

By: West

H.B. No. 2986

Substitute the following for H.B. No. 2986:

By: Crabb

C.S.H.B. No. 2986

A BILL TO BE ENTITLED

AN ACT

relating to the informal resolution of certain proceedings conducted by the Railroad Commission of Texas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 102, Utilities Code, is amended by adding Section 102.0055 to read as follows:

Sec. 102.0055. INFORMAL RESOLUTION OF CONTESTED PROCEEDINGS. (a) In this section, "contested proceeding" means a hearing, claim, complaint, investigation, inquiry, or other procedure for finding facts or making a decision:

(1) that involves disputed issues of law, fact, or both law and fact; and

(2) over which the railroad commission has original jurisdiction under this title.

(b) This section does not apply to a contested proceeding:

(1) initiated under Chapter 103;

(2) initiated under Subchapter C or G, Chapter 104; or

(3) related to the rates, services, or practices of a gas utility that is not docketed by the railroad commission.

(c) The railroad commission by rule shall establish a process for informal resolution of contested proceedings as provided by this section. The railroad commission by rule shall require all parties to a contested proceeding to participate in the informal resolution process. An administrative hearing may not be

1 conducted until the informal resolution process is completed.

2 (d) The railroad commission shall require the parties to a
3 contested proceeding to participate in a mediation process and
4 undertake to settle all issues raised in the case by the mediation
5 process. The commission rules must provide for the appointment of
6 railroad commission staff to conduct the mediation process and must
7 require the process to be completed not later than the 90th day
8 after the date the relevant contested proceeding is docketed by the
9 railroad commission unless the parties to the mediation and the
10 railroad commission mediator agree that additional time is
11 warranted.

12 (e) The railroad commission mediator shall conduct limited
13 discovery as part of the mediation. The discovery is limited to
14 obtaining from any party to the mediation copies of the 10 most
15 relevant contracts for services or transactions that are similar to
16 the service or transaction that is the basis for the contested
17 proceeding and any other relevant documents or information the
18 railroad commission mediator determines is necessary to the
19 mediation. The railroad commission mediator shall provide to the
20 parties to the mediation the mediator's summary of relevant
21 information contained in the contracts without disclosing the
22 parties to the contracts or information that allows a party to a
23 contract to be identified. If the party producing the contracts or
24 other relevant documents requests that the contracts or documents
25 be reviewed at the party's offices, the railroad commission
26 mediator may make copies of the contracts or documents for the
27 mediation process and the producing party shall pay the mediator's

1 travel expenses in an amount not to exceed the per diem allowance
2 for state employees in accordance with the General Appropriations
3 Act.

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

10 (g) If the mediation process results in an agreed settlement
11 of all issues, the railroad commission by order shall dismiss the
12 contested proceeding.

13 (h) If the mediation process does not result in an agreed
14 settlement of all issues during the period for mediation provided
15 by Subsection (d), the railroad commission mediator shall, before
16 the 11th day after the completion of the period for mediation, send
17 a confidential memorandum to each party to the mediation process
18 that states one of the following conclusions, based on the
19 information reviewed by the mediator:

20 (1) no discriminatory act has been identified; or

21 (2) further formal proceeding is warranted.

22 (i) After a memorandum is issued under Subsection (h), the
23 railroad commission shall:

24 (1) convene a settlement conference of the parties to
25 be held before the 31st day after the completion of the period for
26 mediation, if a party requests a settlement conference based on the
27 memorandum; or

1 (2) set the contested proceeding for an administrative
2 hearing:

3 (A) not later than the 61st day after the
4 completion of the period for mediation; or

5 (B) at a time considered appropriate by the
6 railroad commission, if the contested proceeding relates to setting
7 a cost of service rate under Chapter 104.

8 (j) If the railroad commission convenes a settlement
9 conference and the conference results in an agreed settlement, the
10 railroad commission by order shall dismiss the contested
11 proceeding. If a settlement conference does not result in an agreed
12 settlement, the railroad commission shall set the matter for an
13 administrative hearing. Discovery of all relevant documents and
14 information shall be permitted in the contested proceeding
15 according to the rules of the railroad commission and Chapter 2001,
16 Government Code.

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

20 (l) As provided by Subsection (m), at the conclusion of a
21 contested proceeding, the railroad commission may award all or part
22 of the costs of the contested proceeding actually incurred and
23 paid, including mediation costs, as are equitable and just.
24 Allowable costs include just and reasonable attorney's fees, costs
25 of experts, investigation costs, and costs of a party's personnel
26 employed in the preparation or presentation of the mediation. This
27 subsection does not affect the amount of litigation expenses a

1 party may be entitled to recover under any other law or a rule
2 adopted by the railroad commission. Unless authorized by railroad
3 commission order, costs assessed against a gas utility may not be
4 recovered in a gas utility rate set by the railroad commission.

5 (m) The railroad commission shall award costs under this
6 section in a contested proceeding in which one or more of the
7 parties makes a written settlement offer as follows:

8 (1) if the party that made a written settlement offer
9 is the party complained against and a transportation or gathering
10 rate set by the railroad commission's final order is equal to or
11 greater than the rate contained in the offer, the railroad
12 commission:

13 (A) shall issue an order requiring a party or
14 parties to reimburse the party complained against for that party's
15 reasonable costs; and

16 (B) may not require reimbursement under this
17 subdivision if the rate set in the final order is lower than the
18 rate contained in that party's written settlement offer;

19 (2) if the party that made a written settlement offer
20 is a person that filed a complaint relating to a transportation or
21 gathering rate and the rate set by the railroad commission's final
22 order is equal to or less than the rate contained in the offer, the
23 railroad commission:

24 (A) shall issue an order requiring a party or
25 parties to reimburse the complaining party for the complaining
26 party's reasonable costs; and

27 (B) may not require reimbursement under this

1 subdivision if the rate set in the final order is higher than the
2 rate contained in the complaining party's written settlement offer;
3 or

4 (3) if the contested proceeding does not involve the
5 setting of rates, the railroad commission may award costs to a party
6 as are equitable and just if that party has made a reasonable offer
7 to settle the contested proceeding and an opposing party has
8 asserted an unreasonable position in the contested proceeding.

9 SECTION 2. Subchapter G, Chapter 111, Natural Resources
10 Code, is amended by adding Section 111.228 to read as follows:

11 Sec. 111.228. INFORMAL RESOLUTION OF CONTESTED
12 PROCEEDINGS. (a) In this section, "contested proceeding" means a
13 hearing, claim, complaint, investigation, inquiry, or other
14 procedure for finding facts or making a decision:

15 (1) that involves disputed issues of law, fact, or
16 both law and fact; and

17 (2) over which the commission has jurisdiction under
18 this chapter or Chapter 117.

19 (b) This section does not apply to a contested proceeding
20 related to the rates, services, or practices of a public utility or
21 pipeline facility that is not docketed by the commission.

22 (c) The commission by rule shall establish a process for
23 informal resolution of contested proceedings as provided by this
24 section. The commission by rule shall require all parties to a
25 contested proceeding to participate in the informal resolution
26 process. An administrative hearing may not be conducted under this
27 chapter or Chapter 117 until the informal resolution process is

1 completed.

2 (d) The commission shall require the parties to a contested
3 proceeding to participate in a mediation process and undertake to
4 settle all issues raised in the case by the mediation process. The
5 commission rules must provide for the appointment of a commission
6 mediator to conduct the mediation process and must require the
7 process to be completed not later than the 90th day after the date
8 the relevant contested proceeding is docketed by the commission
9 unless the parties to the mediation and the commission mediator
10 agree that additional time is warranted.

11 (e) The commission mediator shall conduct limited discovery
12 as part of the mediation. The discovery is limited to obtaining
13 from any party to the mediation copies of the 10 most relevant
14 contracts for services or transactions that are similar to the
15 service or transaction that is the basis for the contested
16 proceeding and any other relevant documents or information the
17 commission mediator determines is necessary to the mediation. The
18 commission mediator shall provide to the parties to the mediation
19 the mediator's summary of relevant information contained in the
20 contracts without disclosing the parties to the contracts or
21 information that allows a party to a contract to be identified. If
22 the party producing the contracts or other relevant documents
23 requests that the contracts or documents be reviewed at the party's
24 offices, the commission mediator may make copies of the contracts
25 or documents for the mediation process and the producing party
26 shall pay the mediator's travel expenses in an amount not to exceed
27 the per diem allowance for state employees in accordance with the

1 General Appropriations Act.

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

8 (g) If the mediation process results in an agreed settlement
9 of all issues, the commission by order shall dismiss the contested
10 proceeding.

11 (h) If the mediation process does not result in an agreed
12 settlement of all issues during the period for mediation provided
13 by Subsection (d), the commission mediator shall, before the 11th
14 day after the completion of the period for mediation, send a
15 confidential memorandum to each party to the mediation process that
16 states one of the following conclusions, based on the information
17 reviewed by the mediator:

18 (1) no discriminatory act has been identified; or

19 (2) further formal proceeding is warranted.

20 (i) After a memorandum is issued under Subsection (h), the
21 commission shall:

22 (1) convene a settlement conference of the parties to
23 be held before the 31st day after the completion of the period for
24 mediation if a party requests a settlement conference based on the
25 memorandum; or

26 (2) set the contested proceeding for an administrative
27 hearing under this chapter or Chapter 117 not later than the 61st

1 day after the completion of the period for mediation.

2 (j) If the commission convenes a settlement conference and
3 the conference results in an agreed settlement, the commission by
4 order shall dismiss the contested proceeding. If a settlement
5 conference does not result in an agreed settlement, the commission
6 shall set the matter for an administrative hearing under this
7 chapter or Chapter 117.

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

11 (l) As provided by Subsection (m), at the conclusion of a
12 contested proceeding, the commission may award all or part of the
13 costs of the contested proceeding actually incurred and paid,
14 including mediation costs, as are equitable and just. Allowable
15 costs include just and reasonable attorney's fees, costs of
16 experts, investigation costs, and costs of a party's personnel
17 employed in the preparation or presentation of the mediation. This
18 subsection does not affect the amount of litigation expenses a
19 party may be entitled to recover under any other law or a rule
20 adopted by the commission. Unless authorized by commission order,
21 costs assessed against a gas utility may not be recovered in a gas
22 utility rate set by the commission.

23 (m) The commission shall award costs under this section in a
24 contested proceeding in which one or more of the parties makes a
25 written settlement offer as follows:

26 (1) if the party that made a written settlement offer
27 is the party complained against and a transportation or gathering

1 rate set by the commission's final order is equal to or greater than
2 the rate contained in the offer, the commission:

3 (A) shall issue an order requiring a party or
4 parties to reimburse the party complained against for that party's
5 reasonable costs; and

6 (B) may not require reimbursement under this
7 subdivision if the rate set in the final order is lower than the
8 rate contained in that party's written settlement offer;

9 (2) if the party that made a written settlement offer
10 is a person that filed a complaint relating to a transportation or
11 gathering rate and the rate set by the commission's final order is
12 equal to or less than the rate contained in the offer, the
13 commission:

14 (A) shall issue an order requiring a party or
15 parties to reimburse the complaining party for the complaining
16 party's reasonable costs; and

17 (B) may not require reimbursement under this
18 subdivision if the rate set in the final order is higher than the
19 rate contained in the complaining party's written settlement offer;
20 or

21 (3) if the contested proceeding does not involve the
22 setting of rates, the commission may award costs to a party as are
23 equitable and just if that party has made a reasonable offer to
24 settle the contested proceeding and an opposing party has asserted
25 an unreasonable position in the contested proceeding.

26 SECTION 3. This Act takes effect September 1, 2005.