

PUBLIC SERVICE COMMISSION: Expense of Investigation of public utility.

December 4, 1944.

Opinion No. 99

Hon. Glen L. Steckley, Sec'y.
Public Service Commission of Indiana,
State House,
Indianapolis, Indiana.

Dear Sir:

This is in answer to your recent request for an opinion as to the duty of the commission in connection with certain expenses incurred in an investigation of a utility property.

It appears from your request that the commission's engineers and accountants in July, 1939, on authority given by Commissioner Cook, proceeded to make an inventory and appraisal of the properties of the LaPorte Gas and Electric Company, a public utility. As to such investigation, you say:

“* * * No formal case appears upon the docket books of the Commission wherein an inventory, an appraisal, investigation or rate investigation was either petitioned for or initiated by the Commission.
* * *”

The expenses incurred by the engineering department of the commission amount to \$16,727.20, and the expenses incurred by the accounting section amounted to \$4,315.38. These amounts were charged upon the books of the commission to the utility. You say further:

“* * * No formal order was ever made in a cause pending before the Commission, nor was any such cause pending, wherein said costs and expenses were or could have been ordered paid.

“Thereafter, on October 12, 1943, the Common Council of the City of LaPorte filed with the Commission a petition requesting this Commission to investigate the rates for electric service charged by the LaPorte Gas and Electric Company in the City of LaPorte, which petition was docketed upon the records of this Commission as Cause No. 16172, and is now pending before the Commission. Upon the hearing

held by the Commission in this cause, evidence was received from the Accounting Department of the Commission, consisting in part of the results of the audit made by that department pursuant to the request of Commissioner Cook hereinabove referred to, and also consisting of additional matters developed by inventory, appraisal and audit for the period subsequent to the time covered by the inventory, appraisal and audit made at the request of Commissioner Cook. In obtaining such additional evidence, further costs were incurred by the Engineering Department in the sum of \$1,320.39 and by the Accounting Department in the sum of \$3,064.88.

“The question upon which your answer is sought is whether this Commission may issue an order calling upon the utility, the LaPorte Gas and Electric Company, to pay all of the costs charged to it upon the Commission’s records, including the costs of the Engineering and Accounting Departments in the sums of \$16,727.20 and \$4,315.38 respectively, incurred prior to the institution of Cause No. 16172. * * *”

The governing statute is as follows:

“In its order upon any investigation, made under the provisions of this act, either upon complaint against any public utility, or upon the petition of any such public utility or upon the initiation of the commission, the commission shall ascertain and declare the expenses incurred by it upon such investigation, and the public utility affected thereby shall pay into the treasury of the state the amount of the expenses, so ascertained and declared, within a time to be fixed in the order, not exceeding twenty (20) days from the date thereof. The commission shall cause a certified copy of all such orders to be delivered to an officer or agent of the public utility affected thereby, and all such orders shall, of their own force, take effect and become operative twenty (20) days after service thereof unless a different time be provided in said order: Provided, That so much of any order of the commission as may increase any rate of such public

utility shall not take effect until such expenses are paid into the state treasury. All such moneys paid into the treasury of the state are hereby appropriated to the public service commission until and including the thirtieth day of September, 1925, to defray its expenses until said date and thereafter shall be paid into the general fund of the state."

Burns' 1933, Section 54-425.

This office has heretofore ruled that the above statute was a valid one and that under the decisions of the courts such expenses incurred by the commission pursuant to the statute were proper costs in the regulation of utilities to be paid by the utilities. (Attorney General's opinion, 1935, page 451.) In his opinion the Attorney General said:

"From what I have said, my opinion is that the Commission is empowered to assess the expenses of inquiring into and informing itself as to the facts necessary for it to regulate utilities, and the expenses of such inquiry may be properly assessed against a utility under investigation."

Later in *State ex rel. Thompson v. City of Greencastle* (1942), 111 Ind. App. 640, 658, the above statute was held to be valid.

The Indiana legislature evidently thought that such expenses should be paid by the public utility under investigation, or by the patrons served by it, rather than out of taxes paid by the general public who are not interested in the rates or regulation of the particular utility.

On January 9, 1939, your commission again sought an opinion from the Attorney General as to the right of the commission to charge the expense of "re-valuing" utility property to the utility. The Attorney General ruled that such expenses were allowable costs to be charged to the utility, but the Attorney General said in his opinion:

"This statute above set out evidently contemplates that the costs so chargeable must be in an investigation which will result in some order, and it must be assumed that the costs will not be arbitrarily arrived at

and that the utility will be given some opportunity to be heard as to the propriety of the expense.”

Attorney General's Opinion, 1939, page 23.

I do not believe the fact that no formal order was entered by the commission directing the engineers and accountants to investigate the utility property would of itself stand in the way of making the expenses a proper charge against the utility. The more serious problem involved is whether the commission has complied with the provisions of the statute, which, in my opinion contemplates that the expenses which are to be charged to the utility must be those expenses incurred in a proceeding pending before the commission, or in a proceeding initiated as the result of the investigation.

There may be instances of expenses incurred in the course of inquiries and investigations of utilities which lead up to a formal proceeding and an order as the result of the inquiry. In my opinion such expenses may be ascertained and declared chargeable to the utility in the order.

It further appears from your letter that while the costs and expenses incurred by the commission's staff in the investigation of the LaPorte Gas and Electric Company were incurred in 1939 no order has ever been made and there is no record of a bill for the costs having been presented to the utility, and neither the public utility, nor its patrons, have had an opportunity to inquire into the amount or legality of the expenses. If an order should be entered now, which simply involved a declaration of the amount of expenses to be paid by the public utility, the patrons of the utility, who would be called upon to pay the expense in increased rates may not be the patrons benefited by the investigation.

See:

Washington Ry. & Electric Co. v. District of Columbia (1935), 77 F. (2d) 366, 368.

It must be kept in mind that the Public Service Commission of Indiana derives its power solely from the statute, and its authority to act must be found in some provision of the statute.

Chicago & E. I. R. Co. v. Public Service Commission (1943), 49 N.E. (2d) 341.

It is, therefore, my opinion that the charges on the books of the commission that were incurred in 1939, that is, the \$16,727.20 item and the \$4,315.38 item, cannot be charged to the LaPorte Gas and Electric Company in the present rate case, under your docket No. 16172, which evidently did not result from the investigation in which the costs were incurred.

STATE BOARD OF ACCOUNTS: Cities and towns. Statutes relating to requisition of water works. Control of funds. Who fixes rates.

December 8, 1944.

Opinion No. 100

Hon. Otto K. Jensen, State Examiner,
 Department of Inspection and Supervision
 of Public Offices,
 State House,
 Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of October 23rd in which you state that a difference of opinion has arisen regarding the operation and handling of funds of the water utility at Greencastle, Indiana. You enclose a copy of the original Ordinance No. 2A-1935 providing for the issuance of bonds, Ordinance No. 5A-1935 providing for a Utility Service Board, and Ordinance No. 9A-1935 repealing No. 5A-1935 and providing for a Board of Trustees. You also state that since and prior to June 1, 1935, the date upon which the city purchased and took over the water utility, there has been an order on file with the Public Service Commission of Indiana establishing a rate for hydrant rental in the city at \$75.00 per plug; that various amounts have been paid by the city of less than \$75.00 and for several years nothing was paid for hydrant rental. You further state that because of increased price for material and increased wages necessary to keep experienced men working for the department, the 45% allocated to operations account is now insufficient and that it might be necessary for the department to borrow money unless it can collect delinquent hydrant rental