

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2550

By: Morgan (Danny)

COMMITTEE SUBSTITUTE

An Act relating to oil and gas; amending 52 O.S. 2001, Sections 24.4 and 24.5, which relate to gas gathering; modifying certain definitions; adding definition; deleting certain prohibition for challenging a fee; authorizing the Corporation Commission to order certain fees or terms and conditions to similarly situated persons; prohibiting abrogation of existing contracts; modifying a gatherers requirement to provide open access; modifying certain exemptions to requirement for open access; deleting certain exemptions to requirement for open access; modifying factors used by the Commission to determine fees or terms and conditions; deleting certain factor used by the Commission to determine fees or terms and conditions; deleting certain factor for requiring interim gathering; changing number of days required for certain written notice; deleting prohibition for creation of certain obligations; modifying jurisdiction of the Commission over certain facilities or processes; expanding the authority of the Commission to enforce certain action; granting the Commission the power to inspect certain books and records; authorizing the Commission to punish certain noncompliance; requiring persons providing contracts to delete certain information from the contracts; requiring gatherers to maintain records in certain manner; authorizing the Commission to order fees or terms and conditions to apply to certain uncontracted persons; providing procedure for applying fees or terms and conditions to certain persons; prohibiting unreasonable terms or conditions of service; directing the Commission to determine if certain terms or conditions of service are unreasonable; providing certain criteria for making determination; requiring certain gatherers to offer option of open access to certain persons with certain conditions and terms; directing the Commission to make certain determination; providing scope of terms and conditions of service; and declaring an emergency.

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

SECTION 1. AMENDATORY 52 O.S. 2001, Section 24.4, is amended to read as follows:

Section 24.4 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, master limited 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~~ a 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~~ respecting any gathering activities or process, including, but not limited to, nominations, deductions for fuel, accounting for imbalances, imbalance penalties, assessments, charges or makeup provisions, costs, charges and fees for connection or maintaining connections, duration of gathering service, location of receipt and delivery points, quality specifications of natural gas, minimum and maximum pressures, and measurement; and

5. "Delivery point(s)" shall mean the inlet flange of the gas meter at the point of connection between the pipeline of the gatherer and the receiving interstate or intrastate pipeline or facility.

SECTION 2. AMENDATORY 52 O.S. 2001, Section 24.5, is amended to read as follows:

Section 24.5 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~~

3. Ordering that gathering fees or terms and conditions of service to which such person is subject by existing contract established by the Commission pursuant to the complaint of an aggrieved party may apply to any similarly situated person on the system of the gatherer as specified in subsection L of this section.

Nothing in this section shall operate to abrogate the specific term or terms of an existing contract while the contract is in force. Upon the expiration or cancellation of an existing contract, under the terms of the contract, the provisions of this section shall apply.

B. No gatherer shall refuse to provide open access natural gas gathering, including the redelivery of such natural gas to existing ~~redelivery~~ delivery 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 material capital investment by the gatherer and complainant is unable or unwilling to timely pay gatherer for all reasonable direct 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~~ delivery 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 direct 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 effect 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; or

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 and historically received from the complainant and other shippers within an area the Commission determines to be relevant, which shall include an area of not less than the township or townships within which the well or wells of the applicant are located and the surrounding townships contiguous thereto;

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.~~ 4. The reasonable capital, operating and maintenance costs of such a gathering system; and

~~6.~~ 5. 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 subsequent hearing. Any ~~fee~~ fees for gathering collected during the ~~pendency of~~ period a complaint which seeks to set a fee for such gathering is pending 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)~~ ninety (90) 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~~

G. ~~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~~ to regulate 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~~ shall have the power and

authority to promulgate rules and issue orders to implement and,
administer, and enforce the provisions of this act and may exercise
all incidental powers which are necessary and proper to the
performance of its duties under this act. The Commission shall
promulgate rules establishing a voluntary, nonbinding, 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.~~ An 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. Upon complaint of an aggrieved party, the Commission shall
have the right to inspect the relevant books and records of any
entity gathering gas within an area the Commission determines to be
relevant and may issue process to enforce the attendance of any
witness and to obtain any records or documents relevant to the
complaint of an aggrieved party. The Commission may punish any
person failing to obey or comply with any order or requirement under
this act for contempt and such person shall be subject to a civil
penalty of not more than Five Thousand Dollars (\$5,000.00) for each
day that such noncompliance continues. 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. Any person, whether or not a
party to the proceeding, furnishing a contract or contracts in
response to a request under this section shall, prior to furnishing
such contracts, delete or obfuscate the names of all persons who are

parties to the contract, any unit or well names contained in the contracts, and any reference to the section designation contained in the legal description of the location of the well or unit, but such person shall not remove references to the applicable township and range designations.

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. Each gatherer shall maintain its books and records in such a manner that gathering services provided to an affiliate may be identified and segregated.

L. The Commission may order that any gathering fee or terms and conditions of service established by the Commission shall apply to all uncontracted persons on or in proximity to the gathering system of a gatherer who are similarly situated and who file an application in accordance with this subsection. Any person on the gathering system of a gatherer may file an application with the Commission

seeking such fee 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.

M. 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 or condition of service violates this subsection and if so shall, by order, remedy any improper term or condition of service. In determining whether any term 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 service of other gatherers under comparable conditions.

N. Any gatherer seeking to purchase natural gas from any person which is not connected to the pipeline of a gatherer and any gatherer offering to purchase natural gas from any person which is connected to the pipeline of a gatherer upon the expiration of a contract, shall affirmatively offer to the person the option of open access gathering for a fee and on terms and conditions of service which are fair, just, reasonable, and not unduly discriminatory for the delivery of natural gas to the delivery point(s). Upon the complaint of an aggrieved party, the Commission shall determine whether the fee and terms and conditions of service are fair, just, reasonable, and not unduly discriminatory under the applicable provisions of this section, taking into consideration the relevant factors comprising the determination of the fees charged and the terms and conditions of service provided. Terms and conditions of

service may include, but are not limited to, transportation, measurement, conditioning, compressing, cleaning, treating, and processing of the natural gas.

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.

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