

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 Stegmier #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 STAFF'S
RESPONSE TO ENDEAVOR'S MOTION TO DISMISS**

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

1. Staff agrees with Endeavor the Kansas Corporation Commission ("Commission") lacks jurisdiction over this complaint in that the Commission does have the jurisdiction to "determine a party's property rights as to mineral produced from subsurface formations." Staff Response, ¶7.
2. As conceded and elaborated upon in Atmos Energy's Response to Endeavor's motion, Atmos Energy agrees the Commission is not the proper venue to litigate and determine property rights. However, that is not what Atmos Energy is requesting.
3. Atmos Energy obtained a lease for the gas storage rights underlying the Stegmier 23-1 well on November 21, 2011. See the attached Exhibit A.

TESTING OF THE WELL

4. To the extent Staff is contending the Commission cannot order the testing of a well under *any* circumstances, Atmos Energy believes this contention to be false.
5. The Commission is granted broad authority to regulate the establishment and operation of gas storage fields and to *prevent* and cleanup any pollution of the soils or waters of the state in connection therewith. K.S.A. 74-623(a)(2) (emphasis added).
6. The limit of said authority is not exactly defined, though it expressly includes the

ability to restrict the methods and materials used in plug back operations. *See* K.A.R. 82-3-311.

7. Atmos Energy submits the testing of gas wells in an effort to *prevent* pollution of the soils and water of the state are well within the Commission's power.

PROPERTY RIGHTS ARE NOT AT STAKE IN THIS ADMINISTRATIVE PROCEEDING

8. As elaborated on in Atmos Energy's Response to Endeavor's motion, Atmos is not asking for a determination of property rights in this administrative action.

9. All Atmos Energy is seeking is for the Commission to (1) make a determination that the Squirrel sand formation underlying the subject property is part of the Liberty Facility, (2) order that Endeavor plug back the Squirrel formation using a permanent cement plug, (3) order that the Stegmier 23-1 well be tested to determine if it is or has been producing gas from the Liberty Facility, and (4) enjoin Endeavor from further production until the risk of pollution and/or dangerous gas leaks can be ascertained and dealt with. None of the relief requested requires a determination of property rights or for the litigation of matters left for the District Court alone.

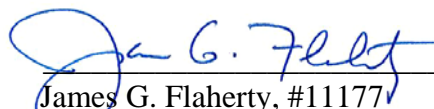
10. It is clear the Commission has *expressly* granted authority over two of the requested items of relief and the others are included in the Commission's broad authority to regulate gas storage field and potential pollution associated therewith. K.S.A. 74-623(a)(2) directs the Commission that it is responsible for the prevention and cleanup of any pollution associated with gas storage fields and can, therefore, take any reasonable action to carry out that directive, including the testing of a gas well drilled through the Liberty Facility and enjoining production from a well. K.A.R. 82-3-311 expressly gives the Commission the authority to order the methods and materials used in plugging back any wells drilled through the Liberty Facility. Finally, K.S.A. 55-1,115 expressly gives the Commission the authority to determine the Liberty Facility Boundaries. All of the requested relief is squarely in the Commission's power to grant.

THE ORIGINAL COMPLAINT AND K.A.R. 82-1-220

11. As conceded in Atmos Energy Response to Endeavor's motion, Atmos' initial complaint may have been worded inadequately in that it seemed, on its face, to call for the litigation and determination of property rights before the Commission. That is not what Atmos Energy requests.

12. In any event, K.A.R. 82-1-220(c) provides that any complaint that fails to establish a prima facie case for Commission action, as Endeavor and Staff contend here, shall be dismissed and the complainant given additional time in which to correct and amend the complaint to establish such a prima facie case.

13. Moreover, K.A.R. 82-1-220(d) provides that a complainant, with the leave of the Commission, may freely file an amended complaint. To the extent the Commission believes an amended complaint would be required to establish a prima facie case, Atmos Energy would request that leave be granted to so amend the complaint and for the Commission to consider the above paragraph 8 as the amended relief sought by Atmos Energy.



James G. Flaherty, #111771

Jeffrey A. Wilson, #26527

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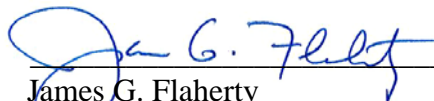
Attorneys for Atmos Energy Corporation

VERIFICATION

STATE OF KANSAS)
)ss:
COUNTY OF FRANKLIN)

James G. Flaherty, of lawful age, being first duly sworn on oath, states:

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



James G. Flaherty

SUBSCRIBED AND SWORN to before me this 28th day of March, 2017.





Notary Public

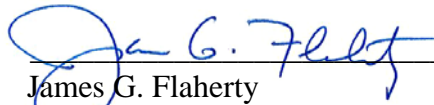
Appointment/Commission Expires:

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 28th day of March, 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



James G. Flaherty

ORIGINAL COMPARED WITH RECORD

549731

STATE OF KANSAS, LABETTE COUNTY
THIS INSTRUMENT WAS FILED FOR RECORD
AND DULY RECORDED IN BOOK

114 OF *114* AT PAGE *141*

NOV 19 2012 2:10

Donna L. Stuckland
REGISTER OF DEEDS

FEES *36.00*

UNDERGROUND STORAGE LEASE AGREEMENT

THIS UNDERGROUND STORAGE LEASE AGREEMENT ("Agreement") made and entered into this *21st* day of November, 2011 ("Effective Date") by and between Earl Stegmier; hereinafter referred to collectively and in the singular as "Lessor" and Atmos Energy Corporation; hereinafter referred to as "Lessee".

WHEREAS, Lessor is the owner of 240 acres, more or less, described in Exhibit "A" attached hereto and made a part hereof ("Land"), which Land is located in an area known as the Liberty Storage Field ("Gas Storage Field"), Labette County, Kansas, and

WHEREAS, Lessee desires to store natural gas in one or more natural reservoirs (collectively, the "Storage Reservoir") underneath the Land.

NOW, THEREFORE

1. Lessor, for and in consideration of the sum of \$ 1,800.00 cash in hand paid and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, hereby grants, demises, leases and lets exclusively unto the Lessee the Land for the purpose of injecting, storing, and withdrawing natural gas in and from the Storage Reservoir for the term of one (1) year from the date hereof and as long thereafter as the annual rentals provided for herein are paid, with such rights of way, easements, privileges and rights upon and under the Lands as may be necessary or desirable for the underground storing of natural gas, including without limitation the following:

(a) The full and exclusive right of injecting and removing gas into and out of the Storage Reservoir by pumping or otherwise introducing same through any well or wells which are now located or which Lessee may in the future develop and locate on the Land and/or on tracts adjacent to the Land to store gas in the Storage Reservoir and retain possession, ownership and title of gas so stored as personal property;

(b) To right to do and perform such other acts and things as may be necessary, usual or convenient for any and all of the foregoing purposes or as a part of and in connection with the storage of gas in the Storage Reservoir alone or conjointly with other lands in the vicinity thereof.

2. The Lessee shall pay to Lessor annually the sum of:

(a) \$ 7.65 per acre commencing one (1) year from date hereof as rental for the storage rights granted to the Lessee by Section 1 hereof, and each year thereafter, the storage rental shall be increased by \$ 0.15 per acre per annum, commencing with the anniversary of the date hereof, and

3. Lessee shall pay Lessor for damage caused by its operations to growing crops, fences and/or timber on the Land. Said damage, if not mutually agreed upon, shall be ascertained and determined by three disinterested persons, one to be appointed by Lessor, one by Lessee and a third by the two parties aforesaid and the written award of such three persons, or any two of them, shall be final and conclusive.

4. All payments provided for by Section 2 and 3 shall be made by currency, draft, or check mailed directly to Lessor at the address shown in Section 13.

5. Notwithstanding any other actual or constructive knowledge or notice to Lessee, its successors or assigns, no change or divisions in the ownership of the Land or any interest therein, howsoever effected, shall be binding upon Lessee unless and until thirty (30) days after there has been furnished to Lessee, at its address listed below, appropriate documents to establish the validity of such change.

6. Failure of the Lessee to make annual payments provided for by Section 2 hereof, or to perform any of its other obligations hereunder shall not invalidate the rights granted by this Agreement unless and until Lessee fails to make such payment or perform such obligation within thirty (30) days after having received a written request from the Lessor and if such obligation requires more than thirty (30) days to complete such cure period will be extended for a reasonable time provided Lessee commences to fulfill the obligation with the initial thirty (30) day period. In such request, Lessor shall set forth a description of the Land, the due date of the rental and the amount thereof or if not a payment default, a detailed description of the obligation breached by Lessee and the date of this Agreement.

7. If the Lessor owns a less interest in the Land or the Storage Reservoir than the entire and undivided fee simple estate therein, then the payments herein provided shall be paid to the Lessor only in the proportion which the Lessor's interest bears to the whole and undivided fee. If the Land shall hereafter be owned in severalty or in separate tract, the premises, nevertheless, shall be considered as one leased tract and all payments hereunder shall be treated as an entirety and shall be divided among and paid to such separate owners in the proportion that the acreage owned by each such separate owner bears to the entire acreage subject to this Agreement. It is hereby agreed that, in the event this lease is assigned as to a part or as to parts of the Land and the holder or owner of any such part or parts shall fail or make default in the payment of the proportionate part of the rent due from him or them, such default shall not operate to defeat or affect this Agreement in so far as it covers a part or part of the Land upon which the said Lessee or any assignee hereof shall make due payment of said rentals.

8. Neither Lessor, nor any person holding any interest in the Land under, by or through Lessor shall have the right to produce, remove, take, hold, use or otherwise possess or dispose of gas stored by Lessee or its successors or assigns, in the Storage Reservoir. Neither Lessor nor any person holding under, by or through Lessor shall have the right to drill on or below the surface of the Land (except as specifically hereinafter provided).

Nothing contained in this Agreement shall prevent Lessor, or those holding any interest in the Land under Lessor from making exploration and development of the Land for oil, gas or other minerals, which lie or are supposed to lie at a depth greater than the Storage Reservoir; provided, however, no drilling shall commence unless and until Lessee is first notified in writing of such operations, and all proper and necessary precautions in Lessee's opinion are taken to prevent the escape of gas stored by Lessee, or its successors or assigns, and to prevent any damage to the Storage Reservoir, its strata or formations.

In addition to the foregoing, it is understood and agreed that no well shall be drilled through said Storage Reservoir unless and until such drilling operations are in complete compliance with the Underground Natural Gas Storage and Conservation Act of 1977, as amended and the rules and regulations promulgated thereunder.

9. Lessor hereby warrants and agrees to defend the title of the interest leased herein, subject to such easements, servitudes, leases and other encumbrances that may be of record in the official records of the County wherein the Land is located at the time of the execution hereof. Lessor agrees that Lessee shall have the right at any time to redeem for the Lessor, by payment, any mortgage, taxes, or other liens on the Land, in the event of default of payment by the Lessor, and shall be subrogated to the rights of the holder thereof; and Lessor agrees that any such payments made by the Lessee for the Lessor shall be deducted from any amounts of money which may become due the Lessor under the terms of this Agreement.

10. Lessee shall have the right to acquire leases or conveyances from others owning or claiming to own interest in the Land and Storage Reservoir which may be adverse to the rights of Lessor herein. Lessee shall also have the right to cause others owning, or claiming an interest in the Land and Storage Reservoir, or the mineral rights associated therewith to join in the execution of this Agreement. Lessee shall have the right to accept co-Lessor agreements ratifying, confirming and adopting this Agreement in its entirety from any such person owning any interest in the Land and Storage Reservoir or the mineral rights associated therewith ratifying, confirming and adopting this Agreement in its entirety.

11. Lessee may release and surrender the rights granted herein at any time by written instrument duly recorded in the official records of the County in which the Land is located, and in the event of such release and surrender, the Lessee shall have the right to remove its equipment and other facilities from the Land either before or within ninety (90) days after such release and surrender is made as herein provided. Upon termination as provided herein, all rights and interests granted to Lessee herein shall terminate.

In the event this Agreement is terminated at any time for any reason whatsoever, except the filing of record by Lessee of a release as provided herein, the Lessee, by making payment of any sums then due or owing hereunder and by continuing to tender or pay annually the sums provided herein, shall after the date of such termination have the right to remove all gas stored in and under the Land, and the right to own, maintain and operate all its pipelines, wells and other facilities for such purpose during the time reasonably necessary and convenient to Lessee to accomplish the removal of such gas, and on conclusion of such operations the right to remove all its equipment and other property from the said Land as hereinabove provided.

12. The provisions hereof shall run with the Land and extend to and be binding upon the heirs, assigns, executors, administrators, and successors of both parties hereto. This Agreement constitutes the entire agreement between the parties hereto, and no verbal warranties, representations or promises have been made or relied upon by Lessor or Lessee supplementing, modifying, or as an inducement to this Agreement. Either party may assign, transfer, and convey, either in whole or in part, its ownership or interest in the Land, rights, privileges, and property covered by this Agreement.

13. Any notices or requests herein requested or permitted shall be deemed sufficient as to delivery if given in writing, deposited in the United States mails and addressed to the other party hereto as follows:

Lessor: Earl Stegmier
8073 Elk Road
Edna, Kansas 67342

Lessee: Atmos Energy Corporation
Attention: Compliance Manager
25090 W. 110th Terrace
Olathe, Kansas 66061

With a copy to:

Atmos Energy Corporation
Attention: Contract Administration
P.O. Box 650205
Dallas, Texas 75265-0205

14. All covenants whether expressed or implied by this agreement shall be subject to all federal and state laws and to all executive orders, rules or regulations of state and federal authorities. The rights created by this agreement shall not be terminated in whole or in part, nor Lessee held liable for any failure to perform hereunder, if such failure is due to or is a result of any such law, order, rule or regulation.

15. Lessor and Lessee will execute a memorandum of lease and record it in the Real Property Records of the County in which the Land is located, or in the alternative, record the entire Lease itself.

16. The legal relationship created under this Agreement is one of lessor and lessee, and does not create a joint venture or partnership.

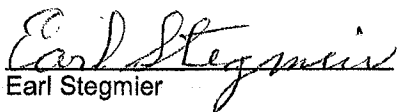
17. This Agreement will be governed by the laws of the State where the Land is located.

18. Invalidity or unenforceability of one or more provisions of this Agreement shall not affect any other provision of this Agreement.

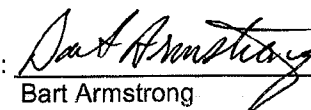
This Agreement is entered into as of the Effective Date.

LESSOR:

LESSEE:


Earl Stegmier

Atmos Energy Corporation

By: 
Bart Armstrong
Vice President - Operations

INDIVIDUAL ACKNOWLEDGMENT

STATE OF KANSAS §
COUNTY OF MONTGOMERY §

The foregoing instrument was acknowledged before me this 15th day of NOVEMBER, A.D., 2011, by EARL STEGMIER.

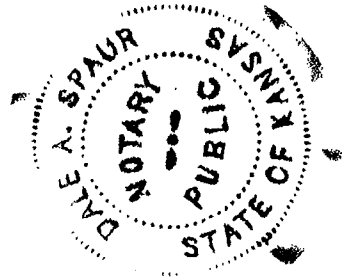
WITNESS MY HAND AND OFFICIAL SEAL.

Dale A. Spaur
DALE A. SPAUR

NOTARY PUBLIC

My Commission Expires:

AUGUST 1, 2015



ACKNOWLEDGMENT BY CORPORATION

STATE OF KANSAS §
COUNTY OF JOHNSON §

The foregoing instrument was acknowledged before me this 21st day of NOVEMBER, A.D., 2011, by Bart Armstrong, known to me to be the Vice President - Operations of Atmos Energy Corporation.

WITNESS MY HAND AND OFFICIAL SEAL.

Dale A. Spaur
DALE A. SPAUR
NOTARY PUBLIC

My Commission Expires:

AUGUST 1, 2015

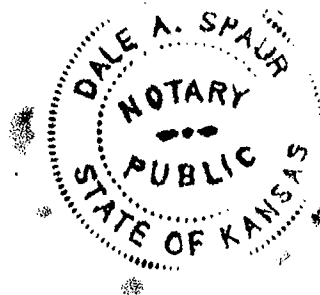


Exhibit "A"

✓ Southwest Quarter (SW/4) of Section 23, Township 33, Range 17, Labette County, Kansas

And

South One-half of the Northwest Quarter (S/2 NW/4) of Section 23, Township 33, Range 17, Labette County, Kansas

It is intended to include in the foregoing description all lands and interest therein contiguous to or appurtenant to the above lands owned or claimed by the Lessor, regardless of any omissions or irregularities in the foregoing description.

FIRST AMENDMENT TO UNDERGROUND STORAGE LEASE AGREEMENT

THIS FIRST AMENDMENT TO UNDERGROUND STORAGE LEASE AGREEMENT ("Amendment") is made and entered into as of the 19th day of April, 2012, by and between EARL STEGMIER, as Lessor, and ATMOS ENERGY CORPORATION, a Texas and Virginia corporation, as Lessee.

WITNESSETH:

WHEREAS, on or about November 21, 2011, Lessor and Lessee entered into that certain Underground Storage Lease Agreement ("Lease") pursuant to which Lessee leased from Lessor 240 acres, more or less, described in Exhibit "A" attached hereto and made a part hereof ("Land") in an area known as the Liberty Storage Field ("Gas Storage Field"), in Labette County, Kansas, upon the terms and conditions more particularly stated in the Lease; and

WHEREAS, Lessee and Lessor desire to modify certain terms and provisions of the Lease as hereinafter set forth.

NOW, THEREFORE, in consideration of the sum of \$1.00 and other good and valuable consideration, Lessor and Lessee hereby amend and modify the Lease as follows:

1. Item 2 is hereby deleted in its entirety and the following is substituted therefor:

"2. The Lessee shall pay to Lessor on the anniversary of the date of the Lease the sum of \$201.21 as rental for the time period from November 21, 2012 through and including December 31, 2012, and thereafter, on January 1, 2013, the sum of \$7.65 per acre as rental for the storage rights granted to the Lessee by Section 1 hereof. Annually thereafter, commencing on January 1, 2014, the storage rental shall be increased by \$0.15 per acre per annum, with the rental payments hereunder being due and payable on January 1st of each subsequent year, until such time as the Lease is terminated."

2. Effective Date of Amendment. The terms and provisions of this First Amendment to Underground Storage Lease Agreement, and the modifications to the Lease hereby made, shall become effective upon the signing of this Amendment. Except as herein modified, all other terms and provisions of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, Lessor and Lessee have executed this First Amendment to Underground Storage Lease Agreement as of the date first written above.

LESSOR:

LESSEE:

By: Earl Stegmier
Earl Stegmier

ATMOS ENERGY CORPORATION

By: Bart Armstrong
Bart Armstrong, Vice President - Operations

4-19-12

INDIVIDUAL ACKNOWLEDGMENT

STATE OF Kansas §

COUNTY OF Labeite §

The foregoing instrument was acknowledged before me this 19th day of April, A.D., 20 12,
by Earl Stegmier.

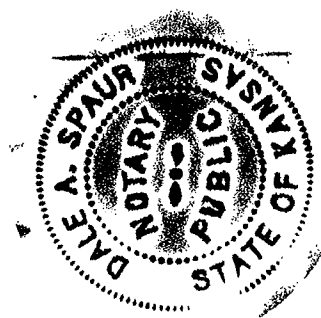
WITNESS MY HAND AND OFFICIAL SEAL.

Dale A. Spaur
DALE A. SPAUR

NOTARY PUBLIC

My Commission Expires:

August 1, 2015



ACKNOWLEDGMENT BY CORPORATION

STATE OF KANSAS §

COUNTY OF JOHNSON §

The foregoing instrument was acknowledged before me this 23rd day of April, A.D., 20 12,
by Bart Armstrong, known to me to be the Vice President – Operations of Atmos Energy Corporation.

WITNESS MY HAND AND OFFICIAL SEAL.

Dale A. Spaur
DALE A. SPAUR
NOTARY PUBLIC

My Commission Expires:

August 1, 2015

