

**SUBJECT:** Use of mediation by RRC for resolution of certain proceedings

**COMMITTEE:** Energy Resources — committee substitute recommended

**VOTE:** 5 ayes — West, Farabee, Crownover, Crabb, Howard  
0 nays  
2 absent — Corte, Gonzalez Toureilles

**WITNESSES:** For — Adam Haynes, TIPRO; James Mann, Texas Pipeline Association; Ben Sebree, Panhandle Producers and Royalty Owners Association, Permian Basin Petroleum Association, and Texas Oil and Gas Association; Rex White; (*Registered, but did not testify*: Marty Allday, Embridge Energy; Delbert Fore, Enterprise Products; Patrick Nugent, Texas Pipeline Association; Shayne Woodard, Duke Energy).  
Against — William Fowler, WTG Gas Processing, LP; Gaylord Hughey  
On — Bill Stevens, Texas Alliance of Energy Producers

**BACKGROUND:** The Railroad Commission (RRC) regulates the transportation of natural gas, including regulation of gathering operators and pipelines.

The RRC has an informal system for responding to complaints about natural gas transportation services. An individual may make a complaint by contacting the RRC through correspondence or by calling the RRC's helpline. If a complaint is lodged by telephone, the RRC requires the complainant to submit the complaint in writing. A copy of a written complaint is sent to the party that is the subject of the complaint. The RRC staff then begins research of the complaint, and if resolution is not reached within 30 days from the date the written complaint was received by the RRC, an informal meeting with the parties is set with a RRC special projects director acting as a facilitator between the parties, if the parties agree to such a meeting. In the alternative, if requested by either party, or if the respondent has not filed a timely response to the complaint, the matter is set for a formal hearing with the office of general counsel of the RRC.

DIGEST:

CSHB 2986 would require the RRC to establish a mandatory informal mediation process for contested proceedings. Mediation, conducted by RRC staff, would have to be completed within 90 days of the date the proceeding was docketed by the RRC, if the parties involved did not agree to an extension. The bill would allow for limited discovery by the RRC mediator and dismissal of the proceeding if the mediation process resulted in an agreed settlement of all issues. If an agreed settlement were not reached, the mediator either would have to find that no discriminatory act had been identified or that further formal proceeding was required. Within 31 days after the 90-day completion period for mediation, a settlement conference would have to take place if requested by a party.

In the mediation or settlement conference, the RRC could award all or part of equitable and just costs actually incurred and paid at the conclusion of a contested proceeding. The RRC could not assess costs against a gas utility to be recovered in a gas utility rate set by the RRC unless authorized by order.

The RRC would have the authority to award costs to a party that made a reasonable written offer to settle the proceeding if the opposing party had asserted an unreasonable position in the proceeding. If the party against whom a complaint had been made issued a written settlement offer, and a transportation or gathering rate set by the RRC's final order were equal to or greater than the rate contained in the offer, the RRC would issue an order requiring the complainant to reimburse the party complained against for that party's reasonable costs. If the rate set in the order were lower than the rate contained in the party's settlement offer, the RRC could not require a reimbursement. If a written settlement offer were made by a person who filed a complaint relating to a transportation or gathering rate and the rate set by the RRC's final order were equal to or less than the rate contained in the offer, the RRC would follow the same guidelines.

If a party did not request a settlement conference, or if a settlement were not reached in the conference, the RRC would set an administrative hearing no later than the 61st day after the completion of the period for mediation. A formal administrative hearing would allow for discovery of all relevant documents and information. Parties would have to participate in the mediation process before an administrative hearing could take place.

The bill would take effect on September 1, 2005.

SUPPORTERS  
SAY:

The RRC's current informal complaint process has been in place for several years, but it is based on no statutory or rule authority. It was hoped that the process would provide a mechanism and a format under which producers and pipeline operators could come to the RRC and utilize the staff to resolve conflicts over certain issues. Over 10 years, there have been about 80 complaints to the RRC, most of which have been resolved favorably, but the process is flawed in that it lacks legal legitimacy and enforceability. CSHB 2986 would provide an effective alternative to the current informal complaint system that many participants argue is neither sufficiently comprehensive nor efficient because the process lacks discovery and enforcement.

The bill would change the current complaint process to a formal mediation process legitimized by statute that would provide parties and the RRC a tool to require initiation of mediation within 90 days of the complaint being filed. A mandatory mediation process would result in more effective and fair decisions.

The bill also would provide a better alternative to the more formal complaint proceedings that cost a considerable amount of time and money for the parties involved. In some cases, even small companies have spent more than \$300,000 each in resolving disputes under the current system. By their nature, these cases are expensive and time-consuming. Additionally, the formal complaint system still would be in place but would not have to be used as often because most complaints would be resolved during mediation.

Certain issues between producers and pipeline operators have become prominent. CSHB 2986 would take a step forward in providing a mechanism by which these issues between producers and operators might be resolved with less controversy, time, and money. The hope would be that with the mediation process, most of the complaints between operators and producers would be resolved in mediation or settlement and would not result in full-blown contested proceedings.

CSHB 2986 also would require more data to be tendered so that RRC decision-makers would have enough information to make intelligent and informed decisions to settle matters. The bill would provide incentives for both sides genuinely and in good faith to resolve issues through the mediation process. The 90-day time limit for initiation of mediation would provide quick resolution to prevent cases from dragging on.

CSHB 2986 would strike the right balance between operators and producers. If parties were unable to resolve issues on their own, they could find expertise and a process stronger than mediation because the RRC would have the authority to decide in one party's favor if settlement could not be reached. The proposed mediation process would push the parties toward a fair and equitable agreement and would not give any side an advantage or disadvantage when it came to settling disputes. Rather, the bill would attempt to level the disadvantages found in the current system.

OPPONENTS  
SAY:

Mediation would provide a band-aid effect. It would add cost and delay to an already problematic area. CSHB 2986 would create a mandatory time-delay process that is unjustified. Time is often of the essence in these kinds of cases, but the bill nevertheless could delay the formal complaint process by up to six months. It would remove the complainant's right to immediate relief without having to go through the delay process, even in an emergency. This would be directly contrary to the alternative dispute resolution statute for state agencies that prohibits the denial of a right granted under other state or federal law, including a right to an administrative or judicial hearing. The 180-day time-delay portion of the bill would take away that right for that period.

The purported cost reimbursement provided in the bill would be one-sided in favor of the utilities and against those filing the complaints. It would not provide a "loser pays" system because the bill would preserve the utility's right to recover costs even if the RRC mediator found in the other party's favor. Thus, even if the RRC found that the producer or consumer complainant had won a case after harm was found, they would still lose. The mediation process also would be biased in favor of utilities because of the mandatory delay and increased cost to producers, cities, and other industrial customers who need relief. It would not remove obstacles, but would create new ones.

The bill would provide for limited discovery. An equal harm standard is not the cure to the problem. Simply determining that parties have been harmed equally would not make it an appropriate discovery process. The mediator would have to make a decision based on incomplete information.

Under current practices, producers are consistently told by the RRC that it does not handle contractual matters, even though the industry continually sees the unilateral renegotiation of contracts by pipeline operators. The

new mediation process would be procedural and would not address the issue of contractual matters. If the RRC would not handle these issues under the mediation process, then the bill would be providing a mechanism that would not solve the ultimate problem within the industry. The lack of authority of the RRC to deal with contractual prices at the wellhead is going to be a major flaw that would have to be dealt with in the future.

**OTHER  
OPPONENTS  
SAY:**

CSHB 2986 should make the mediation process an optional alternative to the informal complaint process. The current system has worked fairly well so far, with most complaints resulting in a settlement.

**NOTES:**

The substitute modified the original version by allowing an administrative hearing once the informal resolution process was completed and authorizing discovery of relevant documents and information to be obtained from any party. It provided for actions to be taken by the RRC mediator, rather than the RRC staff. It added provisions on how costs would be awarded by the RRC in a contested proceeding in which one of the parties made a written settlement offer.

The fiscal note reports that an assumed increase in the number of informal complaints submitted to the RRC would require the RRC to hire four additional FTEs to handle the additional workload. It estimates a cost to general revenue of \$735,594 through fiscal 2006-07 to cover additional travel and staff-related equipment and training costs associated with the new employees.