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HOUSE BILL 530

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Thomas C. Taylor

AN ACT

RELATING TO NATURAL GAS PRODUCTION; PROHIBITING CERTAIN UNFAIR
OR DISCRIMINATORY ACTS BY CERTAIN NATURAL GAS GATHERERS,
PROCESSORS OR TREATERS; PROVIDING A COMPLAINT PROCEDURE FOR A
HEARING BEFORE THE OIL CONSERVATION COMMISSION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Oil and Gas Act is
enacted to read:

"~~[NEW MATERIAL]~~ NATURAL GAS GATHERING, PROCESSING OR
TREATING IN SAN JUAN BASIN--UNFAIR OR DISCRIMINATORY ACTS
PROHIBITED--HEARING.--

A. Because of unique market conditions and
competitive circumstances existing in the natural gas
gathering, processing and treating industry in the San Juan
basin, located in Rio Arriba, San Juan, Sandoval and McKinley

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1 counties, this section shall apply only to natural gas service
2 providers operating in the San Juan basin as defined by the
3 commission and shall not apply to natural gas service providers
4 operating in the Permian basin or any other gas producing
5 region of this state.

6 B. In order to prevent waste and protect
7 correlative rights and in the best interests of conservation,
8 no natural gas service provider shall charge any fee, engage in
9 any practice or require any terms or conditions of service for
10 natural gas gathering, processing or treating that are unfair
11 or unduly discriminatory.

12 C. In order to prevent waste and protect
13 correlative rights and in the best interests of conservation,
14 no natural gas service provider shall unreasonably refuse to
15 provide open access natural gas gathering, processing or
16 treating, including the redelivery of natural gas to existing
17 redelivery points, for a fee to any person seeking the service.

18 D. A person aggrieved by a violation of Subsection
19 B or C of this section may file a complaint requesting a
20 hearing on the matter with the commission. In the hearing, the
21 burden of proof shall be upon the complainant. All expenses
22 incurred by the commission in the proceedings shall be borne
23 equally by the complainant and the respondent unless the
24 commission, in its discretion, reallocates the expenses at the
25 conclusion of the proceeding based upon its findings with

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1 respect to the merits of the respective positions of the
2 parties.

3 E. Upon a complaint of a party aggrieved by an
4 alleged violation of Subsection B of this section, if the
5 commission finds that the fee, practice, term or condition
6 complained of is unfair or unduly discriminatory, the
7 commission may order an adjustment or elimination of the fee,
8 practice, term or condition. In making its finding, the
9 commission shall determine the fee, practice, term or condition
10 that would result from arms-length bargaining in good faith in
11 a competitive market between persons of equal bargaining power
12 and shall consider all economically significant factors for the
13 natural gas gathering, processing or treating that it
14 determines to be relevant, including:

15 (1) the fees, practices, terms and conditions
16 that the natural gas service provider has negotiated with the
17 complainant and other customers for similar levels of service
18 within the area that the commission determines to be relevant,
19 taking into account the conditions and circumstances existing
20 at the time of agreement;

21 (2) the fees, practices, terms and conditions
22 provided to customers by other natural gas service providers
23 for similar services within the area that the commission
24 determines to be relevant, taking into account the conditions
25 and circumstances existing at the time of agreement;

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1 (3) the reasonable financial risks of
2 operating the natural gas service provider's gathering,
3 processing or treating facility;

4 (4) the reasonable capital, operating and
5 maintenance costs of the facility; and

6 (5) such other factors that the commission
7 determines to be relevant.

8 F. Upon a complaint of a party aggrieved by an
9 alleged violation of Subsection C of this section, the
10 commission may order the natural gas service provider to
11 provide service to the complainant unless the commission finds
12 that:

13 (1) the provision of the service would require
14 an additional capital investment or incremental operating and
15 maintenance costs by the natural gas service provider that the
16 complainant is unwilling to pay on fair and reasonable terms;

17 (2) the provision of the service could
18 reasonably be expected to result in material adverse effect on
19 the environment, public safety or the service being provided to
20 existing customers; or

21 (3) the natural gas does not meet minimum
22 standards for quality and energy content or recoverable
23 hydrocarbon content consistently applied to other gas connected
24 to the natural gas service provider's facility.

25 G. Nothing in this section gives the commission the

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1 authority to set fees or require practices, terms and
2 conditions of service computed on a utility rate of return
3 basis or authority to otherwise regulate natural gas service
4 providers in a manner similar to public utilities.

5 H. Nothing in this section authorizes the
6 commission to abrogate the terms of an existing contract while
7 the contract is in force and effect; provided that the
8 commission may order the continuation of the terms and service
9 of an existing contract for existing customers during the
10 pendency of a complaint.

11 I. This section does not apply to wellhead
12 purchases or natural gas producer-owned or -controlled field
13 facilities that do not provide gathering, processing or
14 treating services to third parties other than interest owners
15 in wells connected to the field facilities, including pipelines
16 that connect a well or wells to a central delivery point for
17 onward carriage by a natural gas gatherer.

18 J. As used in this section:

19 (1) "natural gas gatherer" means a person
20 offering to transport, for compensation, natural gas of third
21 parties from a wellhead or central delivery point in New Mexico
22 to a processing or treating facility or to the inlet of an
23 interstate or intrastate pipeline;

24 (2) "natural gas processor" or "natural gas
25 treater" means a person offering to process, for compensation,

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1 natural gas of third parties for the purpose of extracting
2 natural gas liquids or removing carbon dioxide or other
3 impurities from a natural gas stream; and

4 (3) "natural gas service provider" means a
5 natural gas gatherer, a natural gas processor or a natural gas
6 treater.

7 K. Proprietary or confidential business information
8 and trade secrets obtained or received by the commission for
9 use in resolving a complaint filed pursuant to this section
10 shall be kept confidential and are not open to public
11 inspection.

12 L. The commission shall promulgate such rules as
13 are necessary to carry out the provisions of this section,
14 including rules governing the procedure for filing complaints,
15 conducting hearings, enforcing orders and protecting trade
16 secrets and proprietary or confidential information used in
17 determining or setting a fee, practice, term or condition
18 applicable to a customer or natural gas service provider."

19 **SECTION 2. EFFECTIVE DATE.**--The effective date of the
20 provisions of this act is July 1, 2011.