

1 **2004 MODEL UNDERGROUND GAS STORAGE PROVISIONS**

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3 **Interstate Oil and Gas Compact Commission**

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5 **Preface**

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7 The underground storage of gas promotes conservation and permits the accumulation of
8 reserves for orderly withdrawal in periods of peak demand, and serves to make gas
9 resources to the domestic, commercial and industrial consumers more readily, reliably, and
10 efficiently available to meet year-round market demand. The Interstate Oil and Gas
11 Compact Commission (IOGCC) has prepared the following provisions to supplement Part
12 VIII of the Model Oil and Gas Conservation Act, which deals with the regulation of
13 Underground Gas Storage. These provisions address the acquisition of properties suitable
14 for underground gas storage through eminent domain and recognize certain property rights
15 in stored gas. These Model Provisions do not address the initial ownership of storage rights
16 vis-à-vis the surface and mineral interest owner. These supplementary provisions should
17 not be codified under a state’s conservation act, but Part I should be included in a state’s
18 eminent domain or public utilities code and Part II should be included in a state’s property
19 code.
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21 **Declaration of Purpose**

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23 Because of the economic and strategic importance of gas, the conservation of property
24 suitable for underground gas storage, the prevention of waste, and the protection of
25 correlative rights, public health, public safety, and the environment are declared to be in
26 the public interest. Accordingly, the purpose of these provisions is to conserve property
27 suitable for underground gas storage, to prevent waste, and to protect correlative rights,
28 public health, public safety, and the environment.
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30 **PART I.**

31 **[Procedures for Gas Public Utilities]**

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33 **SECTION 1. DEFINITION.** “Natural gas public utility” means any person, firm or
34 corporation authorized to do business in this state and that holds a certificate of
35 convenience from the [commission] or the Federal Energy Regulatory Commission to
36 engage in the business of transporting storing or distributing gas by means of pipelines
37 into, within or through this state for ultimate public use.

38 **SECTION 2. PUBLIC INTEREST.** The underground storage of gas promotes
39 conservation and permits the building up of reserves for orderly withdrawal in periods of
40 peak demand, and serves to make gas resources to the domestic, commercial and industrial
41 consumers more readily, reliably, and efficiently available to meet year-round market
42 demand, thereby promoting the public interest and the general welfare. Therefore the
43 [legislature of this state] finds that the orderly and efficient underground storage of gas is
44 in the public interest.

45 **SECTION 3. APPROPRIATION OF CERTAIN PROPERTY.** Any natural gas public
46 utility may appropriate for its use for the underground storage of gas any subsurface
47 stratum or formation in any land which the [oil and gas conservation commission] shall
48 have found to be suitable and in the public interest for the underground storage of gas, and

1 in connection therewith may appropriate other interests in property as may be required
2 adequately to examine, prepare, maintain and operate underground gas storage facilities.
3 The right of appropriation shall be without prejudice to the rights of the owner of the land,
4 minerals, or other rights or interests therein, as to all other uses of property, including the
5 right to drill or bore through the appropriated underground stratum or formation, if done in
6 accordance with any order, permit, rule, or regulation that the [oil and gas conservation
7 commission] may issue for the purpose of protecting the underground storage strata or
8 formation against pollution and against the escape of gas.

9 **SECTION 4. APPLICATION FOR GAS STORAGE CERTIFICATE; NOTICE AND**
10 **HEARING; ASSESSMENT OF COSTS.**

11 (a) Any natural gas public utility desiring to exercise the right of eminent domain as to any
12 property for use for underground storage of gas shall, as a condition precedent to the filing
13 of its petition in the district court, obtain from the [oil and gas conservation commission] a
14 certificate setting out findings of the [oil and gas conservation commission] that:

- 15 (1) the underground stratum or formation sought to be acquired is suitable for the
16 underground storage of gas and that its use for this purpose is in the public interest; and
17 (2) the amount of proven commercially producible accumulations of oil or native gas,
18 or both, if any, remaining in the proposed storage stratum or formation.

19 (c) The [commission's] finding under subparagraph (2) above that the underground stratum
20 or formation is suitable for the underground storage of gas shall include specific findings,
21 including:

- 22 (1) that the use of the storage facility for the underground storage of gas will not
23 contaminate other formations containing fresh water or containing oil, gas or other
24 commercial mineral deposits; and
25 (2) that the proposed storage will not unduly endanger lives or property.

26 (d) the [oil and gas conservation commission] shall not issue a certificate without
27 reasonable notice to interested parties and an opportunity for a hearing. [The applicant
28 shall be responsible for all costs of this proceeding.]

29 **SECTION 5. EMINENT DOMAIN PROCEDURE.** Any natural gas public utility,
30 having first obtained the certificate specified in [Section 4] from the [oil and gas
31 conservation commission] and desiring to exercise the right of eminent domain for the
32 purpose of acquiring property for the underground storage of gas, shall proceed in
33 accordance with [eminent domain procedure of this state]. The petitioner shall file the
34 certificate as a part of its petition and no order by the court granting said petition shall be
35 entered unless accompanied by the certificate. The appraisers in awarding damages shall
36 also take into consideration the amounts of proven commercially producible accumulations
37 of oil or native gas or both, if any, remaining in the property sought to be appropriated and,
38 for this purpose, shall receive the findings of the [oil and gas conservation commission] as
39 prima facie evidence of these amounts.

40 **SECTION 6. NOTICE OF ABANDONMENT OF UNDERGROUND GAS**
41 **STORAGE FACILITY; REVERSION OF PROPERTY RIGHTS.** When the owner of
42 an underground gas storage facility has permanently abandoned the storage facility and
43 that facility was certificated by the [oil and gas conservation commission], the owner shall
44 file with the [oil and gas conservation commission] a notice of abandonment. If any
45 storage facility was certificated pursuant to federal authority, the owner shall file a copy of
46 any federal abandonment authority with the [oil and gas conservation commission]. Unless
47 notice of abandonment authority has been filed with the [oil and gas conservation
48 commission], there shall be a presumption that the storage facility and all rights associated

1 with it remain as certificated. In either case the owner shall file an instrument with the
2 [recorder] in the appropriate county or counties, stating that storage has ceased and, except
3 in cases in which the owner of the storage facility has purchased the fee, that the ownership
4 of all property acquired by the owner, both mineral and surface, has reverted to those who
5 owned the property at the time of the acquisition or their heirs, successors or assigns.

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7 **PART II.**

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9 **Determining Property Rights to Injected Gas**

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11 **SECTION 1. OWNERSHIP OF INJECTED GAS.** All gas that has previously been
12 reduced to possession, and which is subsequently injected into underground storage fields,
13 sands, reservoirs and facilities, whether storage rights were acquired by eminent domain or
14 otherwise, shall at all times be the property of the injector, or the injector's heirs,
15 successors or assigns, whether owned by the injector or stored under contract. Absent a
16 final judgment of willful abandonment rendered by a court of competent jurisdiction, in no
17 event shall this gas be deemed the property of a surface owner or mineral owner, or the
18 property of persons claiming by or under these owners, under whose lands the gas is
19 stored. Only the injector, or the injector's heirs, successors and assigns, may produce, take,
20 reduce to possession this stored gas.

21 **SECTION 2. EFFECT ON SURFACE AND MINERAL RIGHTS.** Nothing in this
22 subsection shall be deemed to affect the otherwise lawful right of a surface or mineral
23 owner to drill or bore through the underground storage fields, sands, reservoirs and
24 facilities, if done in accordance with [commission] rules for protecting the underground
25 storage strata or formation against pollution and against the escape of gas.

26 **SECTION 3. IDENTIFICATION OF MIGRATING GAS—COSTS—INJUNCTION.**

27 (a) If gas that has been injected into property or has migrated to adjoining property or to a
28 stratum, or portion thereof, which has not been acquired by eminent domain or otherwise
29 acquired, the injector shall not lose title to or possession of injected gas if the injector can
30 prove by a preponderance of the evidence that the gas was originally injected into the
31 underground storage. The court, on its own motion or upon motion of a party, may appoint
32 the [oil and gas conservation commission] as a special master to provide assistance
33 regarding this issue.

34 (b) If gas that has been injected into property or has migrated to adjoining property or to a
35 stratum, or portion thereof, which has not been acquired by eminent domain or otherwise
36 acquired, the injector, at the injector's sole risk and expense, shall have the right to conduct
37 reasonable testing on any existing wells on adjoining property including tests to determine
38 ownership of the gas, and to determine the value of any lost production of other than the
39 injector's gas.

40 (c) If gas that has been injected into property or has migrated to adjoining property or to a
41 stratum, or portion thereof, which has not been acquired by eminent domain or otherwise
42 acquired, the owner of the stratum and the owner of the surface shall be entitled to
43 compensation for use of or damage to the surface or substratum, the value of the storage
44 right, and shall be entitled to recover all costs and expenses, including reasonable attorney
45 fees.

46 (d) The injector shall have the right to interim relief through injunctive or other appropriate
47 relief.