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OFFICIAL OPINION NO. 26

September 23, 1974

Honorable Clarence R. Kelley
Indiana State Senator
61551 Bremen Highway
Mishawaka, Indiana 46544

Dear Senator Kelley:

This is in response to your request for my official opinion on the following question:

“Does the State Public Service Commission have the authority to mandate a gas utility company to furnish the total energy needs of a customer?”

ANALYSIS

The Indiana Code of 1971, Section 8-1-2-54 provides:

“Upon a complaint made against any public utility by any mercantile, agricultural or manufacturing society or by any body politic or municipal organization or by ten [10] persons, firms, corporations or associations, or ten [10] complainants of all or any of the aforementioned classes, or by any public utility, that any of the rates, tolls, charges or schedules or any joint rate or rates in which such petitioner is directly interested are in any respect unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act whatsoever affecting or relating to the service of any public utility, or any service in connection therewith, is in any respect unreasonable, unsafe, *insufficient* or unjustly discriminatory, or *that any service is inadequate or cannot be obtained*, the commission shall proceed, with or without notice, to make such investigation as it may deem necessary or convenient. But no order affecting said rates, tolls, charges, schedules, regulations, measurements, practice or act, complained of, shall be entered by the commission without a formal public hearing.” (My emphasis.)

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The commission, after receiving a complaint of inadequate or insufficient service may make an investigation of the allegations to see if said service is in fact inadequate. Such an investigation should be made with the Indiana Code of 1971, Section 8-1-2-4 in mind, which provides:

“Every public utility is required to furnish *reasonably* adequate service and facilities.” (My emphasis.)

What is reasonable will, of course, be dependent upon what the general economic factors concerning the supply of energy are at present. If the investigation and subsequent hearing reveal facts sufficient to substantiate charges of inadequacy of service, then the commission may issue an order pursuant to the Indiana Code of 1971, Section 8-1-2-69, to rectify the situation in a just and reasonable way.

“Whenever, upon investigation made under the provisions of this act [8-1-2-1—8-1-2-120], the commission shall find any regulations, measurements, practices, acts or service to be unjust, unreasonable, unwholesome, unsanitary, unsafe, *insufficient*, preferential, unjustly discriminatory or otherwise, in violation of any of the provisions of this act; or shall find that *any service is inadequate* or that any service which can be reasonably demanded cannot be obtained, the commission shall determine and declare and by order fix just and reasonable measurements, regulations, acts, practices, or service to be furnished, imposed, observed and followed in the future in lieu of those found to be unjust, unreasonable, unwholesome, unsanitary, unsafe, insufficient, preferential, unjustly discriminatory, inadequate, or otherwise in violation of this act, as the case may be, and shall make such other order respecting such measurement, regulation, act, practice or service as shall be just and reasonable.” (My emphasis.)

There is nothing in the statutes which can be construed to require the commission to mandate a gas utility company to furnish the total energy needs of a customer. However, the Public Service Commission clearly has the authority to issue an order to require a utility to adequately serve its customers

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when conditions exist which would make the order just and reasonable.

CONCLUSION

It is, therefore, my Official Opinion that the Indiana General Assembly has *not* authorized the Public Service Commission to mandate a gas utility to furnish the *total energy needs* of a customer. However, the Public Service Commission may, after investigation and hearing, order a utility to provide reasonably adequate service and facilities where the utility is not providing such service.