

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 949  
By: Armbrister  
Natural Resources  
4/13/2005  
Committee Report (Substituted)

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

Gatherers and pipelines are currently 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 (commission) under the Utilities Code. There are two avenues to address any complaints about gatherers or pipelines at the commission. A party can file a formal complaint which is docketed and tried like any administrative law case with full discovery, hearings, proposal for decision, and an order by the commissioners. The formal proceedings are expensive and time consuming litigation. There is also an informal dispute resolution process that is conducted like standard mediation, in which there is no discovery and no hearings, and the mediators can encourage settlement.

C.S.S.B. 949 creates a statutory process for mediated settlements in contested case proceedings involving gas utilities in the Utilities Code and hazardous liquid pipeline transportation in the Natural Resources Code. This process is faster and less expensive than formal proceedings, but gives the commission more power and involvement than typical mediation. A Texas Railroad Commission mediator is responsible for conducting the mediation process and is required to inform the parties of their recommended position if agreement is not reached. If the case still does not settle, the matter goes to the formal hearing process in a contested case docket.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Railroad Commission in SECTION 1 (Section 102.0055, Utilities Code) and SECTION 2 (Section 111.228, Natural Resources Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter A, Chapter 102, Utilities Code, by adding Section 102.0055, as follows:

Sec. 102.0055. INFORMAL RESOLUTION OF CONTESTED PROCEEDINGS. (a) Defines "contested proceeding."

(b) Provides that this section does not apply to certain contested proceedings.

(c) Requires the Texas Railroad Commission (commission), by rule, to establish a process for informal resolution of contested proceedings. Requires the 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 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. Requires the commission rules to provide for the appointment of railroad commission staff to conduct the mediation process and requires that the process be completed not later than the 90th day after the date the relevant contested proceeding is docketed by the commission unless the parties to the mediation and the railroad commission mediator agree that additional time is warranted.

- (e) Sets forth guidelines for the commission mediator to conduct limited discovery as a part of the mediation process.
- (f) Requires the parties to share equally the cost of the 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 be conducted at a location other than the commission offices in Austin, Texas.
- (g) Requires the commission, by order, to dismiss the contested proceeding if the mediation process results in a settlement.
- (h) Sets forth guidelines for handling a contested proceeding that is not settled.
- (i) Requires the commission, after a memorandum is issued under Subsection (h), to take certain actions to settle a contested proceeding in a settlement conference.
- (j) Requires the commission, by order, to dismiss the contested proceeding if, after holding a settlement conference, an agreed settlement results. Requires the commission, if a settlement conference does not end in an agreed settlement, to set the matter for administrative hearing. Requires discovery of all relevant documents and information to be permitted in the contested proceeding according to the rules of the commission and Chapter 2001 (Administrative Procedure), Government Code.
- (k) Provides that Section 2009.054 (Confidentiality of Certain Records and Communications), Government Code, applies to information produced or obtained during the mediation or settlement conference under this section.
- (l) Authorizes the commission, as provided by Subsection (m) and at the conclusion of a contested proceeding, to award all or part of the costs of the contested proceeding actually incurred and paid, including mediation costs, as are equitable and just. Sets forth guidelines for determining allowable costs. Provides that 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 commission. Prohibits costs assessed against a gas utility from being recovered in a gas utility rate set by the commission unless authorized by commission order.
- (m) Requires the commission to award costs under this section in a contested proceeding in which one or more of the parties makes a certain written settlement offer.

SECTION 2. Amends Subchapter G, Chapter 111, Natural Resources Code, by adding Section 111.228, as follows:

Sec. 111.228. INFORMAL RESOLUTION OF CONTESTED PROCEEDINGS. (a) Defines "contested proceeding."

- (b) Provides that this section does not apply to certain contested proceedings.
- (c) Requires the commission, by rule, to establish a process for informal resolution of contested proceedings as provided by this section. Requires the 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 under this chapter or Chapter 117 (Hazardous Liquid or Carbon Dioxide Pipeline Transportation Industry) until the informal resolution process is completed.
- (d) Requires the 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. Requires the commission rules to provide for the

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

(e) Sets forth guidelines for the commission mediator to conduct limited discovery as a part of the mediation process.

(f) Requires the parties to share equally the cost of the 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 that the mediation be conducted at a location other than the commission offices in Austin, Texas.

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

(h) Sets forth guidelines for handling a contested proceeding that is not settled.

(i) Requires the commission, after a memorandum is issued under Subsection (h), to take certain actions to settle a contested proceeding in a settlement conference.

(j) Requires the commission, by order, to dismiss the contested proceeding if, after holding a settlement conference, an agreed settlement results. Requires the commission, if a settlement conference does not end in an agreed settlement, to set the matter for administrative hearing under this chapter or Chapter 117.

(i) Provides that Section 2009.054 (Confidentiality of Certain Records and Communications), Government Code, applies to information produced or obtained during the mediation or settlement conference under this section.

(l) Authorizes the commission, as provided by Subsection (m) and at the conclusion of a contested proceeding, to award all or part of the costs of the contested proceeding actually incurred and paid, including mediation costs, as are equitable and just. Sets forth guidelines for determining allowable costs. Provides that 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 commission. Prohibits costs assessed against a gas utility from being recovered in a gas utility rate set by the commission unless authorized by commission order.

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

SECTION 3. Effective date: September 1, 2005.