

ENROLLED SENATE
BILL NO. 634

By: Easley of the Senate
and
Rice of the House

An Act relating to oil and gas; amending 52 O.S. 1991, Section 24 and Section 1, Chapter 340, O.S.L. 1993 (52 O.S. Supp. 1994, Section 24.3), which relate to natural gas pipelines; exempting certain gathering activities; providing alternate regulation; authorizing Corporation Commission to remedy certain discrimination fees; stating requirements for natural gas gatherers and providing exemptions; providing for Commission to set certain fee; authorizing Commission to determine certain gathering fee under certain conditions; providing complaint procedures; requiring fee to reflect fair market value; stating criteria used to determine fee; limiting jurisdiction of Commission; authorizing Commission to promulgate certain rules; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 52 O.S. 1991, Section 24, is amended to read as follows:

Section 24. Every corporation, joint stock company, limited copartnership, partnership or other person, now or hereafter engaged in the business of carrying or transporting natural gas for hire, for compensation or otherwise, by pipeline, or pipelines within this state, and by virtue of and in conformity to, any valid law incapable of revocation by any law of this state or of the United States, or by virtue of and in conformity to the provisions of this act, shall be a common carrier thereof as at common law, and no such common carrier shall allow or be guilty of any unjust or any

unlawful discrimination, directly or indirectly, in favor of the carriage, transportation or delivery of any natural gas, offered to it, in its possession or control, or in which it may be interested, directly or indirectly, and, provided further, that any person, firm or corporation owning or operating a gas pipeline within the limits of any incorporated city or town in this state shall be exempted from the provisions of this section only as to its distributing lines located wholly within the corporate limits of said city or town; and provided further, that any person, firm or corporation engaged in gathering natural gas in this state shall be exempted from the provisions of this section as to such gathering activities and instead shall be subject to the provisions of Section 24.3 of this title.

SECTION 2. AMENDATORY Section 1, Chapter 340, O.S.L. 1993 (52 O.S. Supp. 1994, Section 24.3), is amended to read as follows:

Section 24.3 A. No person gathering natural gas for hire, for compensation or otherwise shall charge any fee for such service which is unduly discriminatory. Upon complaint of an aggrieved party, the Corporation Commission shall have the authority to remedy any unduly discriminatory fee for gathering by ordering an adjustment of the fee as to the aggrieved party to the extent necessary to remove any unduly discriminatory portion of such fee; provided, no person may challenge as unduly discriminatory a fee which such person is obligated to pay by existing contract.

B. No person gathering natural gas for hire, for compensation, or otherwise or gathering natural gas, in whole or in part, for such person's own account, whether in connection with the purchase and resale of natural gas or otherwise, shall refuse to provide open access natural gas gathering for a fee for any person seeking such gathering unless:

1. The natural gas cannot be reasonably carried by such gatherer;
2. An extension or expansion of facilities would be required;
3. There is another gatherer of natural gas that is willing to gather or that can more conveniently gather such natural gas;
4. The gathering of such gas could reasonably be expected to have a material adverse affect on safety or on service to existing customers or on the operation of or recovery in any processing facility;
5. The gas does not satisfy minimum standards for quality or energy or recoverable hydrocarbon content consistently applied by the gatherer for that system;
6. Such gathering is inconsistent with an existing contract which governs the gas of the person seeking gathering; or
7. For such other good cause as the Corporation Commission may determine by rule or in the particular case.

Upon complaint of an aggrieved party, the Corporation Commission shall have authority to determine whether a gatherer is required by reason of this section to provide open access gathering to such party, and if so, and the parties are unable to agree upon a fee for gathering, to fix a fee for such gathering.

C. If a person engaged in the gathering of natural gas and a person seeking gathering are unable to agree upon a fee for such gathering, then upon complaint of the person seeking gathering, the Corporation Commission shall have the authority to determine a fee for such gathering if:

1. The Corporation Commission makes a factual determination that competitive gathering conditions do not exist for the gathering of complainant's gas; and
2. The fee for such gathering is not governed by a contract by which complainant is bound; and

3. If under subsection B of this section the complainant would be entitled to an order requiring the gatherer to provide the gathering service for which complainant seeks to fix a fee.

D. Any action by the Corporation Commission under this section shall be initiated by the filing of a complaint by the aggrieved party, following which the Corporation Commission shall conduct a hearing and take evidence as is necessary to determine the complaint. Notice shall be given to the gatherer at least ten (10) days prior to such hearing. In fixing a fee under subsection B or C of this section for any gathering service, the Corporation Commission shall determine a fee which would result from arm's-length bargaining in good faith in a competitive market between parties of equal bargaining power. In determining such a fee, the Corporation Commission shall consider all economically significant factors which it determines to be relevant, which may include, but are not limited to:

1. The fees which said gatherer receives from other shippers;
 2. The fees charged by other gatherers within a relevant area determined by the Corporation Commission;
 3. The financial risks of installing such a gathering system;
 4. The financial risks of operating such a gathering system;
 5. The capital, operating and maintenance costs of such a gathering system; and
 6. Such other factors which the Corporation Commission determines to be relevant;
- provided, in no event is such fee to be computed on a utility rate of return basis.

E. Nothing in this section shall give the Corporation Commission jurisdiction over the purchase, processing or resale of natural gas or the price or other compensation for or any of the other terms or conditions of any such purchase, processing or resale.

F. The Corporation Commission is hereby authorized to promulgate rules to administer the provisions of this section.

SECTION 3. 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 act shall take effect and be in full force from and after its passage and approval.