

TRANSCRIPT OF PROCEEDINGS

BEFORE THE

PUBLIC UTILITY COMMISSION OF TEXAS

AUSTIN, TEXAS

FIRST ORGANIZATIONAL MEETING

BE IT REMEMBERED that the above entitled matter came on for hearing before the PUBLIC UTILITY COMMISSION OF TEXAS on September 2nd, 1975, beginning at 2:00 p.m., at the 7th Floor Conference Room, Attorney General's Office, Supreme Court Building, Austin, Texas, the HONORABLE GARRETT MORRIS, Chairman, presiding, and MESSRS. GEORGE COWDEN and ALAN R. ERWIN, members; also attending were ATTORNEY GENERAL JOHN HILL and FIRST ASSISTANT ATTORNEY GENERAL DAVID M. KENDALL, and the following proceedings were reported by Hickman Reporting Service, 504 Travis Building, 205 West Ninth, Austin, Texas 78701.

HRS
HB2**HICKMAN REPORTING SERVICE**THE QUALITY REPORTERS
Austin, Texas 476-5363

PROCEEDINGS

1
2
3 MR. COWDEN: It's two o'clock, and
4 according to our notice for this organizational meeting
5 we're scheduled to start at two under our notice of a
6 meeting, open meeting, and Al Erwin and I have discussed
7 among ourselves and we would like to ask and formally
8 elect Garrett Morris to be chairman if he'll serve. Al
9 joins me in this.

10 Garrett, if you'll serve as chairman we want
11 you to do that.

12 CHAIRMAN MORRIS: I consent.

13 MR. COWDEN: Will you consent? I'll let
14 you see the agenda. Thank you.

15 MR. ERWIN: I assume we need to make a
16 formal motion, don't you think?

17 CHAIRMAN MORRIS: I would think you ought
18 to make it in a formal motion.

19 MR. COWDEN: Well, I don't know to whom
20 the motion is made, but I think we can agree that we
21 have agreed among ourselves that you'll serve as chairman.

22 MR. ERWIN: I second the motion for you
23 to serve.

24 CHAIRMAN MORRIS: In other words, both of
25 you agree that I—or move and second or second and move—

1 MR. COWDEN: That's correct.

2 CHAIRMAN MORRIS: —that I serve as chair-
3 man. There being no one else to take the vote, I declare
4 myself elected as chairman.

5 We shall proceed.

6 I think really before we get too far into this
7 agenda, I would like to ask the Attorney General for
8 some clarification on the Act and on the means by which
9 we can proceed.

10 First, we do not have a place to have any
11 meeting, so you kindly, Mr. Attorney General, agreed to
12 let us use your Conference Room, for which we are very
13 appreciative.

14 As I understand the law, under the law we have
15 to make application to the Board of Control for space,
16 and they have to take bids so there isn't any way that
17 we can obtain permanent space for probably at least
18 thirty days or maybe longer, and if they do not have any
19 temporary space available, what is our alternative and
20 what could we do in such an event?

21 MR. HILL: Mr. Chairman, I should think
22 that certainly through the Governor's Office, if you
23 decided that you wanted some sort of a space before you
24 went through the normal channels that that would be—and
25 I certainly don't undertake to speak for him—but I know

1 from conversations we have had that he's very interested
2 in the Commission and as early a start as possible. So
3 I'm sure there would be a manner and way to help with
4 your interim financing.

5 Certainly I feel confident that the Board of
6 Control will move expeditiously with you, and as you know,
7 we work with them and in connection with these contracts,
8 so if you can get some specifications in to the Board
9 as rapidly as possible. Obviously it's going to be here
10 in Austin, and I suppose you would want to make a deter-
11 mination as to whether you desire to be in the Capitol
12 Complex or in some other part of the city, which is
13 certainly a judgment for you to make. But once you've
14 determined that, so that you can set out your specifica-
15 tions as to the approximate amount of space that you
16 envision and the amount of parking that you feel you
17 will need, some of the details of the kind of space that
18 you would like, and I'm sure you're going to want hearing
19 rooms because even though this will be— I'm sure you
20 want to think of it in terms of it as being as nearly
21 permanent as possible. So those will be the kinds of
22 things that you'll need to get to the Board of Control
23 and let us try to help you put that together so that that
24 can be moved on as soon as possible.

25 Yes, George.

1 MR. COWDEN: Let me ask you a question,
2 John. With reference to the space and the nature of
3 the space and so forth, would we be in violation of the
4 open meeting law to go and sit and visit with them and
5 find out what is available maybe on a temporary basis,
6 what they recommend, and what they suggest, and make a
7 determination as a result of that, or would we need to
8 come back into a meeting and—

9 MR. HILL: I don't think so, George.
10 I think certainly you can, as the three members of this
11 Commission, go to the Board of Control at your earliest
12 convenience and sit down with Homer Forrester and find
13 out what his procedures are and what forms you're going
14 to need and try to get some help at his staff level—

15 MR. COWDEN: That's what we need.

16 MR. HILL: —in determining the kind of
17 specifications that you'll want to draw up. To me, it's
18 an administrative thing. You haven't made a decision.
19 You're simply trying to get some paper work out of the
20 way.

21 Now, yes, when you come to the point where
22 you're going to decide what type of ultimate facility
23 you're going to ask for and what kind of money you're
24 going to be talking about, that would be public matter
25 and you should do that in a noticed meeting.

1 MR. COWDEN: Fine.

2 CHAIRMAN MORRIS: Well, along that same
3 vein now, let me ask you one other question. In con-
4 nection with the interviewing and hiring of personnel,
5 since there are several named people now, in the Act,
6 that we're to hire, is any part of that employment or
7 hiring process have to be done in a public meeting?

8 MR. HILL: No. I don't believe so. The
9 actual decision when you come to naming the staff and
10 who is going to be your engineer and your general counsel,
11 yes, that should be done in a noticed meeting. Any real
12 decision that you make with regard to it, I think on
13 those levels probably should be made in an open meeting.
14 Quite obviously there is an exemption in the Act itself
15 dealing with personnel matters, and you're going to
16 have so many personnel people to interview, it seems to
17 me you're almost going to have to set up someone to
18 help you with this. It may be one of your first needs
19 for an employee is someone who can head up your personnel
20 and your talent search.

21 CHAIRMAN MORRIS: In the same line with
22 that question, we're going to need a budget at an early
23 date, before we employ a great number of people. Is the
24 adoption of that budget, again, a matter for public
25 meeting process?

1 MR. HILL: Yes. That is one area that
2 we can be pretty clear on. Anything that involves the
3 expenditure of money, you'll need to notice it, and of
4 course, you can do your routine budget work without an
5 open meeting, but when you get around to the point where
6 you're going to adopt it, then you would have to be in
7 an open meeting.

8 CHAIRMAN MORRIS: It would seem to me
9 that we would have to adopt some sort of a temporary
10 budget at least before we are going to know what kind
11 of personnel slots we will need to fill other than the
12 statutory definition.

13 MR. HILL: Yes.

14 CHAIRMAN MORRIS: Now, am I correct that
15 beginning September the 1st, we have to give a seven
16 days' notice of a meeting?

17 MR. HILL: Yes.

18 CHAIRMAN MORRIS: Before we can have
19 another meeting.

20 MR. HILL: Of course you have your
21 emergency provision.

22 CHAIRMAN MORRIS: Well now, on the
23 emergency provision, what will that cover? Would that
24 cover such things as employment of certain personnel in
25 this instance where we have no staff to begin with, or

1 is there any way that we can, say, recess this meeting
2 at the end of it, subject to recall at a later date
3 without seven days notice?

4 MR. HILL: I would think, Garrett, that
5 everyone is going to be inclined to be rather generous
6 with this Commission on those kinds of matters.

7 MR. COWDEN: Say that again, Mr. Attorney
8 General.

9 MR. HILL: I mean, we know you're going to
10 have a lot of shots to call here in the next couple of
11 months trying to get your staff, and as long as you're
12 working in good faith, seven days notice is what we like
13 to see, but when you have a real problem where you need
14 to get together and try to hire somebody that otherwise
15 may get away from you in a week or ten days, I don't
16 think anyone is going to be very critical about your
17 getting an emergency notice out so long as you specify
18 in that notice what the emergency is.

19 MR. KENDALL: It not only speaks in terms
20 of emergency; it also speaks of urgent public necessity,
21 and I think you can certainly assert that.

22 CHAIRMAN MORRIS: It may seem like these
23 are kind of foolish questions to be asking, but it seems
24 to me that—I've been trying to think about how are we
25 going to get organized. We don't have a place to call a

1 public meeting in, you know, at present, and it's very
2 difficult to make that first beginning. And if we've
3 got to, you know, give seven days notice before we can
4 get anybody to type up a notice for us we're in a very
5 difficult position.

6 MR. HILL: I understand.

7 CHAIRMAN MORRIS: Now I understand that
8 we can start interviewing people for positions, and I
9 understand that maybe we can start interviewing people,
10 you know, that have the qualifications of putting together
11 a budget for us, which I think is very important that
12 we get at an early date, but how do you get from one
13 step to the other. I did want your advice on it, because
14 I think it is very important that we try to do this as
15 nearly right as we can do it, and yet get on with the
16 job of getting the agency organized.

17 Do you all have any questions that you want to
18 ask? George?

19 MR. COWDEN: Garrett, I really don't know
20 of any other questions. I don't know whether John
21 responded a minute ago about the idea of maybe our being
22 able to recess this meeting this afternoon and maybe
23 come back here tomorrow and continue it. Is there any
24 provision for that?

25 MR. HILL: I think you clearly can do that.

1 There is no reason that I know of that you can't recess
2 a meeting that's been duly noted so long as you're con-
3 tinuing the same agenda.

4 MR. COWDEN: Well, I think that there
5 would be those at the appropriate time.

6 MR. ERWIN: I think you've asked the
7 questions I had too.

8 CHAIRMAN MORRIS: I've got a couple of
9 other things that don't have to do with immediate
10 organization, but it does have something to do with the
11 speed with which we assemble a staff and adopt certain
12 rules.

13 According to the Act as I read it, on November
14 the 29th we have to be prepared to start to accept filings
15 by companies for certificates of convenience and
16 necessity. Now, if that requires any rules or any
17 regulations by us prior to the filing date, are we
18 required to give thirty days notice and public hearings
19 before adoption of rules or regulations or application
20 forms for such filings on November the 29th?

21 MR. HILL: I think on your forms that you
22 could go right ahead with forms, and I think you should.
23 But certainly, what you envision on the convenience and
24 necessity, Mr. Chairman, but I would envision just simply
25 in the beginning that there would be an application filed

1 by companies seeking that, and then you would give notice
2 from that point once you received it.

3 CHAIRMAN MORRIS: Once we received the
4 application?

5 MR. HILL: Once having received it, then
6 there would be something to give notice of, and the
7 notice would be to the public that that has been applied
8 for, and at some point you will, of course, need to
9 establish certain rules of procedure and practice, and
10 that's going to be quite an undertaking.

11 CHAIRMAN MORRIS: Well, won't those initial
12 filings be the basis for their constitutional claim for,
13 you know, service in the various areas that they apply
14 for?

15 MR. HILL: Yes.

16 CHAIRMAN MORRIS: In other words, what
17 occurred to me, are we going to adopt the rules behind
18 the filing, you know, as to how it shall be filed, or
19 will we be required to set up some rules and forms for
20 the filing of those initially? And if we do have to,
21 do we have to give the thirty days notice?

22 MR. KENDALL: The Administrative Procedure
23 Act doesn't go into effect until January 1st.

24 CHAIRMAN MORRIS: So that we would not
25 have to give the thirty days notice and have the public

1 hearings then on any requirements for those initial
2 filings?

3 MR. KENDALL: I think that's correct.

4 CHAIRMAN MORRIS: All right.

5 MR. HILL: The hearings themselves, of
6 course, would be subject to it. In your rules of practice,
7 if I might just interject a thought, maybe you're going
8 to get to it, but it seems to me that one of your main
9 problems here in the interim is dealing with the city,
10 because the Act contemplates that although you don't
11 actually start your rate making and regulatory activities
12 until September 1 of '76, I don't—unless I've overlooked
13 something—do not see that restraint on you as far as
14 making available to the cities staff or assistance which
15 is called for. You may have an appellate case come to
16 you from a city decision, which is also provided in the
17 Act. And to me this would be—I can see real needs here
18 for staff, for your getting in business quickly, because
19 I think you have many responsibilities under the Act that
20 are there aside from the September 1, '76 date, and then
21 an enormous amount of work in connection with your rules,
22 your regulations, your practice. There can be all manner
23 of filings. There are many, many reports that are called
24 for in the Act that you are to obtain from the companies
25 in Texas. There is quite a work load that's here, so that

1 you are really ready to go when the real rate hearings
2 would begin, more for you as a Commission, in September.

3 MR. KENDALL: Mr. Chairman, before I forget,
4 the Secretary of State's Office sent these over. They
5 need to be signed.

6 CHAIRMAN MORRIS: Now one other thing that
7 I would like to ask you about: The Act provides many
8 things about conflicts of interest, and provides that
9 we shall keep a log. What worries me a little bit, how
10 much of a log must be kept?

11 MR. HILL: I think, Mr. Morris, what most
12 people keep is just a sign-in, sign-out log, just a
13 matter that they were there, who they represented, and
14 what their business was, should be sufficient.

15 Now, there are other reports that are called
16 for that don't bear directly on that in terms of
17 entertainment expenses, public relations expenses, all
18 of this is covered by the Act as far as their filing
19 with you, but in the event that you yourself were, as
20 you know some very, very strict conflicts of interest
21 provisions in connection with how you, each of you—and
22 I'm sure you will—conduct yourselves with reference to
23 those who would have business before you. As far as
24 just the details of who was there, I would think that
25 would be totally sufficient, Mr. Chairman. Just a sign-in

1 log identifying the person and who they represent and
2 the nature of their business.

3 CHAIRMAN MORRIS: Does that log have to
4 cover all telephone, incoming and outgoing telephone calls
5 also?

6 MR. HILL: That is very difficult to
7 handle. I find it extremely difficult in our office.
8 It's not covered specifically. I think it is a matter
9 of what you can do. If you can it is certainly better,
10 but we find that we just have so much telephone traffic
11 it makes it impossible to keep up with all of that.

12 MR. ERWIN: May it would be better if
13 we didn't have telephones.

14 MR. KENDALL: Mr. Chairman, in that
15 respect, the Act specifically makes the Commission a
16 major state agency within the meanings of the Ethics
17 Act, and within thirty days of your appointment you will
18 be required to file a financial statement.

19 CHAIRMAN MORRIS: Yes.

20 MR. KENDALL: And the Secretary of State,
21 if they haven't already sent them to you, will have the
22 forms, but that is a deadline that you should—

23 MR. COWDEN: They have taken care of that.

24 MR. KENDALL: They're pretty diligent.

25 MR. ERWIN: They wanted to know immediately.

1 They sure did.

2 MR. COWDEN: John, I have asked that we
3 be furnished a copy of this open meeting law so we can
4 study it individually, and it is certainly in the statutes,
5 but if they could furnish one to us it would be helpful.

6 MR. HILL: I thought, with your consent—
7 of course, we want to have whomever you would like from
8 this office, to meet our responsibilities to represent
9 the Commission, we don't envision whomever we would send
10 would be very much involved in your day to day inhouse
11 sort of work, because you have other people who will be.
12 We'll be primarily your litigating and your advisors
13 in terms of how to comply with some of these statutes,
14 but I would like to designate Mr. Kendall, which is the
15 highest compliment I can pay the Commission, because
16 he is not only my first assistant in name, I think he's
17 first. He's good, and I think you will find him someone
18 that you can respect and listen to his advice. So at
19 least for the first several months until we sort of get
20 used to what is going to happen, why, if you would look
21 to him on that, and certainly he'll get you a copy of
22 the Open Meetings Act and the Open Records Act as
23 specifically mentioned in here. So he will get you that,
24 and we'll try to work with you in every way we can.

25 CHAIRMAN MORRIS: General Hill, may we

1 say, or may I say for myself, and I'm sure I speak for
2 the other two, that we are very appreciative of your
3 help, and I am delighted to see you assign Mr. Kendall
4 to us, because I am sure that we're going to need all
5 the help that we can have for the next couple of months
6 and maybe much longer than that. I'm not sure about that.

7 MR. ERWIN: How long can you do it?

8 CHAIRMAN MORRIS: I certainly am very
9 appreciative.

10 MR. HILL: Well, let us know how we can
11 help you.

12 CHAIRMAN MORRIS: We do thank you very
13 much.

14 Do you all have any other questions, specific
15 questions?

16 MR. COWDEN: I don't think at this point.
17 We might tomorrow.

18 MR. ERWIN: I don't.

19 MR. HILL: If you do meet again, feel
20 free to meet here and feel free to meet here in this
21 interim period. I know you can find a better place, but
22 until you do, you're welcome.

23 CHAIRMAN MORRIS: Thank you.

24 I would like, if we could, run down this
25 agenda, and while we're sitting as a Commission, to

1 authorize us to start accepting applications and to look
2 for office space and so that we have done it officially
3 in open meeting, if it's all right with you all.

4 MR. COWDEN: What is the next item?

5 CHAIRMAN MORRIS: The next item is to
6 accept applications for employment positions.

7 MR. COWDEN: I'm not certain it requires
8 a motion, but if it's appropriate—

9 CHAIRMAN MORRIS: I don't know, but I
10 would think that in the organization we ought to do it,
11 and from there on at least let everybody know that we
12 are now open to accept applications.

13 MR. COWDEN: I so move.

14 MR. ERWIN: Second.

15 CHAIRMAN MORRIS: There is a motion and
16 a second. Is there discussion?

17 MR. ERWIN: I have one thing. As I'm sure
18 you're aware, Mr. Chairman, we have received several
19 hundred unsolicited letters.

20 CHAIRMAN MORRIS: I understand.

21 MR. ERWIN: If you would like I will go
22 ahead and compile them all. They're being held in
23 different places where they were sent. I'll put them
24 all together so we can all look at them.

25 MR. COWDEN: I'd like for that motion, just

1 looking back, but I'd like for it to be broad enough to
2 include those that we have received prior to today, not
3 just those that we might receive in the future.

4 CHAIRMAN MORRIS: All right. Any other
5 comment?

6 All in favor of the motion say "aye."

7 (The motion, being put to a vote, carried.)

8 Can we have a motion on space and equipment,
9 that we be authorized to proceed to the Board of Control
10 and make application for temporary and permanent space?

11 MR. ERWIN: I so move.

12 CHAIRMAN MORRIS: And equipment.

13 MR. COWDEN: Yes. That needs to be
14 broadened enough to include what they tell us we're going
15 to need to do, which is make application and determine
16 in light of what they tell us what we can do.

17 CHAIRMAN MORRIS: Is that your motion?

18 MR. ERWIN: One question. Do we want to
19 do that, the three of us together, meet with the Board
20 of Control?

21 CHAIRMAN MORRIS: Yes. I would think we
22 ought to.

23 MR. COWDEN: I think so.

24 CHAIRMAN MORRIS: But I would like to have
25 it done in open meeting, authorizing us to.

1 MR. ERWIN: All right.

2 CHAIRMAN MORRIS: There is a motion.

3 MR. COWDEN: Second.

4 CHAIRMAN MORRIS: Discussion?

5 As many as favor the motion say "aye."

6 (The motion, being put to a vote, carried.)

7 We have consulted with the Attorney General.

8 Are there any other matters to come before this meeting?

9 MR. COWDEN: I don't have any.

10 CHAIRMAN MORRIS: We need to order a seal,
11 but I guess we do that through the Board of Control.

12 MR. COWDEN: I think so.

13 MR. KENDALL: Something was mentioned
14 here, you may need to get a post office box the first thing
15 I don't know the procedure for that, but I guess the
16 Board of Control—

17 MR. COWDEN: That's why I said a minute
18 ago, I want us to be broad enough to cover when we sit
19 down with them they're going to have a checklist in all
20 likelihood, and they're going to say, "Here's what you
21 need to do," and I want us to be able—I know I under-
22 stand that we have to make a decision ultimately in open
23 meeting, but I want our motion to be broad enough to
24 include the discussion of whatever they tell us that we
25 need to have included.

1 CHAIRMAN MORRIS: And I think it ought
2 to include the authority to sign an application at
3 least for temporary headquarters, and that ought to be
4 understood as being covered in this motion.

5 MR. ERWIN: I think maybe we need a
6 separate motion to meet with the Comptroller, certainly
7 if we hire somebody immediately, how to get him on the
8 payroll, and how to get ourselves on the payroll, first.

9 MR. COWDEN: Also, John, does it make
10 good sense for us to sit down with the auditor, comp-
11 troller?

12 MR. HILL: I think it makes very good
13 sense to sit down with those people.

14 MR. COWDEN: Is there somebody else we
15 need to talk to?

16 MR. HILL: No, really. Of course, you'll
17 have a lot of these contracts that are filed with the
18 government that you're required to get. I think primarily
19 now you just need about half a dozen real good active
20 folks and a place to start working. I think probably
21 most of your activity is going to be with the Board of
22 Control until you get set up. Payroll, I really don't
23 think you'll have any problem there at all. It's a
24 matter of just kind of getting the names fed in and the
25 rates.

1 MR. COWDEN: Mr. Chairman, I would like
2 to move that we arrange a time, at the earliest con-
3 venient time, to meet with the Comptroller or his
4 representative, or representatives, and with the Auditor
5 or his representative, and cover such matters as they
6 tell us we need to cover in discussion, and then whatever
7 determination we might need to make in light of those
8 discussions will certainly be made in open meetings.
9 But I would suggest that we—I'd like to recommend that
10 we do that and then come back into an open meeting for
11 a determination.

12 MR. ERWIN: I'll second that motion.

13 CHAIRMAN MORRIS: There is a second. Any
14 other discussion?

15 As many as favor the motion, say "aye."

16 (The motion, being put to a vote, carried.)

17 Do you all want to recess this meeting to some
18 definite time? The only place we have to meet is here,
19 if the General will consent, to return here at a given
20 date and time? That would satisfy the statutes, wouldn't
21 it? Could we make it next Monday?

22 MR. COWDEN: For purposes of discussion,
23 would we do better to maybe plan to meet here tomorrow
24 about this same time? We may be able to cover more
25 territory with the Board of Control and the Comptroller

1 as far as the space is concerned.

2 MR. COWDEN: I move we recess until
3 two o'clock tomorrow afternoon and meet here in this
4 conference room.

5 MR. ERWIN: I second the motion.

6 CHAIRMAN MORRIS: All in favor say "aye."

7 (The motion, being put to a vote, carried.)

8 CHAIRMAN MORRIS: We are recessed until
9 two o'clock tomorrow afternoon.

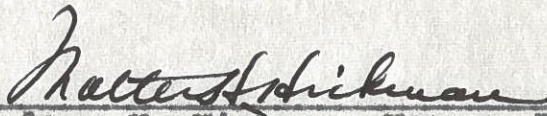
10 (Whereupon, the meeting was recessed, to
11 reconvene at two o'clock p.m., on September 3, 1975.)

CERTIFICATE

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

I, Walter H. Hickman, a Notary Public in and for Travis County, Texas, do certify that on the 2nd day of September, 1975, the foregoing proceedings before the PUBLIC UTILITY COMMISSION OF TEXAS were recorded by me and that the foregoing 23 pages constitute a full, true and correct transcription of my stenograph notes.

GIVEN under my hand and seal of office this 3rd day of September, 1975.


Walter H. Hickman, Notary Public
in and for Travis County, Texas.

RECEIVED

BY _____

MAR 24 1976

PUBLIC UTILITY COMMISSION
AUSTIN, TEXAS