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OPINION COMMITTEE

RICHARD L. "RICK" HARDCASTLE
HOUSE OF REPRESENTATIVES

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The Honorable Greg Abbott
Attorney General
State of Texas
P.O. Box 12548
Austin, Texas 79711-2548

RQ-0617-GA

Dear General Abbott:

It has come to my attention that there may be some uncertainty in the interpretation of a statutory provision that exempts some state agencies from paying for certain expenses of a gas utility.¹ This uncertainty impacts state agencies and gas utilities alike, and all would benefit from clarification of the applicability of the provision.

Specifically, the Texas Utilities Code creates an exemption for "state agencies" from being charged gross receipts assessments, regulatory assessments or similar expense of the utility by a gas utility.² The uncertainty arises due to the definition of the term "state agency" in the Utilities Code. The Utilities Code defines "state agency" as having the meaning "assigned by Section 572.002, Government Code, to the extent the state agency must obtain the approval described by Section 31.401(a), Natural Resources Code." Tex. Util. Code Ann. § 101.003(15) (emphasis added). Government Code Section 572.002 defines state agency relatively broadly. The Utilities Code definition, however, limits this expansive definition to only those entities which must obtain the approval described in the Natural Resources Code, Section 31.401(a). That provision requires that the General Land Office review and approve any contract entered into by a state agency for the acquisition of an annual average of 100 Mcf per day or more of natural gas used to meet its energy requirements." Reading these provisions together, to qualify for the exemption appearing in Texas Utilities Code § 104.202, it appears a state agency must use an annual average of 100 Mcf per day or more of natural gas to meet its energy requirements. It is my understanding that some entities have claimed status as a "state agency" for purposes of the exemption without acknowledging the statutory limitations on the "state agencies" to which the exemption applies.

¹ TEX. UTIL. CODE ANN. § 104.202.

² *Id.*

In order to clarify the application of Texas Utilities Code Section 104.202, I ask your opinion on the following questions:

1. Does a state agency have to use an annual average of 100 Mcf per day or more of natural gas to meet its energy requirements in order to qualify for the exemption found in Texas Utilities Code § 104.202?
2. For state agencies having facilities in more than one geographical location, does the calculation of annual average usage described above include only natural gas provided to a single service site, or does the calculation include the aggregate usage by an "agency" at multiple, geographically separate locations?

For your convenience, we have attached the relevant statutory provisions. Should you require additional information on this matter, please contact my office at 512-463-0526.

Respectfully submitted,



Rick Hardcastle, Chairman
House Committee on Energy Resources

RH/ss

RELEVANT STATUTORY PROVISIONS

Texas Utilities Code

§ 104.202. EXCLUDED EXPENSES. (a) The rates that a gas utility or municipally owned utility charges a state agency may not include an amount representing a gross receipts assessment, regulatory assessment, or similar expense of the utility.

(b) An expense under Subsection (a) that is reasonable and is not recovered from a state agency under this section may be recovered from other customers of the gas utility or municipally owned utility.

(c) A gross receipts assessment, regulatory assessment, or similar expense of the utility does not include a payment to a municipality under a contract, franchise, or other agreement.

§ 101.003. DEFINITIONS.

In this subtitle:

(15) "State agency" has the meaning assigned by Section 572.002, Government Code, to the extent the state agency must obtain the approval described by Section 31.401(a), Natural Resources Code.

Government Code

§ 572.002. GENERAL DEFINITIONS. In this chapter:

(10) "State agency" means:

(A) a department, commission, board, office, or other agency that:

(i) is in the executive branch of state government;

(ii) has authority that is not limited to a geographical portion of the state;

and

(iii) was created by the Texas Constitution or a statute of this state;

(B) a university system or an institution of higher education as defined by Section 61.003, Education Code, other than a public junior college; or

(C) a river authority created under the Texas Constitution or a statute of this state.

Natural Resources Code

§ 31.401. NATURAL GAS ACQUISITION CONTRACTS. (a) The land office shall review and must approve any contract entered into by a state agency for the acquisition of an annual average of 100 MCF per day or more of natural gas used to meet its energy requirements.

(b) Before approving a contract described by Subsection (a) of this section, the land office shall ensure that the agency, to meet its energy requirements, is using, to the greatest extent practical, natural gas produced from land leased from:

(1) the school land board;

(2) a board for lease other than the Board for Lease of University Lands; or

(3) the surface owner of Relinquishment Act land.

(c) If the land office is able to substitute a contract using in-kind royalty gas from state-owned lands or using other gas for a contract under which a state agency acquires or proposes to acquire its natural gas supplies, the commissioner shall inform the comptroller each month of the amount of savings attributable to the substitution.

(d) In this section, "state agency" has the meaning assigned by Subchapter A, Chapter 572, Government Code.