

**EHB 1586**

**THE STATE SENATE**  
**Tuesday, April 5, 2005**

**ENGROSSED**

**House Bill No. 1586**

**As Amended**

ENGROSSED HOUSE BILL NO. 1586 - By: ADKINS and MORGAN (Danny) of the House and CRUTCHFIELD of the Senate.

**[ oil and gas - gas gathering - emergency ]**

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

SECTION 1. AMENDATORY 52 O.S. 2001, Section 24.5, as amended by Section 2, Chapter 77, O.S.L. 2004 (52 O.S. Supp. 2004, 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

1 portion of such fee or terms and conditions of service, or both,  
2 under the standard specified in and as provided by subsection D of  
3 this section; and, if applicable,

4 2. Ordering the continuation of gathering service during the  
5 pendency of the complaint as provided in subsection ~~E~~ F of this  
6 section; or

7 3. Ordering the application of fees and terms and conditions of  
8 service established by an order previously issued by the Commission  
9 under this act be applied to a similarly situated shipper as  
10 specified in subsection L of this section.

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

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

21 1. The continuation of gathering service on the basis requested  
22 by the complainant would require an additional capital investment,  
23 material to the well or wells at issue, by the gatherer and

1 complainant is unable or unwilling to timely pay gatherer for all  
2 reasonable direct costs attributable to such capital investment  
3 together with that reasonable portion of a gatherer's overhead  
4 directly related to such capital investment;

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

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

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

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

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

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

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

9 2. An extension or expansion of facilities would be required  
10 and the complainant is unable or unwilling to timely pay the  
11 gatherer for all reasonable direct costs attributable to such  
12 extension or expansion together with that reasonable portion of a  
13 gatherer's overhead directly related to such extension or expansion  
14 of facilities;

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

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

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

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

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

1 the provisions of subsection ~~F~~ F of this section, the Commission  
2 shall determine a fee or terms and conditions of service, or both,  
3 which would result from arm's-length bargaining in good faith in a  
4 competitive market between persons of equal bargaining power and  
5 shall consider all economically significant factors for gathering  
6 which it determines to be relevant which may include, but are not  
7 limited to:

8 1. The fees and terms and conditions of service which such  
9 gatherer receives from the complainant and other shippers for  
10 analogous levels of service for gathering within an area the  
11 Commission determines to be relevant;

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

15 3. The reasonable financial risks of operating such a gathering  
16 system;

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

19 5. Such other factors which the Commission determines to be  
20 relevant.

21 Provided, that neither such fee nor such terms and conditions of  
22 service shall be computed on a utility rate of return basis and that

1 gatherers shall not be regulated like public utilities in the  
2 setting of fees and terms and conditions of service.

3 E. In establishing the gathering fee, if the Commission  
4 determines the natural gas is processed, the order entered by the  
5 Commission establishing such fee shall include the following:

6 1. Gatherer shall return to shipper at the redelivery point the  
7 MMBtu's attributable to such shipper at the plant inlet, less any  
8 volumetric deductions for fuel and loss associated with gathering;  
9 and

10 2. For any month in which there is a spread fee, the shipper  
11 shall pay to the gatherer such amount.

12 No further order shall be made regarding the calculation of the  
13 spread fee or gatherer's obligations for redelivery of natural gas  
14 or natural gas liquids.

15 F. Upon the filing of a complaint under this section which  
16 seeks to continue an existing gathering service, the Commission on  
17 motion of the complainant shall require continuation of gathering  
18 service under the fees and terms and conditions of service of the  
19 last expired contract, if any, during the pendency of the complaint,  
20 or set an interim fee and terms and conditions of service. However,  
21 the gatherer shall not be required to provide interim gathering if  
22 the gatherer can show that such continuance would require an  
23 otherwise unnecessary, material capital expenditure, or if the

1 Commission determines interim gathering is excused for safety  
2 reasons. Interim relief shall be by order of the Commission after  
3 notice to the gatherer from whom gathering service is being  
4 requested and subsequent hearing. Any fees for gathering collected  
5 during the period a complaint which seeks to set a fee for such  
6 gathering is pending shall be subject to the fee finally set by the  
7 Commission. If the finally determined fee is less than the  
8 collected fee, the excess shall be refunded to the complainant  
9 within fifteen (15) days after the final determination of the fee,  
10 together with interest at a rate established by the Commission. If  
11 the finally determined fee is greater than the collected fee, the  
12 excess shall be paid by the complainant to the gatherer within  
13 fifteen (15) days after the fee is finally determined, together with  
14 interest at a rate established by the Commission.

15 G. A gatherer providing natural gas gathering services shall  
16 not increase the fee for gathering, change the terms or conditions  
17 of service, discontinue gathering service, or not renew an expiring  
18 contract of the shipper, without first giving the shipper written  
19 notice prior to the effective date of the increase in fee, change in  
20 terms or conditions of service, discontinuance of gathering  
21 services, or nonrenewal. Such written notice shall be given at  
22 least ninety (90) days prior to the effective date of such increase,  
23 change, discontinuance or nonrenewal, unless otherwise provided by

1 existing contract, but in no event less than thirty (30) days prior  
2 to the effective date of such increase, change, discontinuance or  
3 nonrenewal with respect to contracts having terms in excess of six  
4 (6) months. If the parties are unable to agree upon continuation of  
5 service or fees or terms and conditions of service, or both, the  
6 aggrieved party may file a complaint under this act to determine  
7 whether an open access obligation exists and, if so, seek the  
8 determination of fees or terms and conditions of service, or both,  
9 under this act.

10 H. All matters to be determined by the Commission under this  
11 act shall be heard on an expedited basis and a final, appealable  
12 order rendered thereon within one hundred twenty (120) days from the  
13 filing of the complaint, unless otherwise agreed by the parties.  
14 The Commission shall have the power and authority to promulgate  
15 rules and issue orders to implement, administer, and enforce the  
16 provisions of this act and may exercise all incidental powers which  
17 are necessary and proper to the performance of its duties under this  
18 act. The Commission shall promulgate rules establishing a  
19 voluntary, nonbinding, informal procedure to be available, either  
20 before or after the filing of a complaint, in order to encourage the  
21 resolution of disputes arising under this act. An informal  
22 procedure shall not extend the time limit of one hundred twenty

1 (120) days established in this subsection, unless otherwise agreed  
2 by the parties.

3 I. Upon the filing of a complaint of an aggrieved party, the  
4 Commission shall have the right to require the production of  
5 relevant documents of the gatherer which is subject to the  
6 complaint. Gathering contracts covering the 25 wells most recently  
7 connected to the system of the gatherer which is subject to the  
8 complaint are deemed discoverable and production will not be denied  
9 upon a relevance objection. The Commission may issue process to  
10 enforce the attendance of any witness and to obtain any documents  
11 relevant to the complaint of an aggrieved party. The Commission may  
12 punish any person failing to obey or comply with any order or  
13 requirement under this act for contempt, and such person shall be  
14 subject to a civil penalty of not more than Five Thousand Dollars  
15 (\$5,000.00) for each day that such noncompliance continues. If,  
16 after notice and opportunity to be heard, the Commission finds that  
17 the documents of any other gatherer are relevant, the Commission may  
18 issue process to enforce the attendance of any witness and to obtain  
19 any documents relevant to the complaint and may punish any person  
20 failing to obey or comply with any order or requirement under this  
21 act for contempt and such person shall be subject to a civil penalty  
22 of not more than Five Thousand Dollars (\$5,000.00) for each day that  
23 such noncompliance continues. If, in connection with any proceeding

1 under this act, any person, whether or not a party to the  
2 proceeding, furnishes information it desires to be confidential,  
3 proprietary and/or privileged, the Commission, upon motion of such  
4 person and upon a finding by the Commission that the information is  
5 confidential, proprietary or privileged, shall enter such protective  
6 order as may be necessary to ensure that the information will be  
7 used only as may be required for the proper determination of the  
8 merits of a proceeding under this act and will not be used for  
9 purposes of competitive advantage. Any person, whether or not a  
10 party to the proceeding, furnishing a contract or contracts in  
11 response to a request under this section shall, prior to furnishing  
12 such contracts, delete or obfuscate the names of all persons who are  
13 parties to the contract, any unit or well names contained in the  
14 contracts, and any reference to the section designation contained in  
15 the legal description of the location of the well or unit, but such  
16 person shall not remove references to the applicable township and  
17 range designations. Additional nonrelevant, confidential  
18 information may be deleted or obfuscated from contracts furnished in  
19 response to a request under this section, subject to Commission  
20 review. Documents produced under this section shall be covered by a  
21 confidentiality privilege and thus exempt from the Oklahoma Open  
22 Records Act.

1 J. The Commission shall maintain an index of all orders entered  
2 by it under this act identifying the date and order number,  
3 indicating the type of relief granted, and identifying the gatherer  
4 and gathering system to which the order applies. All orders of the  
5 Commission determining a fair, just, reasonable and  
6 nondiscriminatory fee and terms and conditions of service under this  
7 act shall contain findings of fact and conclusions of law in  
8 sufficient detail so that the relevant and significant factors  
9 considered by the Commission in determining a fee and terms and  
10 conditions of service, the Commission's analysis of those factors  
11 and the reasons supporting such fee and terms and conditions of  
12 service can be reasonably determined from the face of the order;  
13 provided, such order shall not include any information not permitted  
14 to be disclosed by the terms of any protective order entered under  
15 subsection I of this section.

16 K. No gatherer shall charge any fee or require any terms and  
17 conditions of service, or both, which unduly discriminate in favor  
18 of the gatherer's affiliated entities and against other persons.  
19 Each gatherer shall maintain documents in such a manner that  
20 gathering services provided to an affiliate may be identified and  
21 segregated.

22 L. Any person seeking gathering service for a well or wells  
23 covered by a previous order of the Commission may file an

1 application with the Commission seeking the same fee or terms and  
2 conditions of service as provided in the previous order, which shall  
3 be granted to the applicant by the Commission, unless the gatherer  
4 can demonstrate that the applicant is not a similarly situated  
5 shipper or that there has been a material change in conditions or  
6 circumstances since the prior fee or terms and conditions of service  
7 were determined.

8 M. Nothing in this act shall create or be interpreted to create  
9 service or abandonment obligations upon a gatherer or give the  
10 Commission jurisdiction to regulate abandonment of gathering  
11 facilities. Nothing in this act shall give the Commission  
12 jurisdiction to regulate the purchase, processing or resale of  
13 natural gas or the price or other compensation for, or any of the  
14 other terms or conditions of any such purchase, processing or  
15 resale.

16 SECTION 2. It being immediately necessary for the preservation  
17 of the public peace, health and safety, an emergency is hereby  
18 declared to exist, by reason whereof this act shall take effect and  
19 be in full force from and after its passage and approval.

20 COMMITTEE REPORT BY: COMMITTEE ON ENERGY & ENVIRONMENT, dated  
21 3-31-05 - DO PASS, As Amended.