

ENGROSSED SENATE  
JOINT  
RESOLUTION NO. 42

By: Stipe of the Senate

and

Mass of the House

A Joint Resolution disapproving rules of the Corporation Commission relating to the assessment of a fee in public utility docket causes filed by unregulated entities; directing distribution; and declaring an emergency.

WHEREAS, on March 31, 1994, the Corporation Commission submitted to the Legislature permanent Rule 165:5-3-30, Rule 165:5-3-31, Rule 165:5-3-32, Rule 165:5-3-33 and Rule 165:5-3-34, relating to the assessment of a fee in public utility docket causes filed by unregulated entities; and

WHEREAS, Rule 165:5-3-30, Rule 165:5-3-31, Rule 165:5-3-32, Rule 165:5-3-33 and Rule 165:5-3-34 allow the Corporation Commission broad discretion when assessing a fee in public utility docket causes filed by unregulated entities which does not reflect the intent of the authorizing legislation; and

WHEREAS, Rule 165:5-3-30, Rule 165:5-3-31, Rule 165:5-3-32, Rule 165:5-3-33 and Rule 165:5-3-34 do not reflect the intent of the Oklahoma State Legislature.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE 2ND SESSION OF THE 44TH OKLAHOMA LEGISLATURE:

SECTION 1. Rule 165:5-3-30 stating the purpose of the rules assessing a fee in public utility docket causes filed by unregulated entities is hereby disapproved by the Oklahoma State Legislature.

The language of Rule 165:5-3-30, which is disapproved by this resolution, reads as follows:

"The purpose of this Part is to assess, pursuant to 17 O.S. (Supp. 1993) § 180.11, a fee in public utility docket causes filed by unregulated entities, to assist in providing funding to the Public Utility Regulation Revolving Fund."

SECTION 2. Rule 165:5-3-31 defining the term "unregulated entity" is hereby disapproved by the Oklahoma State Legislature. The language of Rule 165:5-3-31, which is disapproved by this resolution, reads as follows:

"The following words and terms, when used in this Part, shall have the following meaning unless the context clearly indicates otherwise:

"Unregulated entity" means any person, firm or corporation which is not a public utility as defined in Title 17 O.S. (Supp. 1993) §180.11."

SECTION 3. Rule 165:5-3-32 providing the procedure and factors considered by the Corporation Commission in determining the assessment against an unregulated entity in public utility docket causes is hereby disapproved by the Oklahoma State Legislature. The language of Rule 165:5-3-32, which is disapproved by this resolution, reads as follows:

"(a) In causes initiated on the Public Utility Docket by an unregulated entity seeking affirmative relief, fees may be assessed to the applicant unregulated entity upon a motion of the Staff of the Public Utility Division made within ninety (90) days after the application has been filed, after notice and hearing; provided, however, should the applicant make a material change in its application or add a separate cause after 90 days, the Commission may make an additional assessment.

(b) In considering whether or not to assess fees to the applicant unregulated entity, the Commission shall consider, although not be limited to, the following factors:

1. The benefit(s) to the applicant if the requested relief is granted.

2. The benefit(s) to the State of Oklahoma if the requested relief is granted.

3. The public interest.

4. Compliance with any other state or federal law under which this Commission has jurisdiction.

5. Whether the applicant is a consumer group filing a case on behalf of themselves as consumer/members and the composition of the consumer group.

(c) The Commission shall make a determination of the estimated costs which will be incurred by the Commission for Commission resources and/or consulting services, that are required to process an application.

(d) In the event the actual costs of the Commission are less than the assessed amount, the difference will be refunded to the unregulated entity applicant.

(e) The Commission shall issue an order which shall include the following:

1. Whether or not the unregulated entity will be assessed a fee.

2. The amount of the fee to be assessed, which shall be no greater than the estimated amount, and which shall not be subject to modification, regardless of the cause being delayed or appealed, except as provided in 165:5-3-32(a).

3. The date the payment shall be paid.

(f) All unregulated entity applicants who in their capacity as customers of a regulated utility file a complaint with the Commission seeking compliance with existing Commission rules and

regulations and/or Commission approved tariffs shall not be assessed fees beyond the filing fee set forth in 165:5-3-1."

SECTION 4. Rule 165:5-3-33 providing the unregulated entity the option of withdrawing its application if a fee is assessed is hereby disapproved by the Oklahoma State Legislature. The language of Rule 165:5-3-33, which is disapproved by this resolution, reads as follows:

"If the Commission orders that a fee be assessed, the applicant unregulated entity shall have the option of proceeding with the cause or withdrawing its application. If the applicant unregulated entity withdraws its application, no assessment beyond the filing fees set forth in 165:5-3-1 shall be required."

SECTION 5. Rule 165:5-3-34 stating the results for failure to pay an assessed fee by an unregulated entity is hereby disapproved by the Oklahoma State Legislature. The language of Rule 165:5-3-34, which is disapproved by this resolution, reads as follows:

"Failure by an applicant unregulated entity to pay an assessed fee by or on the date ordered by the Commission shall either result in a dismissal without prejudice, after notice and hearing, or postponement of the procedural schedule as directed by the Commission."

SECTION 6. The Secretary of State is hereby directed to distribute copies of this resolution to the Governor, the Corporation Commission and the editor of "The Oklahoma Register".

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this resolution shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 4th day of May, 1994.

President of the Senate

Passed the House of Representatives the \_\_\_\_ day of  
\_\_\_\_\_, 1994.

Speaker of the House of  
Representatives