

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Jay Scott Emler, Chairman
Shari Feist Albrecht
Pat Apple

In the Matter of the Complaint of Atmos)	Docket No. 17-CONS-3509-CMSC
Energy Against Endeavor Energy Resources,)	
L.P. Relating to the Stegmeir #23-1 Well)	CONSERVATION DIVISION
Located in the SW/4 SW/4 SW/4 of Section 23,)	
Township 33 South, Range 17 East, Labette)	License No. 31769
County, Kansas.)	

**REPLY TO ATMOS ENERGY'S RESPONSE TO
ENDEAVOR'S MOTION TO DISMISS**

COMES NOW Endeavor Energy Resources, LP ("Endeavor") and in further support of its Motion to Dismiss the Complaint filed by Atmos Energy Corporation ("Atmos") and in reply to Atmos Energy's Response to Endeavor's Motion to Dismiss in the above-captioned matter, states the following:

1. In its response, Atmos attempts, to no avail, to alter the very nature of its Complaint in order to fit a square peg into a round hole. Atmos' Complaint initially sought declaratory and injunctive relief and sought an order that the Stegmeir 23-1 well be tested. Quite plainly, Atmos requested "an order from the KCC finding that Endeavor *has no right to produce gas* from the Well," and alleged that pursuant to K.S.A. 55-1210(a) that the gas being produced from the Stegmeir well "is *property of Atmos Energy*." *See Atmos' Complaint, at ¶ 10* (emphasis added). As basis for its request to test the Stegmeir 23-1 well, Atmos cited K.S.A. 55-1210(c)(2), and requested that it be allowed to take such samples "as may be reasonable to conduct tests *to determine the ownership* of the gas," and "to determine whether the gas is injected gas." *Id. at ¶ 14* (emphasis added). There is no mention whatsoever of public safety, pollution, or integrity of the plug in the Stegmeir 23-1 well in the Complaint. There can be little question that by its own

words Atmos filed the Complaint in this proceeding to obtain a determination of property rights as to gas produced from the Stegmeir 23-1 well, to impact Endeavor's rights in such gas, and to the lease underlying the Stegmeir 23-1 well.

2. As Staff recognized, the Commission does not have jurisdiction or authority over the matters raised in Atmos' Complaint, as they relate to disputes over property rights. *Staff's Response to Endeavor's Motion to Dismiss*. The legislature did not delegate the Commission such rights when enacting K.S.A. 55-1210, as Atmos inadvertently acknowledges in its own response. *See Atmos' Reply to Staff's Response to Endeavor's Motion to Dismiss*, ¶ 40.

3. Recognizing its initial Complaint was doomed, Atmos has now completely shifted course. In its response to Endeavor's Motion to Dismiss, Atmos now claims that the Commission has jurisdiction because the purpose of its Complaint was to address "the risk of pollution and/or dangerous gas leaks" from the facility. *See Atmos' Response to Endeavor's Motion to Dismiss*, p. 4-5, ¶ 25. That is a transparent shell game. There is no mention of the threat of pollution or dangerous gas leaks of any kind whatsoever, nor is there any mention of any public health and safety interests in the entire body of the Complaint. Atmos' allusions of pollution and safety concerns are also facially unfounded in its own responsive pleadings, which are devoid of any factual allegation of for the basis of these pollution and safety concerns.

4. Recognizing its Complaint plainly does not fall within the Commission's jurisdiction, Atmos now has asked for leave to amend its Complaint to address these shortcomings.

5. Atmos should not be granted leave because there is no connection between the relief sought in the Complaint and the proper jurisdiction or authority of the Commission. There has been no evidence or contention of concerns of pollution or public safety related to this matter. The Complaint should not be twisted in such a manner so as to provide jurisdiction to a matter where

jurisdiction is so clearly and plainly lacking on the face of the Complaint. As such, the Complaint should be dismissed.

6. In addition, Endeavor believes it is important to address certain misstatements in Atmos' response. Specifically, Atmos' contention that the acreage on which the Stegmeir lease and 23-1 well sit was automatically brought within the certified boundaries of the Liberty Facility when Atmos acquired a top lease on such acreage. That contention is incorrect.

7. Endeavor holds an oil and gas lease to such acreage, which predates by a number of years the certification of the Liberty Facility, giving Endeavor the right to produce from all formations within the leased acreage. Contrary to Atmos' position, nothing in the permit for the Liberty Facility states that the newly-leased acreage would be automatically added to the Liberty Facility upon acquisition. Indeed, such an interpretation is contrary to the applicable regulations. K.A.R. 82-3-1003(b)(10) requires an injector to confirm that it "holds the necessary and sufficient property rights" for construction of the facility in the proposed lands. Atmos does not have present rights in the acreage. It has a top lease. Endeavor's lease remains valid giving it the present right to explore in all formations. Atmos cannot destroy those rights by simply obtaining a top lease.

8. Contrary to Atmos' position, it seems quite clear that, in order to expand the aerial boundaries of the field to incorporate the newly-leased area, Atmos would be required to file for an amendment to the existing permit pursuant to K.A.R. 82-3-1003(k)(1)(B), provide notice to the currently-effected parties, including Endeavor, and if necessary obtain from such parties the current property rights to expand the facility by way of private contract or by eminent domain. *See* K.A.R. 82-3-1003.

9. Notwithstanding the issues discussed above in paragraphs 6–8, it remains quite clear that the Commission does not have jurisdiction over the issues addressed in the Complaint, and per Staff’s recommendation, the Complaint should be dismissed.

10. Despite the fact that it absolutely disagrees with many of the positions taken and representations made by Atmos in its briefing in this proceeding, Endeavor will not address those disagreements any further here. The Commission lacks jurisdiction to address the issues raised in this Complaint, and it should therefore be dismissed. It would not be appropriate to allow Atmos to file a completely new Complaint that bears no resemblance whatsoever to the original Complaint under the guise of an “amendment” of its pleadings. Indeed, Atmos has not even provided the proposed amended Complaint that it would file to correct the numerous and egregious problems with its filed Complaint. Perhaps Atmos would be better served to pursue the nearly identical petition it filed in the Labette County District Court—the proper jurisdiction for this matter. As such, this Complaint should be dismissed for lack of jurisdiction, the requested leave to amend should be denied, and Endeavor should be awarded its costs and attorneys’ fees as required by statute.

Respectfully submitted,

MORRIS, LAING, EVANS, BROCK
& KENNEDY, CHARTERED

By: 

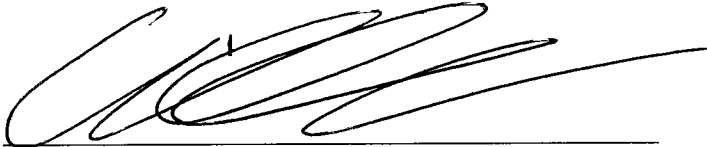
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VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

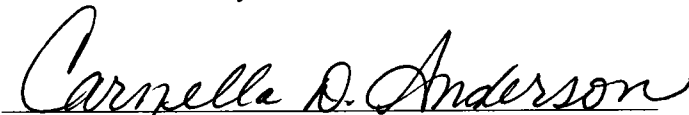
Will B. Wohlford, being of lawful age and being first duly sworn upon his oath, deposes and says:

That he is the attorney for Endeavor Energy Resources, L.P.; he has read the above and forgoing Reply to Atmos Energy's Response to Endeavor's Motion to Dismiss, is familiar with the contents and that the statements made therein are true and correct to the best of his knowledge and belief.



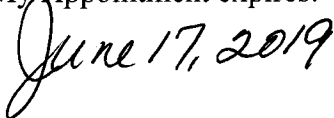
Will B. Wohlford

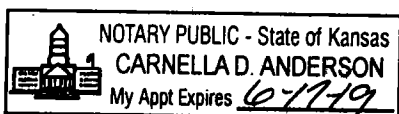
SUBSCRIBED AND SWORN to before me this 31st day of March, 2017.



Notary Public

My Appointment expires:





CERTIFICATE OF SERVICE

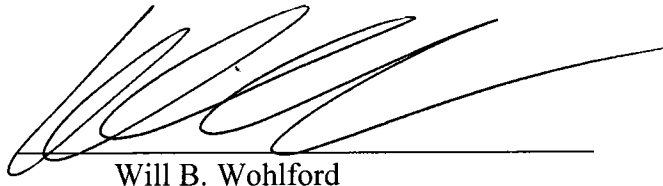
I, Jonathan A. Schlatter, hereby certify that on this 31st day of March, 2017, I caused the original of the foregoing Reply to Atmos Energy's Response to Endeavor's Motion to Dismiss to be electronically filed with the Conservation Division of the State Corporation Commission of the State of Kansas, and caused true and correct copies of the same to be transmitted by email and USPS, first class, postage prepaid, and properly addressed to the following parties:

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