such.

Given under my hand and Notary Seal, the 12th Day of October A. D. 197

My Commission expires 6-1-23 John S. Rose
505895 See

Assignment in deeds & records Book 1261 page 142 December 30, 1927
See Open End Agreement Assignment of record Bk 1256 pg 342 11-30-88
See UCC 1 File 1 No 3778 11-30-88
See Assignment in deeds & records Bk 1256 pg 332 7 11-30-88

THIS INDENTURE, made this 22nd day of September A.D. 1971 by and between Mary Jane Clark Groton and Calvert C. Groton, her husband, and Aaron P. Clark, Jr., and Lois Ann Clark, his wife and Joseph C. Clark and Helen D. Clark; his wife parties of the first part and C. E. Beck party of the second, parts;

WITNESSETH that the said party of the first part for and in consideration of the sum of one and 00/100 Dollars to him in hand paid by the party of the second part, the receipt of which is hereby acknowledged, does by these presents accept, approve, ratify and confirm unto the said party of the second part, his successors and assigns, that certain lease or grant for oil and gas purposes made by Aaron P. Clark and J. O. Clark, Jr., and Carolyn S. Clark, his wife, to C. E. Beck bearing the date of the 22nd day of September A. D. 1971 and recorded in the public records of Clearfield County, Pennsylvania in Book No. 2 at Page No. 1 and does by these presents grant, bargain, sell, ratify and confirm the Estate created, granted and demised to the lessees or grantees therein, his successors and assigns in, out and upon a tract of 2.952 acres in Clearfield County, Pennsylvania; however, this Ratification applies to only 324 acres of this acreage which is in the Game Preserve and which is shown on the Game Preserve Map, hereby approving and confirming all acts heretofore done and all payments made under and by virtue of the terms of the said lease or grant. It is agreed by the parties hereto that all lease bonuses, rentals and royalties payable under the terms of this lease shall be paid to Aaron P. Clark and J. O. Clark, Jr., ~~ENDOWMENT OIL AND GAS COMPANY~~

TO HAVE AND TO HOLD the said lease hold and other estates to the said C. E. Beck, his successors and assigns for the unexpired portion of the term of said lease or grant and/or all modifications and extensions subject to the terms and limitations thereof.

Witness:

Mary Jane Clark Groton

Mary Jane Clark Groton

Calvert C. Groton

Aaron P. Clark, Jr.

Joseph C. Clark

Lois Ann Clark

Calvert C. Groton

Joseph C. Clark

Helen D. Clark

Acknowledgement

County of Pandora, State of Rhode Island ss.
I, Calvert C. Groton, Notary Public, residing in said County, in the State aforesaid, do hereby certify that

We are the persons above written and

Calvert C. Groton

Personally known to be the same persons whose names subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, and desired the same to be recorded as such.

Given under my hand and Notary Seal, this 1st Day of September A. D. 1971.

My Commission expires June 30, 1976

505895

Seal

S-21 45 Assignment, 64168 Date 10/93 / 109

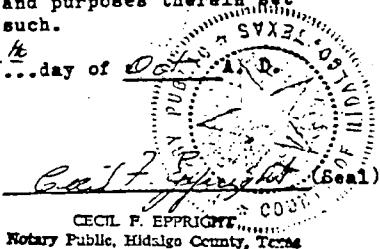
Acknowledgement

County of Hidalgo, State of Texas ss.
 I - Cecil F. Eppright in and for said County.
Aaron P. Clark, Jr.

Personally known to me to be the same persons whose names subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, and desired the same to be recorded as such.

Given under my hand and Notary Seal, this 6th day of Oct. A.D. 1971.

My Commission expires June 30, 1973



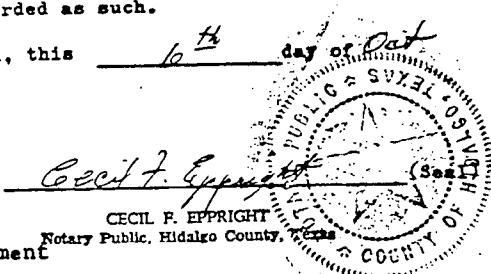
Acknowledgement

County of Hidalgo, State of Texas ss.
 I - Cecil F. Eppright in and for said County.
Louis Ann Clark

Personally known to me to be the same persons whose names subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, and desired the same to be recorded as such.

Given under my hand and Notary Seal, this 10th day of Oct. A.D. 1971.

My Commission expires June 30, 1973



Acknowledgment

County of Indiana, State of Pennsylvania ss.
 I, Margaret L. Makin, Notary Public in and for said County, in the state aforesaid, do hereby certify that JOSEPH C. CLARK and HELEN D. CLARK, his wife, personally known to me to be the persons whose names subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, and desired the same to be recorded as such.

Given under my hand and Notary Seal, this 11th day of October, A.D. 1971.

MARGARET L. MAKIN, Notary Public
 Indiana, Indiana Co., Pa.
 My Commission Expires Dec. 8, 1974

505895 - Margaret L. Makin (SEAL)

Entered of Record Jan 5 1972 8:32 Cecil F. Eppright Record

EXHIBIT

“B”

VOL 1900 PAGE 84

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

RONALD J. MOZICK,
Plaintiff
vs.
OLLIVE P. AKE, a/k/a OLIVE P. AKE,
a/k/a OLLIE P. AKE, ALICE AKE
HOLMES and HELEN AKE WEAVER,
their personal representatives,
heirs and assigns, and any other
party claiming any right, title or
interest in the premises described
herein,
Defendants

NO. 97-1293-CO
ACTION TO QUIET TITLE

I hereby certify this to be a true
and accurate copy of the original
document on file in this case

FEB 19 1998

Attest:

Willie A. Ake
Prothonotary

ORDER

AND NOW, this 13th day of JANUARY, 1998, a Petition
having been considered and the Court being advised that no
pleadings or appearances have been filed by or on behalf of
Defendants, Ollive P. Ake, a/k/a Olive P. Ake, a/k/a Ollie P. Ake,
Alice Ake Holmes and Helen Ake Weaver, their heirs, personal
representatives and assigns, and any other parties claiming any
right, title or interest in the premises described herein, except
Plaintiff, claiming an interest, lien, right or title to certain
parcels of real estate situate in Burnside Township, Clearfield
County, Pennsylvania, as more fully described in Exhibit "A",
which is attached hereto and made a part hereof.

IT IS ORDERED AND DECREED that Defendants, Ollive P.
Ake, a/k/a Olive P. Ake, a/k/a Ollie P. Ake, Alice Ake Holmes and
Helen Ake Weaver, their heirs, personal representatives and
assigns, or anyone claiming an interest, lien, right or title in

the said premises inconsistent with the interest or claim of Plaintiff as set forth in their Complaint, shall be forever barred, unless appropriate action is taken by said Defendants, their heirs, personal representatives or assigns, or anyone claiming an adverse interest, lien, right or title inconsistent with the interest title or claim of Plaintiffs, within thirty (30) days from the date of this Order. Upon failure of said Defendants, their successors or assigns, or anyone claiming an adverse interest, lien, right or title in said premises to take appropriate action as provided by this Order, the Prothonotary of Clearfield County is directed to enter final judgment for RONALD J. MOZICK, for the premises described in Exhibit 'A', upon the expiration of the thirty (30) day period, upon Praeclipe by Plaintiff's counsel, and upon final judgment, Plaintiff shall be seized of an indefeasible title to said premises as aforesaid.

BY THE COURT:

/s/JOHN K. REILLY, JR.

Judge

I hereby CERTIFY that this document
is recorded in the Recorder's Office of
Clearfield County, Pennsylvania.



Karen L. Starck
Karen L. Starck
Recorder of Deeds

CLEARFIELD COUNTY
ENTERED OF RECORD
TIME 3:45pm 2/19/98
BY ANNA M. STARK
FEES 1P.50
Karen L. Starck, Recorder

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

FEB 19 1998
Attest: *John K. Reilly*
John K. Reilly
Prothonotary

ALL that certain piece, parcel or tract of land situate, lying and being in Burnside Township, Clearfield County, Pennsylvania, bounded and described as follows:

PARCEL #1: BEGINNING at a post standing on the bank of the Susquehanna River; thence by land formerly of Edward Milno, South 72° East 256 perches to post in line of land formerly of John Backhouse; thence by same and land formerly of Benjamin Trapnal, North 18°19' perches to corner post in line of land formerly of Mary Roberts; thence by same, North 72° West 87 perches to a corner post; thence by vacant land, South 18° West 28 perches to corner hickory standing on bank of said river; thence by said river along its several courses 312 perches to post and place of beginning. CONTAINING 318 acres and allowance of six percent for roads.

EXCEPTING AND RESERVING therefrom the following:

A lot containing 1,428 square feet which Elizabeth B. Patchin by deed dated November 4, 1909, and recorded in Deed Book 201, at Page 148, conveyed to Daniel Dry.

A piece of land containing 75.2 perches, more or less, which Elizabeth B. Patchin, by deed dated June 15, 1911, and recorded in Deed Book No. 224, at Page 216, conveyed to Mrs. Blanche Fry.

A piece of land containing one acre which Elizabeth B. Patchin, by deed dated September 24, 1914, and recorded in Deed Book 212, at Page 125, conveyed to the School District of Burnside Township.

A piece of land containing about one-half acre, more or less, which Elizabeth B. Patchin, by deed dated June 15, 1911, and recorded in Deed Book 252, at Page 28, conveyed to J. Fry, reserving the coal and other minerals.

A piece of land containing 2-1/4 acres, more or less, which Florence P. Dufton, et al., by their deed dated May 3, 1944, and recorded in Deed Book 359, at Page 549, reserving the coal and other minerals conveyed to Kyle T. Decker.

A piece of land containing one acre, more or less, which Florence P. Dufton, et al., by their deed dated October 27, 1943, and recorded in Deed Book 387, at Page 110, granted and conveyed to Mary Fry, reserving all the coal and other minerals.

A piece of land containing 7,925 square feet which Winifred P. Clark, et al, by deed dated December 4, 1947, and recorded in Deed Book 394, at Page 217, granted and conveyed to Carl P. Smith and Lida C. Smith, husband and wife.

PARCEL #2: BEGINNING at a post on the East bank of the Susquehanna River; thence South 69°45' East 4,230 feet to a post at line now or formerly of W. Campbell; thence along line of land now or formerly of W. Campbell, Thomas Rager and others, South 20°15' West 1,725 feet to a post, the Northeast corner of land now or formerly of Mrs. Clara Wilson; thence along line of land now or formerly of Mrs. Clara Wilson, North 70° West 1,417 feet to a post, the Northwest corner of land now or formerly of Clara Wilson; thence by the same, South 19° West 870 feet to a post in the Western line of land now or formerly of Clara Wilson; thence North 71° West 413 feet to a post on the South side of Beaver Run; thence by Beaver Run its several courses and distances, to a post on the public road leading from Patchinville to Cherry Tree; thence by land of A. P. Fry, South 15° West 975 feet to a post on line of land now or formerly of V. Tonkins; thence along line of land now or formerly of V. Tonkins, North 70° West 1,605 feet to a

post on the East bank of the Susquehanna River; thence by the Susquehanna River, North 3°30' East 212 feet, North 32°1/4° East 206 feet, North 39°30' East 375 feet, North 56° West 303 feet, North 3° East 297 feet, North 15° East 310 feet, North 24°45' East, 345 feet, North 39° East 177 feet, North 52°15' East 341 feet, North 40° East 251 feet, due North 122 feet, North 37°15' West 340 feet, North 25-1/2° East 163 feet, North 55-1/2° East 117 feet, North 68-1/2° East 204 feet, South 84° East 345 feet, North 15° East 171 feet, to post and place of beginning. CONTAINING 271 acres and 46 Perches.

EXCEPTING AND RESERVING therefrom a piece of land containing 1 acre with the Executors of the Estate of A. W. Patchin, deceased, by deed dated December 27, 1900, and recorded in Deed Book 113, at Page 448, conveyed to Daniel Fry.

EXCEPTING AND RESERVING out of the above two tract, 1.0 acre and the right of ingress, egress and regress along presently existing road or right-of-way, said tract being the Patchinville Cemetery and/or private burial ground. It being the intention of this exception and reservation to forever set the same aside for burial purposes of the family presently having an interest therein.

The above described parcels are further identified and combined under Map No. 108-515-38 in the Clearfield County Tax Assessment Office.

EXCEPTING AND RESERVING from the above described parcels 45.301 acres conveyed to Daniel P. Engle, Sr., by deed of Jerry D. Wolfgang and Kelly A. Wolfgang, his wife, dated May 17, 1994, and recorded in Clearfield County Deed Book 1605, Page 211.

The property conveyed by this deed is more specifically described as follows pursuant to survey of Robert E. Cochran, R.S. dated June 8, 1996:

BEGINNING at a point at the northwestern corner of the herein described tract in the centerline of Route 219; thence along line of lands of Robert L. Baker South 71°55'58" East 1,593.31 feet to a stone pile; thence along line of lands of Ralph D. and H. Joann Fulton South 71°50'01" East 1,059.31 feet to an iron pin; thence along same South 19°58'03" West 1,141.31 feet to an iron pin; thence along same South 69°27'18" East 1,637.39 feet to an iron pin near a private road; thence along the private road and crossing L.R. 17004 and along lands of Andrew P. Ondo, Emery Cowan, Ivan Pierce, Sheridan Campbell, Sr., and Betty West South 19°41'15" West 3,443.40 feet to an iron pin; thence along lands of Aloys Hanechak and Linda Means North 67°11'20" West 1,455.13 feet to an iron pin; thence along lands of Linda Means South 18°39'27" West 870.00 feet to an iron pin; thence along lands of Paul Houser North 68°11'20" West 327.59 feet to an iron pin at the edge of "Beaver Run"; thence along "Beaver Run" the following courses and distances:

North 50°21'36" East 49.21 feet; North 30°15'59" East 61.21 feet; North 14°41'39" West 50.57 feet; North 62°43'18" West 80.92 feet; North 46°45'56" West 117.11 feet; North 83°45'02" West 106.21 feet; North 40°03'06" West 89.14 feet; North 33°14'30" West 42.53 feet; North 39°21'02" West 67.38 feet; North 83°18'51" West 48.70 feet; South 75°58'17" West 60.58 feet; South 52°02'15" West 60.17 feet; South 60°27'22" West 126.74 feet; North 39°09'23" West 66.97 feet; North 39°33'40" East 63.83 feet; North 51°36'36" East 50.53 feet; North 75°24'48" East 79.04 feet; North 11°59'44" East 56.65 feet; North 40°31'16" West 83.97 feet; North 82°18'05" West 75.71 feet; North 82°11'22" West 102.53 feet; South 58°35'16" West 76.66 feet; South 26°35'21" West 59.10 feet; South 4°10'43" West 49.01 feet; North 76°05'28" West 50.35 feet; North 78°47'09" West 97.09 feet; North 79°07'17" West 66.64 feet; North 78°04'31" West 118.05 feet to a point in the centerline of Route 219; thence along the centerline of Route 219 South 15°47'32" West 975.00 feet to a point in the centerline of Route 219; thence leaving Route 219 and along line of lands of William Buterbaugh North 69°12'28" West 1,643.03 feet to an iron pin at the edge of the "Susquehanna River"; thence along the edge of said River the following courses and distances: North 9°19'39" East 127.08 feet; North 30°14'13" East 131.55 feet; North 37°56'07" East 140.77 feet; North 43°37'51" East 147.56 feet; North 19°20'00" East 117.09 feet; North 11°46'21" West 100.64 feet; North 70°41'18" West 96.00 feet; North 77°54'57" West 115.33 feet; North 21°10'14" West 66.73 feet; North 18°42'44" East 80.07 feet; North 7°25'19" East 133.28 feet; North 9°39'36" East 118.00 feet; North 17°23'15" East 132.54 feet; North 13°55'43" East 127.92 feet; North 19°56'30" East 180.30 feet; North 28°45'27" East 155.61 feet; North 38°05'22" East 127.17 feet; North 44°16'00" East 169.48 feet; North 55°43'22" East 233.98 feet; North 49°51'53" East 119.40 feet; North 39°49'48" East 99.37 feet; North 10°04'57" East 148.45 feet; North 16°25'52" West 74.01 feet; North 43°20'53" West 89.02 feet; North 54°56'22" West 119.87 feet; North 34°03'20" West 71.03 feet; North 9°00'43" East 103.64 feet; North 29°47'04" East 124.04 feet; North 65°26'36" East 131.56 feet; North 80°11'38" East 114.52 feet; South 87°39'31" East 81.21 feet; South 83°24'54" East 162.16 feet; South 85°07'54" East 96.32 feet; North 83°36'36" East crossing the mouth of "Beaver Run" 87.65 feet; thence along same North 33°45'52" East 86.47 feet; North 25°47'18" East 92.76 feet; North 28°26'59" West 160.08 feet; North 23°40'09" West 49.40 feet; North 28°08'06" East 156.45 feet; North 57°08'09" East 125.77 feet; North 51°08'03" East 36.30 feet; North 31°57'56" East 58.53 feet; North 17°31'48" West 170.23 feet; North 40°00'54" West 186.36 feet; thence North 32°05'54" West 172.63 feet to a point; thence leaving said edge of the "Susquehanna River" and along lands of Daniel P. Engle, Sr., North 77°18'29" East 480.00 feet to a point in the centerline of Route 219; thence

along the centerline of Route 219 the following courses and distances: North 15°19'04" West 991.38 feet; North 15°46'02" West 66.34 feet; North 16°16'29" West 69.03 feet; North 12°52'47" West 67.77 feet; North 0°55'53" West 64.22 feet; North 11°58'05" East 57.47 feet; North 23°40'05" East 53.89 feet; North 35°37'54" East 54.34 feet; North 48°53'34" East 74.84 feet; North 64°11'12" East 59.93 feet; North 77°38'42" East 70.43 feet; North 83°52'51" East 76.20 feet; North 84°01'06" East 108.65 feet; North 78°54'45" East 102.31 feet; North 70°15'56" East 68.74 feet; North 64°15'40" East 67.41 feet; North 58°52'37" East 90.43 feet; North 48°21'41" East 88.96 feet to a point in the centerline of Route 219, the place of beginning. CONTAINING 516.850 acres.

ALSO including all of the oil and gas previously reserved by Jerry D. and Kelly A. Wolfgang, Plaintiff's grantors, in a deed to Daniel P. Engle, Sr., dated May 17, 1994 and recorded in Clearfield County Deed and Records Book 1605, Page 211, containing 45.301 acres, more or less.

EXCEPTING AND RESERVING those tracts which were previously conveyed containing a total of 11.114 acres, leaving a remaining acreage of 505.736 acres.

EXCEPTING AND RESERVING unto Plaintiff's Grantors, the right to remove all timber greater than 14" for a period of fifteen (15) years from July 8, 1996 with all rights of ingress and egress.

The survey referenced to above appears of record in the Clearfield County Recorder's Office in Map File No. 1191.

BEING the same premises which Jerry D. Wolfgang and Kelly A. Wolfgang granted and conveyed to Ronald J. Mozick, by deed dated July 8, 1996 and recorded in the Office of the Recorder of deeds in Deed and REcords Book 1772, Page 227, and a Corrective deed between the same parties dated July 17, 1996 and recorded in Deed and Records Book 1786, Page 80, which corrected the failure to include in the prior deed the conveyance to Plaintiff of all the oil and gas reserved by Plaintiff's Grantors in Deed and Records Book 1605, Page 211 as aforesaid.

Entered of Record 2-19 1998 : 3:45a Karen L Stanck, Recorder

EXHIBIT

“C”

Power Gas Marketing & Transmission Inc.
 The Atrium Suite 007
 665 Philadelphia Street
 Indiana, PA 15701
 Phone (724) 465-2599 Fax (724) 465-2699

Invoice

DATE	INVOICE NO.
10/3/2002	PGC-1002-1

BILL TO

TOM RANDOLF
 RR #1 BOX 34
 CHERRY TREE PA 15724

PLEASE REMIT PAYMENT TO:

POWER GAS MARKETING & TRANSMISSION, INC.
 P.O. BOX 3500
 PITTSBURGH, PA 15230

PERIOD	TERMS	DUE DATE	ALLOTME...	COMPANY	WELL NAME
MAR - JULY	25TH OF MONTH	10/25/2002	200	KOG	CLARK #3 BLK #7
DESCRIPTION		Qty. Used	Qty. Billed	RATE (\$/MCF)	AMOUNT (\$)
MARCH 2002	66		59	7.31	431.29
APRIL 2002	56		56	8.32	465.92
MAY 2002	28		28	8.28	231.84
JUNE 2002	7		7	8.295	58.07
JULY 2002	5		5	8.205	41.03

Total

\$1,228.15

Power Gas Marketing & Transmission Inc.
The Atrium Suite 007
665 Philadelphia Street
Indiana, PA 15701
Phone (724) 465-2599 Fax (724) 465-2699

Invoice

DATE	INVOICE NO.
9/9/2002	PGC-0902-3

BILL TO
TOM RANDOLF RR #1 BOX 34 CHERRY TREE PA 15724

PLEASE REMIT PAYMENT TO:
POWER GAS MARKETING & TRANSMISSION, INC. P.O. BOX 3500 PITTSBURGH, PA 15230

PERIOD	TERMS	DUE DATE	ALLOTME...	COMPANY	WELL NAME
AUGUST 2002	25TH OF MONTH	9/25/2002	200	KOG	CLARK #3 BLK #7
DESCRIPTION	Qty. Used	Qty. Billed	RATE (\$/MCF)	AMOUNT (\$)	
AUGUST 2002	5	5	7.875	39.38	

Total

\$39.38

Power Gas Marketing & Transmission Inc.
The Atrium Suite 007
665 Philadelphia Street
Indiana, PA 15701
Phone (724) 465-2599 Fax (724) 465-2699

Invoice

DATE	INVOICE NO.
10/8/2002	PGC-1002-10

BILL TO

TOM RANDOLF
RR #1 BOX 34
CHERRY TREE PA 15724

PLEASE REMIT PAYMENT TO:

POWER GAS MARKETING & TRANSMISSION, INC.
P.O. BOX 3500
PITTSBURGH, PA 15230

PERIOD	TERMS	DUE DATE	ALLOTME...	COMPANY	WELL NAME
SEPT 2002	25TH OF MONTH	10/25/2002	200	KOG	CLARK #3 BLK #7
DESCRIPTION	Qty. Used	Qty. Billed	RATE (\$/MCF)	AMOUNT (\$)	
SEPTEMBER 2002	10	10	8.335	83.35	

Total

\$83.35

Power Gas Marketing & Transmission Inc.
The Atrium Suite 007
665 Philadelphia Street
Indiana, PA 15701
Phone (724) 465-2599 Fax (724) 465-2699

Invoice

DATE	INVOICE NO.
11/7/2002	PGC-1102-12

BILL TO

TOM RANDOLF
RR #1 BOX 34
CHERRY TREE PA 15724

PLEASE REMIT PAYMENT TO:

POWER GAS MARKETING & TRANSMISSION, INC.
P.O. BOX 3500
PITTSBURGH, PA 15230

PERIOD	TERMS	DUE DATE	ALLOTME...	COMPANY	WELL NAME
OCT 2002	25TH OF MONTH	11/25/2002	200	KOG	CLARK #3 BLK #7
DESCRIPTION		Qty. Used	Qty. Billed	RATE (\$/MCF)	AMOUNT (\$)
OCTOBER 2002		56	56	8.60	481.60

Total

\$481.60

Power Gas Marketing & Transmission Inc.
The Atrium Suite 007
665 Philadelphia Street
Indiana, PA 15701
Phone (724) 465-2599 Fax (724) 465-2699

Invoice

DATE	INVOICE NO.
1/9/2003	PCG-0103-11

BILL TO
TOM RANDOLF RR #1 BOX 34 CHERRY TREE PA 15724

PLEASE REMIT PAYMENT TO:
POWER GAS MARKETING & TRANSMISSION, INC. P.O. BOX 3500 PITTSBURGH, PA 15230

PERIOD	TERMS	DUE DATE	ALLOTME...	COMPANY	WELL NAME
DEC 2002	25TH OF MONTH	1/25/2003	200	KOG	CLARK #3 BLK #7
DESCRIPTION		Qty. Used	Qty. Billed	RATE (\$/MCF)	AMOUNT (\$)
DECEMBER 2002		25	25	9.13	228.25

Total

\$228.25

H. THOMAS RANDOLPH
 CLARK #3, BLOCK 7
 CONSUMER READING
 SUMMARY

Line Pressure 10
 Allotment 200

2002	Beginning Reading	Ending Reading	MCF	YTD MCF	Overages	Invoice	Rate	Invoice Amount
January	129	186	94	94	0			
February	186	246	99	193	0			
March	246	286	66	259	59	PGC-1002-1	\$7.310	\$431.29
April	286	320	56	315	56	PGC-1002-1	\$8.320	\$465.92
May	320	337	28	343	28	PGC-1002-1	\$8.280	\$231.84
June	337	341	7	350	7	PGC-1002-1	\$8.295	\$58.07
July	341	344	5	355	5	PGC-1002-1	\$8.205	\$41.03
August	344	347	5	360	5	PGC-0902-3	\$7.875	\$39.38
September	347	353	10	370	10	PGC-1002-10	\$8.335	\$83.35
October	353	387	56	426	56	PGC-1102-12	\$8.600	\$481.60
November	387	387	0	426	0			
December*	387	402	25	451	25	PGC-0103-12	\$9.130	\$228.25
TOTAL			451		251			\$2,060.73

*Usage discovered due to tampering with meter. Meter removed and consumer billed for usage.

Balance Due	\$2,060.73
--------------------	-------------------

MCF CALCULATION	
$\left[\frac{\text{Line Pressure} + \text{Atmosphere Pressure}}{\text{Contract Base Pressure}} \right] \times \left[\frac{\text{Ending Reading} - \text{Beginning Reading}}{10} \right]$	
Atmosphere Pressure:	14.4
Contract Pressure:	14.73

EXHIBIT

“D”

1. Name..... Agent
2. Seller..... Agent
3. Buyer..... Buyer
4. Spouse..... Manager
5. Child.....
6. Co-Owner..... Buyers
Buyer's or Name of Spouse

Copyright Pennsylvania Association of Realtors (1973)

AGENT FOR THE SELLER
ERA Bowell & Assoc. Real Estate
Ellie Leiberton
310 West Mahoning St.
Punxsutawney, Pa. 15767

SUBAGENT FOR SELLER

PA. LICENSED BROKER

PA. LICENSED BROKER

This Agreement, this 20. th day of ... October A.D. 19.95.....

1. PRINCIPALS (1-78) Between Daniel Engle
..... RD#1, Cherry Tree, Pa. 15724.....
(residing at ... RD#3, Box. 115B, Dubois, Pa., 15801 Zip Code. 15801.....) hereinafter called Seller,
and Harry T. Randolph and his wife, SSI. #210-38-4555.....

..... Harry E. Randolph, SSI. #164-38-7352.....
(residing at ... 900 Chestnut St., Barnsboro, Pa. 15714 Zip Code.....) hereinafter called Buyer,
2. PROPERTY (7-90) Seller hereby agrees to sell and convey to Buyer, who hereby agrees to purchase:
ALL THAT CERTAIN lot or piece of ground with buildings and improvements thereon erected, if any, known as:
.. A single family residence known as Tax card #1080B15000000085.....
..... in the ... township of ... Winslow
County of ... Clearfield State of ... Pa. Zip Code. 15724.....
Zoning Classification ... none

Failure of this agreement to contain the zoning classification (except in cases where the property (and each parcel thereof, if subdividable) is zoned solely or primarily to permit single-family dwellings) shall render this agreement voidable at the option of the Buyer, and, if voided, any deposit tendered by the Buyer shall be returned to the Buyer without any requirement for court action.

3. TERMS (3-85) (A) Purchase Price ... Forty Thousand dollars and 00/100 \$40,000.00 Dollars
which shall be paid to the Seller by the Buyer as follows:

(B) Cash or check at signing this agreement \$10,000.00
(C) Cash or check to be paid on or before: 19. \$.....
(D) \$.....
(E) Cash or certified check at time of settlement \$30,000.00
TOTAL \$40,000.00
(F) Written approval of Seller to be on or before: October 27, 1995 19.
(G) Settlement to be made on or before: December 22, 1995 19.
(H) Conveyance from Seller will be by fee simple deed of general warranty.
(I) Transfer taxes will be paid: 18. by the seller. 1/18. by the buyer.....
(J) Taxes will be apportioned pro-rata on a calendar basis. Rent, water and
sewer rents, lienable municipal services, interest on mortgage assumptions, condominium fees and homeowner association fees, if
any, will be apportioned pro-rata at time of settlement.

4. MORTGAGE CONTINGENCY This sale is NOT contingent upon any mortgage financing unless otherwise provided by addendum.
5. SPECIAL CLAUSES

(A) Buyers hereby requires that seller and/or tenants remove all debris
from the property, carriage house, mercantile, summer kitchen and
yard, prior to closing.
(B) This sale does not transfer any coal, gas or mineral rights
other than the unlimited free gas specified in the sellers lease.

10-27-95 Seller will agree to the \$40,000.00 purchase price, and wishes
the buyers to know that it will be their responsibility to clean the remaining
debris from the property, carriage house, mercantile, summer kitchen and yard.

SELLER: Dan Engle

DATE: 10-27-95

BUYER: Henry T. Randolph

DATE: 11-17-95

BUYER: Henry E. Randolph

DATE: 11-17-95

EXHIBIT

“E”

This Deed

MADE THE 8th day of January
thousand nine hundred ninety-six (1996).

In the year of our Lord one

BETWEEN DANIEL P. ENGLE, SR., single man, of RD#3, Box 115A,
DuBois, Clearfield County, Pennsylvania, grantor,

AND

HARRY THOMAS RANDOLPH and SHERRY E. RANDOLPH, husband and
wife, of 900 Chestnut Avenue, Barnesboro, Cambria County,
Pennsylvania, grantees,

WITNESSETH, that in consideration of FORTY THOUSAND and NO/100 -----
----- (\$40,000.00) ----- dollars,
in hand paid, the receipt whereof is hereby acknowledged, the said grantor does
hereby grant and convey to the said grantees.

ALL that certain piece, parcel or tract of land situate, lying and
being in Burnside Township, Clearfield County, Pennsylvania,
bounded and described as follows, to wit:

BEGINNING at a point in the centerline of U.S. route 219 on line of
lands now or formerly of R. Baker, being the Northeast corner of
the parcel herein described; thence along the centerline of said
highway toward Cherry Tree the following courses and distances:
South 48° 21' 41" West 88.96 feet; South 58° 52' 37" West 90.43
feet; South 54° 15' 40" West 67.41; South 70° 15' 56" West 68.74
feet; South 78° 54' 45" West 102.31 feet; South 84° 1' 6" West
108.65 feet; South 83° 52' 51" West 76.20 feet; South 77° 38' 42"
West 70.43 feet to a point in said centerline; thence North
85° 43' 15" West along the Patchinville Cemetery 389.94 feet to a
point; thence South 10° 12' 00" West again along said Cemetery
117.72 feet to a point; thence North 83° 44' 04" East along the
Cemetery 103.67 feet to a point; thence South 75° 01' 57" East
along said Cemetery 170.43 feet to a point in the centerline of
U.S. Route 219 thence continuing along the centerline of U.S. Route
219 again toward Cherry Tree the following courses and distances:
South 23° 40' 05" West 53.89 feet; South 11° 58' 05" West 57.46 feet;
South 00° 55' 53" East 64.22 feet; South 12° 52' 47" East 67.77
feet; South 16° 16' 29" East 69.03 feet; South 15° 46' 02" East 66.34
feet; South 15° 19' 04" East 991.38 feet to a point in the
centerline of U.S. Route 219 and the Southeast corner of the parcel
herein described; thence through land of which this was a part
south 77° 18' 29" West 480.00 feet to a point on the eastern bank
of the Susquehanna River; thence along the eastern bank of the
Susquehanna River and in the down stream direction of said River
the following courses and distances: North 32° 01' 32" West 75.44
feet; North 34° 40' 35" West 135.71 feet; North 32° 38' 52" West
99.93 feet; North 30° 44' 59" West 144.73 feet; North 36° 19' 55"
West 135.84 feet; North 49° 15' 26" West 140.15 feet North 44° 29'
02" West 109.26 feet; North 29° 22' 00" West 103.87 feet; North 10°
25' 44" West 97.26 feet; North 22° 00' 47" East 114.12 feet; North
25° 10' 09" East 77.67 feet; North feet; North 23° 51' 41" East
82.59 feet; North 21° 22' 05" East 49.51 feet; North 8° 28' 52"
West 51.25 feet; North 41° 04' 07" West 138.09 feet; North 80° 18'
56" West 83.64 feet; North 88° 44' 34" West 235.87 feet; North
83° 26' 45" West 123.89 feet; North 39° 05' 04" West 45.47 feet;
North 3° 03' 09" West 49.67 feet; North 28° 06' 12" East 84.03
feet; North 19° 55' 30" East 92.69 feet; North 13° 21' 11" East
179.15 feet; North 2° 46' 15" West 156.43 feet; North 30° 58' 06"

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East 167.02 feet; North 55° 35' 06" East 65.79 feet; North 67° 00' 43" East 177.75 feet; North 63° 50' 08" East 54.54 feet; North 80° 57' 24" East 156.25 feet to a point on the South shore of the Susquehanna River; thence South 72° 00' 00" East along land now or formerly of Baker 1,435.74 feet to a point in the centerline of U.S. Route 219 and the place of beginning. Containing 45.301 acres and being further described on a plat prepared by Robert E. Cochran, Registered Surveyor, dated May 4, 1994, a copy of which is attached hereto.

UNDER AND SUBJECT to the exceptions and reservations as were excepted and reserved in prior conveyances of said land.

TITLE to the above described premises became vested in Daniel P. Engle, Sr., by deed of Jerry D. Wolfgang et ux., dated May 17, 1994, and recorded in the Recorder's Office in and for Clearfield County in Deed Book Volume 1605, page 211.

GRANTOR herein states that the hereinabove described property is not presently being used for the disposal of hazardous waste nor to the best of his knowledge, information and belief has it ever been so used. This statement is made in compliance with the Solid Waste Management Act 1980-97, Section 405.

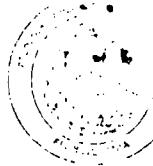
THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT.

HARMONY SCHOOL DISTRICT
10% REALTY TRANSFER TAX
AMOUNT 400.00
PAID 1-9-96 RECEIVED
A.J.B.

vol 1729-137

AND the said grantor hereby covenants and agrees that he will warrant generally the property hereby conveyed.

Know COUNTRY that this document is recorded in the Recorder's Office of Clearfield County, Pennsylvania.



Karen L. Starck
Recorder of Deeds

CLEARFIELD COUNTY
ENTERED OF RECORD
TIME 1-25-96 1-9-96
BY Karen Starck
FEES 13.50
Karen L. Starck, Recorder

IN WITNESS WHEREOF, said grantor has hereunto set his hand and seal the day and year first above written.

Signed Sealed and Delivered
in the Presence of

Elizabeth W. Engle

Daniel P. Engle, Sr.
DANIEL P. ENGLE, SR.

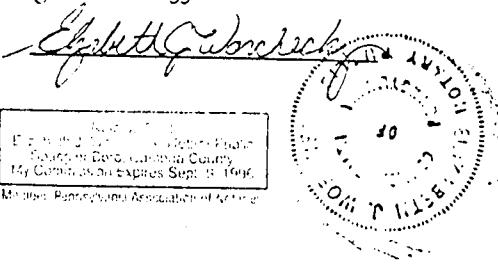
State of Pennsylvania

county of Cambria

on this the 8th. day of January 1996.
before me, the undersigned officer, personally appeared
Daniel P. Engle, Sr.

known to me (or satisfactorily proven) to be the person whose name is
subscribed to the within instrument, and acknowledged that he executed the
same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



vol 1729 page 438

State of Pennsylvania

County of Cambria

on this the 19 day of
before me, the undersigned officer, personally appeared

known to me (or satisfactorily proven) to be the person whose name
subscribed to the within instrument, and acknowledged that 19 executed
the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

I do hereby certify that the precise residence and complete post office address of
the within named grantees is
900 Chestnut Ave., Barnesboro, PA 15714.

Jan. 8, 1996

Kenneth R. Suttle

Plat fee 400.00
Recording fee 400.00

THE COMMONWEALTH OF PENNSYLVANIA,

County of

Recorded on this 19 day of January
A.D. 1996, in the recorder's office of the said county, in
vol. 1729, page 438.

Given under my hand and the seal of the said office, the date above written.

Karen L. Starck, Recorder

KENNETH R. SUTTLE, ESQ.
Box 728, Blyler Ave.
Spangler, PA 15775

Entered of Record Jan 9 1996, 12:35pm, Karen L Starck, Recorder

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

Power Gas Marketing &
Transmission, Inc.,
Plaintiff

vs.

Harry Thomas Randolph
and Sherry E. Randolph,
Defendants

:
:
:
:
:
: No. 03-1324
:
:
:
:
:
: Type of Pleading: Acceptance of
: Service
:
:
: Filed on Behalf of: Harry Thomas
: and Sherry E. Randolph
:
:
: Counsel of Record:
: Robin Jean Foor, Esquire
: ID #41520
: MIDPENN LEGAL SERVICES
: 211 ½ East Locust Street
: Clearfield, PA 16840
: (814)765-9646

FILED

SEP 17 2003

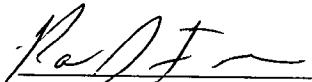
William A. Shaw
Prothonotary/Clerk of Courts

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

Power Gas Marketing & :
Transmission, Inc., :
Plaintiff :
vs. : No. 03-1324
Harry Thomas Randolph :
and Sherry E. Randolph, :
Defendants :
:

ACCEPTANCE OF SERVICE

I, Robin Jean Foor, Esquire, attorney for the defendants Harry Thomas Randolph and Sherry E. Randolph in the above captioned matter, do hereby accept service of the complaint on behalf of Harry Thomas Randolph and Sherry E. Randolph on this 15th day of September 2003.



Robin Jean Foor, Esquire ID #41520
MidPenn Legal Services, Inc.
211 1/2 East Locust Street
Clearfield, PA 16830
(814)765-9646

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

POWER GAS MARKETING & :
TRANSMISSION, INC. :
Plaintiff : NO. 03-1324
vs. : Type of Case: CIVIL
HARRY THOMAS RANDOLPH :
and SHERRY E. RANDOLPH, : Type of Pleading: ANSWER AND
his wife, : COUNTERCLAIMS
Defendants : Filed on Behalf of: Defendants
: Counsel of Record:
: Robin Jean Foor, Esquire
: Supreme Court No. 41520
: MidPenn Legal Services
: 211 1/2 East Locust Street
: Clearfield, PA 16830
: (814)765-9646

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093:20
William A. ...
Prothonotary, Clerk of Courts

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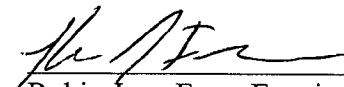
IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Power Gas Marketing & :
Transmission, Inc., :
Plaintiff :
:
vs. : No. 03-1324
:
Harry Thomas Randolph :
and Sherry E. Randolph, :
Defendants :
:

NOTICE TO PLEAD

To: Power Gas Marketing & Transmission, Inc.

You are hereby notified to file a written response to the enclosed Counterclaims
within twenty (20) days from service hereof or a judgment may be entered against you.



Robin Jean Foor, Esquire ID #41520
MidPenn Legal Services, Inc.
211 1/2 East Locust Street
Clearfield, PA 16830
(814)765-9646

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

Power Gas Marketing &	:
Transmission, Inc.,	:
Plaintiff	:
	:
vs.	: No. 03-1324
	:
Harry Thomas Randolph	:
and Sherry E. Randolph,	:
Defendants	:

ANSWER

Defendants, Harry Thomas and Sherry E. Randolph, by and through their attorneys, Robin Jean Foor, Esquire, and MidPenn Legal Services, answer and counter claim as follows:

1. Admitted.
2. Admit in part. Denied in part. Defendants are currently residing at 900 Chestnut Avenue, Northern Cambria, PA 15714.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. The answers to paragraphs 1 through 7 are incorporated herein by reference.
9. Admitted.

10. Admitted in part. Further, until March 2002, the well on defendants' property was never metered. There is no information on whether 200, 000 cubic per year or more or less gas were provided to the residence.

11. Defendants have no direct knowledge of how much gas was used. Strict proof is demanded.

12. Admitted in part. Defendants received the first invoice dated September 9, 2002 for 39.98. Then they received invoices dated October 8, 2002 in the amount of \$83.35; October 10, 2002 in the amount of \$1228.15 and November 7, 2002 in the amount of \$481.60. Copies of the invoices are attached and marked "Exhibit 1."

13. Admitted.

14. Denied. Defendants believe and therefore allege they do not owe plaintiff any amount for excess usage.

15. Admitted in part. Defendants admit they have not paid plaintiff but deny that they owe any money to plaintiff.

16. Answers to paragraph 1 through 15 are incorporated herein by reference.

17. Defendants have no direct knowledge of how much gas was used. Strict proof is demanded.

18. Denied. Defendants believe and therefore allege they do not owe plaintiff any money.

NEW MATTER

Counterclaim I

19. Paragraphs 1 through 18 are incorporated herein by reference.

20. Defendants believe and therefore allege that from inception of the Oil and Gas Lease dated September 22, 1971 until March 2002, the gas well on their property was never metered.

21. Defendants and their predecessors in interest had the use of unlimited free gas until March 2002, a period in excess of thirty-one (31) years.

22. Defendants and their predecessors relied on the availability of unlimited free gas in their choice of heating systems and other maintenance of the their residence.

23. Defendants believe and therefore allege that plaintiff's failure to enforce the lease terms for twenty-four (24) years led to defendants' predecessors advertising that unlimited free gas was available with the purchase of the real property.

24. Defendants believe and therefore allege that plaintiff's failure to enforce the lease terms for twenty-four (24) years led to defendants' predecessors including a clause in the deed to the defendants that unlimited free gas was available with the purchase of the real property.

WHEREFORE, defendants request this honorable court enter judgment declaring that:

- a. Plaintiff is estopped from limiting the amount of free gas available to the defendants' for use in the heating of their primary residence;
- b. Defendants do not owe plaintiff any sum for gas used to heat their primary residence.

Counterclaim II

25. That paragraphs 1 through 24 are incorporated herein by reference.

26. That in November 2002, plaintiff caused the natural gas to defendant's residence to be shut off.

27. Due to plaintiff's actions defendants have been unable to heat their home.

28. Due to the lack of heat, defendants' home has been damaged due to settling and warping.

29. Due to lack of heat, defendants' home has been damaged by the growth of mold and mildew.

30. Defendants estimate the damage to their home to be in excess of ten thousand dollars(\$10,000).

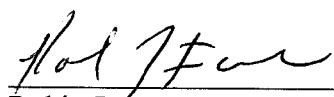
31. Defendants incurred costs to drain all the water from the plumbing system and winterize the residence to prevent additional damages to the property.

32. Due to lack of heat, defendants have not been able to live in their home and have had to reside with their daughter and pay additional utilities bills totaling approximately two thousand dollars (\$2000).

WHEREFORE, defendants request that:

a. a judgment be issued against plaintiff for the damages to defendants' home, costs defendants have incurred preventing additional damages to the property and the additional utilities defendants have had to pay;

b. The Court grants such other relief as is appropriate.



Robin Jean Foor, Esquire ID #41520
MidPenn Legal Services, Inc.
211 1/2 East Locust Street
Clearfield, PA 16830
(814)765-9646

VERIFICATION

I, Harry Thomas Randolph, verify that the statements in the foregoing Answer and New Matter are true and correct. I understand that false statements that are made herein are made subject to penalties of 18 Pa.C..S. 4904 relating to unsworn falsification to authorities.

9, 30, 03
Date

Harry Thomas Randolph
Harry Thomas Randolph

I, Sherry E. Randolph, verify that the statements in the foregoing Answer and New Matter are true and correct. I understand that false statements that are made herein are made subject to penalties of 18 Pa.C..S. 4904 relating to unsworn falsification to authorities.

9, 30, 03
Date

Sherry E. Randolph
Sherry E. Randolph

EXHIBIT 1

Power Gas Marketing & Transmission Inc.
The Atrium Suite 007
665 Philadelphia Street
Indiana, PA 15701
Phone (724) 465-2599 Fax (724) 465-2699

Invoice

DATE	INVOICE NO.
9/9/2002	PGC-0902-3

BILL TO
TOM RANDOLF RR #1 BOX 34 CHERRY TREE PA 15724

PLEASE REMIT PAYMENT TO:
POWER GAS MARKETING & TRANSMISSION, INC. P.O. BOX 3500 PITTSBURGH, PA 15230

PERIOD	TERMS	DUE DATE	ALLOTME...	COMPANY	WELL NAME
AUGUST 2002	25TH OF MONTH	9/25/2002	200	KOG	CLARK #3 BLK #7
DESCRIPTION	Qty. Used	Qty. Billed	RATE (\$/MCF)	AMOUNT (\$)	
AUGUST 2002	5	5	7.875	39.38	

Total

\$39.38

Power Gas Marketing & Transmission Inc.
 The Atrium Suite 007
 665 Philadelphia Street
 Indiana, PA 15701
 Phone (724) 465-2599 Fax (724) 465-2699

Invoice

DATE	INVOICE NO.
10/8/2002	PGC-1002-10

BILL TO	
TOM RANDOLF RR #1 BOX 34 CHERRY TREE PA 15724	

PLEASE REMIT PAYMENT TO:	
POWER GAS MARKETING & TRANSMISSION, INC. P.O. BOX 3500 PITTSBURGH, PA 15230	

PERIOD	TERMS	DUE DATE	ALLOTME...	COMPANY	WELL NAME
SEPT 2002	25TH OF MONTH	10/25/2002	200	KOG	CLARK #3 BLK #7
DESCRIPTION	Qty. Used	Qty. Billed	RATE (\$/MCF)	AMOUNT (\$)	
SEPTEMBER 2002	10	10	8.335	83.35	

	Total	\$83.35
--	--------------	---------

Power Gas Marketing & Transmission Inc.
 The Atrium Suite 007
 665 Philadelphia Street
 Indiana, PA 15701
 Phone (724) 465-2599 Fax (724) 465-2699

Invoice

DATE	INVOICE NO.
10/10/2002	PGC-1002-1

BILL TO
TOM RANDOLF RR #1 BOX 34 CHERRY TREE PA 15724

PLEASE REMIT PAYMENT TO:
POWER GAS MARKETING & TRANSMISSION, INC. P.O. BOX 3500 PITTSBURGH, PA 15230

PERIOD	TERMS	DUE DATE	ALLOTME...	COMPANY	WELL NAME
MAR - JULY	25TH OF MONTH	10/25/2002	200	KOG	CLARK #3 BLK #7
DESCRIPTION		Qty. Used	Qty. Billed	RATE (\$/MCF)	AMOUNT (\$)
MARCH 2002		66	59	7.31	431.29
APRIL 2002		56	56	8.32	465.92
MAY 2002		28	28	8.28	231.84
JUNE 2002		7	7	8.295	58.07
JULY 2002		5	5	8.205	41.03

Total

\$1,228.15

Power Gas Marketing & Transmission Inc.
 The Atrium Suite 007
 665 Philadelphia Street
 Indiana, PA 15701
 Phone (724) 465-2599 Fax (724) 465-2699

Invoice

DATE	INVOICE NO.
11/7/2002	PGC-1102-12

BILL TO	
TOM RANDOLF RR #1 BOX 34 CHERRY TREE PA 15724	

PLEASE REMIT PAYMENT TO:	
POWER GAS MARKETING & TRANSMISSION, INC. P.O. BOX 3500 PITTSBURGH, PA 15230	

PERIOD	TERMS	DUE DATE	ALLOTME...	COMPANY	WELL NAME
OCT 2002	25TH OF MONTH	11/25/2002	200	KOG	CLARK #3 BLK #7
DESCRIPTION	Qty. Used	Qty. Billed	RATE (\$/MCF)	AMOUNT (\$)	
OCTOBER 2002	56	56	8.60	481.60	

	Total	\$481.60
--	--------------	----------

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

Power Gas Marketing & :
Transmission, Inc., :
Plaintiff :
vs. : No. 03-1324
Harry Thomas Randolph :
and Sherry E. Randolph, :
Defendants :
.

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2003 a copy of the Defendants' Answer and Counterclaims was served on Power Gas Marketing and Transmission, Inc. by mailing a true and correct copy by United States First Class Mail, postage prepaid addressed as follows:

Patrick Dougherty, Esquire
936 Philadelphia Street
Indiana, PA 15701

MidPenn Legal Services
By:



Robin Jean Foor, Esquire
Attorney for Thomas and Sherry
Randolph

POWER GAS MARKETING &
TRANSMISSION, INC.,

Plaintiff,

vs.

HARRY THOMAS RANDOLPH
and SHERRY E. RANDOLPH,
his wife,

Defendants.

: IN THE COURT OF COMMON PLEAS

: CLEARFIELD CO., PENNSYLVANIA

:

: CIVIL DIVISION

: NO. 03-1324

:

: Type of Pleading:

: Reply to Defendants' Counterclaims

:

: Filed on behalf of: Plaintiff, 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

DEC 01 2003

*William A. Shaw
Prothonotary/Clerk of Courts*

POWER GAS MARKETING &	:	IN THE COURT OF COMMON PLEAS
TRANSMISSION, INC.,	:	
	:	CLEARFIELD CO., PENNSYLVANIA
Plaintiff,	:	
	:	
vs.	:	
	:	
HARRY THOMAS RANDOLPH	:	CIVIL DIVISION
and SHERRY E. RANDOLPH,	:	
his wife,	:	NO. 03-1324
	:	
Defendants.	:	

REPLY TO DEFENDANTS' COUNTERCLAIMS

AND NOW, comes Plaintiff, Power Gas Marketing & Transmission, Inc., by and through their attorneys, Michael S. Delaney, Esquire, and Patrick Dougherty, Esquire, and file the following Reply to Defendants' Counterclaim as follows:

COUNTERCLAIM I

19. Paragraphs 1 through 18 of Plaintiff's Complaint are incorporated herein by reference.

20. Denied. Plaintiff believes that at all times since the drilling of the gas well under the Oil and Gas Lease dated September 22, 1971, the gas well on the property has been metered.

21. Neither admitted nor denied. Plaintiffs are without sufficient information or knowledge to form a belief as to the matter set forth in paragraph 21 of Defendants' Counterclaim. Strict proof of the same is demanded at time of trial. However, to the extent that an answer is required, Plaintiff denies that Defendants and their predecessors had the use of unlimited free gas, to the contrary the Oil and Gas Lease

date September 22, 1971, provides for 200,000 cubic feet of oil and gas.

22. Neither admitted nor denied. Plaintiffs are without sufficient information or knowledge to form a belief as to paragraph 22 of Defendants' Counterclaim. Strict proof of the same is demanded at time of trial. However, to the extent that an answer is necessary, Plaintiff specifically denies that Defendants and their predecessors were provided with unlimited free gas, to the contrary, the Oil and Gas Lease dated September 22, 1971, provides for 200,000 cubic feet of oil and gas.

23. Neither admitted nor denied. Plaintiffs are without sufficient knowledge or information to form a belief as to paragraph 23 of Defendants' Counterclaim. Strict proof of the same is demanded at time of trial. However, to the extent that an answer is necessary, it is specifically denied that Plaintiff failed to enforce the terms of the lease for 24 years, to the contrary, the lease dated September 22, 1971, provided for Defendants and their predecessors to receive 200,000 cubic feet of free gas.

24. Neither admitted nor denied. Plaintiffs are without sufficient knowledge or information to form a belief as to paragraph 24 of Defendants' Counterclaim. Strict proof of the same is demanded at time of trial. However, to the extent that an answer is necessary, Plaintiff denies that they or their predecessors failed to enforce the leased terms for a period of 24 years.

WHEREFORE, Plaintiff requests this Honorable Court to enter judgment declaring that:

- a. Defendants are only entitled to 200,000 cubic feet per year for use in their principal dwelling house;
- b. that Defendants are not entitled to unlimited free gas as provided

in the sales agreement between Defendants and Engle;

c. Defendants are ordered to pay costs of this suit to the Plaintiff; and
any other remedy or further relief as the Court deems proper.

COUNTERCLAIM II

25. Paragraphs 1 through 24 of Plaintiff's Complaint and paragraphs 19 through 24 of Plaintiff's Reply to Defendants' Counterclaim are incorporated herein by reference.

26. Admitted.

27. Neither admitted nor denied. Plaintiff is without sufficient knowledge or information to form a belief as to Paragraph 27 of Defendants' Counterclaim. Strict proof of the same is demanded at time of trial.

28. Neither admitted nor denied. Plaintiff is without sufficient knowledge or information to form a belief as to paragraph 28 of Defendants' Counterclaim. Strict proof of the same is demanded at time of trial.

29. Neither admitted nor denied. Plaintiff is without sufficient knowledge or information to form a belief as to paragraph 29 of Defendants' Counterclaim. Strict proof of the same is demanded at time of trial.

30. Neither admitted nor denied. Plaintiff is without sufficient knowledge or information to form a belief as to paragraph 30 of Defendants' Counterclaim. Strict proof of the same is demanded at time of trial.

31. Neither admitted nor denied. Plaintiff is without sufficient knowledge or information to form a belief as to paragraph 31 of Defendants' Counterclaim. Strict proof of the same is demanded at time of trial.

32. Neither admitted nor denied. Plaintiff is without sufficient knowledge or information to form a belief as to paragraph 32 of Defendants' Counterclaim. Strict proof of the same is demanded at time of trial.

WHEREFORE, Plaintiff requests that judgment be entered for the Plaintiff and against the Defendant and that the Court grant such other relief as appropriate.

NEW MATTER TO DEFENDANTS' COUNTERCLAIM

33. Paragraphs 1 through 18 of Plaintiff's Complaint and paragraphs 20 through 32 of Plaintiff's Reply to Defendants' Counterclaim are incorporated herein by reference.

34. That from November of 2002 to the present the Defendants had a duty to mitigate any damages sustained to their residence as a result of terminating gas service.

35. By letter dated October 10, 2002, Plaintiff provided notice to Defendants that failure to pay an Invoice dated September 9, 2002, would result in disconnection of gas service.

36. Also in the October 10, 2002, letter Plaintiff provided notice to Defendants that they were to maintain a reliable backup heat and energy supply due to the unreliable production of the gas well.

WHEREFORE, Plaintiff requests this Honorable Court to enter judgment in favor of the Plaintiff and against the Defendant, and order any such other relief as the Court deems appropriate.

Respectfully submitted:

BY: Patrick Dougherty
PATRICK DOUGHERTY, ESQUIRE

VERIFICATION

I, PHILLIP KHOURY, Business Manager, 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 DEFENDANTS' COUNTERCLAIMS and NEW MATTER TO DEFENDANTS' COUNTERCLAIMS 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: Nov 21, 2003

POWER GAS MARKETING & : IN THE COURT OF COMMON PLEAS
TRANSMISSION, INC., :
Plaintiff, : CLEARFIELD CO., PENNSYLVANIA
vs. :
HARRY THOMAS RANDOLPH : CIVIL DIVISION
and SHERRY E. RANDOLPH, : NO. 03-1324
his wife, :
Defendants. :

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within
Reply to Defendants' Counterclaims was served on the following counsel through the
United States Mail, first class, postage prepaid, this 26th day of November, 2003:

Robin Jean Foor, Esquire
Mid-Penn Legal Services
211 1/2 East Locust Street
Clearfield, PA 16830


PATRICK DOUGHERTY, ESQUIRE
Attorney for Plaintiff

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

Power Gas Marketing & :
Transmission, Inc., :
Plaintiff : NO. 03-1324
vs. : Type of Case: Civil
Harry Thomas Randolph :
and Sherry E. Randolph, : Type of Pleading: Praecipe
Defendants : to List for Non-Jury Trial
: Filed on Behalf of: Defendants
: Counsel of Record:
: Robin Jean Foor, Esquire
: Supreme Court No. 41520
: MidPenn Legal Services
: 211 1/2 East Locust Street
: Clearfield, PA 16830
: (814)765-9646

FILED

JUL 15 2004

William A. Shaw
Prothonotary, Clerk of Courts

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

Power Gas Marketing & :
Transmission, Inc., :
Plaintiff :
vs. : No. 03-1324
Harry Thomas Randolph :
and Sherry E. Randolph, :
Defendants :
:

PRAECIPE TO LIST FOR NON-JURY TRIAL

TO: THE PROTNONOTARY

Please the above captioned matter for trial on:

1. (a) No motions are outstanding and discovery has been completed
and the case is ready for trial; or
(b) No motions are outstanding and that an order of Court has been
entered limiting discovery to a period ending more than thirty (30) days prior to the filing
of the praecipe; and

2. This case is to be heard:

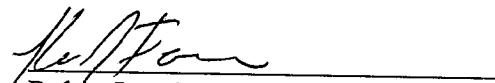
Jury

Non jury

Arbitration

3. Notice of the praecipe has been given to the other attorney or attorneys
representing the other parties or in the event that the other parties are not represented by
counsel, then directly to such parties.

7-15-04
Date



Robin Jean Foor

POWER-GAS MARKETING &
TRANSMISSION, INC.,

Plaintiff,

vs.

HARRY THOMAS RANDOLPH
and SHERRY E. RANDOLPH,
his wife,

Defendants.

: IN THE COURT OF COMMON PLEAS

:
CLEARFIELD CO., PENNSYLVANIA

:

:
CIVIL DIVISION

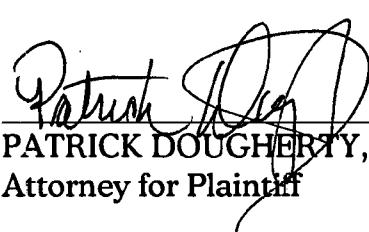
:
NO. 03-1324

RECEIVED from CLA
PROTHONOTARY'S OFFICE
8/16/04
WILLIAM A. SHAW
PROTHONOTARY/CLERK OF COURTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within Pre-Trial Memorandum was served on the following counsel through the United States Mail, first class, postage prepaid, this 4th day of August, 2004:

Robin Jean Foor, Esquire
Mid-Penn Legal Services
211 1/2 East Locust Street
Clearfield, PA 16830


PATRICK DOUGHERTY, ESQUIRE
Attorney for Plaintiff

FILED NO CC
09:33 AM
AUG 12 2004
EAS
William A. Shaw
Prothonotary/Clerk of Courts

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

FILED

AUG 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

POWER GAS MARKETING &
TRANSMISSION, INC.,
Plaintiff

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vs.
HARRY THOMAS RANDOLPH and
SHERRY E. RANDOLPH,
Defendants

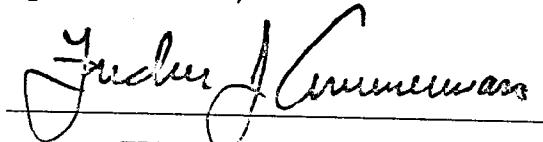
NO. 2003-1324-C.D.

O R D E R

NOW, this 12th day of August, 2004, following Pre-Trial Conference with counsel for the parties and the Court, it is the ORDER of this Court as follows:

1. Non-Jury Trial be scheduled for one day, on the 8th day of December, 2004, beginning at 9:00 a.m. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Both counsel have agreed that the Defendants may supplement documentation relative damages and their claim therefore up to a point no later than thirty (30) days prior to the date scheduled for trial above.

By the Court,



FREDRIC J. AMMERMAN
President Judge

FILED
08/18/04
AUG 13 2004
EGK

William A. Shaw
Prothonotary/Clerk of Courts

2 certified copies to Patrick Dougherty, Esquire
2 certified copies to Robin J. Foor, Esquire
1 copy to President Judge Ammerman
1 copy to Court Administrator

16

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

POWER GAS MARKETING & :
TRANSMISSION, INC. :
VS. : NO. 03-1324-CD
HARRY THOMAS RANDOLPH and :
SHERRY E. RANDOLPH :

O R D E R

AND NOW this 8th day of December, 2004, following
nonjury trial in the above-captioned matter, it is the ORDER of
this Court that counsel provide the Court with briefs in no more
than thirty (30) days from this date.

BY THE COURT:



President Judge

FILED *26K*
011:58 AM 10/10/2004 *cc: Doughty*
DEC 10 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL DIVISION

300
FILED
William J. Prothonotary
Clerk of Court, SULLIVAN COUNTY

O P I N I O N and O R D E R

Defendants are the assessed owners of 45.301 acres more or less situate in Burnside Township, Clearfield County. Title became vested in Defendants by virtue of a deed dated January 8, 1996 recorded in Clearfield County Deeds and Records Book 1729, page 435. (Defendants' Exhibit B).

By Oil and Gas Lease agreement entered September 22, 1971, and recorded in the Recorder's Office of Clearfield County, in Miscellaneous Book No. 161, page 37, Aaron P. Clark and J.O. Clark, Jr., and Carolyn S. Clark, his wife, leased 2,535 acres (for oil and gas production) situate in Burnside Township, Clearfield County (Plaintiffs' Exhibit 1).

By Order of Court, dated January 13, 1998¹, the oil and gas rights under Defendants' parcel are vested in Ronald J. Mozick. The oil and gas rights having previously been severed from the surface estate.

¹ See Exhibit "B" attached to Plaintiff's complaint.

Plaintiff is now the owner of the controlling Oil and Gas lease and Plaintiff operates one well on Defendants' property. Prior to the filing of this action the well was only producing quantities of natural gas sufficient for use in Defendants' house.

Under the specific provisions of the lease agreement, 200,000 cubic feet of gas was reserved each year for the principal dwelling house on the property. Since January 8, 1996, Plaintiff has provided 200,000 cubic feet or more of "free gas" per year to Defendants' dwelling house.

On August 17, 2001, Plaintiff installed a meter to measure the amount of gas from the well to the Defendants' house. In 2002, Defendants consumed 451,000 cubic feet of gas; obviously exceeding their yearly allotment by 251,000 cubic feet. On September 9, 2002, Plaintiff sent Defendants an invoice for the month of August, 2002 for the excess gas used in the amount of \$39.38. On October 3, 2002, Plaintiff sent Defendants an invoice for excess gas consumed in March, April, May, June and July 2002 in the amount of \$1,228.15. On October 8, 2002, Plaintiff invoiced Defendants for September 2002 for the amount of excess gas consumed in the amount of \$83.35. On November 7, 2002, Plaintiff invoiced Defendant for excess gas used in October 2002 in the amount of \$481.60. On January 9, 2003,

Plaintiff invoiced Defendants for December 2002 in the amount of \$228.25. All of the above mentioned invoices have gone unpaid by Defendants. Plaintiff's Exhibit 6 represents copies of the various invoices in question.

On May 3, 2002, Plaintiff had contacted Defendants by mail and advised them of the terms and conditions of their use of "free gas" under the provisions of the controlling lease agreement. (Plaintiff's Exhibit 2). Thereafter, Plaintiff was contacted by Defendants and told to contact their attorney Kenneth Sottile. Plaintiff contacted Attorney Sottile by letter dated September 18, 2002, (Plaintiff's Exhibit 4) but receiving no further response from Defendants or their alleged attorney². Plaintiff then sent a letter dated October 10, 2002, (Plaintiff's Exhibit 5) to the Defendants which provided that if their account was not paid by October 31, 2002, their "free gas" would be disconnected. Defendants did not respond to the October 10, 2002 letter and Plaintiff disconnected the "free gas" service to the Defendants' home. As of date of the trial Defendants did not receive "free gas" for the years of 2003 and 2004 from Plaintiff's well, due to non-payment of the amount owing. During the trial it was estimated by Phillip Khoury, Vice President of the Plaintiff that the value of 200,000 cubic

² It is not clear whether Attorney Sottile ever actually represented the Defendants concerning the issues herein.

feet of gas was approximately \$1,000 to \$2,000, depending on market fluctuation.

Defendants contend that they are entitled to unlimited "free gas" as a result of their sales agreement to purchase the property received from Daniel Engle, said agreement being admitted at trial as Defendants' Exhibit A. It is undisputed that Plaintiff is not a party to the sales agreement and Mr. Engle was not in any way an agent for or employee of the Plaintiff company.

Shortly after having the "free gas" terminated Defendants left their house. At trial, both Defendants indicated that they did not seek any alternative sources of heat for their house and that they removed only their essential items and moved to a home owned by their daughter.

As part of their damages claim, Defendants testified that they were required to make certain utility payments at their daughter's home, for which they believe Plaintiff is responsible, as well as damage to certain items that were left in their house. However, Defendants both testified that they not only left items in the dwelling house and took minimal if any steps to protect the items, but also confirmed that they continued to place items in the house even after they knew that other items had been damaged.

Finally, Defendants testified that there had been certain damage sustained to the house itself. However, Defendants presented no evidence from a contractor or independent party as to any damage that was sustained to the house as a result of the termination of gas service. The only evidence presented dealt with the costs the Defendants incurred for having the heating system drained throughout the home.

On September 8, 2003, Plaintiff filed the complaint in this action requesting that this Court declare the Defendants are only entitled to 200,000 cubic feet of free gas per year for use in their principal dwelling house as provided for in the 1971 Oil and Gas lease agreement. In addition, Plaintiff requests that this Court order Defendants to pay the sum of \$2,060.73, plus interest and cost of this suit for their excess use of their gas allotment.

This case requires the interpretation of the previously referenced Oil and Gas Lease agreement that was entered September 22, 1971, by Aaron P. Clark, et al. Defendants' 45.301 acres is a part thereof and Defendants' dwelling house was receiving the right to "free gas". As was presented at trial, Defendants do not own the subject oil and gas rights, which belong to Ronald Mozick by way of a severance from the surface estate.

The Court must ascertain the intent of the parties as manifested by the language of the written instrument. Where a provision of a policy is ambiguous, the policy provision is to be construed against the drafter of the agreement. Where, however, the language of the contract is clear and unambiguous, the court is required to give effect to that language. Gene & Harvey Builders v. Pennsylvania Mfrs. Ass'n. 512 Pa. 420, 426, 517 A.2d 910, 913 (1986) (quoting Standard Venetian Blind Co. v. American Empire Ins. Co., 503 Pa. 300, 304-05, 469 A.2d 563, 566 (1983)).

Contractual language is ambiguous "if it is reasonably susceptible of different constructions and capable of being understood in more than one sense." Hutchison v. Sunbeam Coal Co., 513 Pa. 192, 201, 519 A.2d 385, 390 (1986).

In the agreement in question, there is no ambiguity as to the language. It is clear that "Lessee shall have gas free of charge for his principal dwelling house up to 200,000 cubic feet per year from any well on leased premises producing gas by making his own connections with the well. The use of said gas is to be at Lessor's sole risk and expense". Paragraph 5 of September 22, 1971 Oil and Gas Lease.

The language of the contract or agreement is not in question. What is in question is the Defendants' understanding

of to what they were entitled. It was clear from the testimony of both Defendants that they were relying on the real estate sales agreement (See paragraph 5(B) of Defendants' Exhibit A) for their belief that they were entitled to unlimited "free gas". More specifically, Defendants testified that they never at any time inquired as to what was provided for in the recorded oil and gas lease, they solely relied upon the representations made by Mr. Daniel Engle in the real estate sales agreement.

Clearly, Plaintiff cannot be bound by what representations Mr. Engle made to Defendants, being that Engle was in no way associated with or employed by Plaintiff. It is a basic legal principle regarding real estate that one cannot sell or transfer what is not his. Engle cannot agree to provide Defendants with something that he does not own. Here Engle was merely a surface owner and his ownership rights were subject to the existing lease covering the property; he could not provide Defendants with unlimited "free gas" because he did not own the rights to unlimited "free gas".

Defendants attempted to argue that due to the fact Plaintiff and its predecessors had not metered the gas since the inception of the lease then Defendants were entitled to unlimited "free gas" and should not have to pay for use

exceeding the 200,000 cubic feet. However, at trial Defendants did not present any evidence that would support this contention that Plaintiffs are estopped from enforcing the amount of gas usage.

"Equitable estoppel is a doctrine that prevents one from doing an act differently than the manner in which another was induced by word or deed to expect." Kreutzer vs. Monterey County Herald Co., 560 Pa. 600, 606, 747 A.2d 358, 361 (2000); G.E. vs. Advance Stores, Inc., 285 F.Supp. 2d 1046, 1050 (N.D. Ohio 2003). In Pennsylvania, the elements of equitable estoppel are as follows: "(1) an inducement, whether by act, representation or silence when one ought to speak, that causes one to believe the existence of certain facts; (2) justifiable reliance on that inducement; and (3) prejudice to the one who relies if the inducer is permitted to deny the existence of such facts." Chem Bank v. Dippolito, 897 F.Supp. 221, 224 (E.D. Pa. 1995); see also Heskett vs. Paulig, 131 Oh.App. 3d 221, 227, 722 N.E. 2d 142,146 (Ohio App.Ct. 1999)

Bullick vs. Sterling Inc. d/b/a Kay Jewelers, 2004 WL 2381544, (E.D. Pa. 2004).

The record contains no evidence that Plaintiff or its predecessors misrepresented to the Defendants or their predecessors that they were entitled to an unlimited supply of "free gas". Defendants, at the time they desired to buy the property, had a burden of inquiry to review what was of record and if they had done so would have been enlightened as to the provisions of the lease. The Defendants took the word of the seller, Mr. Engle, at their peril.

It is clear that the Defendants are entitled to 200,000 cubic feet of gas per year for their dwelling house as called for in the lease agreement. Any gas consumed in excess of 200,000 cubic feet is used by the Defendants at their own expense.

Defendants have counter-sued Plaintiff for various damages that they claim occurred as a result of Plaintiff terminating gas service to their home. The burden of proof on the counterclaim falls squarely on the Defendants. "Where one party to a contract without any legal justification, breaches the contract, the other party is entitled to recover, unless the contract provided otherwise, whatever damages he suffered, provided (1) they were such as would naturally and ordinarily result from the breach, or (2) they were reasonably foreseeable and within the contemplation of the parties at the time they made the contract, and (3) they can be proved with reasonable certainty." Taylor v. Kaufhold, 368 Pa. 538, 84 A.2d 347, 351 (1951).

It is clear based upon the reasoning previously set forth by the Court that Plaintiff did not breach the agreement; to the contrary Defendants breached the terms of pre-existing gas lease by consuming gas in excess of 200,000 cubic feet and then refusing to pay for the excess. The lease agreement called for

200,000 cubic feet per year and once Defendants reached that amount they were obligated to pay for the excess portion of the gas. It is clear that Defendants did not pay, therefore Plaintiff was well within it's rights to disconnect service. As such, Defendants are not entitled to damages on their counterclaim.

O R D E R

NOW, this 1st day of February, 2005, consistent with the foregoing Opinion, it is the Order of this Court as follows:

1. Plaintiff's request for Declaratory Relief is hereby granted. It is the finding of this Court that under the terms of the oil and gas lease Defendants are entitled only to receive 200,000 cubic feet per year of "free gas";
2. Defendants are liable for the fair market cost of excess gas used, in the total amount of \$2,060.73 plus interests and costs of suit;
3. Defendants counterclaim(s) is hereby dismissed.

BY THE COURT


FREDRIC J. AMMERMAN
President Judge

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

POWER GAS MARKETING &
TRANSMISSION, INC.

Plaintiff

vs.

HARRY THOMAS RANDOLPH
and SHERRY E. RANDOLPH,
his wife,

Defendants

:
:
: NO. 03-1324
:
: Type of Case: CIVIL
:
: Type of Pleading: Petition for
: Reconsideration
:
:
:
: Filed on Behalf of: Defendants
:
:
:
: Counsel of Record:
: Robin Jean Foor, Esquire
: Supreme Court No. 41520
: MidPenn Legal Services
: 211 1/2 East Locust Street
: Clearfield, PA 16830
: (814)765-9646

BP **FILED**
10:40 am 3/27/05

FEB 11 2005

William A. Shaw
Prothonotary

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

Power Gas Marketing &	:
Transmission, Inc.,	:
Plaintiff	:
	:
vs.	: No. 03-1324
	:
Harry Thomas Randolph	:
and Sherry E. Randolph,	:
Defendants	:

DEFENDANT'S PETITION FOR RECONSIDERATION OF
ORDER OF FEBRUARY 1, 2005

Defendants, Harry and Sherry Randolph, by their undersigned counsel, respectfully petition this Court for reconsideration of its order entered in the above captioned matter on February 1, 2005, and avers the following in support:

1. Defendants are entitled to receive 200, 000 cubic feet of gas without charge a year under the lease and this Court's ruling.
2. Defendant's did not receive any gas in the year 2003 and would have received something less then 200,000 cubic feet in the year 2004.
3. The excess gas used in 2002, was 251,000 cubic feet.

WHEREFORE, the defendants request to set off the gas they were due but did not receive in 2003 and 2004 against the money judgment entered in paragraph 2 of the Court's order.



Robin Jean Foor
PA ID # 41520
MidPenn Legal Services Inc.
211 1/2 East Locust Street
Clearfield. PA 16803
(814)765-9646

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

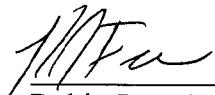
Power Gas Marketing &	:
Transmission, Inc.,	:
Plaintiff	:
	:
vs.	: No. 03-1324
	:
Harry Thomas Randolph	:
and Sherry E. Randolph,	:
Defendants	:

CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2005 a copy of the Defendants' Petition for Reconsideration of Order dated February 1, 2005 was served on Power Gas Marketing and Transmission, Inc. by mailing a true and correct copy by United States First Class Mail, postage prepaid addressed as follows:

Patrick Dougherty, Esquire
936 Philadelphia Street
Indiana, PA 15701

MidPenn Legal Services
By:



Robin Jean Foor, Esquire
Attorney for Thomas and Sherry
Randolph

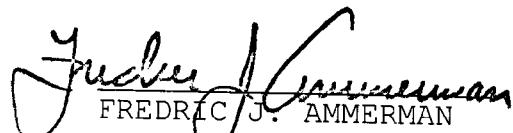
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

POWER GAS MARKETING &	*
TRANSMISSION, INC.,	*
Plaintiff	*
	*
VS.	*
	NO. 03-1324-CD
HARRY THOMAS RANDOLPH and	*
SHERRY E. RANDOLPH,	*
Defendants	*

O R D E R

NOW, this 17th day of February, 2005, the Court hereby
GRANTS the Defendants Petition for Reconsideration and hereby
Orders reconsideration of its Order of February 1, 2005.
Argument on the issue contained within the said Petition shall
be held before the Court on the 10 day of March, 2005,
at 3:00 Pm. in Courtroom No. 1 of the Clearfield County
Courthouse, Clearfield, Pennsylvania.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED
646 3:40 PM 3000th
FEB 17 2005

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

POWER GAS MARKETING
TRANSMISSION, INC.

-vs-

HARRY THOMAS RANDOLPH and
SHERRY E. RANDOLPH

No. 03-1324-CD

②
01/4/00 BSN
MAR 11 2005
Attns:
Dougherty
Foor

Prothonotary Clerk J. Jacobs

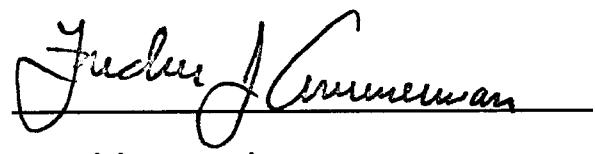
O R D E R

NOW, this 10th day of March, 2005, following
argument on the Petition for Reconsideration, it is the
ORDER of this Court as follows:

1. In looking at the equities of the situation
relative the amount of Two Thousand Sixty Dollars and
Seventy-Three (\$2,060.73) Cents which this Court had
determined in its Order of February 1, 2005, is due
Plaintiff from the Defendants versus the amount of natural
gas unused for the years 2003 and 2004, this Court will
set off any gas for the years 2003 and 2004 to which the
Defendants may have been entitled (notwithstanding the
issue of breach of the lease) for the amount set forth by
the Court of Two Thousand Sixty Dollars and Seventy-Three
(\$2,060.73) Cents. The Defendants shall not be obligated
for the said money amount. The Plaintiff shall not be
obligated to provide any gas under the terms of the lease
to the Defendants for the years 2003 and 2004;

2. All other provisions of this Court's Opinion and Order dated February 1, 2005, not inconsistent with the above is hereby reconfirmed.

BY THE COURT,



Judge J. C. Kerrigan
President Judge