



OFFICE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS 78711

JOHN G. HULL
ATTORNEY GENERAL

August 30, 1976

The Honorable Ron Clower
Chairman
Consumer Affairs Sub-Committee
Texas Senate
State Capitol Building
Austin, Texas 78711

Opinion No. H-872

Re: Municipality's
authority to require regu-
lated utility to furnish
financial data concerning
operations outside city
limits.

Dear Senator Clower:

You ask whether, under the Public Utility Regulatory Act, article 1446c, V.T.C.S., a municipality setting rates for a public utility operating within its regulatory jurisdiction may require information concerning the utility's profits and losses in areas outside the city or town limits. We believe that the Act clearly authorizes cities exercising regulatory jurisdiction to require such information and to consider it in setting rates.

Under the regulatory scheme of the Act, the governing body of each municipality retains exclusive original jurisdiction over the rates of any gas utility within its city or town limits [section 19(a)], and the Public Utility Commission (hereinafter referred to as "Commission") is granted exclusive original jurisdiction over telecommunications utility rates (section 18). Each municipality retains original jurisdiction to regulate electric, water, and sewer rates within city or town limits, unless electing to surrender that jurisdiction to the Commission (section 17). Utility service subject to regulation by the governing body of a municipality is exempt from regulation by the Commission (or Railroad Commission for gas rates), and the area within the municipal boundaries is thus considered an "exempt area." Parts of the state which are subject to regulation by the Commission (or Railroad Commission) are thus "nonexempt areas." Section 22 of the Act provides that:

[I]n fixing rates and charges in the exempt area, the governing body [of the municipality] may consider a public utility's revenues and return on investment in nonexempt areas.

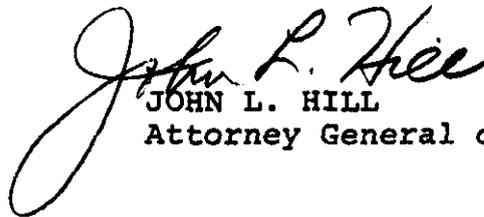
Section 22, then, authorizes any municipality's governing body to take into account, in setting rates within city or town limits, the utility's revenues and return on investment in certain areas beyond city or town limits. In order to give meaning to section 22's authorization, it is reasonable to infer that the Act contemplates that the governing body should have some means of obtaining such information, especially since section 89 requires that the Act be construed "liberally to promote the effectiveness and efficiency of regulation of public utilities"

The municipality's authority to require this information under the Act will not arise until September 1, 1976. Section 87(b) of the Act provides that the regulatory authority -- again, for our purposes in this opinion, the governing body of each municipality -- is to assume jurisdiction over rates under the Act on September 1, 1976. Until that effective date, municipalities must look to pre-Act law for authority to require profit and loss information from public utilities.

S U M M A R Y

Under the Public Utility Regulatory Act, the governing body of a municipality regulating rates of a public utility furnishing service within city or town limits may, after September 1, 1976, require that the utility furnish information concerning profits and losses in areas outside the city or town limits.

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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