



**THE ATTORNEY GENERAL  
OF TEXAS**

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July 6, 1976

The Honorable Garrett Morris  
Chairman  
Public Utility Commission  
7800 Shoal Creek Boulevard  
Austin, Texas 78757

Opinion No. H-844

Re: Issuance of certificates of convenience and necessity to gas utilities under section 50(2) of the Public Utility Regulatory Act.

Dear Chairman Morris:

You have asked:

Is the Public Utility Commission required, under Section 50(2) of Article 1446c, V.T.C.S., The Public Utility Regulatory Act, to certify gas retail public utilities by September 1, 1976, if such gas retail utility files an application therefor and is furnishing, making available, rendering or extending retail public utility service to any area to which gas retail utility service is being lawfully furnished by another gas retail public utility on or after the effective date of this Act?

Your question is necessitated by sections 49 and 50 of the Public Utility Regulatory Act, which provide:

Sec. 49. For the purposes of this article only: (a) 'Retail public utility' means any person, corporation, municipality, political subdivision or agency, or cooperative corporation, now or hereafter operating, maintaining, or controlling in Texas facilities for providing retail utility service. (b) 'Public utility' does not include any person, corporation, municipality, political subdivision or agency, or cooperative corporation under the jurisdiction of the Railroad Commission.

Sec. 50. Beginning one year after the effective date of this Act, unless otherwise specified:

(1) No public utility may in any way render service directly or indirectly to the public under any franchise or permit without first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require such installation, operation, or extension.

(2) Except as otherwise provided in this article no retail public utility may furnish, make available, render, or extend retail public utility service to any area to which retail public utility service is being lawfully furnished by another retail public utility on or after the effective date of this Act, without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

Since certain gas utilities may fall within the definition of retail public utility, it is arguable that the strict language of section 50(2) would require those gas utilities to obtain certificates of convenience and necessity before they may

'furnish, make available, render, or extend retail public utility service to any area to which retail utility service is being lawfully furnished by another retail public utility on or after the effective date' of the statute. Sec. 50 (2). See Attorney General Opinion H-831 (1976); H-812 (1976).

Since the Public Utility Commission is the only body authorized to grant such certificates by the Act, if a certificate is required it must be received from the Public Utility Commission.

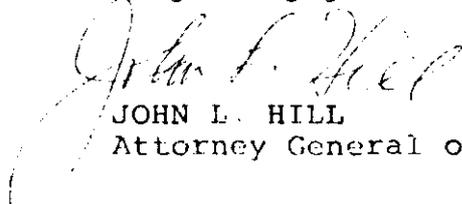
It is a fundamental rule of statutory construction that a statute is to be read as a whole and its parts harmonized to give effect to the evident intention of the Legislature. Texas Turnpike Authority v. Shepperd, 279 S.W.2d 302 (Tex. Sup. 1955); A&A Liquor Stores v. Texas Liquor Control Board, 342 S.W.2d 783 (Tex. Civ. App. -- Austin 1961, writ ref'd n.r.e.).

In examining the entire Act it is evident that the Legislature did not intend for certificates to be issued to gas utilities by the Public Utility Commission. Exclusive jurisdiction over services of gas utilities is vested either in the municipality [sec. 19(a)] or the Railroad Commission [sec. 19(b)]. If a gas utility were required to obtain a certificate of convenience and necessity, the absurd result would accrue that the utility would be required to obtain a certificate from the Public Utility Commission, but the Public Utility Commission would have no authority to issue such a certificate. Since there is no entity which is empowered to grant certificates of public convenience and necessity to gas utilities under section 50 of the Public Utility Regulatory Act, it is our view that gas utilities are not required to obtain a certificate under that section.

S U M M A R Y

The Public Utility Commission is not required to issue certificates of convenience and necessity to gas utilities under section 50(2) of the Public Utility Regulatory Act, article 1446c, V.T.C.S.

Very truly yours,

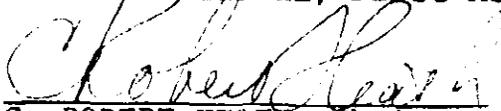


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APPROVED:



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