

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 SENATE BILL 1411

By: Marlatt

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5
6 AS INTRODUCED

7 An Act relating to gas gathering; amending 52 O.S.
8 2011, Sections 24.4 and 24.5 which relate to gas
9 gathering and processing; modifying definitions;
10 deleting definition; modifying certain procedures
11 relating to gas gathering facilities; modifying gas
12 measurements attributable to certain parties;
13 clarifying statutory language; and declaring an
14 emergency.

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

16 SECTION 1. AMENDATORY 52 O.S. 2011, Section 24.4, is
17 amended to read as follows:

18 Section 24.4. For the purposes of this act:

19 1. "Gathering" is the transportation of natural gas through a
20 pipeline for hire, compensation or otherwise, or transporting
21 natural gas through a pipeline, in whole or in part, for such
22 person's own account, whether in connection with the purchase and
23 resale of natural gas, or in connection with the processing of
24 natural gas or otherwise, performed by a person other than a local
distribution company, intrastate transmission pipeline or interstate
pipeline. Gathering includes those activities or processes

1 performed between the delivery points and the redelivery points,
2 which shall include and be limited to only transportation,
3 processing, measurement, conditioning, compressing, pressure
4 regulation, recompressing, cleaning and treating of such gas and the
5 fuel or gas loss associated with such foregoing activities. The
6 terms "conditioning, cleaning and treating" as used herein shall
7 include those processes of separation, dehydration, removal of all
8 contaminants and inerts and filtering. Gathering specifically shall
9 not include processing or for the extraction of natural gas liquids
10 and products. The term "processing" as used herein is any activity
11 occurring beyond the inlet to a natural gas processing facility that
12 changes the natural gas stream's physical or chemical
13 characteristics, enhances the marketability of the stream, or
14 enhances the absorption, adsorption, flashing, refrigeration,
15 cryogenics, sweetening, dehydration within a processing facility,
16 beneficiation, stabilizing, compression (other than compression such
17 as reinjection, wellhead pressure regulation, or the changing of
18 pressures and temperatures in a reservoir) and separation which
19 occurs within a processing facility;

20 2. "Gatherer" shall mean any person who performs the activities
21 or processes defined as gathering;

22 3. "Person" shall mean any individual, corporation, firm,
23 partnership, master limited partnership, limited liability company,
24 association, venture, trust, institution, or federal, state, or

1 local governmental instrumentality, or any legal entity however
2 organized;

3 4. "Shipper" shall mean any person who owns or controls natural
4 gas that seeks or receives gathering service from a gatherer;

5 5. "Terms and conditions of service" shall include all factors
6 defining the obligations between the gatherer and shipper respecting
7 any gathering activities or process, including, but not limited to,
8 nominations, deductions for fuel, accounting for imbalances,
9 imbalance penalties, assessments, charges or makeup provisions,
10 costs, charges and fees for connection or maintaining connections,
11 duration of gathering service, location of receipt and delivery
12 points, quality specifications of natural gas, minimum and maximum
13 pressures, and measurement;

14 6. "Delivery point(s)" shall mean the point where the
15 possession or control of the gas stream transfers from a shipper to
16 a gatherer;

17 7. "Redelivery point(s)" shall mean the point at which the
18 gatherer relinquishes possession or control of (i.) the gas stream,
19 and (ii.) The products resulting from processing; and

20 8. "Similarly situated shipper" shall mean any person so
21 designated by the Commission, after application and hearing, wherein
22 the Commission determines that such applicant should receive the
23 benefits and obligations specified in a previously issued Commission
24 order under this act. In determining whether a person is a

1 similarly situated shipper, the Commission shall consider all
2 relevant conditions and factors including those utilized in fixing
3 the fee or terms and conditions of service in the previous order.
4 Similarly situated shipper status shall be limited to applicant's
5 interest in the well(s) covered by the previous order; and

6 ~~9. "Spread fee" shall mean the monthly difference obtained by
7 subtracting the value received by the gatherer for the natural gas
8 liquids attributable to shipper from the value of the heating
9 content of the natural gas converted to natural gas liquids
10 attributable to the shipper, established by the cost of natural gas
11 purchased by the gatherer to specifically replace such heating
12 content or, if no actual purchases were made, by the value received
13 by gatherer for natural gas sold at the plant tailgate; provided,
14 however, in any month that the result of this calculation generates
15 a value of zero or less, there shall be deemed to be no spread fee.~~

16 SECTION 2. AMENDATORY 52 O.S. 2011, Section 24.5, is
17 amended to read as follows:

18 Section 24.5. A. No gatherer shall charge any fee or require
19 any terms and conditions of service, or both, for gathering, which
20 is unfair, unjust, unreasonable, or unduly discriminatory under the
21 standard specified in and as provided by subsection D of this
22 section. Upon complaint of an aggrieved party filed pursuant to
23 this act, the Corporation Commission shall have the authority to
24

1 remedy any such fee or terms and conditions of service, or both, for
2 gathering, by:

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

9 2. Ordering the continuation of gathering service during the
10 pendency of the complaint as provided in subsection F of this
11 section; or

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

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

20 B. No gatherer shall refuse to provide open access natural gas
21 gathering, including (i.) the redelivery of such natural gas to
22 existing redelivery points, and (ii.) the delivery of products
23 resulting from processing to existing product receipt points, for a
24 fee for any person seeking such gathering for natural gas which is

1 connected to the gatherer's ~~pipeline~~ facilities unless the gatherer
2 can demonstrate to the Commission that any of the following apply:

3 1. The continuation of gathering service on the basis requested
4 by the complainant would require an additional capital investment,
5 material to the well or wells at issue, by the gatherer and
6 complainant is unable or unwilling to timely pay gatherer for all
7 reasonable direct costs attributable to such capital investment
8 together with that reasonable portion of a gatherer's overhead
9 directly related to such capital investment;

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

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

16 4. The gathering service requested is inconsistent with an
17 existing contract which governs the gathering of the complainant's
18 natural gas; or

19 5. For such other good cause as the Commission may determine in
20 the particular case.

21 Upon complaint of an aggrieved party connected to the gatherer's
22 ~~pipeline~~ facilities, the Commission shall determine whether such
23 gatherer is required by reason of this subsection to continue to
24 provide open access natural gas gathering to such party, and if so,

1 and the parties are unable to agree upon a fee or terms and
2 conditions of service or both, for gathering, to fix a fee or terms
3 and conditions of service, or both, for such gathering.

4 C. No gatherer shall refuse to provide open access natural gas
5 gathering, including (i.) the redelivery of such natural gas to
6 existing redelivery points, and (ii.) the delivery of products
7 resulting from processing to existing product receipt points, for a
8 fee for any person seeking such gathering for natural gas which is
9 not connected to gatherer's ~~pipeline~~ facilities unless the gatherer
10 can demonstrate that any of the following apply:

11 1. The natural gas cannot be reasonably carried by such
12 gatherer due to existing capacity limitations on the gatherer's
13 ~~pipeline~~ facilities;

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

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

24

1 4. The natural gas does not satisfy minimum standards for
2 quality or energy or recoverable hydrocarbon content consistently
3 applied by the gatherer for such ~~gathering~~ system; or

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

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

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

1 Commission may set such interim fee or terms and conditions of
2 service, or both, under the provisions of subsection F of this
3 section. In determining and setting a fee or terms and conditions
4 of service, or both, under this act, other than an interim fee under
5 the provisions of subsection F of this section, the Commission shall
6 determine a fee or terms and conditions of service, or both, which
7 would result from arm's-length bargaining in good faith in a
8 competitive market between persons of equal bargaining power and
9 shall consider all economically significant factors for gathering
10 which it determines to be relevant which may include, but are not
11 limited to:

12 1. The fees and terms and conditions of service which such
13 gatherer receives from the complainant and other shippers for
14 analogous levels of service for gathering within an area the
15 Commission determines to be relevant;

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

19 3. The reasonable financial risks of operating such a gathering
20 ~~system~~ facility;

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

23 5. Such other factors which the Commission determines to be
24 relevant.

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

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

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

12 2. ~~For any month in which there is a spread fee, the shipper~~
13 ~~shall pay to the gatherer such amount~~ Gatherer shall deliver to
14 shipper at the appropriate product delivery points the products
15 resulting from such processing attributable to such shipper at the
16 facility outlet, less any volumetric deductions for fuel and loss
17 associated with processing.

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

21 F. Upon the filing of a complaint under this section which
22 seeks to continue an existing gathering service, the Commission on
23 motion of the complainant shall require continuation of gathering
24 service under the fees and terms and conditions of service of the

1 last expired contract, if any, during the pendency of the complaint,
2 or set an interim fee and terms and conditions of service. However,
3 the gatherer shall not be required to provide interim gathering if
4 the gatherer can show that such continuance would require an
5 otherwise unnecessary, material capital expenditure, or if the
6 Commission determines interim gathering is excused for safety
7 reasons. Interim relief shall be by order of the Commission after
8 notice to the gatherer from whom gathering service is being
9 requested and subsequent hearing. Any fees for gathering collected
10 during the period a complaint which seeks to set a fee for such
11 gathering is pending shall be subject to the fee finally set by the
12 Commission. If the finally determined fee is less than the
13 collected fee, the excess shall be refunded to the complainant
14 within fifteen (15) days after the final determination of the fee,
15 together with interest at a rate established by the Commission. If
16 the finally determined fee is greater than the collected fee, the
17 excess shall be paid by the complainant to the gatherer within
18 fifteen (15) days after the fee is finally determined, together with
19 interest at a rate established by the Commission.

20 G. A gatherer providing natural gas gathering services shall
21 not increase the fee for gathering, change the terms or conditions
22 of service, discontinue gathering service, or not renew an expiring
23 contract of the shipper, without first giving the shipper written
24 notice prior to the effective date of the increase in fee, change in

1 terms or conditions of service, discontinuance of gathering
2 services, or nonrenewal. Such written notice shall be given at
3 least ninety (90) days prior to the effective date of such increase,
4 change, discontinuance or nonrenewal, unless otherwise provided by
5 existing contract, but in no event less than thirty (30) days prior
6 to the effective date of such increase, change, discontinuance or
7 nonrenewal with respect to contracts having terms in excess of six
8 (6) months. If the parties are unable to agree upon continuation of
9 service or fees or terms and conditions of service, or both, the
10 aggrieved party may file a complaint under this act to determine
11 whether an open access obligation exists and, if so, seek the
12 determination of fees or terms and conditions of service, or both,
13 under this act.

14 H. All matters to be determined by the Commission under this
15 act shall be heard on an expedited basis and a final, appealable
16 order rendered thereon within one hundred twenty (120) days from the
17 filing of the complaint, unless otherwise agreed by the parties.
18 The Commission shall have the power and authority to promulgate
19 rules and issue orders to implement, administer, and enforce the
20 provisions of this act and may exercise all incidental powers which
21 are necessary and proper to the performance of its duties under this
22 act. The Commission shall promulgate rules establishing a
23 voluntary, nonbinding, informal procedure to be available, either
24 before or after the filing of a complaint, in order to encourage the

1 resolution of disputes arising under this act. An informal
2 procedure shall not extend the time limit of one hundred twenty
3 (120) days established in this subsection, unless otherwise agreed
4 by the parties.

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

1 of not more than Five Thousand Dollars (\$5,000.00) for each day that
2 such noncompliance continues. If, in connection with any proceeding
3 under this act, any person, whether or not a party to the
4 proceeding, furnishes information it desires to be confidential,
5 proprietary and/or privileged, the Commission, upon motion of such
6 person and upon a finding by the Commission that the information is
7 confidential, proprietary or privileged, shall enter such protective
8 order as may be necessary to ensure that the information will be
9 used only as may be required for the proper determination of the
10 merits of a proceeding under this act and will not be used for
11 purposes of competitive advantage. Any person, whether or not a
12 party to the proceeding, furnishing a contract or contracts in
13 response to a request under this section shall, prior to furnishing
14 such contracts, delete or obfuscate the names of all persons who are
15 parties to the contract, any unit or well names contained in the
16 contracts, and any reference to the section designation contained in
17 the legal description of the location of the well or unit, but such
18 person shall not remove references to the applicable township and
19 range designations. Additional nonrelevant, confidential
20 information may be deleted or obfuscated from contracts furnished in
21 response to a request under this section, subject to Commission
22 review. Documents produced under this section shall be covered by a
23 confidentiality privilege and thus exempt from the Oklahoma Open
24 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~~ facilities to which the order applies. All
5 orders of the 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
24 application with the Commission seeking the same fee or terms and

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

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

15 SECTION 3. It being immediately necessary for the preservation
16 of the public peace, health and safety, an emergency is hereby
17 declared to exist, by reason whereof this act shall take effect and
18 be in full force from and after its passage and approval.

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