

§2.001. Informal Complaint Procedure

(a) Scope and Jurisdiction. This section applies to any complaint within the Commission's jurisdiction, including, but not limited to, complaints about natural gas purchasing, selling, shipping, transportation, and gathering practices. This section does not apply to matters arising under Texas Utilities Code, Chapter 103, entitled "Jurisdiction and Powers of Municipality," or initiated under Texas Utilities Code, Chapter 104, Subchapter C, entitled "Rate Changes Proposed by Utility," or Subchapter G, entitled "Interim Cost Recovery and Rate Adjustment."

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Common purchaser--Has the same meaning as is given that term in Texas Natural Resources Code, §111.081.

(2) Complainant--A person who submits a complaint to the Commission pursuant to this section.

(3) Director--The Director of the Gas Services Division of the Railroad Commission of Texas or the director's delegate.

(4) Gatherer--A person providing gathering service for a fee for a third party.

(5) Gathering service--A pipeline that collects gas and brings it to a common point(s).

(6) Informal complaint proceeding--The process set out in this section for addressing disputes among entities within the Commission's jurisdiction, including, but not limited to, natural gas purchasers, sellers, shippers, transporters, and gatherers.

(7) Mediator--The individual who conducts an informal complaint resolution mediation .

(8) Monitor--The Commission employee appointed by the director to manage an informal complaint proceeding and/or assist a non-Commission mediator in the management of an informal complaint proceeding. A monitor may also be a mediator.

(9) Natural gas purchaser--An entity that purchases natural gas.

(10) Natural gas seller—An entity that sells natural gas, including, but not limited to, a producer.

(11) Natural gas utility--Has the same meaning as is given that term in Texas Utilities Code, §§101.003 and 121.001.

(12) Participant--A complainant, respondent, monitor, or mediator in an informal complaint-proceeding.

(13) Person--A person includes an individual, corporation, partnership, joint venture, or other legal entity of any kind.

(14) Respondent--A person who is the subject of a complaint submitted to the Commission pursuant to this section.

(15) Shipper--Any person for which a transporter is currently providing, has provided, or has pending a written request to provide transportation services.

(16) Similarly-situated shipper--Any shipper that seeks or receives transportation service under the same or substantially the same, physical, regulatory, and economic conditions of service as any other shipper of a transporter. In determining whether conditions of service are the same or substantially the same, the Commission shall evaluate the significance of relevant conditions, including, but not limited to, the following:

(A) service requirements;

(B) location of facilities;

(C) receipt and delivery points;

(D) length of haul;

(E) quality of service (firm, interruptible, etc.);

(F) quantity;

(G) swing requirements;

(H) credit worthiness;

(I) gas quality;

(J) pressure (including inlet or line pressure);

(K) duration of service;

(L) connect requirements; and

(M) conditions and circumstances existing at the time of agreement or negotiation.

(17) Transportation service--The receipt of a shipper's natural gas at a point or points on a transporter's facilities and redelivery of a shipper's natural gas by the transporter at another point or points on the transporter's facilities or on another person's facilities, including exchange, backhaul, displacement, and other methods of transportation.

(18) Transporter--A person providing transportation service for a fee for a third party .

(c) Policy.

(1) It is the policy of the Commission to encourage the resolution and expedient settlement of disputes regarding natural gas purchasers, sellers, transporters and gatherers and to prevent discrimination among similarly situated shippers and sellers as is prohibited by the Texas Natural Resources Code, Chapter 111, entitled "Common Carriers, Public Utilities, and Common Purchasers," and Texas Utilities Code, Title 3, Subtitle A, entitled "Gas Utility Regulatory Act, and Subtitle B, entitled "Regulation Of Transportation and Use," and other matters of dispute subject to the Commission's jurisdiction. This section is adopted in furtherance of that policy.

(2) To accomplish the policy set out in this section, Commission employees, acting pursuant to this section, will attempt to facilitate, encourage, and promote resolution and settlement of disputes among natural gas purchasers, sellers, shippers, transporters, gatherers, and other parties subject to the Commission's jurisdiction consistent with the public interest and without lengthy and potentially expensive formal proceedings. The informal complaint procedure is intended to establish a forum for communication with the

1 goal of achieving mutually acceptable compromise and resolution that is in the public interest.

2 (d) General requirements and limitations.

3 (1) The Commission will not process anonymous complaints under this section.

4 (2) The communications, records, conduct, and demeanor of the participants in each informal
5 complaint proceedings are confidential and handled in accordance with Texas Government Code, §2009.054,
6 entitled "Confidentiality of Certain Records and Communications."

7 (3) A mediator shall have completed forty (40) hours of Texas mediation training that meets the
8 standards of the Texas Alternative Dispute Resolution Procedures Act, and must follow the ethical guidelines
9 for mediators adopted by the Alternative Dispute Resolution Section of the State Bar of Texas.

10 (4) A mediator may be either a Commission employee or a non-Commission employee. If the
11 complainant and respondent submit a written request to the director agreeing to share all costs of mediation, they
12 may retain a non-Commission employee to conduct the mediation. If the complainant and respondent are
13 unable to agree on whether to engage a non-Commission employee as the mediator, or in the absence of a
14 request for a non-Commission employee mediator, the director shall appoint a Commission employee to conduct
15 the mediation. If the mediator is not a Commission employee, then the monitor will act as a technical advisor to
16 the non-Commission employee mediator and may, at the direction of the non-Commission employee mediator,
17 participate in the informal complaint proceeding. A non-Commission employee mediator shall have the same
18 duties and obligations of a commission employee mediatory and may, in his sole discretion, compel the
19 complainant and respondent to provide information pursuant to subsection (f)(9) of this section.

20 (5) Mediators and monitors shall not communicate with a Commission hearings examiner or
21 any Commissioner about any material or substantive aspect of a complaint or reply filed pursuant to this section.

22 (6) Each complainant and respondent in an informal complaint proceeding shall cooperate fully
23 in gathering and disclosing information requested by the mediator or monitor and shall participate in good faith
24 in all aspects of the informal complaint proceeding.

1 (7) A natural gas purchaser, transporter, or gatherer shall not discontinue or deny service to a
2 shipper or seller during the pendency of an informal complaint proceeding in which both are participants unless
3 one of the following reasons applies for discontinuing service:

4 (A) there is insufficient capacity on the respective facility or facilities; provided,
5 however that the purchaser, transporter, or gatherer provide any partial capacity that maybe available from time
6 to time.

7 (B) the natural gas does not meet the quality specifications of the purchaser,
8 transporter, gatherer, or downstream processors, pipelines or customers; unless the natural gas is flowing under
9 an agreement and at the impending termination of that agreement there is sufficient capacity and out of spec gas
10 is being blended for other shippers or sellers in the area, and the acceptance of such volumes from shipper or
11 seller will not jeopardize downstream market deliverability of the gas, then the purchaser, transporter, or
12 gatherer shall continue to take the gas until the conclusion of the informal complaint process, charging blending
13 fees applicable to similarly situated shippers;

14 (C) continuing to take the natural gas would create a safety or environmental risk or
15 cause a violation of a safety or environmental regulation or permit or interfere with necessary maintenance and
16 repairs of facilities;

17 (D) there is no existing contractual agreement as to the price to be paid or fees charged
18 for the production during the pendency of the informal complaint process, provided however, that the
19 production will be taken if the complainant and respondent agree that the price or fees will be determined at a
20 later date;

21 (E) for such good cause as the mediator may determine in the particular case.

22 (8) A transporter, gatherer, or purchaser shall not discriminate against a shipper or seller
23 because the shipper or seller has, in good faith:

24 (A) filed an informal complaint at the Commission;

(B) filed a formal complaint at the Commission;

(C) instituted or caused to be instituted at the Commission any enforcement proceeding against a purchaser, transporter, or gatherer based on alleged violations of any rule or statute; or

(D) made inquiry to the Commission as to the facts or circumstances surrounding operation of a purchaser's, transporter's, or gatherer's system.

(9) The Commission may commence an enforcement action, initiated by the Director, for failure by the complainant or the respondent to comply with all provisions of the informal complaint proceeding.

(e) Informal Complaint Process.

(1) An informal complaint proceeding is initiated by filing a complaint with the Commission by:

(A) calling the Commission Helpline at (512) 463-7167. Commission staff will answer calls to the Helpline from 8:00 a.m. to 5:00 p.m. on regular Commission business days. A voice mail system will be in place to receive calls during non-business hours; or

(B) submitting a complaint in writing by:

(i) regular United States mail to the following address: Director, Gas Services Division, P. O. Box 12967, Austin, Texas 78711-2967;

(ii) facsimile transmission (fax) to the following number: (512) 463-7962; or

(iii) internet submission by accessing the following URL:

<http://www.rrc.state.tx.us/divisions/gs/mos/complaints/icp.html>.

(2) Each complaint shall include the following information:

(A) the name of the individual submitting the complaint;

(B) the complainant's name, mailing address, telephone number, and, if applicable, e-mail address and fax number;

(C) the respondent's name, mailing address, telephone number, and if applicable, e-

1 mail address and fax number;

2 (D) a factual description of the events that are the basis of the complaint, including the
3 onset or duration of such events;

4 (E) a statement of the current status of negotiations between the complainant and the
5 respondent and a description of any actions the complainant has taken to resolve the dispute;

6 (F) a statement of the relief sought by complainant; and

7 (G) all supporting documentation, unless the complaint is filed by telephone.

8 (3) The Director shall assign a complaint to a monitor, who shall promptly contact the
9 complainant to confirm receipt of the complaint and to obtain any additional relevant and supporting
10 documentation pertaining to the complaint. The monitor shall advise the complainant of its right to have the
11 complaint mediated by a commission employee or by a non-commission employee mediator. If the complainant
12 has submitted the complaint by telephone and wishes to pursue the matter, the monitor shall direct the
13 complainant to submit the complaint by e-mail, facsimile, or letter, along with supporting documentation.

14 (4) After the monitor determines that the complainant has provided all required information,
15 the monitor shall notify the respondent of the complaint by mailing to the respondent, via certified mail, return
16 receipt requested, a copy of the complaint and all supporting documentation. This notification shall include
17 notice to the respondent of its right to have the matter heard by a non-commission employee mediator pursuant
18 to the agreement of the parties.

19 (5) The respondent shall reply in writing to both the monitor and the complainant within 14
20 calendar days from the date of the monitor's notification letter. The respondent's reply shall address the
21 substance of the complaint and either propose a solution or explain why the complaint is incorrect.

22 (6) The complainant and the respondent will be given 14 calendar days from the date of the
23 respondent's reply to resolve the complaint without the participation of a mediator.

24 (7) If the complainant and the respondent have made a good faith attempt to resolve the

1 complaint but have been unable to do so, the monitor shall determine within seven days after expiration of the
2 period allowed for informal resolution in paragraph (6) of this subsection whether the parties want the matter
3 referred to a Commission or non-Commission mediator and shall refer the matter back to the director.

4 (8) In the event the parties agree upon a non-commission employee mediator, then the monitor
5 shall notify the agreed upon mediator. In the event the parties desire to use a non-commission employee
6 mediator and are unable to agree upon the selection of a non-commission employee mediator, each party shall
7 each submit the name of its preferred mediator and the preferred mediators so designated shall choose a third
8 mediator who will preside over the process.

9 (9) In accordance with the procedure set forth in subsection (d)(4) of this section, the director
10 shall appoint a mediator within seven days after receipt of the information in paragraph (7) of this subsection.

11 (10) The mediator shall,
12 within 14 calendar days after the appointment provided in paragraph (8) of this
13 subsection, review all information received from the complainant and respondent. The mediator may request
14 additional information as the mediator deems necessary. At any time during an informal complaint procedure,
15 the mediator may request and review documents or information the mediator considers pertinent to the
16 complaint. The mediator shall furnish the complainant and respondent with a written summary of all relevant
17 documents and information reviewed. The mediator's summary shall not disclose confidential information.

18 (10) The commission shall schedule a mediation meeting with the complainant and
19 respondent, which the mediator shall conduct, to occur within 14 calendar days after the date of the mediator's
20 written summary.

21 The commission shall promptly notify the complainant and respondent of the date, time
22 and location of the meeting, which may be conducted at the headquarters of the Commission in Austin, Texas,
23 or in the Commission's offices in the district in which the complaint arises, or at any other location by
24 agreement of the participants.

1 (11) The complainant and respondent shall participate in the mediation meeting and undertake
2 in good faith to settle all issues raised in the complaint. The complainant and respondent shall make available
3 during the mediation meeting, in person, representatives who are empowered to make decisions on their behalf.

4 (12) If the mediation process does not result in a settlement of all issues during the period for
5 mediation provided herein, after completing the mediation, the mediator shall send a confidential memorandum
6 to the complainant and the respondent that states one or more of the following conclusions, based on the
7 information reviewed by the mediator. The mediator may conclude that:

8 (A) the complaint does not involve a violation of a Commission rule or statute;

9 (B) there are specific actions which, if taken by either the respondent or the complaint
10 or both, could result in resolution of the complaint; or

11 (C) a formal evidentiary hearing is warranted. Such a hearing may be:

12 (i) initiated by the Director of the Gas Services Division as a show cause
13 proceeding; or

14 (ii) requested by either the complainant or the respondent.

15 (g) Internal Report. The director shall maintain an internal report of all complaints received.

16 (1) The report shall be circulated no less often than once every six months to the
17 Commissioners, the executive director, and the general counsel.

18 (2) The specific points of the participants' discussions and any negotiated resolution shall not
19 be included in this internal report.

 This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be
within the agency's authority to adopt.

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