

By: West

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 arising out of a contract for a transaction or for services; 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

1 informal resolution process. A hearing may not be conducted under
2 Section 102.006 until the informal resolution process is completed.

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

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

1 exceed the per diem allowance for state employees in accordance
2 with the General Appropriations Act.

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

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

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

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

20 (2) further formal proceeding is warranted.

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

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

27 (2) set the contested proceeding for an administrative

1 hearing under Section 102.006:

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

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

7 (j) If the railroad commission staff convenes a settlement
8 conference and the conference results in an agreed settlement, the
9 railroad commission by order shall approve the settlement and
10 dismiss the contested proceeding. If a settlement conference does
11 not result in an agreed settlement, the railroad commission staff
12 shall set the matter for an administrative hearing under Section
13 102.006.

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

17 (l) If a contested proceeding is settled under this section,
18 the railroad commission may award to the prevailing party all or a
19 part of the equitable and just costs actually incurred under this
20 section, including the costs of mediation, just and reasonable
21 attorney's fees, expert witness fees, investigation costs, and
22 costs of mediation personnel. An award under this subsection does
23 not affect the amount of litigation expenses a party may be entitled
24 to recover under other law or a rule adopted by the railroad
25 commission. Unless authorized by the railroad commission, costs
26 assessed under this subsection against a gas utility may not be
27 recovered through a rate set by the railroad commission. Costs may

1 not be awarded under this subsection unless a party has made a
2 settlement offer and the agreed settlement contained in the
3 railroad commission's order adopts the position contained in the
4 offer.

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

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

11 (1) that involves disputed issues of law, fact, or
12 both law and fact arising out of a contract for a transaction or for
13 services; and

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

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

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

25 (d) The commission shall require the parties to a contested
26 proceeding to participate in a mediation process, as the first step
27 of the informal resolution procedure, and undertake to settle all

1 issues raised in the case by the mediation process. The commission
2 rules must provide for the appointment of commission staff to
3 conduct the mediation process and must require the process to be
4 completed not later than the 90th day after the date the relevant
5 contested proceeding is docketed by the commission unless the
6 parties to the mediation and the commission staff agree that
7 additional time is warranted.

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

24 (f) If the parties agree for the mediation to be conducted
25 at a location other than the offices of the commission in Austin,
26 Texas, the parties shall share equally the cost of the commission
27 staff's travel expenses in an amount not to exceed the per diem

1 allowance for state employees in accordance with the General
2 Appropriations Act.

3 (g) If the mediation process results in an agreed settlement
4 of all issues, the commission by order shall approve the settlement
5 and dismiss the contested proceeding.

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

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

14 (2) further formal proceeding is warranted.

15 (i) After a memorandum is issued under Subsection (h),
16 commission staff shall:

17 (1) convene a settlement conference of the parties to
18 be held before the 31st day after the completion of the period for
19 mediation if a party requests a settlement conference based on the
20 memorandum; or

21 (2) set the contested proceeding for an administrative
22 hearing under this chapter or Chapter 117 not later than the 61st
23 day after the completion of the period for mediation.

24 (j) If the commission staff convenes a settlement
25 conference and the conference results in an agreed settlement, the
26 commission by order shall approve the settlement and dismiss the
27 contested proceeding. If a settlement conference does not result

1 in an agreed settlement, the commission staff shall set the matter
2 for an administrative hearing under this chapter or Chapter 117.

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

6 (l) If a contested proceeding is settled under this section,
7 the commission may award to the prevailing party all or a part of
8 the equitable and just costs actually incurred under this section,
9 including the costs of mediation, just and reasonable attorney's
10 fees, expert witness fees, investigation costs, and costs of
11 mediation personnel. An award under this subsection does not
12 affect the amount of litigation expenses a party may be entitled to
13 recover under other law or a rule adopted by the commission. Unless
14 authorized by the commission, costs assessed under this subsection
15 against a public utility or pipeline facility may not be recovered
16 through a rate set by the commission. Costs may not be awarded
17 under this subsection unless a party has made a settlement offer and
18 the agreed settlement contained in the commission's order adopts
19 the position contained in the offer.

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