

BILL ANALYSIS

C.S.H.B. 2986
By: West, George "Buddy"
Energy Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, gatherers and pipelines are regulated by the Utilities Code and, in some types of materials, the Natural Resources Code. There is a class of "non-utility" gatherers that are not subject to the rate jurisdiction of the Texas Railroad Commission under the Utilities Code.

There are currently two processes to address any complaints about gatherers or pipelines at the commission. First, the commission has an informal process where an issue can be raised, yet there is no discovery nor any hearings. The informal process can easily be begun with a phone call. The commission staff evaluates the issue to resolve the matter, often without anybody ever coming to Austin. This can be an inexpensive and expedited process for a complainant to utilize. The problem with the current informal process is that some complaining parties do not believe that the process is sufficiently comprehensive nor effective. Their complaints, for example, are that the process lacks discovery and enforcement.

House Bill 2986 creates a forceful mediation process where the parties must appear, discovery is conducted, and the staff takes an active role in resolving the disputes.

The second existing process is by formal complaint which resembles the litigation process. There is the same type of discovery as found in courthouse cases where procedural requirements create a lengthy process. Lawyers and consultants are necessary in this process. Just like many other litigations, this too can be very expensive. A case involving a small company can still cost \$300,000.

With passage of House Bill 2986 the formal hearing process would remain, but with an alternative, so the formal process does not have to be used nearly as often. The bill creates a formal mediation process at the Railroad Commission which is stronger than a typical mediation. All complaints must go through the mediation process. The Railroad Commission staff can conduct specified discovery of any party to determine whether the complaining party is being treated in a discriminatory manner or not. The staff will extract relevant information from the documents they review and prepare a summary for the parties to review at the mediation. At the conclusion of the mediation, if the case is not settled, the commission staff issues a memo based on the information reviewed. The memo would state whether (1) the staff believes the matter should be subject to further proceedings based on the information reviewed, or (2) based on the information reviewed, no discriminatory act has been identified. The mediation process and all the information produced in it is subject to the same confidentiality provisions now applicable to the mediation provisions in the Government Code.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 1 and SECTION 2 of this bill.

ANALYSIS

SECTION 1: Subchapter A, Chapter 102, Utilities Code.

Chapter 102 is amended by adding Section 102.0055:

(a) Definitions.

C.S.H.B. 2986 79(R)

(b) Exemptions.

(c) Requires the railroad commission by rule to establish a process for informal resolution of contested proceedings as provided by this section. Requires the railroad commission by rule to require all parties to a contested proceeding to participate in the informal resolution process. Prohibits an administrative hearing from being conducted until the informal resolution process is completed.

(d) Requires the railroad commission to require the parties to a contested proceeding to participate in a mediation process and undertake to settle all issues raised in the case by the mediation process.

Provides that the commission rules must provide for the appointment of railroad commission staff to conduct the mediation process and must require the process to be completed not later than the 90th day after the date the relevant contested proceeding is docketed by the railroad commission unless the parties to the mediation and the railroad commission mediator agree that additional time is warranted.

(e) Requires the railroad commission mediator to conduct limited discovery as part of the mediation. The discovery is limited to obtaining from any party to the mediation copies of the 10 most relevant contracts for services or transactions that are similar to the service or transaction that is the basis for the contested proceeding and any other relevant documents or information the railroad commission mediator determines is necessary to the mediation.

Requires the railroad commission mediator to provide to the parties to the mediation the mediator's summary of relevant information contained in the contracts without disclosing the parties to the contracts or information that allows a party to a contract to be identified.

Authorizes the railroad commission mediator to make copies of the contracts or documents for the mediation process and the producing party shall pay the mediator's travel expenses in an amount not to exceed the per diem allowance for state employees in accordance with the General Appropriations Act, if the party producing the contracts or other relevant documents requests that the contracts or documents be reviewed at the party's offices.

(f) Requires the parties to share equally the cost of the railroad commission mediator's travel expenses in an amount not to exceed the per diem allowance for state employees in accordance with the General Appropriations Act, if the parties agree for the mediation to be conducted at a location other than the offices of the railroad commission in Austin, Texas.

(g) Requires the railroad commission by order to dismiss the contested proceeding, if the mediation process results in an agreed settlement of all issues.

(h) If the mediation process does not result in an agreed settlement of all issues during the period for mediation provided by Subsection (d), the railroad commission mediator is required, before the 11th day after the completion of the period for mediation, send a confidential memorandum to each party to the mediation process that states one of the following conclusions, based on the information reviewed by the mediator: (1) no discriminatory act has been identified; or (2) further formal proceeding is warranted.

(i) Requires the railroad commission, after a memorandum is issued under Subsection (h), to:

- (1) convene a settlement conference of the parties to be held before the 31st day after the completion of the period for mediation, if a party requests a settlement conference based on the memorandum; or
- (2) set the contested proceeding for an administrative hearing:
 - (A) not later than the 61st day after the completion of the period for mediation; or
 - (B) at a time considered appropriate by the railroad commission, if the contested proceeding relates to setting a cost of service rate under Chapter 104.

(j) Requires the railroad commission by order to dismiss the contested proceeding if the railroad commission convenes a settlement conference and the conference results in an agreed settlement.

Requires the railroad commission to set the matter for an administrative hearing if a settlement conference does not result in an agreed settlement.

Requires discovery of all relevant documents and information to be permitted in the contested proceeding according to the rules of the railroad commission and Chapter 2001, Government Code.

(k) Section 2009.054, Government Code, applies to information produced or obtained during a mediation or settlement conference under this section.

(l) As provided by Subsection (m), Authorizes the railroad commission to award all or part of the costs of the contested proceeding actually incurred and paid, including mediation costs, as are equitable and just at the conclusion of a contested proceeding. Allowable costs include just and reasonable attorney's fees, costs of experts, investigation costs, and costs of a party's personnel employed in the preparation or presentation of the mediation.

This subsection does not affect the amount of litigation expenses a party may be entitled to recover under any other law or a rule adopted by the railroad commission. Prohibits costs assessed against a gas utility to be recovered in a gas utility rate set by the railroad commission unless authorized by railroad commission order.

(m): Requires commission to award costs under this section in a contested proceeding in which one or more of the parties makes a written settlement offer as follows:

(1) If the party that made the written settlement offer is the party complained against and a transportation or gathering rate set by the railroad commission's final order is equal to or greater than the rate contained in the offer, the railroad commission is (a) required to issue an order requiring a party or parties to reimburse the party complained against for the party's reasonable costs, and (b) prohibited from requiring a reimbursement under this section if the rate set in the final order is lower than the rate contained in the party's written settlement offer.

(2) If the party that made the written settlement offer is a person that filed a complaint relating to a transportation or gathering rate and the rate set by the railroad commission's final order is equal to or less than the rate contained in the offer, the railroad commission is required to follow the same guidelines as in (m)(1)(a) and (b).

(3) Authorizes the commission authorized to award costs to a party as are equitable and just if the party has made a reasonable offer to settle the contested proceeding and an opposing party has asserted an unreasonable position in the contested proceedings.

SECTION 2: Subchapter g, Chapter 111, Natural Resources Code.

Amends the Section by adding Section 111.228. Including the same provisions as SECTION 1 into the parts of the Natural Resources Code which governs common carriers and common purchasers. Other types of oil and gas proceedings are not covered.

EFFECTIVE DATE

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

General Summary: The cost recovery provision in the substitute deletes the "prevailing party" concept and replaces it with the formula for recovery on costs in cases involving gathering and transportation rates. The commission is given discretion to award costs in other types of cases if one of the parties has made a reasonable offer to settle the case and the other party has been unreasonable.

SECTION 1. Subchapter A, Chapter 102, Utilities Code.

C.S.H.B. 2986 79(R)

Section 102.0055 (c): The substitute specifies that an administrative hearing, instead of a general hearing, is prohibited from being conducted until the informal resolution is completed.

(d): The substitute removes the provision that the mediation process be the first step of the informal resolution process.

(e): The substitute adds that the discovery can be obtained from any party and specifies that relevant contracts used in the discovery be similar to the service or transaction, replacing the term "contract" with "service and transaction."

(j) The substitute adds the requirement that discovery of all relevant documents and information be permitted in the contested proceeding according to the rules of the Railroad Commission and Chapter 2001 of the Government Code.

(1) The substitute adds language prohibiting costs from being awarded under this section unless the party has made a settlement offer and the agreed settlement contained in the Railroad Commission's order adopts the position contained in the offer.

(m) The substitute adds section (m).

SECTION 2. Subchapter G, Chapter 111, Natural Resources.

The substitute applies the same changes as made in SECTION 1, Utilities Code, to SECTION 2, Natural resources Code.