

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Complaint of Atmos Energy)	Docket No. 17-CONS-3509-CMSC
Against Endeavor Energy Resources, L.P.)	
Relating to the Stigmeir #23-1 Well Located in)	CONSERVATION DIVISION
the SW/4 SW/4 SW4 of Section 23, Township 33)	Atmos Energy Corporation License No. 31769
South, Range 17 East, Labette County, Kansas.)	Endeavor Resources, L.P. License No. 32887

ATMOS ENERGY'S REPLY TO ENDEAVOR'S REPLY

COMES NOW Atmos Energy Corporation ("Atmos Energy") and for its reply to Endeavor Energy Resources, L.P.'s ("Endeavor") Reply, states as follows:

1. Whatever merit there may be for Endeavor's other complaints and assertions, and Atmos Energy does not admit that there is any merit, the Kansas Corporation Commission ("KCC") herein clearly has jurisdiction over this matter to determine whether the SW/4 SW/4 SW/4 of Section 23, Township 33 South, Range 17 East ("Land"), is included within the Liberty Gas Storage Facility ("Liberty Facility") permit that was approved by the KCC. For that reason, alone, Atmos Energy's complaint cannot be dismissed.

2. As noted previously, Atmos Energy did not word its original complaint to accurately state the relief being sought. However, whether or not the Commission finds that the specific grounds for relief are within the KCC's jurisdiction, or whether Atmos Energy's Response should be considered an amendment to the original complaint, the original complaint cannot feasibly be construed to not include a request to determine that the Land is within the KCC permitted boundaries of the Liberty Facility.

3. The entire basis of Atmos Energy's complaint from the very beginning has been that Endeavor is producing injected gas from the Liberty Facility. That was the implicit underlying assertion central to the entire complaint. Endeavor denies that the Land is located with the KCC

permitted boundaries of the Liberty Facility. Since it is the KCC and not a court of law that is required by statute to determine the boundaries of gas storage fields in Kansas owned by natural gas distribution companies like Atmos Energy, that determination is squarely within the KCC's jurisdictional powers and is clearly in dispute between Atmos Energy and Endeavor and should be resolved as part of this complaint proceeding. K.S.A. 74-623; K.S.A. 55-1,115.

4. Moreover, Endeavor also argues that Atmos Energy gas storage lease of the Land in the Liberty Facility is a "top lease" that is subordinate to Endeavor's own lease.

5. This is a clear misstatement of the law. Endeavor's lease gives it the right to explore for and produce native gas, not injected storage gas. *See*, K.S.A. 55-1210(a) ("all natural gas which has been previously reduced to possession, and which is subsequently injected into underground storage fields, sands, reservoirs and facilities ... shall at all times be the property of the injector"). Moreover, the pore space used for the Liberty Facility is owned by the landowners, who executed a lease for that pore space to Atmos Energy. *See Mound City Brick & Gas Co. v. Goodspeed Gas & Oil Co.*, 83 Kan. 136, 109 P. 1002, 1004 (1910) ("it has been determined that, although oil and gas in place are part of the realty, the *stratum* in which that are found is capable of severance") (emphasis added); *See also Cent. Natural Res., Inc. v. Davis Operating Co.*, 288 Kan. 234, 242 (2009). Endeavor's lease is a lease to explore and produce the minerals *found within that stratum*, but the *stratum itself* remains the property of the landowners, who have leased the stratum comprising a portion of the Liberty Facility to Atmos Energy. Endeavor has no right to produce injected gas from that formation because any gas produced from that formation is not subject to the same rule of capture as native gas. *N. Natural Gas Co. v. ONEOK Field Servs. Co.*, 296 Kan. 906, 911 (2013). While these are issues that are more appropriate for a court of law to decide, Endeavor's arguments on these

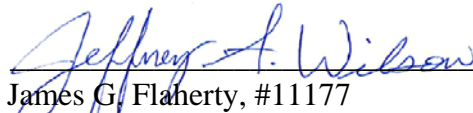
issues as set forth in its reply are entirely without merit. However, as mentioned above, in order for a court to make a determination of these issues, the KCC, either in this complaint case, or in the alternative, a separate filing with the KCC as discussed below, must first determine whether the Land is located within the KCC permitted boundaries of the Liberty Facility.

6. Endeavor also complains that Atmos Energy should not be given an opportunity to amend its original complaint because "there is no connection between the relief sought in the Complaint and the proper jurisdiction or authority of the Commission." **Endeavor Reply, ¶5.** Notably, Endeavor cites no law or regulation for this supposed standard for the amendment of pleadings before the Commission. As stated in Atmos Energy's Response, K.A.R. 82-1-220(c) states any complainant whose complaint is dismissed for failing to establish a prima facie basis for relief *shall* be granted additional time in which to amend and correct said complaint. Dismissing this complaint without allowing for an amendment is a waste of the Commission's, Atmos Energy's, and, ironically, Endeavor's time. The Commission should accept Atmos Energy's Response as an amendment or grant Atmos Energy leave to file a formal amended complaint in the interests of efficiency and justice.

7. It is quite clear that none of Endeavor's complaints and allegations have any merit in the face of Atmos Energy's proposed amendments to its complaint. Moreover, even considering the original complaint, alone, the KCC has jurisdiction, at a minimum, to establish whether the Land is located within the KCC permitted boundaries of the Liberty Facility.

8. In the alternative, should the Commission find that Atmos Energy's gas storage permit as written does not include the subject quarter section, something which Atmos Energy argues is not the case, Atmos Energy requests that it be allowed to amend its permit to include said quarter section.

The KCC obviously concluded at the time it issued Atmos Energy's permit that the Land should be included in the boundaries of the Liberty Facility. The KCC specifically conditioned said permit on Atmos Energy acquiring the gas storage rights to the Land and including in its annual compliance filings a revised map showing the boundaries when said storage rights to the Land were acquired. Accordingly, there should be no question that the Land is being used as part of the Liberty Facility, otherwise the KCC would not have included the statements and attachments that it did to the permit. Since the KCC already made that determination in the permit, if the KCC requires Atmos Energy to make some additional filing to confirm that the Land is included in the permitted boundaries established by the KCC, then the utility should be allowed to do so either as part of this complaint case, or in a separate filing.

A handwritten signature in blue ink, reading "Jeffrey A. Wilson", is positioned above a horizontal line.

James G. Flaherty, #11177

Jeffrey A. Wilson, #26527

ANDERSON & BYRD, LLP

216 S. Hickory • P. O. Box 17

Ottawa, Kansas 66067

(785) 242-1234, telephone

(785) 242-1279, facsimile

jflaherty@andersonbyrd.com

jwilson@andersonbyrd.com


Attorneys for Atmos Energy Corporation

VERIFICATION

STATE OF KANSAS)
)ss:
COUNTY OF FRANKLIN)

Jeffrey A. Wilson, of lawful age, being first duly sworn on oath, states:

That he is the attorney for Atmos Energy, named in the foregoing Reply to Endeavor's Reply, and is duly authorized to make this affidavit; that he has read the foregoing Reply, and knows the contents thereof; and that the facts set forth therein are true and correct to the best of his information and belief.



Jeffrey A. Wilson

SUBSCRIBED AND SWORN to before me this 18th day of April, 2017.





Notary Public

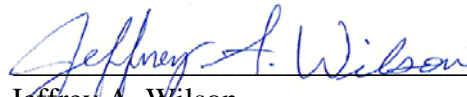
Appointment/Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was sent via U.S. Mail, postage prepaid, hand-delivery, or electronically, this 18th day of April, 2017, addressed to:

Jonathan B. Schlatter
Morris, Laing, Evans, Brock & Kennedy, Chartered
300 N. Mead, Suite 200
Wichita, Kansas 67202
jschlatter@morrislaing.com

Joshua D. Wright
Litigation Counsel
Kansas Corporation Commission
Conservation Division
266 N. Main Street, Suite 220
Wichita, Kansas 67202-1513
j.wright@kcc.ks.gov



Jeffrey A. Wilson