

CAUSE NO. \_\_\_\_\_

EFS MIDSTREAM LLC

*Plaintiff,*

vs.

SUNDANCE ENERGY, INC.

*Defendants.*

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION**

Sundance Energy, Inc. (“Sundance”) owes EFS Midstream LLC (“EFS”) millions of dollars under the parties’ Hydrocarbon Gathering and Handling Agreement (the “Gathering Agreement”). Rather than honor its commitment, Sundance manufactured a host of excuses to avoid paying EFS. Sundance then doubled down on its breach of the Gathering Agreement by unilaterally claiming to “cancel” its future obligations under the guise of force majeure. Sundance has breached and repudiated the Gathering Agreement. Because Sundance refuses to perform now and in the future, EFS is forced to seek relief from this Court.

**DISCOVERY CONTROL PLAN**

1. EFS intends to conduct discovery under Discovery Control Plan Level 2.

**PARTIES**

2. Plaintiff EFS Midstream LLC is a limited liability company organized and existing under the laws of Delaware with its principal place of business in Houston, Texas. The ultimate parent of EFS is Enterprise Products Partners L.P., a publicly traded master limited partnership with unit holders in Colorado.

3. Defendant Sundance Energy, Inc. is a corporation incorporated and existing under the laws of Colorado with its principal place of business in Denver, Colorado. Sundance may be

served with process through its registered agent, CT Corporation System, located at 1999 Bryan Street, Suite 900, Dallas, Texas 75201, or wherever else it may be found.

#### **JURISDICTION AND VENUE**

4. This Court has personal jurisdiction over Sundance because Sundance has a registered agent in Texas, Sundance owns property interests in Texas, Sundance regularly conducts business in Texas, EFS' claims in this lawsuit arise from Sundance's contacts with Texas, and Sundance otherwise has sufficient minimum contacts with Texas. Further, in the Gathering Agreement, the parties expressly consented to the exercise of personal jurisdiction in Texas.

5. This Court has subject matter jurisdiction over this dispute because the amount in controversy exceeds the jurisdictional requirements of this Court.

6. Venue is proper in Harris County pursuant the mandatory venue provision set forth in the Gathering Agreement. Venue is further proper in Harris County because all or a substantial part of the events or omissions giving rise to this dispute occurred here. Finally, venue is proper in Harris County because EFS' principal office is located here.

#### **RULE 47 STATEMENT OF RELIEF REQUESTED**

7. Pursuant to Texas Rule of Civil Procedure 47, EFS seeks monetary relief over \$1,000,000, plus its reasonable and necessary attorneys' fees and costs incurred in connection with this dispute. It also seeks a declaration from this Court.

#### **FACTS**

8. EFS provides natural gas compression, gathering, dehydrating, and treating services, and liquid hydrocarbon gathering, condensate handling and stabilizing, distillation, and storage services to producers in the Eagle Ford shale area of Texas. Sundance is one of the many producers that EFS services.

**A. EFS and Sundance enter into the Gathering Agreement, under which Sundance guarantees EFS a minimum amount of revenue per year.**

9. On or around April 23, 2018, EFS and Sundance entered into the Gathering Agreement.

10. Under the Gathering Agreement, Sundance dedicated its production of liquid hydrocarbons (other than crude oil) and natural gas from certain specified interests to EFS for EFS to perform gathering and treating services. In exchange for EFS' services, Sundance agreed to pay EFS monthly fees based on the volume of liquid hydrocarbons and natural gas that Sundance delivers to EFS for gathering and treating.

11. As further consideration for EFS' services, Sundance guaranteed EFS a minimum amount of revenue per year under the Gathering Agreement. Specifically, Sundance promised that EFS would receive an agreed amount of liquid hydrocarbons fees and natural gas fees each year. Sundance further promised that, if the actual fees paid to EFS throughout the year failed to meet these minimum guaranteed levels, Sundance would pay the difference to EFS. These payments are referred to as the "Liquid Hydrocarbons Deficiency Fee" and the "Gas Deficiency Fee" (collectively, the "Deficiency Fees"), depending on the product for which Sundance fails to meet its revenue guarantees in any given year.

12. Consistent with Sundance's revenue guarantees to EFS, the parties specifically excluded the payment of any Liquid Hydrocarbons Deficiency Fee and Gas Deficiency Fee from the Gathering Agreement's force majeure provision. Section 13.1 of the Gathering Agreements states, in relevant part:

13.1 Force Majeure. If either Gatherer or Producer is rendered unable by an event of Force Majeure to carry out, in whole or part, its obligations hereunder, then, during the pendency of such Force Majeure, but only during that period, the obligations of the Party affected by the Force Majeure event (**other than the obligation to make payments then due or becoming due, including Gas**

**Deficiency Fees and Liquid Hydrocarbons Deficiency Fees)** shall be canceled or suspended, as applicable, to the extent required.

13. The parties performed under the Gathering Agreement during 2018 and 2019. During that time, Sundance never claimed that it was owed any credits against its payment obligations to EFS under the Gathering Agreement.

**B. Sundance refuses to pay EFS the agreed Deficiency Fees for 2019 and improperly declares force majeure as a basis for any failure to pay Deficiency Fees for 2020.**

14. In 2019, the liquid hydrocarbon fees and natural gas fees paid to EFS were less than the guaranteed revenue amounts under the Gathering Agreement.

15. Thus, on February 19, 2020, EFS issued an invoice to Sundance in the amount of \$2,621,387.07, representing the Liquid Hydrocarbons Deficiency Fee and Gas Deficiency Fee owed to EFS by Sundance under the Gathering Agreement.<sup>1</sup>

16. On February 28, 2020, Sundance responded to EFS' invoice, disputing liability for the 2019 Liquid Hydrocarbons Deficiency Fee and Gas Deficiency Fee and, for the first time, claiming that it was entitled to at least \$2,627,994 in credits from EFS. The credits asserted by Sundance relate to alleged issues stretching as far back as 2018, during which time Sundance said nothing about the alleged issues.

17. Unsatisfied with dishonoring its minimum revenue guarantees for 2019, and further calling its credit arguments into question, Sundance then repudiated its revenue commitments to EFS for 2020. On March 19, 2020, Sundance notified EFS that it was unilaterally "cancelling" its revenue guarantees for 2020, claiming the impact of COVID-19 as a force majeure event under Section 13.1 of the Gathering Agreement.

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<sup>1</sup> EFS has since issued a Prior Period Adjustment to Sundance, adjusting the amount of the total Deficiency Fees owed for 2019 to \$2,294,104.51.

18. EFS has repeatedly explained to Sundance that it cannot avoid payment of the 2019 Deficiency Fees based on its belated and baseless credit allegations. EFS has also reminded Sundance that its obligation to pay the 2020 Deficiency Fees is expressly excluded from the very force majeure provision upon which it relies. Nonetheless, Sundance refuses to honor its existing obligations and continues to repudiate its future obligations.

**COUNT I: BREACH OF CONTRACT**

19. The preceding paragraphs are incorporated herein for all purposes.

20. The Gathering Agreement is a valid and enforceable contract.

21. EFS has and continues to perform under the Gathering Agreement, but Sundance has breached and/or repudiated certain contractual obligations to EFS by, without limitation, refusing to pay the Liquid Hydrocarbons Deficiency Fee and the Gas Deficiency Fee for 2019 and stating that it will not pay any Liquid Hydrocarbons Deficiency Fee and any Gas Deficiency Fee for 2020.

22. Sundance's breach has and continues to cause EFS to suffer damages.

**COUNT II: DECLARATORY JUDGMENT**

23. The preceding paragraphs are incorporated herein for all purposes.

24. Pursuant to Chapter 37 of the Texas Civil Practices and Remedies Code, EFS seeks a declaration of the parties' respective rights and obligations in the Gathering Agreement.

25. Specifically, EFS claims that Sundance is not entitled to cancel or suspend its obligation to pay any Liquid Hydrocarbons Deficiency Fee and any Gas Deficiency Fee for 2020 under Section 13.01 of the Gathering Agreement. Sundance, on the other hand, claims that it has canceled such obligations. Thus, a justiciable controversy exists between the parties and that controversy can be resolved by declarations from this Court.

26. For that reason, EFS seeks a declaration that the impacts of COVID-19 asserted by Sundance in its March 19, 2020 letter do not provide a basis under Section 13.01 of the Gathering Agreement to cancel, suspend, or otherwise excuse its obligation to pay any Liquid Hydrocarbons Deficiency Fee and any Gas Deficiency Fee for 2020.

**COUNT III: ATTORNEYS' FEES**

27. The preceding paragraphs are incorporated herein for all purposes.

28. EFS has retained outside counsel and has incurred, and will continue to incur, attorneys' fees and costs in connection with this dispute. EFS seeks to recover its reasonable and necessary attorneys' fees and costs pursuant to Chapter 38 of the Texas Civil Practice & Remedies Code. EFS also seeks to recover its reasonable and necessary attorneys' fees and costs pursuant to Chapter 37 of the Texas Civil Practice & Remedies Code.

**CONDITIONS PRECEDENT**

29. Any and all conditions precedent to EFS' right to recover on the claims stated herein have been satisfied, have occurred, and/or have been waived.

**REQUEST FOR DISCLOSURE**

30. Under Rule 194, Sundance must disclose, within 50 days of service of this Original Petition, the information and material described in Rule 194.2

**PRAYER FOR RELIEF**

For these reasons, EFS requests that Sundance be cited to appear and answer, and that upon final trial, the Court enter judgment awarding EFS its actual damages; attorneys' fees; pre- and post-judgment interest at the maximum rate allowed by law; costs; declaratory relief; and all other relief, whether in law or in equity, to which EFS may be justly entitled.

Respectfully submitted,

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