

IC 32-24-5

Chapter 5. Eminent Domain for Gas Storage

IC 32-24-5-1

Subsurface strata or formations

Sec. 1. Whereas, the storage of gas in subsurface strata or formations of the earth in Indiana tends to insure a more adequate supply of gas to domestic, commercial, and industrial consumers of gas in this state and materially promotes the economy of the state, the storage of gas is declared to be in public interest and for the welfare of Indiana and the people of Indiana and to be a public use.

As added by P.L.2-2002, SEC.9.

IC 32-24-5-2

Persons entitled to exercise eminent domain; conditions precedent

Sec. 2. (a) A person, firm, limited liability company, municipal corporation, or other corporation authorized to do business in Indiana and engaged in the business of transporting or distributing gas by means of pipelines into, within, or through Indiana for ultimate public use may condemn:

- (1) land subsurface strata or formations;
- (2) other necessary land rights;
- (3) land improvements and fixtures, in or on land, except buildings of any nature; and
- (4) the use and occupation of land subsurface strata or formations;

for constructing, maintaining, drilling, utilizing, and operating an underground gas storage reservoir.

(b) The following rights in land may be condemned for use in connection with the underground storage of gas:

- (1) To drill and operate wells in and on land.
- (2) To install and operate pipelines.
- (3) To install and operate equipment, machinery, fixtures, and communication facilities.
- (4) To create ingress and egress to explore and examine subsurface strata or underground formations.
- (5) To create ingress and egress to construct, alter, repair, maintain, and operate an underground storage reservoir.
- (6) To exclusively use any subsurface strata condemned.
- (7) To remove and reinstall pipe and other equipment used in connection with rights condemned under subdivisions (1) through (6).

(c) Acquisition of subsurface rights in land for gas storage purposes by condemnation under this section must be without prejudice to any subsequent proceedings that may be necessary under this section to acquire additional subsurface rights in the same land for use in connection with the underground storage. Surface rights in land necessary for the accomplishment of the purposes set forth in this section may be condemned.

(d) Except with respect to a proceeding under this chapter to:

- (1) acquire the right to explore and examine a subsurface stratum or formation in land; and
- (2) create the right of ingress and egress for operations connected to the acquisition;

and subject to subsection (e), as a condition precedent to the exercise of the right to condemn any underground stratum, formation, or interest reasonably expected to be used or useful for underground gas storage, a condemnor first must have acquired by purchase, option, lease, or other method not involving condemnation, the right, or right upon the exercise of an option, if any, to store gas in at least sixty per cent (60%) of the stratum or formation. This must be computed in relation to the total surface acreage overlying the entire stratum or formation considered useful for the purpose.

(e) A tract under which the stratum or formation sought to be condemned is owned by two (2) or more persons, firms, limited liability companies, or corporations must be credited to the condemnor as acquired by it for the purpose of computing the percentage of acreage acquired by the condemnor in complying with the requirement of subsection (d) if the condemnor acquires from the owner or owners of an undivided three-fourths (3/4) part or interest or more of the underground stratum or formation, by purchase, option, lease, or other method not involving condemnation, the right, or right upon the exercise of an option, if any, to store gas in the stratum or formation. It is not necessary for the condemnor to have acquired any interest in the property in which the condemnee has an interest before instituting a proceeding under this chapter.

As added by P.L.2-2002, SEC.9.

IC 32-24-5-3

Oil and gas leases; drilling into gas storage stratum

Sec. 3. (a) The rights acquired by condemnation must be without prejudice to the rights and interests of the owners or their lessees to:

- (1) execute oil and gas leases;
 - (2) drill or bore to any other strata or formation not condemned;
- and
- (3) produce oil and gas discovered.

However, any drilling and all operations in connection with the drilling must be performed in a manner that protects the strata or formations condemned against the loss of gas and against contamination of the reservoir by water, oil, or other substance that will affect the use of the condemned strata or formations for gas storage purposes.

(b) If the owners of mineral rights or the owners' lessees drill into land in which gas storage rights have been condemned under this chapter, the owners of mineral rights or their lessees shall give notice to the owner of the gas storage stratum, formation, or horizon at least thirty (30) days before commencing the drilling. The notice must specify the location and nature of the operations, including the depth to be drilled. The notice must be given by United States registered or certified mail, return receipt requested, and addressed to the usual

business address of the owner or owners of the gas storage stratum or formation condemned under this chapter.

(c) It is the duty of the owner of a gas storage stratum or formation to designate all necessary procedures for protecting the gas storage area. The actual costs incurred over and above customary and usual drilling and other costs that would have been incurred without compliance with the requirements shall be borne by the owner of the gas storage stratum or formation. An owner or lessee of mineral interests other than gas storage rights is not responsible for an act done under such a requirement or the consequences of this act.

As added by P.L.2-2002, SEC.9.

IC 32-24-5-4

Rights appropriated and condemned; compensation paid

Sec. 4. Only the rights in land necessary for use in connection with underground storage of gas and those subsurface strata adaptable for underground storage of gas may be appropriated and condemned under this chapter. Rights in the subsurface of land constituting a part of a geological structure are deemed necessary to the operation of an underground storage reservoir in the structure. In determining the compensation to be paid to the owner of an oil producing stratum, or interest in the stratum, condemned under this chapter, proof may be offered and consideration must be given to potential recovery, if any, of oil from a stratum by secondary or other subsequent recovery processes in addition to potential recovery by a primary process.

As added by P.L.2-2002, SEC.9.

IC 32-24-5-5

Authority to appropriate and condemn

Sec. 5. The appropriation and condemnation of subsurface strata or formations in land rights in and easements in land and subsurface strata or formations authorized by this chapter must be made under IC 32-24-1.

As added by P.L.2-2002, SEC.9.