STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 565

By: Easley of the Senate

and

Rice of the House

COMMITTEE SUBSTITUTE

An Act relating to natural gas; creating the Natural Gas Competitiveness Act of 1997; providing short title; stating public policy; defining jurisdiction of the Corporation Commission under certain conditions; defining terms; providing for effect of language; providing for constitutional amendment; authorizing Corporation Commission certain exclusive jurisdiction determining application of act; authorizing certain parties to seek certain determination from Commission; creating certain presumption; providing for rebutting presumption by certain parties; prohibiting Commission from requiring continuance of certain transportation or sales; prohibiting public utilities from charging rate in excess of certain regulated rate; limiting application of act; authorizing Commission to promulgate certain rules; providing for codification; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 160.10 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as "The Natural Gas Competitiveness Act of 1997".

B. It shall be the policy of the State of Oklahoma to encourage and promote competition in the transportation and sale of natural gas for the benefit of municipalities, public trusts and authorities and industrial end-users and to rely upon market based rates established in a competitive environment.

C. The Corporation Commission shall have no jurisdiction over or authority to regulate:

1. The transportation of natural gas for ultimate delivery to or the sale of natural gas to:

a. a municipality or any public trust or authority, whether for its own use or for resale and distribution, or

b. any industrial end-user of natural gas,

if, in the case of either subparagraph a or b of this paragraph, competitive conditions exist at the time the contract for such transportation or sale is entered into; or

2. Any facilities to the extent used for such transportation or sale.

Nothing in this subsection shall limit the Corporation Commission's authority over:

(i) any facilities in matters of pipeline safety, or

(ii) facilities used for a transportation or sale not exempt under paragraph 1 of this subsection to the extent the Corporation Commission may otherwise have authority over such facilities.

For the purposes of this act, the term "competitive conditions" includes, but is not limited to, the existence of another transporter or supplier of natural gas, including a natural gas company or public service corporation capable of providing such transportation or of supplying such natural gas.

D. No person shall become a "public utility" as defined by Section 151 et seq. of Title 17 of the Oklahoma Statutes, or a "transportation company", "transmission company" or a "public service corporation" as defined by Sections 18 through 34 of Article 9 of the Oklahoma Constitution or shall be considered to be engaged in the conduct of a "public business" as defined by Section 4 of Title 79 of the Oklahoma Statutes or to be engaged in an activity or business affected with a public interest by reason of the transportation or sale of natural gas in accordance with the provisions of subsection C of this section. The terms defined in this subsection shall in no way effect or have any bearing upon these or similar terms as defined in Section 2808 of Title 68 of the Oklahoma Statutes. To the extent required to implement this act, this act shall be deemed to be a constitutional amendment by the Legislature as authorized by Section 35 of Article 9 of the Oklahoma Constitution.

E. The Corporation Commission shall have exclusive jurisdiction to determine whether any transportation or sale of natural gas is governed by subsection C of this section. A determination by the Corporation Commission that subsection C of this section applies shall not be required in order for any person to undertake the transportation or sale of natural gas authorized by subsection C of this section. However, any person who is a party, or intends to

become a party, to a transportation or sale authorized, or claimed to be authorized, by subsection C of this section, including a municipality public trust or authority, or industrial end-user for whose direct benefit such transportation or sale is made, may, in anticipation of such a transaction or after such a transaction is commenced, seek a determination from the Corporation Commission that such transaction is governed by subsection C of this section. A transaction undertaken in reliance upon subsection C of this section, if so expressed in the applicable documents, shall create a presumption that competitive conditions exist. In such event, the burden of rebutting such presumption shall be borne by the person claiming the lack of competitive conditions; provided, the parties to such transaction, including a municipality, public trust or authority, or industrial end-user for whose direct benefit such transaction is made, and the successors in interest and affiliates of such parties, shall have no standing to challenge the existence of competitive conditions and, as to such persons, the applicability of subsection C of this section to such transaction shall be conclusively presumed.

F. The Corporation Commission shall have no jurisdiction or authority to require the continuance of any transportation or sale made pursuant to subsection C of this section upon the termination of such transportation or sale.

G. If the Corporation Commission has established a regulated rate for the transportation or sale of natural gas by a public utility to a municipality or a public trust or authority, subsection C of this section shall not permit such public utility to charge a rate in excess of such regulated rate.

H. Nothing in this act shall be construed to limit the authority of the Corporation Commission under Section 24.3 of Title 52 of the Oklahoma Statutes.

I. The Corporation Commission is hereby authorized to promulgate rules to implement the provisions of this act. However, the Commission shall not promulgate any rules inconsistent with the intent of this act.

J. The term "person" shall include a natural person, corporation, company, partnership, joint venture, limited liability company, trust, trustee, receiver, lessee, and any unincorporated organization or association.

SECTION 2. 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.

46-1-7178 KB