

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)
CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 319

By: Easley of the Senate

and

Beutler of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to natural gas; amending 52 O.S. 1991, Section 24, as amended by Section 1, Chapter 293, O.S.L. 1995 (52 O.S. Supp. 1997, Section 24), which relates to pipelines; requiring certain gas pipelines to be subject to act; defining terms; prohibiting gas gatherers from charging fees or requiring terms and conditions which are unfair, unjust, unreasonable or unduly discriminatory; authorizing the Corporation Commission to remedy such fees upon complaint of aggrieved party; stating remedies; requiring gatherers to provide open access natural gas gathering to certain persons; stating exceptions; requiring the Commission to determine if certain gatherers are required to provide open access natural gas gathering; prohibiting gatherers from refusing open access; stating exceptions; allowing the Commission to require gatherers to provide open access and set certain fees if parties are unable to agree; prohibiting gatherers from requiring unreasonable terms or conditions of service; allowing Commission to determine violations; requiring Commission action be initiated by the filing of a complaint; requiring Commission to conduct hearing; requiring certain notice; providing for Commission to set certain fees, terms or conditions pending complaint; providing settlement of certain fees collected during complaint pendency; requiring Commission to order certain fees apply to certain uncontracted persons who file application; prohibiting gatherers from increasing fees for uncontracted persons without certain notice; limiting jurisdiction of the Commission; requiring Commission to determine certain hearings within certain time period; requiring Commission to promulgate rules implementing act; authorizing Commission to keep certain information confidential; requiring Commission to maintain index of certain orders; prohibiting gatherers from charging discriminatory fees, terms or conditions in favor of gatherer's affiliated entities; providing severability; repealing Section 1, Chapter 340, O.S.L. 1993, as amended by Section 2, Chapter 293, O.S.L. 1995 (52 O.S. Supp. 1997, Section 24.3), which relates to gas gathering; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 52 O.S. 1991, Section 24, as amended by Section 1, Chapter 293, O.S.L. 1995 (52 O.S. Supp. 1997, Section 24), is amended to read as follows:

Section 24. Every corporation, joint stock company, limited co-partnership, 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 an 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~~ Sections 4 and 5 of this ~~title~~ act.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24.3A of Title 52, unless there is created a duplication in numbering, reads as follows:

For the purposes of this act:

1. "Gatherer" means any person gathering natural gas for hire, 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;

2. "Person" means any individual, corporation, firm, partnership, limited liability company, association, venture, trust, institution, or federal, state, or local governmental instrumentality, or any legal entity however organized;

3. "Terms and conditions of service" shall mean all significant factors relevant to the nomination, gathering, carriage, or redelivery of natural gas including, but not limited to, deductions for fuel, accounting for imbalances, costs, charges and fees for connection, term of gathering service, location of receipt and delivery points, quality specifications of gas, minimum and maximum pressures, and measurement; and

4. "Uncontracted person" shall mean:

- a. a person who has no contract respecting the gathering of such gas with the gatherer, or
- b. a person whose contract with the gatherer is expiring within ninety (90) days of the date of filing a complaint and who has not subsequently entered into a contract governing the gas which is the subject of the complaint.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24.3B of Title 52, unless there is created a duplication in numbering, reads as follows:

A. No gatherer shall charge any fee and/or require any terms and conditions of service for gathering which is unfair, unjust, unreasonable, or unduly discriminatory. Upon complaint of an aggrieved party filed pursuant to this act, the Corporation Commission shall have the authority to remedy any such fee and/or terms and conditions of service for gathering by:

1. Ordering an adjustment of the fee and/or terms and conditions of service as to the aggrieved party to the extent necessary to remove any unfair, unjust, unreasonable, or unduly discriminatory portion of such fee and/or the terms and conditions of service;

2. Ordering the continuation of gathering service during the pendency of the complaint under such fees and/or terms and conditions of service as the Commission may determine; and

3. Ordering that gathering fees and/or terms and conditions of service established by the Commission pursuant to the complaint of an aggrieved party shall apply to all similarly situated persons on the gatherer's gathering system as specified in subsection G of this section.

Provided, that no person may challenge as unfair, unjust, unreasonable, or unduly discriminatory under any provision of this act a fee which such person is obligated to pay and/or terms and conditions to which such person is subject to by existing contract.

B. No gatherer shall refuse to provide open access natural gas gathering, including the redelivery of such gas, for a fee for any person seeking such gathering for gas which is connected to the gatherer's pipeline unless the gatherer can demonstrate to the Commission that any of the following appropriately apply in the circumstances:

1. The continuation of gathering service on the basis requested by the complainant would require an additional capital investment by the gatherer and complainant is unable or unwilling to timely reimburse gatherer for the complainant's proportionate share of any reasonable costs arising from and attributable to such continuation of gathering service;

2. The continued gathering of such gas could reasonably be expected to have a material adverse effect on safety or service to existing customers;

3. The gas does not satisfy minimum standards for quality consistently applied by the gatherer for such gathering system;

4. The gathering service requested is inconsistent with an existing contract which governs the gathering of the complainant's gas; or

5. For such other good cause as the Commission may determine in the particular case.

Upon complaint of an aggrieved party connected to the gatherer's pipeline, the Commission shall determine whether such gatherer is required by reason of this subsection to continue to provide open access natural gas gathering to such party, and if so, and the parties are unable to agree upon a fee and terms and conditions of service for gathering, to fix a fee and/or terms and conditions of service for such gathering.

C. No gatherer shall refuse to provide open access natural gas gathering, including the redelivery of such gas, for a fee for any person seeking such gathering for gas which is not connected to gatherer's pipeline unless the gatherer can demonstrate that any of the following apply:

1. The natural gas cannot be reasonably carried by such gatherer due to existing capacity limitations on the gatherer's pipeline;

2. An extension or expansion of facilities would be required and the complainant is unable or unwilling to timely reimburse the gatherer for the complainant's proportionate share of any reasonable costs arising from and attributable to such extension or expansion;

3. The gathering of such gas could reasonably be expected to have a material adverse affect on safety or service to existing customers or on the operation of or recovery in any processing facility;

4. The gas does not satisfy minimum standards for quality consistently applied by the gatherer for such gathering system;

5. The gathering service requested is inconsistent with an existing contract which governs the gathering of the complainant's gas;

6. That there is effective competition at the well-head. For purposes of this subsection, "competition" means the complainant has received two or more contemporaneous offers from gatherers to gather the complainant's gas at a fee and upon terms and conditions which are fair, just, reasonable and not unduly discriminatory; or

7. For such other good cause as the Commission may determine in the particular case.

Upon complaint of an aggrieved party not connected to the gatherer's pipeline, the Commission shall determine whether a gatherer is required by reason of this subsection to provide open access natural gas gathering to such party, and if so, and the parties are unable to agree upon a fee and terms and conditions of service for gathering, to fix a fee and/or terms and conditions of service for such gathering.

D. No gatherer shall require of a person seeking gathering service any term or condition of service not reasonably necessary or proper to the operation or administration of the gathering system. Upon complaint of an aggrieved party, the Commission shall determine whether any term and/or condition of service violates this subsection and if so, shall by order remedy any improper term and/or condition of service. In determining whether any term and/or condition of service violates this subsection, the Commission shall consider the legitimate needs of the gatherer and such other factors as the Commission determines to be relevant, including the terms and conditions of gathering service of other gatherers under comparable conditions.

E. Any action by the Commission under this act shall be initiated by the filing of a complaint with the Commission by the aggrieved party and the serving of a copy of such complaint upon the gatherer from whom gathering service is being requested. The Commission shall conduct a hearing and take such evidence as is necessary to determine the complaint. Notice of the hearing on such complaint shall be given by registered mail to such gatherer at least twenty (20) days prior to such hearing but in no event shall the hearing be less than thirty (30) days from the filing of the complaint. If the parties are unable to agree on an interim fee and/or terms and conditions of service for gathering to apply during the pendency of the complaint before the Commission, then the Commission may set such interim fee and/or terms and conditions of service under the provisions of subsection F of this section. In determining and setting a fee and/or terms and

conditions of service under this act, other than an interim fee under the provisions of subsection F of this section, the Commission shall determine a fee and/or terms and conditions of service which would result from arm's-length bargaining in good faith in a competitive market between persons of equal bargaining power and shall consider all economically significant factors which it determines to be relevant, which may include, but are not limited to:

1. The fees and terms and conditions of service which such gatherer receives from other similarly situated persons;

2. The fees charged and the terms and conditions of service for similar services offered by other gatherers within an area the Commission determines to be relevant;

3. The historical fees and historical terms and conditions of service on such gathering system;

4. The reasonable financial risks of installing such a gathering system;

5. The reasonable financial risks of operating such a gathering system;

6. The reasonable capital, operating and maintenance costs of such a gathering system;

7. If the aggrieved party is not connected to gatherer's pipeline, the economic impact related to the recovery of liquefiable hydrocarbons in the gas stream of such gathering system which would result from the gathering of the complainant's gas; and

8. Such other factors which the Commission determines to be relevant; provided, that such fee and/or terms and conditions of service shall not be computed on a utility rate of return basis.

F. Upon the filing of a complaint under this section which seeks to continue an existing gathering service, the Commission on motion of the complainant shall require continuation of gathering service under the terms and conditions of the last expired contract, if any, during the pendency of the complaint, or set an interim fee and/or terms and conditions of service; provided, the gatherer shall not be required to make any additional capital

expenditure in order to provide such interim service or to provide interim gathering if the Commission determines interim gathering is excused for safety reasons. Interim relief shall be by order of the Commission after notice to the gatherer from whom gathering service is being requested and hearing. Any fee for gathering collected during the pendency of a complaint which seeks to set a fee for such gathering shall be subject to the fee finally set by the Commission. If the finally determined fee is less than the collected fee, the excess shall be refunded to the complainant within fifteen (15) days after final determination of the fee, together with interest at a rate established by the Commission. If the finally determined fee is greater than the collected fee, the excess shall be paid by the complainant to the gatherer within fifteen (15) days after the fee is finally determined, together with interest at a rate established by the Commission.

G. The Commission shall order that any gathering fee and/or terms and conditions of service established by the Commission shall apply to all uncontracted persons on or in proximity to the gatherer's gathering system who are similarly situated and who file an application in accordance with this subsection. Any person on such gatherer's gathering system may file an application with the Commission seeking such fee and/or terms and conditions of service, which shall be granted to the applicant by the Commission, unless the gatherer can demonstrate that the applicant is not similarly situated to the original complainant or that there has been a material operational change in conditions or circumstances since the prior fee or terms and conditions of service were determined.

H. A gatherer providing natural gas gathering services to an uncontracted person shall not increase the fee for gathering, change the terms or conditions of such gathering service, discontinue gathering service, or not renew an expiring contract of an uncontracted person, without first giving the uncontracted person written notice prior to the effective date of the increase in fee, change in terms or conditions, discontinuance of gathering services, or nonrenewal. Such written notice shall be given at

least sixty (60) days prior to the effective date of such increase, change, discontinuance or nonrenewal with respect to contracts having terms in excess of three (3) months, and at least thirty (30) days prior to the effective date of such increase, change, discontinuance or nonrenewal with respect to contracts having terms of three (3) months or less. An affected person may file a complaint with the Commission challenging the new fee, change in the terms and conditions, discontinuance or nonrenewal of contract of gathering services pursuant to this act to determine whether the increased fee or changes in terms and conditions of service are in accordance with the provisions of this act. Such complaint shall be filed no later than one hundred twenty (120) days from the effective date of the new fee, change in terms and conditions of service, discontinuance of service, or expiration of the contract. Upon the filing of a complaint challenging an increased fee, change in the terms and conditions of service, discontinuance of service, or nonrenewal of an expiring contract and after a hearing by the Commission, the Commission shall determine whether the proposed fee, change in terms and conditions of service, discontinuance of service, or nonrenewal of an expiring contract is permissible under the provisions of this act. In the event the fee, change in terms and conditions of service, discontinuance of service, or nonrenewal of existing contract is determined to be inappropriate, the Commission shall fix a proper fee for such service and/or prescribe appropriate terms and conditions of service.

I. Nothing in this act shall give the Commission jurisdiction over the purchase or resale of natural gas or the products processed therefrom, or the price or other compensation for, or any of the other terms or conditions of, any such purchase or resale.

J. All matters to be determined by the Commission under this act shall be heard on an expedited basis and a final, appealable order rendered thereon within one hundred twenty (120) days from the filing of the complaint. The Commission shall promulgate rules to implement and administer the provisions of this act,

which shall include rules establishing an informal procedure to be available, either before or after the filing of a complaint, in order to encourage the resolution of disputes arising under this act; however, such informal procedure shall not extend the time limit of one hundred twenty (120) days established in this subsection.

K. If, in connection with any proceeding under this act, any person, whether or not a party to the proceeding, furnishes information it desires to be confidential, proprietary and/or privileged, the Commission, upon motion of such person and upon a finding by the Commission that the information is confidential, proprietary or privileged, shall enter such protective order as may be necessary to ensure that the information will be used only as may be required for the proper determination of the merits of a proceeding under this act and will not be used for purposes of competitive advantage.

L. The Commission shall maintain an index of all orders entered by it under this act identifying the date and order number indicating the type of relief granted and identifying the gatherer and gathering system to which the order applies. All orders of the Commission determining a fair, just, reasonable and nondiscriminatory fee and/or terms and conditions of service under this act shall contain findings of fact and conclusions of law in sufficient detail so that the relevant and significant factors considered by the Commission in determining a fee and/or terms and conditions of service, the Commission's analysis of those factors and the reasons supporting such fee and/or terms and conditions of service can be reasonably determined from the face of the order; provided, such order shall not include any information not permitted to be disclosed by the terms of any protective order entered under subsection K of this section.

M. No gatherer shall charge any fee and/or require any terms and conditions of service which discriminate in favor of the gatherer's affiliated entities and against other persons.

N. The provisions of this act are severable, and if any part or provision thereof shall be held void, the decision of the court

shall not affect or impair any of the remaining parts or provisions thereof.

SECTION 4. REPEALER Section 1, Chapter 340, O.S.L. 1993, as amended by Section 2, Chapter 293, O.S.L. 1995 (52 O.S. Supp. 1997, Section 24.3), is hereby repealed.

SECTION 5. 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.

46-2-3253 MJM (<time=system>)