STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1733 By: Morgan (Danny)

AS INTRODUCED

An Act relating to oil and gas; amending 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), which relates to gas gathering; updating statutory reference; and declaring an 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 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; or

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

Nothing in this section shall operate to abrogate the 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 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, material to the well or wells at issue, 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 reasonable 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 direct costs attributable to such extension or expansion together with that reasonable 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. 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~~ F 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 for gathering 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 for analogous levels of service for gathering within an area the Commission determines to be relevant;

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

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

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

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

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

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

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

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 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

the gatherer can show that such continuance would require an otherwise unnecessary, material capital expenditure, 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 fees for gathering collected during the 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.

G. 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 ninety (90) days prior to the effective date of such increase, change, discontinuance or nonrenewal, unless otherwise provided by existing contract, but in no event less than 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.

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 shall have the power and authority to promulgate rules and issue orders to implement, 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. 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 the filing of a complaint of an aggrieved party, the Commission shall have the right to require the production of relevant documents of the gatherer which is subject to the complaint. Gathering contracts covering the 25 wells most recently connected to the system of the gatherer which is subject to the complaint are deemed discoverable and production will not be denied upon a relevance objection. The Commission may issue process to enforce the attendance of any witness and to obtain any 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, after notice and opportunity to be heard, the Commission finds that the documents of any other gatherer are relevant, the Commission may

issue process to enforce the attendance of any witness and to obtain any documents relevant to the complaint and 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. Additional nonrelevant, confidential information may be deleted or obfuscated from contracts furnished in response to a request under this section, subject to Commission review. Documents produced under this section shall be covered by a confidentiality privilege and thus exempt from the Oklahoma Open Records Act.

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 documents in such a manner that gathering services provided to an affiliate may be identified and segregated.

L. Any person seeking gathering service for a well or wells covered by a previous order of the Commission may file an application with the Commission seeking the same fee or terms and conditions of service as provided in the previous order, which shall be granted to the applicant by the Commission, unless the gatherer can demonstrate that the applicant is not a similarly situated shipper or that there has been a material change in conditions or circumstances since the prior fee or terms and conditions of service were determined.

M. Nothing in this act shall create or be interpreted to create service or abandonment obligations upon a gatherer or give the Commission jurisdiction to regulate abandonment of gathering facilities. Nothing in this act shall give the Commission jurisdiction 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.

SECTION 2. 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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