IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THE MUNICIPAL AUTHORITY OF WESTMORELAND COUNTY, on behalf of itself and all others similarly situated,

Plaintiff,

v.

CNX GAS COMPANY and NOBLE ENERGY, INC.,

Defendants.

Case No. 2:16-cv-00422 JFC

Judge Joy Flowers Conti

JURY TRIAL DEMANDED

AMENDED CLASS ACTION COMPLAINT

Municipal Authority of Westmoreland County, on behalf of itself and all others similarly situated, by and through counsel, David A. McGowan and Susan A. Meredith of Caroselli Beachler & Coleman, L.L.C., and Robert C. Sanders of the Law Office of Robert C. Sanders, sues Defendants herein for breach of contract and conversion for the underpayment of natural gas royalties.

THE PARTIES

1. Plaintiff Municipal Authority of Westmoreland County ("MAWC") is a municipal corporation organized under the laws of Pennsylvania with its principal place of business at 124 Park and Pool Road, New Stanton, Pennsylvania 15672.

2. Defendant CNX Gas Company LLC ("CNX Gas") is a limited liability company organized under the laws of Virginia with its principal place of business at 1000 Consol Energy Drive, Canonsburg, Pennsylvania 15317.

3. Defendant Noble Energy, Inc. ("Noble") is a corporation organized under the laws of Delaware with its principal place of business at 1001 Noble Energy Way, Houston, Texas 77070.

FACTS COMMON TO ALL COUNTS

A. The Natural Gas Industry

4. Natural gas producers produce gas from wells and transport the gas through "gathering" lines to the interstate pipeline system. Producers sell the gas either at the point where the gathering line meets the interstate pipeline system or at any one of thousands of receipt and delivery points on the interstate pipeline system.

5. To produce gas, gas producers enter into oil and gas leases with the owners of the gas rights. Under such leases, the owner of the gas rights (the lessor) conveys those rights to the producer (the lessee) in exchange for a royalty on the gas produced and sold each month.

6. Natural gas royalties are calculated by multiplying the volumes of gas produced each month (in units of a thousand cubic feet or "mcf") times the sale price and dividing that amount by the royalty interest.

7. Effective September 20, 1979, Pennsylvania enacted the Guaranteed Minimum Royalty Act ("GMRA"), 58 P.S. §33. The GMRA provides that an oil and gas lease must provide the lessor with "at least one-eighth royalty of all oil, natural gas or gas of other designations removed or recovered from the subject real property."

8. Under Pennsylvania law, the gas producer must pay all "production costs," these being the costs of drilling and producing the gas to the well head.

9. Gas producers incur "post production costs," these being costs incurred between the well head and the point of sale. Post production costs include the costs of gathering, compression, processing, treatment, dehydration, marketing and interstate transportation.

10. Under Pennsylvania law, a gas producer may deduct the lessor's proportionate share of post production costs from the lessor's gas royalties unless (1) the lease provides that no post production costs will be deducted or (2) the parties have modified the lease by agreeing through their course of performance that no costs shall be deducted or the gas producer has waived the right to deduct post production costs.

B. <u>Plaintiff's Oil and Gas Lease</u>

11. Upon information and belief, beginning in or about the year 2000 and continuing through the year 2009, Dominion Exploration and Production, Inc. ("Dominion Exploration") and Dominion Transmission, Inc. ("Dominion Transmission"), two affiliated gas production companies, entered into oil and gas leases with thousands of landowners in Pennsylvania, Ohio, West Virginia and other states.

12. On or about January 1, 2002, Plaintiff MAWC entered an oil and gas lease ("the Lease") with Dominion Exploration in which it leased it oil and gas rights to 2,255.199 acres in Westmoreland County, Pennsylvania ("the Leased Premises"). A true and correct copy of the Lease is attached as Exhibit 1.

13. On gas sold "at the well," the Lease provides for a royalty of "one-eighth of the amount realized by Lessee from such sale." On gas "used or sold beyond the well," the Lease provides for a royalty of "one-eighth of the net amount realized by Lessee computed at the wellhead from the sale of such substances."

14. Upon information and belief, Dominion Exploration began producing gas under the MAWC Lease during 2002 and continued to produce gas under the Lease until March 4, 2010, when all of Dominion Exploration's leases in Pennsylvania were acquired by Consol Gas Company through a merger with Dominion Exploration, as set forth more fully in paragraphs 17 and 18 below.

15. Dominion Exploration incurred post production costs under the MAWC Lease during every month in which it produced gas, yet it deducted no post production costs from the royalties paid to Plaintiff during every month it was the lessee.

16. Upon information and belief, Dominion Exploration likewise incurred post production costs under the leases of the other Class Members during every month that it produced gas, yet it likewise deducted no post production costs from the royalties paid to the other Class Members during every month it was the lessee.

C. Acquisition of Dominion Exploration Leases by Consol Gas Company

17. On March 4, 2010, Dominion Resources, Inc, and Dominion Energy, Inc., parent companies and/or affiliates of Dominion Exploration, entered into a Purchase and Sale Agreement with Consol Energy Holding LLC under which it sold, transferred, and otherwise assigned certain assets to the latter, including all of the oil and gas producing properties, leases, and wells, owned and/or operated by Dominion Exploration and other Dominion entities and/or affiliates in Pennsylvania, Ohio, West Virginia and other states.

18. As part of corporate re-structuring undertaken in connection with this Purchase and Sale Agreement, Dominion Exploration merged with Consol Gas Company ("Consol Gas") and, effective April 30, 2010, Consol Gas became the lessee on all Dominion Exploration leases sold under the Purchase and Sale Agreement.

19. Consol Gas continued to produce gas from the wells previously drilled by Dominion Exploration. In addition, upon information and belief, in July of 2010, Consol Gas drilled wells into the Marcellus Shale Formation and Utica Shale Formation, including into the Marcellus Shale Formation on the Leased Premises under the MAWC Lease.

20. Consol Gas continued to produce gas and pay royalties under the leases it had acquired from Dominion Exploration, including the MAWC Lease, until Consol Gas merged with the Defendant CNX Gas on January 1, 2011.

21. Like Dominion Exploration before it, Consol Gas incurred post production costs under the MAWC Lease during every month that it produced gas, yet it deducted no post production costs from the royalties paid to Plaintiff under the MAWC Lease during any month it was the lessee.

22. Upon information and belief, Consol Gas likewise incurred post production costs under the leases of the other Class Members during every month that it produced gas, yet it deducted no post production costs from the royalties paid to the other Class Members during any month it was the lessee.

D. <u>Acquisition of Leases by Defendant CNX Gas</u>

23. On or about January 1, 2011, Consol Gas merged with the Defendant CNX Gas. Pursuant to this merger, Defendant CNX Gas became the lessee on all leases that Consol Gas had previously acquired through its merger with Dominion Exploration. Also on or about January 1, 2011, Dominion Transmission entered into an Assignment and Bill of Sale with Defendant CNX Gas which assigned and sold to Defendant CNX Gas numerous Dominion Transmission leases which, upon information and belief, contain the same or similar royalty provisions as in the MAWC Lease. The former Dominion Exploration leases acquired by the Defendant CNX Gas

through its merger with Consol Gas, including the MAWC Lease, and the Dominion Transmission leases assigned to Defendant CNX Gas by Dominion Transmission are collectively referred to in this Complaint as the "Class Leases."

24. Like its predecessors on the Class Leases, Defendant CNX Gas incurred post production costs during every month that it produced gas, yet it deducted no post production costs from the gas royalties during the nine months of January 2011 through September 2011.

E. The CNX GAS - Noble JOA

25. On or about September 30, 2011, the Defendants CNX Gas and Noble entered into a Joint Operating and Development Agreement ("JOA") to develop natural gas in Pennsylvania.

26. As part of the JOA, Defendant CNX Gas assigned, transferred and sold to Defendant Noble an undivided 50% interest in the Class Leases.

F. Defendants' Deduction of Post Production Costs

27. On or about September 30, 2011, Defendants CNX Gas and Noble entered into a Gas Gathering Agreement with Cone Gathering LLC ("Cone Gathering"), a company in which they each are 50% owners.

28. Cone Gathering LLC provides midstream gas gathering services to both Defendant CNX Gas and Defendant Noble through Cone Midstream Partners L.P., a partnership in which Defendant CNX Gas, Defendant Noble and Cone Gathering LLC have a controlling interest.

29. Beginning in October of 2011, Defendant CNX Gas began deducting post production costs from gas produced under the Class Leases, including the MAWC Lease.

30. Beginning in November of 2012, Defendant Noble began paying royalties to the putative Class Members, including Plaintiff, based on its undivided 50% interest in the Class Leases. Although Defendant Noble incurred post production costs during every month that it

produced gas, it deducted no post production costs from the royalties until January 25, 2013, when it unilaterally started deducting post productions costs and retroactively charged Plaintiff post production costs back to November of 2012.

31. The post production costs deducted by Defendants CNX Gas and/or Noble included (1) a gas gathering fee of $0.46 per mcf; (2) a charge for electricity allegedly used to power compressors on the gas gathering system; and (3) a "Lease Use" fee.

32. The post production costs deducted from the royalties paid to MAWC by Defendants CNX Gas and Noble, after all adjustments and corrections by Defendants, are set forth in the two Tables below.

COST DEDUCTIONS FROM MAWC GAS ROYALTIES BY DEFENDANT CNX GAS

Month/ Year	Gathering Deduction	Electricity Deduction	Lease Use	Total Deducts
10-2011	50,070			50,070
11-2011	52,670			52,670
12-2011	47,510			47,510
01-2012	42,300			42,300
02-2012	36,510			36,510
03-2012	34,780			34,780
04-2012	30,690			30,690
05-2012	63,040			63,040
06-2012	72,350			72,350
07-2012	70,750			70,750
08-2012	91,970			91,970
09-2012	70,950			70,950
10-2012	81,220			81,220
11-2012	51,880			51,880
12-2012	46,370			46,370
01-2013	44,960			44,960
02-2013	38,430			38,430
03-2013	39,440			39,440
04-2013	33,290			33,290
05-2013	33,570			33,570
06-2013	29,730			29,730

07-2013	38,590			38,590
08-2013	36,910			36,910
09-2013	33,830			33,830
10-2013	31,490			31,490
11-2013	37,700			37,700
12-2013	42,850			42,850
01-2014	39,670			39,670
02-2014	33,430			33,430
03-2014	34,910			34,910
04-2014	30,490			30,490
05-2014	36,130			36,130
06-2014	41,830			41,830
07-2014	42,810			42,810
08-2014	40,210			40,210
09-2014	39,510			39,510
10-2014	38,450			38,450
11-2014	34,540			34,540
12-2014	33,660			33,660
01-2015	32,750			32,750
02-2015	28,320			28,320
03-2015	31,220			31,220
04-2015	29,190			29,190
05-2015	29,220			29,220
06-2015	26,890			26,890
07-2015	25,220			25,220
08-2015	28,290			28,290
09-2015	24,910			24,910
10-2015	35,470			35,470
11-2015	24,490			24,490
12-2015	34,110			34,110
TOTALS	2,079,570			2,079,570

COST DEDUCTIONS FROM MAWC GAS ROYALTIES BY DEFENDANT NOBLE

Month/ Year	Gathering Deduction	Electricity Deduction	Lease Use	Total Deducts
11-2012	51,560	7,450	-	59,010
12-2012	46,400	6,670	-	53,070
01-2013	44,880	6,480	-	51,360
02-2013	38,380	5,530	-	43,910
03-2013	39,400	5,680	-	45,080

04-2013	33,270	5,850	-	39,120
05-2013	33,460	4,590	-	38,050
06-2013	29,670	4,220	-	33,890
07-2013	38,640	4,260	-	42,900
08-2013	36,940	5,900	-	42,840
09-2013	33,850	1,040	-	34,890
10-2013	31,530	3,690	-	35,220
11-2013	37,720	5,690	-	43,410
12-2013	42,890	4,230	-	47,120
01-2014	39,770	4,300	-	44,070
02-2014	33,420	6,670	-	40,090
03-2014	34,940	5,390	1,260	41,590
04-2014	30,550	6,190	200	36,940
05-2014	35,770	3,190	690	39,650
06-2014	46,050	4,120	-	50,170
07-2014	48,500	4,330	-	52,830
08-2014	44,490	6,220	-	50,710
09-2014	47,970	2,560	-	50,530
10-2014	39,210	5,640	-	44,850
11-2014	33,320	4,540	-	37,860
12-2014	37,480	3,520	700	41,700
01-2015	32,340	3,670	530	36,540
02-2015	31,080	3,440	670	35,190
03-2015	32,700	3,600	600	36,900
04-2015	31,420	2,990	100	34,510
05-2015	30,960	3,370	150	34,480
06-2015	26,880	3,110	160	30,150
07-2015	26,930	3,240	40	30,210
08-2015	26,320	2,890	90	29,300
09-2015	25,770	2,620	120	28,510
10-2015	26,110	2,640	-	28,750
11-2015	25,020	2,570	180	27,770
12-2015	15,800	2,620	-	18,420
01-2016				
TOTALS	1,341,390	164,710	5,490	1,511,590

33. None of the costs deducted by Defendants were properly deductible under the leases by operation of the doctrines of (1) modification by course of conduct and performance, (2) waiver and (3) equitable estoppel.

G. <u>Defendants' Prior Course of Conduct and Performance to Deduct No Post Production Costs Even Though Post Production Costs Were Incurred Every Month From 2002 to the Present</u>

34. As alleged in paragraphs 11-33 above, post production costs were incurred during every month that gas was produced under the MAWC Lease and the other Class Leases.

35. No post production costs were deducted from the royalties paid under the MAWC Lease and the other Class Leases from 2002 until Defendant CNX first deducted them in October of 2011 and Defendant Noble made a retroactive deduction on January 25, 2013 of post production costs back to and including November 2012.

36. The facts set forth in paragraphs 37-52 below establish that during the period of the course of performance at issue in this case the gas produced under the MAWC Lease and the other Class Leases was sold downstream of the well and that gathering and other post production costs were incurred between the well and the point of sale.

37. The Federal Regulatory Energy Commission ("the FERC") deregulated the natural gas industry through a series of Orders beginning in the 1970s and culminating with the issuance of FERC Order 636 in 1992. The purpose of the deregulation was to break the monopoly power that interstate pipeline companies had over the sale of natural gas. Prior to the deregulation, gas producers had little option but to sell their gas production at the well to interstate pipeline companies which would, in turn, transport the gas through their interstate pipeline systems and sell it in downstream markets.

38. With the federal deregulation of the industry, interstate pipeline companies were restricted to being providers of gas transportation and storage services at FERC-approved rates and could no longer be gas merchants. In the new industry structure, gas producers and

independent gas marketers were provided open access to the interstate pipeline systems and could transport gas for sale to customers anywhere on the interstate system.

39. This fundamental change in the structure of the natural gas industry shifted the point at which gas producers sell their gas production from the well head to points downstream of the well.

40. Bruce M. Kramer, an expert witness retained by the lawyers representing Defendant CNX Gas in this case to testify in *Pollock v. Energy Corporation of America*, 2:10-cv-01553-JFC-RCM, submitted a sworn Declaration in *Pollock* that explains how the deregulation of the natural gas industry shifted the point at which gas producers sell gas to markets downstream of the well.. In his Declaration (*Pollock*, ECF No. 68-3), Mr. Kramer states:

> [F]or many years, up until the de-regulation of the sale of natural gas in the 1970s and 1980s, natural gas was largely sold at the wellhead by the producer to an interstate pipeline. It was the interstate pipeline that bore most, if not all, of the post production costs associated with natural gas marketing. With deregulation, the natural gas market changed drastically so that it became customary for natural gas to be sold on a national market rather than at the wellhead. In fact, as deregulation moved forward in time, interstate pipelines no longer acted in a merchant role, buying and selling natural gas, but limited themselves to transporting natural gas owned by others for a fee. These developments led to the treatment of natural gas as a fungible commodity that could be bought and sold anywhere throughout the United States regardless of where the natural gas was actually produced.

41. The Pennsylvania Supreme Court has recognized the fact that since the deregulation of the natural gas industry gas is no longer sold at the well but at points downstream of the well. In *Kilmer v. Elexco Land Services, Inc.*, the court stated: "Given the current state of the industry *where the wellhead and the point of sale are not the same*, we are required to interpret which valuation point is most consistent with the language of the statute [the Guaranteed Minimum Royalty Act]. *Kilmer v. Elexco Land Services, Inc.*, 990 A.2d 1147, 1157 (emphasis added).

42. Defendant CNX Gas's parent company, CONSOL Energy, Inc., files Annual Reports with the U.S. Securities and Exchange Commission ("SEC") that include the oil and gas operations it conducts through Defendant CNX Gas.

43. The 2010 Annual Report describes the oil and gas operations conducted by Defendant CNX Gas, including the operations after the April 30, 2010 acquisition of oil and gas rights held by Dominion Exploration. The 2010 Annual Report states:

> On April 30, 2010, CONSOL Energy completed the Dominion Acquisition for approximately $3.5 billion. The acquisition included approximately one trillion cubic feet equivalents (Tcfe) of net proved reserves and 1.46 million net acres of oil and gas rights within the Appalachian Basin. Included in the acreage holdings were approximately 500 thousand prospective net Marcellus Shale acres located predominantly in southwestern Pennsylvania and northern West Virginia. The producing wells acquired in the Dominion Acquisition are primarily vertical conventional wells located in northwest West Virginia and central Pennsylvania. The producing wells purchased in the acquisition have contributed to the increase in our conventional gas production in the year ended December 31, 2010. In 2010, conventional production was 24.6 bcf or 19% of our total gas production compared to 1.7 bcf or 2% of total gas production in 2009.
>
> With the Dominion Acquisition and other land activities, we have substantially increased our acreage position in the Marcellus Shale from approximately 250,000 at December 31, 2009 to approximately 752,000 at December 31, 2010. Our gas division has been focused on developing our Marcellus acreage position in southwest Pennsylvania, central Pennsylvania and northwest West Virginia. In the year ended December 31, 2010, we have drilled 24 horizontal Marcellus wells of which 13 were brought on-line. We also acquired 17 vertical Marcellus wells acquired in the Dominion Acquisition bringing our total well count to 52 Marcellus wells. Our horizontal Marcellus wells can have laterals up to 5,000 feet in length. Longer laterals allow for higher gas production with a proportionately smaller outlay of capital than drilling an additional vertical well with shorter laterals. These Marcellus wells produced 10.2 bcf in 2010 or 8% of our total gas production compared to 4.9 bcf or 5% of our total gas production in 2009.

44. The 2010 Annual Report describes gas production from both conventional and Marcellus wells:

> ***Conventional***
>
> In 2010, the Dominion Acquisition significantly contributed to the increased number of conventional wells from 195 at December 31, 2009 to 8,517 at December 31, 2010. The conventional wells acquired in the Dominion Acquisition were primarily located in northwestern West Virginia and central Pennsylvania. In 2010, we drilled and completed 23 shallow conventional wells in central Pennsylvania. Also, in 2010, we drilled and completed 86 conventional wells in West Virginia, three conventional wells in Kentucky, and two conventional wells in eastern Ohio. Currently, 32 conventional wells are waiting for the completion of gathering facilities for collection.
>
> The majority of our conventional leasehold position is held by production and all of it is extensively overlain by existing third party gas gathering and transmission infrastructure. Conventional drilling in West Virginia and central Pennsylvania is characterized as low-cost and low-risk with success rates exceeding 98%. The conventional assets add great diversity to CONSOL Energy's drilling portfolio, provide multiple synergies with our CBM and

unconventional shale operations, and the held by production nature of the conventional properties affords CONSOL Energy considerable flexibility to choose when to exploit those assets.

CONSOL Energy also has the rights to extract conventional gas from approximately 650,000 net acres of shallow conventional potential in Ohio, Pennsylvania, West Virginia, and New York.

Marcellus Shale

We have substantially increased our acreage position in the Marcellus Shale from 250,000 net acres at December 31, 2009 to 752,000 net acres at December 31, 2010. The Dominion Acquisition contributed approximately 500,000 acres of the increase. CONSOL Energy drilled and completed 13 wells in the Marcellus Shale in southwestern and central Pennsylvania in 2010. The Dominion Acquisition also included 17 producing Marcellus wells, 12 of these wells are located in central Pennsylvania and 5 of these wells are located in northwestern West Virginia. We also had 11 Marcellus wells in process at December 31, 2010. At December 31, 2010 we have 52 producing Marcellus wells compared to 22 Marcellus wells in 2009.

45. The 2010 Annual Report includes a Table titled "Total Gas Segment Analysis for the Year Ended December 31, 2010 Compared to the Year Ended December 31, 2009." This Table, which is reproduced below, reports that there were gas gathering costs of $18M for gas produced from conventional wells and gathering costs of $10M for gas produced from Marcellus wells.

	For the Year Ended December 31, 2010					Difference to Year Ended December 31, 2009				
	CBM	Conven-tional	Marcellus	Other Gas	Total Gas	CBM	Conven-tional	Marcellus	Other Gas	Total Gas
Sales:										
Produced	$ 567	$ 116	$ 48	$ 9	$ 740	$ (27)	$ 108	$ 27	$ 5	$ 113
Related Party	6	—	—	—	6	3	—	—	—	3
Total Outside Sales	573	116	48	9	746	(24)	108	27	5	116
Gas Royalty Interest	—	—	—	63	63	—	—	—	22	22
Purchased Gas	—	—	—	11	11	—	—	—	4	4
Other Income	—	—	—	5	5	—	—	—	—	—
Total Revenue and Other Income	573	116	48	88	825	(24)	108	27	31	142
Lifting	50	30	5	2	87	1	26	4	1	32
Gathering	97	18	10	3	128	9	17	5	1	32
General & Administration	65	22	8	(2)	93	3	21	4	(2)	26
Depreciation, Depletion and Amortization	113	50	20	7	190	19	46	13	5	83
Gas Royalty Interest	—	—	—	54	54	—	—	—	22	22
Purchased Gas	—	—	—	10	10	—	—	—	4	4
Exploration and Other Costs	—	—	—	25	25	—	—	—	8	8
Other Corporate Expenses	—	—	—	56	56	—	—	—	23	23
Interest Expense	—	—	—	7	7	—	—	—	(1)	(1)
Total Cost	325	120	43	162	650	32	110	26	61	229
Earnings (Loss) Before Noncontrolling Interest and Income Tax	248	(4)	5	(74)	175	(56)	(2)	1	(30)	(87)
Noncontrolling Interest	—	—	—	(5)	(5)	—	—	—	(4)	(4)
Earnings (Loss) Before Income Tax	$ 248	$ (4)	$ 5	$ (69)	$ 180	$ (56)	$ (2)	$ 1	$ (26)	$ (83)

46. The subsequent Annual Report, the Annual Report for 2011, describes gas production from shallow (conventional) wells and Marcellus wells, as well as anticipated production from Utica wells:

> ***Shallow Oil and Gas***
>
> The shallow oil and gas acreage position of CONSOL Energy is approximately 518,000 net acres mainly in West Virginia, Pennsylvania, Virginia, New York, San Juan Basin and Powder River Basin at December 31, 2011. The majority of our shallow oil and gas leasehold position is held by production and all of it is extensively overlain by existing third party gas gathering and transmission infrastructure. The shallow oil and gas assets provide multiple synergies with our CBM and unconventional shale operations, and the held by production nature of the shallow oil and gas properties affords CONSOL Energy considerable flexibility to choose when to exploit those and other gas assets including shale assets.
>
> ***Marcellus Shale***
>
> We have the rights to extract natural gas in Pennsylvania, West Virginia and New York from approximately 361,000 net Marcellus acres at December 31, 2011. In September 2011, CONSOL Energy entered into a joint venture with Noble Energy regarding our Marcellus Shale oil and gas assets and properties in West Virginia and Pennsylvania. The joint venture holds approximately 628,000 net Marcellus Shale acres in those states as well as the producing Marcellus Shale Wells which we had owned. We hold a 50% interest in the joint venture. We also hold a 50% interest in a related gathering company to which we contributed our existing Marcellus Shale gathering assets. Joint operations are conducted in accordance with a joint development agreement.
>
> ***Utica Shale***
>
> CONSOL Energy also controls approximately 114,000 net acres of Utica Shale potential in southeastern Ohio, southwestern Pennsylvania, and northern West Virginia at December 31, 2011. Additionally, CONSOL Energy controls a large number of acres that contain the rights to the Utica Shale but are disclosed in other plays due to the Utica Shale not being the primary drilling target as of December 31, 2011. The thickness of the Utica Shale in this area ranges from 200 to 450 feet. Further delineation of the Ohio acreage potential exploration play is planned for 2012.
>
> To facilitate the delineation in Ohio, CONSOL Energy entered into a joint venture with Hess Ohio Developments, LLC (Hess) in the fourth quarter of 2011. The Hess joint venture owns approximately 200,000 net acres of Utica Shale rights in Ohio. We hold a 50% interest in the joint venture. Joint operations are conducted in accordance with a joint development agreement.

47. The 2011 Annual Report includes a Table titled "Total Gas Segment Analysis for the Year Ended December 31, 2011 Compared to the Year Ended December 31, 2010." This Table, which is reproduced below, reports that Defendant CNX Gas incurred gas gathering costs of $27M for gas produced from conventional wells and gathering costs of $15M for gas produced from Marcellus wells.

	For the Year Ended December 31, 2011					Difference to Year Ended December 31, 2010				
	CBM	Shallow Oil and Gas	Marcellus	Other Gas	Total Gas	CBM	Shallow Oil and Gas	Marcellus	Other Gas	Total Gas
Sales:										
Produced	$ 461	$ 155	$ 119	$ 12	$ 747	$ (106)	$ 39	$ 70	$ 4	$ 7
Related Party	5	—	—	—	5	(1)	—	—	—	(1)
Total Outside Sales	466	155	119	12	752	(107)	39	70	4	6
Gas Royalty Interest	—	—	—	67	67	—	—	—	4	4
Purchased Gas	—	—	—	4	4	—	—	—	(7)	(7)
Other Income	—	—	—	59	59	—	—	—	54	54
Total Revenue and Other Income	466	155	119	142	882	(107)	39	70	55	57
Lifting	52	60	16	3	131	2	30	11	1	44
Gathering	98	27	15	2	142	1	9	5	(1)	14
General & Direct Administration	61	30	17	4	112	(4)	8	9	6	19
Depreciation, Depletion and Amortization	101	61	35	10	207	(12)	11	15	3	17
Gas Royalty Interest	—	—	—	59	59	—	—	—	5	5
Purchased Gas	—	—	—	4	4	—	—	—	(6)	(6)
Exploration and Other Costs	—	—	—	18	18	—	—	—	(7)	(7)
Other Corporate Expenses	—	—	—	65	65	—	—	—	9	9
Interest Expense	—	—	—	10	10	—	—	—	3	3
Total Cost	312	178	83	175	748	(13)	58	40	13	98
Earnings Before Noncontrolling Interest and Income Tax	154	(23)	36	(33)	134	(94)	(19)	30	42	(41)
Noncontrolling Interest	—	—	—	4	4	—	—	—	9	9
Earnings Before Income Tax	$ 154	$ (23)	$ 36	$ (37)	$ 130	$ (94)	$ (19)	$ 30	$ 33	$ (50)

48. The information and data from the 2010 and 2011 Annual Reports show that gathering costs were incurred on the gas produced under the leases acquired from Dominion Exploration from April 30, 2010 (the effective date of the acquisition) forward.

49. Notwithstanding, Defendant CNX Gas did not begin deducting post production costs from the royalties paid under those leases until November of 2011.

50. Dominion Exploration and Dominion Transmission, the predecessor lessees, also incurred post production costs.

51. The 2010 Annual Report filed with the S.E.C. by the Dominion Resources, Inc., the parent company of Dominion Exploration and Dominion Transmission, describes the Dominion gas gathering system:

> Dominion, headquartered in Richmond, Virginia and incorporated in Virginia in 1983, is one of the nation's largest producers and transporters of energy. Dominion's strategy is to be a leading provider of electricity, natural gas and related services to customers primarily in the eastern region of the U.S. Dominion's portfolio of assets includes approximately 27,615 MW of generating capacity, 6,100 miles of electric transmission lines, 56,800 miles of electric distribution lines, 11,000 miles of natural gas transmission, gathering and storage pipeline and 21,800 miles of gas distribution pipeline, exclusive of service lines of two inches in diameter or less. Dominion also owns the nation's largest underground natural gas storage system, operates approximately 947 bcf of storage capacity and serves retail energy customers in 14 states.

52. The website of Dominion Resources, Inc. (https://www.dom.com/corporate/what-we-do/natural-gas/gathering-producer-services) likewise describes the Dominion gas gathering system:

> Gathering Producer Services
>
> This information is for the producers and operators who deliver natural gas into the gathering portion of Dominion's pipeline systems: Dominion East Ohio, Dominion Hope and Dominion Transmission.
>
> Dominion operates more than 5,400 miles of gathering pipeline and 93 gathering compressor stations in Maryland, New York, Ohio, Pennsylvania, Virginia, and West Virginia. Gathering Producer Services is Dominion's primary point of contact for local producers, overseeing more than 11,700 production gas delivery points into the Dominion pipeline system. Producers annually deliver more than 175 Bcf of gas into Dominion systems.
>
> Dominion's underground natural gas storage system includes 26 storage fields that store about 928 billion cubic feet of storage capacity. The company has numerous links to other major pipelines and can access markets in the Midwest, Mid-Atlantic and Northeast regions of the United States.

53. The information and data contained in paragraphs 37 to 52 of this Complaint establish that (1) natural gas is no longer at the well and (2) and that the lessees on the MAWC Lease incurred post production costs in selling gas produced under the MAWC Lease in downstream markets yet deducted no post production costs from the royalties.

H. MAWA's Detrimental Reliance On Defendants' Course of Performance

54. In Pennsylvania, a plaintiff need not show detrimental reliance for there to be a modification of a contract by course of performance.

55. Even though detrimental reliance is not required under Pennsylvania law, Plaintiff MAWC detrimentally relied on the course of performance in this case because it budgeted funds

based on the historical revenue stream from the gas royalties. The decrease in the royalty revenues had many adverse effects, including the need to increase the water rates of the MAWC customers.

56. Plaintiff MAWC's Trust Indenture requires that the net revenues of the MAWC's municipal service system for a period of twelve consecutive months to be not less than 110% of the average annual debt service requirements on the bonds outstanding during that period. Any reduction in revenues less than the coverage requirements of the indenture requires MAWC to increase the water rates of its customers in order to meet its trust indenture requirements. When gathering fees began to be deducted, MAWC's revenues were reduced and this created a shortfall in revenue projections. Consequently, MAWC had to increase the water rates to make up for the deficit, as well as to cover the anticipated future reductions in revenues. The reduction in revenues caused by the deduction of the gathering fees is equal to approximately 1.2% of revenue over that time period, resulting in additional charges of approximately $6.00 per customer per year.

I. <u>The Deduction Of Post Production Costs That Were Unreasonable, Excessive And/Or For Services That Were Not Provided</u>

57. Even if the leases permitted Defendants to deduct post production costs under the leases, the costs they deducted were unreasonable, excessive and/or for services that were not provided.

COUNT I
BREACH OF CONTRACT
(CNX GAS COMPANY)

58. Plaintiff re-alleges and incorporates by reference paragraphs 1–57 of this Complaint.

59. No post production costs were deductible from the royalties paid under the Class leases because, although production costs were incurred, none were deducted by the original lessees, Dominion Exploration and Dominion Transmission, or by their successors, Consol Gas Company and Defendant CNX Gas until Defendant CNX Gas first began to deduct them in October of 2011 and Defendant Noble made a retroactive deduction on January 25, 2013.

60. The Class Leases were modified by the course of performance and conduct under the leases prior to October of 2011.

61. Plaintiff detrimentally relied on the course of performance and conduct under the leases prior to October of 2011, as set forth in paragraph 55 and 56 of this Complaint.

62. Defendant CNX Gas breached the Class Leases by deducting post production costs from the royalties.

63. Defendant CNX Gas was barred by the doctrine of waiver and/or modification from deducting any post production costs from the Class Leases by said course of performance and conduct.

64. Defendant CNX Gas was equitably estopped from deducting any post production costs from the Class Leases by said course of conduct and performance.

65. As a direct and proximate result of the Defendant CNX Gas's deduction of post production costs, Plaintiff and the members of the Plaintiff Class sustained monetary damages in amounts to be proven at trial.

WHEREFORE, Plaintiff and the putative Class Members respectfully request this Court to grant judgment in their favor and against the Defendant CNX Gas Company LLC for breach of contract, compensatory damages, pre-judgment and post judgment interest, costs, attorneys fees and any other remedy at law or in equity the Court may deem proper.

COUNT II
BREACH OF CONTRACT
(CNX GAS COMPANY)

66. Plaintiff re-alleges and incorporates by reference paragraphs 1-65 of this Complaint.

67. Even if Defendant CNX Gas was permitted to deduct post production costs under the leases, the costs it deducted were unreasonable, excessive, and/or for services that were not provided.

68. Defendants' Gas Gathering Agreement with their affiliates, Cone Gathering LLC and Cone Midstream Partners LP, was not negotiated at arm's length and resulted in excessive dollar deductions from the royalties.

69. The $0.46 gathering fee was a blended gathering fee applied to the gathering and processing of both wet and dry gas. Upon information and belief, all of the natural gas produced under the Class Leases is dry gas. This dry gas should not have been subject to a blended gathering fee.

70. Upon information and belief, the compressors and compression facilities used in the gathering and transporting gas produced under the Class Leases, including the MAWC Lease, operate on natural gas, not electricity. Accordingly, all electricity charges deducted from the royalties paid under the Class Leases must be reimbursed.

71. As a direct and proximate result of the breaches of the leases set forth in this Count II, Plaintiff and the other putative Class Members were damaged in an amount to be proven at trial.

WHEREFORE, Plaintiff and the putative Class Members respectfully request this Court to grant judgment in their favor and against the Defendant CNX Gas Company LLC, compensatory damages, pre-judgment and post judgment interest, costs, attorneys fees and any other remedy at law or in equity the Court may deem proper.

COUNT III
CONVERSION
(CNX GAS COMPANY)

72. Plaintiff re-alleges and incorporates by reference paragraphs 1-71 of this Complaint.

73. Conversion is the deprivation of another's right in property without the owner's consent and without legal justification. Conversion is actionable even where the party converting the property has no intent to commit a wrong.

74. Defendant exercised control and possession of the natural gas royalties owned by Plaintiff and the other Class Members because Defendant CNX Gas received the proceeds of the sale of the gas.

75. Under Pennsylvania law, the royalties owned by Plaintiff and the other Class Members and held by Defendant CNX Gas, were and are the personal property of Plaintiff and the other Class Members.

76. Defendant CNX Gas converted a portion of the gas royalties owned by Plaintiff and the other Class Members by deducting post production costs that were not deductible as set forth in Count I herein, and/or by deducting post production costs that were excessive, unreasonable, or for services never provided, as set forth in Count II herein.

77. The conversion claims in this Complaint are actionable by all of CNX Gas's royalty owners, regardless of the form of lease. The royalties of all Class Members were converted by Defendant CNX Gas in the same ways irrespective of lease language.

78. Although the gist of the action doctrine generally precludes recovery in tort for conduct that breaches a contract, a plaintiff may bring an action for conversion when the plaintiff has a property interest in the thing converted, even if that thing is also the subject of a contract. In Pennsylvania, an oil and gas royalty is a property interest.

79. As a direct and proximate result of Defendant CNX Gas's acts of conversion, Plaintiff and the other Class Members were damaged in an amount to be proven at trial.

80. Although deliberate wrongdoing is not required for liability for conversion, Defendant CNX Gas's conversion was deliberate, willful, intentional, and/or outrageous entitling Plaintiffs and the other Class Members to an award of punitive damages.

WHEREFORE, Plaintiff and the other Class Members respectfully request this Court to grant judgment in their favor and against the Defendant CNX Gas Company LLC, compensatory damages, punitive damages, pre-judgment and post judgment interest, costs, attorneys fees and any other remedy at law or in equity the Court may deem proper.

COUNT IV
BREACH OF CONTRACT
(NOBLE)

81. Plaintiff re-alleges and incorporates by reference paragraphs 1-80 of this Complaint.

82. No post production costs were deductible from the royalties paid under the Class leases because, although production costs being incurred, none were deducted by the original lessees, Dominion Exploration and Dominion Transmission, or by their successors, Consol Gas

Company and Defendant CNX Gas until Defendant CNX Gas first began to deduct them in October of 2011 and Defendant Noble made a retroactive deduction on January 25, 2013.

83. The Class Leases were modified by the course of performance and conduct under the leases prior to October of 2011.

84. Plaintiff detrimentally relied on the course of performance and conduct under the leases prior to October of 2011, as set forth in paragraph 55 and 56 of this Complaint.

85. Defendant Noble breached the Class Leases by deducting post production costs from the royalties.

86. Defendant Noble was barred by the doctrine of waiver and/or modification from deducting any post production costs from the Class Leases by said course of performance and conduct.

87. Defendant Noble was equitably estopped from deducting any post production costs from the Class Leases by said course of conduct and performance.

88. As a direct and proximate result of the Defendant Noble's deduction of post production costs, Plaintiff and the members of the Plaintiff Class sustained monetary damages in amounts to be proven at trial.

WHEREFORE, Plaintiff and the other Class Members respectfully request this Court to grant judgment in their favor and against the Defendant Noble, compensatory damages, pre-judgment and post judgment interest, costs, attorneys fees and any other remedy at law or in equity the Court may deem proper.

COUNT V
BREACH OF CONTRACT
(NOBLE)

89. Plaintiff re-alleges and incorporates by reference paragraphs 1-88 of this Complaint.

90. Even if Defendant Noble Gas was permitted to deduct post production costs under the leases, the costs it deducted were unreasonable, excessive and/or for services that were not provided.

91. Defendants' Gas Gathering Agreement with their affiliates, Cone Gathering LLC and Cone Midstream Partners LP, was not negotiated at arm's length and resulted in excessive dollar deductions from the royalties.

92. The $0.46 gathering fee was a blended gathering fee applied to the gathering and processing of both wet and dry gas. Upon information and belief, all of the natural gas produced under the Class Leases is dry gas. This dry gas should not have been subject to a blended gathering fee.

93. Upon information and belief, the compressors and compression facilities used in the gathering and transporting gas produced under the Class Leases, including the MAWC Lease, operate on natural gas, not electricity. Accordingly, all electricity charges deducted from the royalties paid under the Class Leases must be reimbursed.

94. As a direct and proximate result of the breaches of the leases set forth in this Count V, Plaintiff and the other Class Members were damaged in an amount to be proven at trial.

WHEREFORE, Plaintiff and the other Class Members respectfully request this Court to grant judgment in their favor and against the Defendant Noble, compensatory damages, pre-

judgment and post judgment interest, costs, attorneys fees and any other remedy at law or in equity the Court may deem proper.

COUNT VI
CONVERSION
(NOBLE)

95. Plaintiff re-alleges and incorporates by reference paragraphs 1-94 of this Complaint.

96. Conversion is the deprivation of another's right in property without the owner's consent and without legal justification. Conversion is actionable even where the party converting the property has no intent to commit a wrong.

97. Defendant Noble exercised control and possession of the natural gas royalties owned by Plaintiff and the other Class Members because it received the proceeds of the sale of the gas.

98. Under Pennsylvania law, the royalties owned by Plaintiff and the other Class Members and held by Defendant Noble were and are the personal property of Plaintiff and the other Class Members.

99. Defendant Noble converted a portion of the gas royalties owned by Plaintiff and the other Class Members by deducting post production costs that were not deductible, as set forth in Counts I and IV herein, and/or by deducting post production costs that were excessive, unreasonable, or for services never provided, as set forth in Counts II and V herein.

100. The conversion claims in this Complaint are actionable by all of Defendant Noble's Pennsylvania royalty owners, regardless of the form of lease. The royalties of all Class Members were converted by Defendant Noble in the same ways irrespective of lease language.

101. Although the gist of the action doctrine generally precludes recovery in tort for conduct that breaches a contract, a plaintiff may bring an action for conversion when the plaintiff

has a property interest in the thing converted, even if that thing is also the subject of a contract. In Pennsylvania, an oil and gas royalty is a property interest.

102. As a direct and proximate result of Defendant Noble's acts of conversion, Plaintiff and the other Class Members were damaged in an amount to be proven at trial.

103. Although deliberate wrongdoing is not required for liability for conversion, Defendant Noble's conversion was deliberate, willful, intentional, and/or outrageous entitling Plaintiff and the other Class Members to an award of punitive damages.

WHEREFORE, Plaintiff and the other Class Members respectfully request this Court to grant judgment in their favor and against the Defendant Noble for conversion under this Count VI, compensatory damages, punitive damages, pre-judgment and post judgment interest, costs, attorneys fees and any other remedy at law or in equity the Court may deem proper.

CLASS ACTION ALLEGATIONS

104. Plaintiff re-alleges and incorporates by reference the allegations of paragraphs 1-103 of this Amended Complaint.

105. Plaintiff brings this action on behalf of itself and the following Plaintiff Class:

> Every person who is, or has been, a royalty owner under an oil and gas lease in which (1) the original Lessee named on the lease was Dominion Exploration and Production, Inc. or Dominion Transmission, Inc.; (2) the present Lessee is CNX Gas, L.L.C. and/or Noble Energy, Inc.; and (3) natural gas has been produced under the lease, with all such persons divided into subclasses by the state in which the leased premises are located.

106. The claims set forth herein are proper for certification as a class action under the provisions of Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure.

107. Over eighty oil and gas royalty cases have been certified as class actions under these rules, including two cases certified by this Court: *Pollock v. Energy Corp. of America*, No.

10-cv-1553 (W.D. Pa. Sept. 30, 2013) (Conti, C.J.); *Frederick v. Range Resources-Appalachia, LLC,* No. 08-cv-00288 (W.D. Pa. Oct. 13, 2010) (certifying settlement class) (McLaughlin, C.J.).

108. The members of the Plaintiff Class exceed 100 in number, making joinder of all class members impracticable. The exact number and identities of the members of the Plaintiff Class are currently unknown to Plaintiff, but are known to Defendants as reflected in its business records.

109. There are multiple common questions of law and fact because:

(i) All of the Class Leases are the same and or substantially the same as that lease entered into by the named Plaintiff with Dominion Exploration.

(ii) Dominion Exploration and Dominion Transmission engaged in the same or similar course of conduct in performing under Class Leases by deducting no post production costs from the royalties.

(iii) Consol Gas and Defendant CNX Gas as the successor lessees on the Class Leases, continued the same course of performance and conduct as Dominion Exploration and Dominion Transmission.

(iv) Defendants unilaterally and improperly began deducting post production costs from the royalties payable to the Class Members in November 2011 and January 2012, respectively, in the same or similar manner as they did with the named Plaintiff.

(v) As a result of the course of conduct in performing under the Class Leases originally established by Dominion Exploration and Dominion Transmission and continued by Consol Gas and the Defendants CNX Gas waived their right to deduct post production costs, are equitably stopped from deducting post production costs, and/or have reformed and/or modified the Class Leases by their course of conduct and course of performance as to disallow the deduction of post production costs from the royalties;

(vi) Even if it is determined that the Defendants were permitted to deduct post production costs under the Class Leases, the costs they deducted from each Class Member were unreasonable, excessive and/or for services that were not provided;

(vii) The acts of conversion committed by both Defendants as alleged above in Counts III and VI, were the same against all Class members;

(viii) The liability issues are common to each Class Member because the terms of the Class Leases are the same or substantially similar and Defendants' course of conduct in performing under the Class Leases was the same and/or substantially the same towards each Class Member; the Defendants' deductions of costs from each Class member were excessive, unreasonable, and/or for services not provided; and the Defendants' conduct in converting the Class Members royalties was the same or similar to each.

110. The claims of the Plaintiff are typical of the claims of all Class Members because:

(i) The Class Leases are the same or substantially the same in all material terms;

(ii) The course of conduct in performing under each Class Member's Lease originally established by Dominion Exploration and Dominion transmission and continued by Consol Gas and Defendant CNX Gas was the same or substantially the same in not deducting post production costs from the royalties;

(iii) Defendants' conduct in unilaterally and improperly deducting post production costs was and is the same or substantially the same under all Class Leases;

(iv) Defendants' conduct in deducting excessive, and/or unreasonable costs and/or in some cases costs for services not provided from each Class Member was the same, as was Defendants' conduct in committing their respective acts of conversion of each Class Members' royalties; and

(v) The damages of the named Plaintiff and the Class Members are substantially the same because all were underpaid royalties by the Defendants in the same manner.

111. Plaintiff will fairly and adequately assert and protect the interests of the Class because its claims are typical of the claims of the Class and its interests are aligned to the interests of the Class. Plaintiff's interest is coincidental and not antagonistic to those of the Class Members.

Plaintiff's claims are not subject to any unique defense, nor does any interest of Plaintiff conflict with the interests of any other Class Member.

112. The attorneys representing Plaintiff and the other Class Members have the experience and qualifications to adequately represent the interests of the Class and have the financial resources to assure that the interests of the Class will not be harmed.

113. The questions of law and fact common to the class predominate over any issues affecting individual Class Members because liability is subject to class wide proof.

114. Although each Class Member's damages will have to be calculated individually, the calculation is one of simple mathematics using the monthly royalty statements provided by Defendants and, under settled law, variances in the damages of individual class members do not preclude class certification.

115. Questions regarding the application of the statute of limitations do not preclude class certification where, as here, there are other common issues.

116. In Pennsylvania, a plaintiff need not show detrimental reliance for there to be a modification of a contract by course of performance.

117. Even if detrimental reliance were a requirement for modification of a contract by course of performance, the detrimental reliance of all Class Members is self-evident and can be proven on a class wide basis using common proof.

118. Plaintiffs and their counsel are aware of no other action in any court that asserts the claims asserted in this action.

119. This class action is superior to other available methods for the fair and efficient adjudication of the claims asserted herein because there are hundreds of members of the Plaintiff Class and repeated individual discovery and litigation of the common issues would be a needless

waste of judicial resources. The interest of Class Members in individually controlling the prosecution of separate actions does not outweigh the benefits of a class action as to those issues.

120. It is desirable to concentrate the litigation of these claims in one forum and the difficulties in management of this case as a class action are outweighed by the benefits a class action has in disposing of common issues of law and fact among such a large number of litigants.

121. The prosecution of this civil action by all Class Members individually in separate actions would create a risk of inconsistent or varying adjudications with respect to individual Class Members that would establish incompatible standards of conduct for Defendants, could be dispositive of interests of other Class Members not parties to the adjudications, or substantially impair or impede their ability to protect their interests. Further, Defendants have acted or refused to act on grounds generally applicable to the Plaintiff Class.

122. The expense of litigating individual actions renders individual actions cost prohibitive. The recovery to each Class Member justifies the expense and effort of administrating this action as a Class Action.

123. A class action is superior to all other methods for the fair and efficient adjudication of this controversy. The class is readily definable, and prosecution as a class action will eliminate the possibility of repetitious litigation while also providing redress for claims that may be too small to support the expenses of individual, complex litigation. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine the rights of all Class Members with judicial economy.

124. This forum is an appropriate forum because Plaintiff's oil and gas lease was entered into and recorded in the Western District in Westmoreland County, Pennsylvania and many of the

leases of the members of the proposed Plaintiff Class lease oil and gas rights to real property in the Western District.

WHEREFORE, Plaintiff requests that this action be certified as a class action under Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure.

JURY TRIAL DEMANDED

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 11, 2016, a copy of the foregoing was served via the Court's CM/ECF system, thereby causing a copy to be served on all parties listed in the Court's CM/ECF registry for this case.

/s/ David A. McGowan
David A. McGowan, Esquire