Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

May 20, 1993

Honorable Robert Earley
Chairman
Committee on Energy
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 93-40

Re: Whether it is permissible for a gas or electric utility company to waive deposits for United States Navy personnel (ID# 16323)

Dear Representative Earley:

You ask whether it is permissible for a gas or electric utility company to waive deposits for United States Navy personnel "when civilians must continue to pay those deposits for the same services." You have submitted two letters from a citizen with an attached newspaper article which states that certain gas and electric utilities agreed to waive deposits for Navy personnel in order to ease their transition from base to civilian housing. One letter suggests that the Navy has agreed to guarantee payment of the bills of its personnel. You state that the citizen "feels that the practice is illegal because it discriminates against civilians."

Gas and electric utility companies are governed by V.T.C.S., articles 1435 through 1438. *See* V.T.C.S., art. 1435 (setting forth the powers of "[g]as, electric current and power corporations"). Article 1438 provides as follows:

> It shall be unlawful for any such corporation to discriminate against any person, corporation, firm, association or place, in the charge for such gas, electric current or power, or in the service rendered under similar and like circumstances.

The determination whether the practice of excusing some consumers from making deposits constitutes a different "charge" for gas or electricity or a different charge for "service rendered under similar and like circumstances" would involve questions of fact. One would have to consider evidence on such questions as, for example, whether or not a deposit is a "charge" for gas or electricity or for a service, or whether or not civilians and Navy personnel receive such a service "under similar and like circumstances." It may be significant, for example, if it is actually the case that the Navy has agreed to guarantee the bills of its personnel. The purpose of requiring a deposit is to assure payment for services rendered. If the Navy has agreed to guarantee the bills of its personnel, then one might conclude that naval personnel and civilian consumers do not receive service "under similar

and like circumstances." Because we are unable to resolve questions of fact in the opinion process, however, we cannot make a definitive determination whether the utilities' alleged practice violates article 1438.

Furthermore, we note that under the Public Utility Regulatory Act, V.T.C.S., article 1446c, the exclusive jurisdiction concerning electric utility rates, operations and service rests with either with the Public Utility Commission (the "PUC"), or the governing body of a municipality with an appeal available to the PUC. *See* V.T.C.S., art. 1446c, §§ 16 - 26. Similarly, under the Gas Utility Regulatory Act, V.T.C.S., article 1446e, the governing body of each municipality generally "has exclusive original jurisdiction over all gas utility rates, operations, and services provided by any gas utility within its city or town limits." V.T.C.S., art. 1446e, § 2.01(a). The Railroad Commission of Texas (the "railroad commission") has exclusive appellate jurisdiction to review orders of municipalities, and exclusive original jurisdiction over natural gas utilities in some circumstances. *See id.* § 2.01(b). Therefore, this matter would best be raised with the governing body of the municipality with jurisdiction over the utilities involved, the PUC or the railroad commission.

SUMMARY

Article 1438, V.T.C.S., prohibits a gas or electric utility company from discriminating against any person "in the charge for such gas, electric current or power, or in the service rendered under similar and like circumstances." The determination whether a gas or electric utility company's practice of waiving a deposit for United States Navy personnel violates this provision involves questions of fact and is therefore not amenable to the opinion process. For example, if the Navy has agreed to guarantee the bills of its personnel, then one might conclude that naval personnel and civilian consumers do not receive service "under similar and like circumstances."

Yours very truly,

Mary R. Crouter
Assistant Attorney General
Opinion Committee