



RAILROAD COMMISSION OF TEXAS

P.O. Box 12967
Austin, Texas 78711-2967
512/463-7144
FAX 512/936-1950
michael.williams@rrc.state.tx.us

RQ-0372-JC

MICHAEL L. WILLIAMS
CHAIRMAN

April 2, 2001

RECEIVED

APR 03 2001

The Honorable John Cornyn
Attorney General of Texas
Attn: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-41948-01 OPINION COMMITTEE
I.D. # 41948

Re: Request for an opinion as to whether Texas Utilities Code §39.9048 vests primary responsibility with the Railroad Commission for initiation of "a program to keep the costs of fuel, such as natural gas, used for generating electricity low" and, if so, what the scope of that responsibility is.

Dear Attorney General Cornyn:

The purpose of this letter is to request an opinion on whether Texas Utilities Code §39.9048, the codification of a provision of Section 39 of Senate Bill 7 (the Electric Utility Restructuring Act), vests any responsibility with the Texas Railroad Commission (RRC) to initiate "a program to keep the costs of fuel, such as natural gas, used for generating electricity low" and, if so, what the scope of that responsibility is.

The 76th Texas Legislature enacted Senate Bill 7 with this caption: "relating to electric utility restructuring and to the powers and duties of the Public Utility Commission of Texas, Office of Public Utility Counsel, and Texas Natural Resource Conservation Commission; providing penalties." The Act was signed by then Governor George Bush on June 18, 1999, and became effective on September 1, 1999. The Act contains 67 separate sections and addresses issues relating to the three state agencies named in the caption, as well as directing a fundamental change in the regulation of the electric utility industry. Included in the Act is the addition of new Chapter 39 to the Texas Utilities Code, entitled "Restructuring of the Electric Utility Industry"; that chapter includes provisions related to encouraging use of natural gas produced in the State as the "preferential fuel" to be used for generating electric power under the new regulatory scheme. See §§ 39.9044 & 39.9048 of Chapter 39. Specifically, Section 39.9048 reads as follows:

§ 39.9048. Natural Gas Fuel

It is the intent of the legislature that:

- (1) the cost of generating electricity remain as low as possible; and
- (2) the state establish and publicize a program to keep the costs of fuel, such as natural gas, used for generating electricity low.

Although the caption of Senate Bill 7 refers only to the Public Utility Commission (PUC), the Office of Public Utility Counsel and the Texas Natural Resource Conservation Commission, a question has arisen as to whether the primary responsibility for action pursuant to Section 39.9048 was intended to be placed with the RRC and, if so, what action the legislature intended to be taken by the RRC.

Senate Bill 7 was the enacting legislation for the plan for the restructuring of the State's regulation of the electric utility industry and, as such, focuses on regulation of that industry by the PUC. In fact, the Act contains only three references to the Railroad Commission. Two of those references¹ are contained in Section 39 of the Act which adds Chapter 39 to the Texas Utilities Code. Chapter 39 of the Utilities Code is included in the titles of the Code that are administered by the PUC. The two references to the RRC are both found in what is now Section 39.9044; it reads, in relevant portions, as follows (emphasis added):

§ 39.9044. Goal for Natural Gas

(a) It is the intent of the legislature that 50 percent of the megawatts of generating capacity installed in this state after January 1, 2000 use natural gas. To the extent permitted by law, the commission shall establish a program to encourage utilities to comply with this section by using natural gas produced in this state as the preferential fuel. . . .

(b) The commission shall establish a natural gas energy credits trading program. Any power generation company, municipally owned utility, or electric cooperative that does not satisfy the requirements of Subsection (a) by directly owning or purchasing capacity using natural gas technologies shall purchase sufficient natural gas energy credits to satisfy the requirements by holding natural gas energy credits in lieu of capacity from natural gas energy technologies.

(c) Not later than January 1, 2000, the commission shall adopt rules necessary to administer and enforce this section and to perform any necessary studies **in cooperation with the Railroad Commission of Texas**. At a minimum, the rules shall . . .

(d) The commission, **with the assistance of the Railroad Commission of Texas**, shall adopt rules allowing and encouraging retail electric providers and municipally owned utilities and electric cooperatives that have adopted customer choice to market electricity generated using natural gas produced in this state as environmentally beneficial. . . .

The "commission" referred to in this section is the PUC, which is directed to perform certain actions regarding the use of natural gas as a fuel used to generate electricity. With respect to two

¹ The only other reference to the Railroad Commission in Senate Bill 7 is in Section 42 of the Act which amends the Local Government Code to allow local governmental subdivisions to appear in front of the RRC in reference to the customer choice programs provided for in the bill. This reference is not relevant to the question at issue here.

of the tasks, the PUC is directed to perform them "in cooperation with" the RRC or "with the assistance of" the RRC.

Section 39.9044 is followed by Section 39.9048 and, although that section does not mention the RRC, questions have been raised as to whether the reference to "costs of fuel, such as natural gas" implies that primary responsibility for implementation of subsection (2) was intended to be vested in the RRC - as the state agency that oversees the regulation of the oil & gas industry - or whether the PUC - as the agency charged with regulation of the electric utility industry - was intended to take the lead in determining what kind of program should be created to keep electric generation fuel costs low. As part of its regulatory control of electric rates, the PUC has regulated the pass-through to end-use customers of generator fuel costs as a component of rates for electric power. This regulatory function has been performed by the PUC, regardless of the type of fuel used for generation - coal, nuclear power, natural gas, etc.

The second issue on which an opinion is requested is what type of action by the Railroad Commission was contemplated by Section 39.9048. The wholesale price of natural gas is not controlled by law, and there are few regulatory mechanisms available to the RRC that would impact that price. While the RRC oversees the production of natural gas in the state and has some authority to implement programs that might encourage Texas producers to increase the supply of gas available on the market, such action would only indirectly affect the price of gas sold to electric generators on the nationwide market. On the other hand, if the intent was to maintain low costs for "generator fuel" (including natural gas) *as a component of total electric rates*, the PUC would have some control over those costs through its function of approving fuel pass-throughs, such as through the approval of fuel purchasing practices.

In responding to this opinion request, it may be helpful to know what the PUC and RRC have been doing together as a result of the passage of Senate Bill 7. The RRC has fully cooperated with the PUC and participated in PUC workshops addressing information needed to develop the PUC rules required by SB7. The RRC has provided special reports on natural gas pipeline capacity and offered to supply whatever other information the PUC might need to effectively implement the mandates of SB7. With the cooperation and assistance of the RRC, the PUC developed and adopted rules implementing the goals of SB7 for use of natural gas in electric generation. The PUC and the RRC have cooperated in the review of natural gas pipeline access issues and the RRC has provided a "procedural roadmap" document to aide newcomers to the natural gas business in building and operating pipelines in Texas. The RRC has participated in workshops on electric reliability issues and, in response to a specific question from the PUC about capacity in the Dallas/Ft. Worth area, provided a detailed study entitled *Availability of Natural Gas Transmission for Power Generation in the Dallas/Fort Worth Area*.

The RRC has also undertaken a number of initiatives not solely targeted to fuel costs for electric generation but designed to educate consumers of natural gas - both utility companies and the general public - about natural gas prices and the factors that affect prices. The RRC has taken action to inform the Legislature, state agencies, local governments, businesses and the general public about anticipated gas cost increases this winter and possible mitigation strategies consumers could adopt. The RRC adopted an emergency rule to avoid customer disconnects which might otherwise have resulted from the increased price of gas. After convening a special

The Honorable John Cornyn

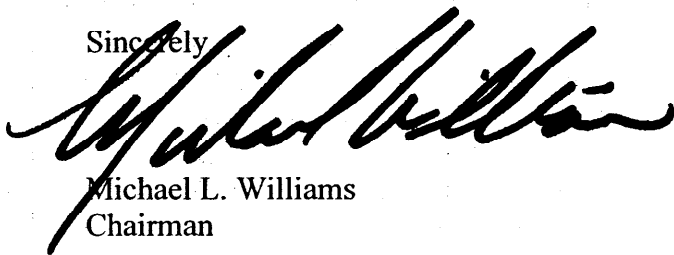
March 30, 2001

Page 4 of 4

conference to get input from industry and the public about recent price fluctuations in the market, the RRC forwarded proposals to the legislature for actions that would help mitigate such fluctuations in the future. A Regulatory Vision initiative has been in place since July of 1999 with the goal of reducing unnecessary regulatory costs on the oil and gas industry, thereby encouraging increased production and resulting in increased supply of natural gas in the marketplace. Each of the commissioners has proposed and supported measures to increase the production and supply of Texas natural gas, measures that will contribute to the stabilization of gas prices over time. All of these efforts are designed to maintain an affordable market for Texas natural gas, both as an end-use energy source and as fuel for electric generation for Texas consumers. All of these actions contribute to the goal articulated in Section 39.9048 of the Texas Utilities Code to "keep the costs of fuel, such as natural gas, used for generating electricity low."

I respectfully request an opinion on the issues raised in this letter. If I can provide any further information to assist you, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael L. Williams", written in a cursive style.

Michael L. Williams
Chairman

Cc: Commissioner Tony Garza
Commissioner Charles Matthews
Representative Tommy Merritt