ENGROSSED SENATE
BILL NO. 235

By: Easley and Crutchfield of the Senate

and

Beutler of the House

[natural gas - amending 52 O.S. 1991, Section 24, as amended by Section 1, Chapter 293, O.S.L. 1995 (52 O.S. Supp. 1998, Section 24), which relates to gas gathering -

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. 1998, 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 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 natural 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 2 and 3 of this ~~title~~ act.

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

A. For the purposes of this act:

1. "Gatherer" shall mean 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 in connection with the processing of natural gas or otherwise;

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

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

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

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

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

2. Ordering the continuation of gathering service during the pendency of the complaint as provided in subsection E 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 or terms and conditions of service to which such person is subject by existing contract.

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

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 pay gatherer for all costs attributable to such capital investment together with that portion of a gatherer’s overhead directly related

to such capital investment;

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

3. The natural gas does not satisfy minimum standards for quality, including energy content, 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 natural 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 or terms and conditions of service or both, for gathering, to fix a fee or terms and conditions of service, or both, for such gathering.

C. No gatherer shall refuse to provide open access natural gas gathering, including the redelivery of such natural gas to existing redelivery points, for a fee for any person seeking such gathering for natural 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 pay the gatherer for all reasonable costs attributable to such extension or expansion together with that portion of a gatherer’s overhead directly related to such extension or expansion of facilities;

3. The gathering of such natural 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 natural gas does not satisfy minimum standards for quality or energy or recoverable hydrocarbon content 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 natural gas; or

6. 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 or terms and conditions of service, or both, for gathering, to fix a fee or terms and conditions of service, or both, for such gathering.

D. 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 or terms and conditions of service, or both, for gathering to apply during the pendency of the complaint before the Commission, then the Commission may set such interim fee or terms and conditions of

service, or both, under the provisions of subsection E of this section. In determining and setting a fee or terms and conditions of service, or both, under this act, other than an interim fee under the provisions of subsection E of this section, the Commission shall determine a fee or terms and conditions of service, or both, 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 the complainant and other shippers;

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

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

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

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

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

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

E. 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 fees and terms and conditions of service of the last expired contract, if any, during the pendency of the complaint, or set an interim fee and terms and conditions of service. However,

the gatherer shall not be required to provide interim gathering if any additional capital expenditure is necessary to provide such interim gathering service or 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 the 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.

F. A gatherer providing natural gas gathering services shall not increase the fee for gathering, change the terms or conditions of service, discontinue gathering service, or not renew an expiring contract of the shipper, without first giving the shipper written notice prior to the effective date of the increase in fee, change in terms or conditions of service, discontinuance of gathering services, or nonrenewal. Such written notice shall be given at least thirty (30) days prior to the effective date of such increase, change, discontinuance or nonrenewal with respect to contracts having terms in excess of six (6) months. If the parties are unable to agree upon continuation of service or fees or terms and conditions of service, or both, the aggrieved party may file a complaint under this act to determine whether an open access obligation exists and, if so, seek the determination of fees or terms and conditions of service, or both, under this act. The requirements of this subsection shall not apply to changes in fees

or terms and conditions of service, or both, or other matters of gathering service which are provided for by existing contract. Further, nothing in this section or this act shall create or be interpreted to create service or abandonment obligations upon a gatherer or give the Commission jurisdiction over abandonment of gathering facilities.

G. Nothing in this act shall give the 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.

H. 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, unless otherwise agreed by the parties. The Commission is hereby authorized to promulgate rules to implement and administer the provisions of this act. The Commission shall promulgate rules establishing a voluntary, non-binding, 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, unless otherwise agreed by the parties.

I. 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.

J. 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 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 terms and conditions of service, the Commission's analysis of those factors and the reasons supporting such fee and 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 I of this section.

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

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.

Passed the Senate the 24th day of February, 1999.

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President of the Senate

Passed the House of Representatives the ____ day of _____ , 1999.

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Speaker of the House of Representatives