

1 STATE OF OKLAHOMA

2 1st Session of the 47th Legislature (1999)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 SENATE BILL NO. 235

By: Easley and Crutchfield of
the Senate

and

Beutler of the House

8 COMMITTEE SUBSTITUTE

9
10 An Act relating to oil and gas; amending 52 O.S.
11 1991, Section 24, as amended by Section 1, Chapter
12 293, O.S.L. 1995 (52 O.S. Supp. 1998, Section 24),
13 which relates to gas gathering; modifying statutory
14 reference; providing definitions; prohibiting
15 gatherer from charging certain fees; authorizing the
16 Corporation Commission to remedy certain service;
17 providing remedies; prohibiting gatherer from
18 refusing to provide open access natural gas gathering
19 for certain persons connected to the pipeline;
20 providing certain exceptions; directing the
21 Commission to make certain determinations;
22 prohibiting gatherer from refusing to provide open
23 access natural gas gathering from certain persons not
24 connected to the pipeline; providing certain
25 exceptions; directing the Commission to make certain
26 determinations; providing for hearing process;
27 allowing the Commission to set interim fees, terms
28 and conditions; providing factors for determining
29 interim fees, terms and conditions; prohibiting
30 certain computation; allowing the Commission to
31 require interim gathering; allowing the Commission to
32 set fees and terms and conditions for interim
gathering; prohibiting a gatherer from taking certain
action without prior written notice; providing for
complaints; limiting the jurisdiction of the
Commission; requiring expedited actions; authorizing
the Commission to promulgate rules; directing the
Commission to promulgate rules establishing certain
dispute resolution procedures; providing for
confidentiality of information; directing the
Commission to establish an index of certain orders;
providing for contents of orders; prohibiting
favorable treatment of affiliated entities; repealing
Section 2, Chapter 293, O.S.L. 1995 (52 O.S. Supp.
1997, Section 24.3), which relates to gathering of
natural gas; providing for codification; and
declaring an emergency.

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

1 SECTION 1. AMENDATORY 52 O.S. 1991, Section 24, as
2 amended by Section 1, Chapter 293, O.S.L. 1995 (52 O.S. Supp. 1998,
3 Section 24), is amended to read as follows:

4 Section 24. Every corporation, joint stock company, limited co-
5 partnership, partnership or other person, now or hereafter engaged
6 in the business of carrying or transporting natural gas for hire,
7 for compensation or otherwise, by pipeline, or pipelines within this
8 state, and by virtue of and in conformity to, any valid law
9 incapable of revocation by any law of this state or of the United
10 States, or by virtue of and in conformity to the provisions of this
11 act, shall be a common carrier thereof as at common law, and no such
12 common carrier shall allow or be guilty of any unjust or any
13 unlawful discrimination, directly or indirectly, in favor of the
14 carriage, transportation or delivery of any natural gas, offered to
15 it, in its possession or control, or in which it may be interested,
16 directly or indirectly, and provided further, that any person, firm
17 or corporation owning or operating a natural gas pipeline within the
18 limits of any incorporated city or town in this state shall be
19 exempted from the provisions of this section only as to its
20 distributing lines located wholly within the corporate limits of
21 said city or town; and provided further, that any person, firm or
22 corporation engaged in gathering natural gas in this state shall be
23 exempted from the provisions of this section as to such gathering
24 activities and instead shall be subject to the provisions of ~~Section~~
25 ~~24.3~~ Sections 2 and 3 of this ~~title~~ act.

26 SECTION 2. NEW LAW A new section of law to be codified
27 in the Oklahoma Statutes as Section 24.4 of Title 52, unless there
28 is created a duplication in numbering, reads as follows:

29 A. For the purposes of this act:

30 1. "Gatherer" shall mean any person gathering natural gas for
31 hire, compensation or otherwise, or gathering natural gas, in whole
32 or in part, for such person's own account, whether in connection

1 with the purchase and resale of natural gas, or in connection with
2 the processing of natural gas or otherwise;

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

7 3. "Shipper" shall mean any person who owns or controls natural
8 gas that seeks or receives gathering service from the gatherer; and

9 4. "Terms and conditions of service" shall include all factors
10 defining the obligations between the gatherer and shipper which are
11 directly related to and impact upon the determination of a gathering
12 fee or open access obligation, including, but not limited to,
13 nominations, deductions for fuel, accounting for imbalances, costs,
14 charges and fees for connection, duration of gathering service,
15 location of receipt and delivery points, quality specifications of
16 natural gas, minimum and maximum pressures, and measurement.

17 SECTION 3. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 24.5 of Title 52, unless there
19 is created a duplication in numbering, reads as follows:

20 A. No gatherer shall charge any fee or require any terms and
21 conditions of service, or both, for gathering, which is unfair,
22 unjust, unreasonable, or unduly discriminatory under the standard
23 specified in and as provided by subsection D of this section. Upon
24 complaint of an aggrieved party filed pursuant to this act, the
25 Corporation Commission shall have the authority to remedy any such
26 fee or terms and conditions of service, or both, for gathering, by:

27 1. Ordering an adjustment of the fee or terms and conditions of
28 service, or both, as to the aggrieved party to the extent necessary
29 to remove any unfair, unjust, unreasonable, or unduly discriminatory
30 portion of such fee or terms and conditions of service, or both,
31 under the standard specified in and as provided by subsection D of
32 this section; and, if applicable,

1 2. Ordering the continuation of gathering service during the
2 pendency of the complaint as provided in subsection E of this
3 section.

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

9 B. No gatherer shall refuse to provide open access natural gas
10 gathering, including the redelivery of such natural gas to existing
11 redelivery points, for a fee for any person seeking such gathering
12 for natural gas which is connected to the gatherer's pipeline unless
13 the gatherer can demonstrate to the Commission that any of the
14 following apply:

15 1. The continuation of gathering service on the basis requested
16 by the complainant would require an additional capital investment by
17 the gatherer and complainant is unable or unwilling to timely pay
18 gatherer for all costs attributable to such capital investment
19 together with that portion of a gatherer's overhead directly related
20 to such capital investment;

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

24 3. The natural gas does not satisfy minimum standards for
25 quality, including energy content, consistently applied by the
26 gatherer for such gathering system;

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

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

32 Upon complaint of an aggrieved party connected to the gatherer's

1 pipeline, the Commission shall determine whether such gatherer is
2 required by reason of this subsection to continue to provide open
3 access natural gas gathering to such party, and if so, and the
4 parties are unable to agree upon a fee or terms and conditions of
5 service or both, for gathering, to fix a fee or terms and conditions
6 of service, or both, for such gathering.

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

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

15 2. An extension or expansion of facilities would be required
16 and the complainant is unable or unwilling to timely pay the
17 gatherer for all reasonable costs attributable to such extension or
18 expansion together with that portion of a gatherer's overhead
19 directly related to such extension or expansion of facilities;

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

24 4. The natural gas does not satisfy minimum standards for
25 quality or energy or recoverable hydrocarbon content consistently
26 applied by the gatherer for such gathering system;

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

30 6. For such other good cause as the Commission may determine in
31 the particular case.

32 Upon complaint of an aggrieved party not connected to the

1 gatherer's pipeline, the Commission shall determine whether a
2 gatherer is required by reason of this subsection to provide open
3 access natural gas gathering to such party, and if so, and the
4 parties are unable to agree upon a fee or terms and conditions of
5 service, or both, for gathering, to fix a fee or terms and
6 conditions of service, or both, for such gathering.

7 D. Any action by the Commission under this act shall be
8 initiated by the filing of a complaint with the Commission by the
9 aggrieved party and the serving of a copy of such complaint upon the
10 gatherer from whom gathering service is being requested. The
11 Commission shall conduct a hearing and take such evidence as is
12 necessary to determine the complaint. Notice of the hearing on such
13 complaint shall be given by registered mail to such gatherer at
14 least twenty (20) days prior to such hearing but in no event shall
15 the hearing be less than thirty (30) days from the filing of the
16 complaint. If the parties are unable to agree on an interim fee or
17 terms and conditions of service, or both, for gathering to apply
18 during the pendency of the complaint before the Commission, then the
19 Commission may set such interim fee or terms and conditions of
20 service, or both, under the provisions of subsection E of this
21 section. In determining and setting a fee or terms and conditions
22 of service, or both, under this act, other than an interim fee under
23 the provisions of subsection E of this section, the Commission shall
24 determine a fee or terms and conditions of service, or both, which
25 would result from arm's-length bargaining in good faith in a
26 competitive market between persons of equal bargaining power and
27 shall consider all economically significant factors which it
28 determines to be relevant which may include, but are not limited to:

29 1. The fees and terms and conditions of service which such
30 gatherer receives from the complainant and other shippers;

31 2. The fees charged and the terms and conditions of service
32 provided by other gatherers within an area the Commission determines

1 to be relevant;

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

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

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

8 6. Such other factors which the Commission determines to be
9 relevant.

10 Provided, that neither such fee nor such terms and conditions of
11 service shall be computed on a utility rate of return basis and that
12 gatherers shall not be regulated like public utilities in the
13 setting of fees and terms and conditions of service.

14 E. Upon the filing of a complaint under this section which
15 seeks to continue an existing gathering service, the Commission on
16 motion of the complainant shall require continuation of gathering
17 service under the fees and terms and conditions of service of the
18 last expired contract, if any, during the pendency of the complaint,
19 or set an interim fee and terms and conditions of service. However,
20 the gatherer shall not be required to provide interim gathering if
21 any additional capital expenditure is necessary to provide such
22 interim gathering service or if the Commission determines interim
23 gathering is excused for safety reasons. Interim relief shall be by
24 order of the Commission after notice to the gatherer from whom
25 gathering service is being requested and hearing. Any fee for
26 gathering collected during the pendency of a complaint which seeks
27 to set a fee for such gathering shall be subject to the fee finally
28 set by the Commission. If the finally determined fee is less than
29 the collected fee, the excess shall be refunded to the complainant
30 within fifteen (15) days after the final determination of the fee,
31 together with interest at a rate established by the Commission. If
32 the finally determined fee is greater than the collected fee, the

1 excess shall be paid by the complainant to the gatherer within
2 fifteen (15) days after the fee is finally determined, together with
3 interest at a rate established by the Commission.

4 F. A gatherer providing natural gas gathering services shall
5 not increase the fee for gathering, change the terms or conditions
6 of service, discontinue gathering service, or not renew an expiring
7 contract of the shipper, without first giving the shipper written
8 notice prior to the effective date of the increase in fee, change in
9 terms or conditions of service, discontinuance of gathering
10 services, or nonrenewal. Such written notice shall be given at
11 least thirty (30) days prior to the effective date of such increase,
12 change, discontinuance or nonrenewal with respect to contracts
13 having terms in excess of six (6) months. If the parties are unable
14 to agree upon continuation of service or fees or terms and
15 conditions of service, or both, the aggrieved party may file a
16 complaint under this act to determine whether an open access
17 obligation exists and, if so, seek the determination of fees or
18 terms and conditions of service, or both, under this act. The
19 requirements of this subsection shall not apply to changes in fees
20 or terms and conditions of service, or both, or other matters of
21 gathering service which are provided for by existing contract.
22 Further, nothing in this section or this act shall create or be
23 interpreted to create service or abandonment obligations upon a
24 gatherer or give the Commission jurisdiction over abandonment of
25 gathering facilities.

26 G. Nothing in this act shall give the Commission jurisdiction
27 over the purchase, processing or resale of natural gas or the price
28 or other compensation for, or any of the other terms or conditions
29 of, any such purchase, processing or resale.

30 H. All matters to be determined by the Commission under this
31 act shall be heard on an expedited basis and a final, appealable
32 order rendered thereon within one hundred twenty (120) days from the

1 filing of the complaint, unless otherwise agreed by the parties.
2 The Commission is hereby authorized to promulgate rules to implement
3 and administer the provisions of this act. The Commission shall
4 promulgate rules establishing a voluntary, non-binding, informal
5 procedure to be available, either before or after the filing of a
6 complaint, in order to encourage the resolution of disputes arising
7 under this act; however, such informal procedure shall not extend
8 the time limit of one hundred twenty (120) days established in this
9 subsection, unless otherwise agreed by the parties.

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

20 J. The Commission shall maintain an index of all orders entered
21 by it under this act identifying the date and order number
22 indicating the type of relief granted and identifying the gatherer
23 and gathering system to which the order applies. All orders of the
24 Commission determining a fair, just, reasonable and
25 nondiscriminatory fee and terms and conditions of service under this
26 act shall contain findings of fact and conclusions of law in
27 sufficient detail so that the relevant and significant factors
28 considered by the Commission in determining a fee and terms and
29 conditions of service, the Commission's analysis of those factors
30 and the reasons supporting such fee and terms and conditions of
31 service can be reasonably determined from the face of the order;
32 provided, such order shall not include any information not permitted

1 to be disclosed by the terms of any protective order entered under
2 subsection I of this section.

3 K. No gatherer shall charge any fee or require any terms and
4 conditions of service, or both, which unduly discriminate in favor
5 of the gatherer's affiliated entities and against other persons.

6 SECTION 4. REPEALER Section 1, Chapter 340, O.S.L. 1993,
7 as amended by Section 2, Chapter 293, O.S.L. 1995 (52 O.S. Supp.
8 1997, Section 24.3), is hereby repealed.

9 SECTION 5. It being immediately necessary for the preservation
10 of the public peace, health and safety, an emergency is hereby
11 declared to exist, by reason whereof this act shall take effect and
12 be in full force from and after its passage and approval.

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