

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1752

By: Case

AS INTRODUCED

An Act relating to public utilities; amending 17 O.S. 2001, Sections 251, 252 and 253, which relate to fuel adjustment clauses; adding certain rule to be considered by the Commission in designing fuel adjustment clauses; adding certain criteria for monitoring application of fuel adjustment clauses; providing for burden of proof at fuel adjustment clause hearings; modifying grounds for and actions taken by the Commission in recomputing fuel adjustment clauses; requiring certain review on fuel adjustment applications; and declaring an emergency.

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

SECTION 1. AMENDATORY 17 O.S. 2001, Section 251, is amended to read as follows:

Section 251. A. No fuel adjustment clause of any kind shall hereafter be authorized by the Commission or be allowed to continue in effect if such clause operates automatically to permit charges, assessments or amendments to existing rate schedules to be made which have not been first approved as provided by Sections 251 through 255 of this title, except as otherwise provided for purchased power adjustments by electric distribution cooperatives in Sections 258 through 262 of this title.

B. If the Commission finds that the changes in the price of fuels required for the generation of electricity by any electric public utility, that the changes in the price of purchased electricity required for distribution by any public utility or changes in the price of purchased gas required for distribution by any gas utility, portends a likely and substantial threat to the ability of the utility to earn a reasonable rate of return, or are

likely to cause the utility to have an excessive rate of return, or are likely to substantially impair the ability of the utility to acquire adequate supplies of fuel or gas, the Commission may, after investigation and public hearing, approve suitable fuel adjustment clauses to be superimposed upon the existing rate schedules of the public utility. The Commission shall design the fuel adjustment clause to allow the electric or gas public utility to increase or decrease charges to the consumer according to changes in the cost of fuel, purchased power or purchased gas as compared to the price of such fuels or power as reflected in the base rates.

C. In the ~~Commission's~~ design of fuel adjustment clauses by the Commission, the following rules shall apply:

1. For the purpose of determining fuel or gas costs, the price paid for the fuel or gas shall be computed at the actual cost of fuel or gas purchased from nonaffiliated persons, firms and corporations; and the actual cost of the production of fuel owned by the public utility or received from affiliated persons, firms and corporations, and in the case of gas, the fair field price for gas owned by the public utility or received from affiliated persons, firms or corporations;

2. The cost of fuel or gas shall be the price paid at the point of delivery into the utility system. In the event the transportation is performed by an affiliated person, firm or corporation as defined in this act which is not subject to the regulatory jurisdiction of the Commission, a regulatory agency of another state having jurisdiction, or the Federal Energy Regulatory Commission or successor agency, the charges made for transportation shall be, if allowed at all, only such as the Commission finds fair, just and reasonable, for purposes of this section. Transportation charges approved by this Commission, a regulatory agency of another state having jurisdiction, or by the Federal Energy Regulatory Commission, or successor agency shall be included for purposes of

this section, if allowed by this Commission. The proposed adjustment charge shall not include the cost of transportation beyond its point of delivery into that portion of the utility system regulated by the Corporation Commission unless there is presented to the Commission and it is persuaded by reliable evidence which clearly points to the conclusion that failure to do so will substantially threaten the ability of the utility to earn a reasonable rate of return;

3. The amount of electric energy produced by hydroelectric generating plants and purchased by the public utility proposing the adjustment charge shall be deducted from the amount of electric energy to which any fuel cost applies;

4. The actual efficiency or heat rate of electric public utilities shall be utilized and line losses shall be considered only if reliable evidence clearly points to the conclusion that failure to do so will substantially threaten the ability of the utility to earn a reasonable rate of return;

5. Fuel or gas removed from storage or stockpiles shall be taken into consideration on the basis of the last-in first-out method of inventory accounting; ~~and~~

6. No estimated fuel adjustment shall be allowed; and

7. Purchased gas charges, other fuel charges, the cost of utilities self-generation and the cost of purchase power shall be allowed only if prudently and reasonably incurred consistent with the provisions of Section 252 of this title.

SECTION 2. AMENDATORY 17 O.S. 2001, Section 252, is amended to read as follows:

Section 252. A. Whenever the Commission approves a fuel adjustment clause pursuant to this act, the clause shall apply to all similar public utilities affected by such increased costs. In addition, the Commission shall continually monitor and oversee the application of the fuel adjustment clauses to ensure:

1. Compliance with the provisions of Section 250 through 264 of this title;

2. The prudent and efficient use of resources, including making the most economical and efficient choice between utility self-generation and purchases through competitive bidding or otherwise from nonutility sources of energy, capacity, or both; and

3. That electric utilities make every reasonable effort to efficiently and economically acquire fuel and generate or purchase power, or both, so as to provide electricity to their retail customers at the lowest costs reasonably possible.

B. The Commission shall hold a public hearing thereon whenever it deems it necessary, but no less frequently than once every twelve (12) months. At the hearing, the burden of proof shall be upon the utility to establish that its fuel adjustment charges or credits are prudent and accurate. If the Commission finds that the charges or credits are not reasonable and prudent, based upon the actual prices paid for fuel, purchased gas or purchased power, or are not properly computed in accordance with the applicable adjustment clause, ~~it~~ the Commission shall disallow and make appropriate adjustment for any charges or credits that are not reasonable and prudently incurred. In addition the Commission shall recompute the charges or credits and shall direct the public utility to take such action as may be required to insure that the charges or credits reasonably, prudently, and properly reflect the actual prices paid for fuel, purchased gas or purchased power and are properly computed in accordance with the applicable adjustment clause for the applicable period. The fuel adjustment clause may be amended upon a finding of changed circumstances by the Commission but shall not be wholly discontinued or suspended except by order of the Commission after notice and hearings for the utilities affected have been rendered.

SECTION 3. AMENDATORY 17 O.S. 2001, Section 253, is amended to read as follows:

Section 253. A. No proposed monthly fuel adjustment, purchased power adjustment or purchased gas adjustment shall become effective until after the Corporation Commission has had an opportunity to determine that the adjustment is calculated in accordance with the terms and conditions of the applicable fuel adjustment clause.

B. The Commission shall promulgate rules requiring each company as a necessary part of the monthly filing with the Commission and condition to consideration of any adjustment application to submit the following information:

1. A statement by each company subject to a fuel adjustment clause of the items and costs making up the average cost of fuel per million BTU and associated costs in dollars and cents or fraction thereof;

2. A summary of its fuel and gas purchase invoices and its computations of the proposed monthly fuel adjustment or purchased gas adjustment charges;

3. A summary of inventory records of fuel and gas going into and taken out of stockpile or storage;

4. A report containing the average unit price, the change in the average unit price, the volume purchased and a brief explanation of such unit cost increase; and

5. Any other records deemed necessary by the Commission including, but not limited to, the heat rate efficiency and delivery efficiency for affected electric public utilities and the actual capacity factor for each generating facility utilized to produce electric power.

The records and computations filed shall be open to public inspection at the office of the Commission.

C. The Commission shall have five (5) business days after the records and computations prescribed in subsection B of this section have been filed to determine the necessity of an administrative proceeding thereon. If the Commission does not determine that a

hearing is required, the proposed adjustment charge shall become effective as filed, subject, however, to the review by the Commission as described in Section 252 of this title. In the event the Commission decides to hold a hearing on the information filed, it shall notify the public utility within such five-day period, set the matter for a public hearing to commence within thirty (30) business days thereafter, and give notice thereof at least three (3) days prior to the commencement of such hearing by publication in a newspaper of general circulation in the area served by such company. The issue to be determined at such hearing shall be either or both of the following determinations:

1. Whether charges or credits made under the fuel adjustment clauses are based upon the actual prices paid for fuel, purchased gas or purchased power and are properly computed in accordance with the applicable adjustment clause; or

2. Whether the fuel adjustment clauses should be discontinued, amended or suspended. In the event that the Commission determines that it is necessary to set any proposed adjustment charge for hearing, the proposed charge shall nevertheless become effective at the option of the utility following the expiration of the five-day period after its records and computations have been filed, pending the Commission's finding with respect to such charges. However, in the discretion of the Commission, the effectiveness of the proposed charge may be conditioned upon the filing by the utility with the Commission of an assurance satisfactory to the Commission, which may include a bond with surety, of the utility's ability and willingness to refund to its customers any such amounts as the utility may collect from them in excess of the charge approved by the Commission in its finding. If the Commission has not approved, in whole or in part, or denied the proposed charge within a seven-day period subsequent to the commencement of such hearing, the Commission shall promptly submit a written explanation of the Commission's failure to

do so to the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the office of the Governor.

SECTION 4. 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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