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Client/Matter: Town of Dish v. Atmos Energy Corp. et al

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I.

1. Discovery is intended to be conducted under Level 3 of Rule 190.1 of the Texas Rules of Civil Procedure.

II.**PARTIES**

2. Plaintiff, The Town of DISH, Texas is a Type C general law municipality located in Denton County, Texas.

3. Defendant, ATMOS ENERGY CORPORATION, is a corporation existing under the laws of the state of Texas and doing business in the state of Texas, with an agent for service in Texas, to-wit: Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

4. Defendant, CROSSTEX NORTH TEXAS GATHERING, L.P., is a limited partnership existing under the laws of Texas and doing business in the state of Texas, with an agent for service in Texas, to-wit: C.T. Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201-0000.

5. Defendant, ENBRIDGE GATHERING (NORTH TEXAS), L.P., is a limited partnership existing under the laws of the state of Texas and doing business in the state of Texas, with an agent for service in Texas, to-wit: C.T. Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201-0000.

6. Defendant, ENERGY TRANSFER FUEL, L.P., is a limited partnership existing under the laws of the state of Delaware and doing business in the state of Texas, with an agent for service in Texas, to-wit: C.T. Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201-0000.

7. Defendant, TEXAS MIDSTREAM GAS SERVICES, L.L.C., is a limited liability company existing under the laws of the state of Oklahoma and doing business in the state of Texas, with an agent for service in Texas, to-wit: C.T. Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201-0000.

8. Defendant, ENTERPRISE TEXAS PIPELINE, L.L.C., is a limited liability company existing under the laws of the state of Texas and doing business in the state of Texas, with an agent for service in Texas, to-wit: C.T. Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201-0000.

III.

JURISDICTION and VENUE

8. Both jurisdiction and venue are proper in Denton County, Texas pursuant to the Texas Civil Practice & Remedies Code. Venue is proper because all or a substantial part of the events or omissions giving rise to the claim occurred in Denton County. *See* Tex. Civ. Prac. & Rem. Code §15.002(a)(1). Further, venue is proper because all or part of the property giving rise to this claim for damages is located in Denton County, Texas. *See* Tex. Civ. Prac. & Rem. Code §15.011.

9. This Court has jurisdiction over the controversy because the damages are within the jurisdictional limits of the Court and there exists personal jurisdiction because Defendant's acts constitute doing business in this state. *See* Tex. Civ. Prac. & Rem. Code §17.042.

IV.

NO BASIS FOR REMOVAL

10. There is no basis for removal of this case to federal court. There is no federal question at issue pursuant to 28 U.S.C. §1441(b). There is no total diversity of citizenship pursuant to 28 U.S.C. §1441 and 28 U.S.C. §1332, because one or more of the Defendants is a citizen of the state of Texas. *See* 28 U.S.C. §1441(b) and 28 U.S.C. §1332(c). Plaintiff is not asserting a claim at anytime against any Defendant who was acting under any officer of the United States or any such agency thereof, or person acting under him, or for any act under color of such office, or against any Defendant during a time period when its facility was a federal enclave.

V.

FACTS

11. The Plaintiff is a Type C general law municipality in Denton County, Texas.

12. The Defendants own and operate a row of gas compressor stations which are adjacent to each other. These compressor stations are approximately adjacent to the Town of DISH.

13. Beginning in 2005, the defendants have built at least five separate gas compressor stations on land in the extra territorial jurisdiction of the Town of DISH. This facility has been expanded and additions to this site have been constructed through the summer of 2009.

14. This site is commonly referred to as either the Ponder Compressor Station; the Justin Compressor Station; the East Justin Compressor Station; and the Hog Branch

Compressor Station. (Herein this site will be referred to as the Ponder Compressor Station or “the facility”).

15. Initially, residents and city officials from the Town of DISH had reported odor issues regarding the facility to the Defendants out of concerns for their safety, but had been assured by Defendants that they were smelling odorant and not harmful gases or pollutants.

16. In April of 2009, city officials from the Town of DISH independently confirmed the presence of natural gas and other hydrocarbons in the air surrounding the Ponder Compressor Station.

17. Defendant, Energy Transfer Fuel, L.P. began operating a hydrator at the facility and added a second hydrator in the summer of 2009. These hydrators emitted substances which significantly worsened the air quality surrounding the facility.

18. In September of 2009, city officials from the town of DISH obtained the results of independent testing of the air surrounding the Ponder Compressor Station which revealed the presence of Benzene, Xylene, Ethylbenzene, and Toluene. Benzene is a known carcinogen.

19. In April 2010, the Texas Commission for Environmental Quality began operating a permanent monitoring station just outside the north perimeter of the facility. This monitor records hourly air samples for substances which include Benzene, Xylene, Ethylbenzene, and Toluene. This monitor is situated between the Ponder Compressor Station and homes on Chisum Road in the Town of DISH.

Atmos Energy Corporation

20. In 2005, Energy Transfer Fuel, L.P. began construction of a facility otherwise known as the Ponder Compressor Station adjacent to the Town of DISH. This site was sold to Atmos Energy Corporation on December 1, 2006. The compressor station at this site is used to boost the pressure of sweet natural gas to a natural gas pipeline system. Sweet natural gas from an inlet separator is then compressed by two (2) 3550hp Caterpillar G3612 LE lean burn IC reciprocating engine driven compressors. Compressor discharge exits the station. Emissions from this facility come from the following sources:

- 1) Compressors;
- 2) 300 bbl Condensate Tank;
- 3) Truck Rack Fugitives;
- 4) Site Fugitives; and
- 5) Compressor Blowdowns

21. Harmful substances are released into the air from the Ponder Compressor Station which are dangerous, offensive, inconvenient, and annoying to persons with normal sensibilities in the Town of DISH. These substances are monitored hourly by the Texas Commission on Environmental Quality.

22. These substances include toxic hydrocarbons such as Benzene, Toluene, Ethylbenzene, and Xylene which are condensed at this facility and measurable amounts are emitted from this facility. These substances are not only offensive and unpleasant in odor, but are a serious health consideration to nearby residents. Benzene is a known carcinogen. These facts are a constant concern to the Town of DISH.

23. The scope of operations at the Ponder Compressor Station is extensive. Large vehicles are constantly arriving and departing the facility. Combined with the noise of the large Caterpillar engines, the noise originating from this facility is loud and

constant. The mere presence of this gas compressor station and the noises and odors associated with its operation are abnormal and out of place in its surroundings.

Crosstex North Texas Gathering, L.P.

24. In 2007, Crosstex North Texas Gathering, L.P. began construction of a facility otherwise known as the Justin Compressor Station adjacent to the Town of DISH. The compressor station at this site is used to boost the pressure of sweet natural gas to a natural gas transportation system. Sweet natural gas from the inlet separator is compressed by one 620-hp Waukesha 2895GSI rich-burn IC reciprocating engine driven compressor. Inlet gas first goes through an inlet separator where any condensate liquids will be collected and stored in one 210 bbl storage tank. The condensed liquids are removed by tank truck. Emissions from this facility come from the following sources:

- 1) One 620-hp Waukesha 2895GSI compressor engine;
- 2) One 210-bbl condensate tank;
- 3) Truck loading; and
- 4) Fugitives.

25. Harmful substances are released in the air from the Justin Compressor Station which are dangerous, offensive, inconvenient and annoying to persons with normal sensibilities in the Town of DISH. These substances are monitored hourly by the Texas Commission on Environmental Quality.

26. These substances include toxic hydrocarbons such as Benzene, Toluene, Ethylbenzene, and Xylene which are condensed at this facility and measurable amounts are emitted from this facility. These substances are not only offensive and unpleasant in odor, but are a serious health consideration to nearby residents. Benzene is a known carcinogen. These facts are a constant concern to the Town of DISH.

27. The scope of operations at the Justin Compressor Station is extensive. Large vehicles are constantly arriving and departing the facility. Combined with the noise of the large Waukeshia engine the noise originating from this facility is loud and constant. The mere presence of this gas compressor station and the noises and odors associated with its operation are abnormal and out of place in its surroundings.

Energy Transfer Fuel, L.P.

28. In 2007, Energy Transfer Fuel, L.P. began construction of a facility otherwise known as the Hog Branch Compressor Station adjacent to the Town of DISH. In the spring of 2009, Energy Transfer Fuel, L.P., began operating a hydrator at the facility and added a second hydrator in the summer of 2009. The compressor station at this site is used to boost the pressure of sweet natural gas to a natural gas transportation system. Sweet natural gas from the inlet separator is compressed by four compressors. The compressors are driven by dual drive units. Compressor discharge enters the glycol dehydrator prior to exiting the station. A standby generator is driven by a 450 hp Caterpillar G398NA 4-cycle rich burn engine. Compressor discharge exits the station. Emissions from this facility come from the following sources:

- 1) Compressors;
- 2) Glycol regenerator emissions;
- 3) Truck Rack Fugitives;
- 4) Dehydration Vent Fugitives;
- 5) Dehydration Flash Fugitives;
- 6) Tank emissions;
- 7) Site Fugitives; and
- 8) Compressor Blowdowns.

29. Harmful substances are released in the air from the Hog Branch

Compressor Station which are dangerous, offensive, inconvenient and annoying to persons with normal sensibilities in the Town of DISH. These substances are monitored hourly by the Texas Commission on Environmental Quality.

30. These substances include toxic hydrocarbons such as Benzene, Toluene, Ethylbenzene, and Xylene which are condensed at this facility and measurable amounts are emitted from this facility. These substances are not only offensive and unpleasant in odor, but are a serious health consideration to nearby residents. Benzene is a known carcinogen. These facts are a constant concern to the Town of DISH.

31. The scope of operations at the Hog Branch Compressor Station is extensive. Large vehicles are constantly arriving and departing the facility. Combined with the noise of the large Caterpillar engines the noise originating from this facility is loud and constant. The mere presence of this gas compressor station and the noises and odors associated with its operation are abnormal and out of place in its surroundings.

Enbridge Gathering (North Texas),L.P.

32. In 2006, Enbridge Gathering (North Texas), L.P., constructed a facility otherwise known as the East Justin Compressor Station adjacent to the Town of DISH. The compressor station at this site is used to boost the pressure of sweet natural gas to a natural gas pipeline system. Sweet natural gas from the inlet separator is compressed by two Waukesha L7042GSI compressors. Compressor discharge exits the station.

Emissions from this facility come from the following sources:

- 1) Compressors;
- 2) Glycol regenerator emissions;
- 3) Condensate Tank;
- 4) Truck Rack Fugitives;
- 5) Site Fugitives; and
- 6) Compressor Blowdowns.

33. Harmful substances are released in the air from the East Justin Compressor Station which are dangerous, offensive, inconvenient and annoying to persons with normal sensibilities in the Town of DISH. These substances are monitored hourly by the Texas Commission on Environmental Quality.

34. These substances include toxic hydrocarbons such as Benzene, Toluene, Ethylbenzene, and Xylene which are condensed at this facility and measurable amounts are emitted from this facility. These substances are not only offensive and unpleasant in odor, but are a serious health consideration to nearby residents. Benzene is a known carcinogen. These facts are a constant concern to the Town of DISH.

35. The scope of operations at the East Justin Compressor Station is extensive. Large vehicles are constantly arriving and departing the facility. Combined with the noise of the large Waukesha engines the noise originating from this facility is loud and constant. The mere presence of this gas compressor station and the noises and odors associated with its operation are abnormal and out of place in its surroundings.

Texas Midstream Gas Services, L.L.C.

36. In 2008, Texas Midstream Gas Services, L.L.C. began construction a facility otherwise known as the Ponder Compressor Station adjacent to the Town of DISH. The overall process at this site is natural gas compression. Sweet natural gas is compressed by two (2) 1380hp Waukesha L5794GSI rich burn compressor engines and one 1340 hp Caterpillar G3516 lean burn compressor engine. Emissions from this facility emanate from the following sources:

- 1) Compressors;
- 2) Truck Rack Fugitives;
- 3) Site Fugitives; and

4) Compressor Blowdowns.

37. Harmful substances are released in the air from the Ponder Compressor Station which are dangerous, offensive, inconvenient and annoying to persons with normal sensibilities in the Town of DISH. These substances are monitored hourly by the Texas Commission on Environmental Quality.

38. These substances include toxic hydrocarbons such as Benzene, Toluene, Ethylbenzene, and Xylene which are condensed at this facility and measurable amounts are emitted from this facility. These substances are not only offensive and unpleasant in odor, but are a serious health consideration to nearby residents. Benzene is a known carcinogen. These facts are a constant concern to the Town of DISH.

39. The scope of operations at the Ponder Compressor Station is extensive. Large vehicles are constantly arriving and departing the facility. Combined with the noise of the large Caterpillar engines the noise originating from this facility is loud and constant. The mere presence of this gas compressor station and the noises and odors associated with its operation are abnormal and out of place in its surroundings.

Enterprise Texas Pipeline, L.L.C.

49. In 2009, Enterprise Texas Pipeline, L.L.C. began construction of a metering facility at a location adjacent to the Justin Compressor Station approximately ¼ mile from the Plaintiff's residences. The overall process at this site is to meter gas entering the gas compressor station. It also provides a mechanism to release gas into the air that exceeds safe pressure limits for the gas pipeline.

50. Harmful substances are released in the air from the Metering

Station which are dangerous, offensive, inconvenient and annoying to persons with normal sensibilities in the Plaintiffs community. These substances are monitored hourly by the Texas Commission on Environmental Quality.

51. These substances include toxic hydrocarbons such as Benzene, Toluene, Ethylbenzene, and Xylene which are contaminants in the gas measured at this facility and measurable amounts are emitted from this facility when unsafe pressure is measured in the pipeline. These substances are not only offensive and unpleasant in odor, but are a serious health consideration to nearby residents. Benzene is a known carcinogen. These facts are a constant concern to the Plaintiffs and nearby residents.

VI.

NUISANCE

40. The Defendants' gas production activities have interfered with the public interest by the ongoing presence of offensive and harmful hydrocarbons and other deleterious substances, odors, and excessive noise and light, in close proximity to the residences of the citizens of the Town of DISH.

41. The Defendants' gas production activities constitute a public nuisance that is intentional, unreasonable, abnormal, and out of place in its surroundings.

42. The Defendants' conduct is a public nuisance because it adversely affects a considerable part of the community specifically including the residents of the Town of DISH.

43. The Defendants' conduct is unreasonable because it significantly interferes with public's health and safety by its continual emission of harmful substances

in the form of hydrocarbons and chemicals creating harmful living conditions to nearby residents.

44. The Defendants' conduct is ongoing in nature and produces an effect that the defendants knew or should have known would have a significant impact on the citizens of The Town of DISH and the public at large.

45. The Defendant's gas production related activities have created a nuisance the conditions of which substantially interfere with the use and enjoyment of the land owned by the citizens of The Town of DISH by causing unreasonable discomfort or annoyance.

46. This nuisance has also caused emotional harm to the citizens of The Town of DISH from the deprivation of the enjoyment of their property by fear, apprehension, offense, and loss of peace of mind. This specifically includes, but is not limited to, the concern that the emissions from the gas compressor station emit known carcinogens.

47. The above mentioned activity is a proximate cause of Plaintiffs' damages.

VII.

TRESPASS

48. The Defendants trespassed upon land owned by the Town of DISH because Defendants gas production activity has resulted in contamination of the air above the Town of DISH with the presence of hydrocarbons and other deleterious substances which are dangerous, offensive, inconvenient and annoying to persons with normal sensibilities in Plaintiffs' community.

49. The Defendants trespass is ongoing and is measured hourly by a monitor maintained and operated by the Texas Commission for Environmental Quality. Beginning in April 2010, the Texas Commission for Environmental Quality has taken hourly measurements of chemical substances that are released from the Defendants facilities. The monitor is situated between the Town of DISH and the Defendants' facilities.

50. The Defendants physically, intentionally, and voluntarily caused and permitted substances associated with gas production including but not limited to hydrocarbons to cross into the Town of DISH and contaminate the air above the town.

51. Defendants trespass resulted in physical damage to municipal property and caused injury to Plaintiff's right of possession.

52. Defendants trespass is a proximate cause of Plaintiff's damages.

VIII.

DAMAGES

53. As a result of the Defendants conduct as alleged herein, the citizens and residents of the Town of DISH have suffered a loss of market value of their land, which in all likelihood will continue in the future as a result of Defendants nuisance and trespass.

54. The resulting loss of market value of the homes of the residents of the Town of DISH have eroded the property values and tax base in the Town of DISH and as a consequence has resulted in a loss of revenue to the Town of DISH in the past and the future in an amount of at least \$15,000.00 per year.

55. As a result of the Defendants conduct as alleged herein, the Town of DISH has incurred legal fees associated with Defendants' conduct in the amount of at least \$45,000.00.

56. As a result of the Defendants' conduct as alleged herein, the Town of DISH has incurred other costs associated with the Defendants' activity in an amount of at least \$15,000.00.

56. Further, Plaintiff seeks damages for each and every trespass as alleged herein for an amount of \$1,000.00 per day.

57. Plaintiff seeks to recover exemplary damages against Defendants in accordance with Texas Civil Practices & Remedies Code, §41.001.

IX.

JURY TRIAL

58. The Plaintiff hereby requests a trial by jury.

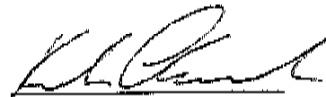
X.

PRAYER

WHEREFORE, Plaintiff prays that the Defendants be duly cited to appear and answer herein; and that upon a final trial of this cause, Plaintiff recover:

1. judgment against Defendants for Plaintiff's damages as set forth above, in an amount within the jurisdictional limits of this Court;
2. interest on the judgment at the legal rate from date of judgment;
3. pre-judgment interest on Plaintiff's damages as allowed by law;
4. costs of court; and
5. such other and further relief to which Plaintiff may be entitled.

Respectfully submitted,



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