

GARY K. NELSON, THE ATTORNEY GENERAL  
STATE CAPITOL  
PHOENIX, ARIZONA

February 5, 1969

DEPARTMENT OF LAW OPINION NO. 69-6 (R-38)

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REQUESTED BY: THE HONORABLE MILTON J. HUSKY,  
CHAIRMAN  
Arizona Corporation Commission

QUESTION: Does A. R. S. Sec. 40-246 (A) which provides, in part, that "no complaint shall be entertained by the commission, . . . as to the reasonableness of any rates or charges of any gas, electrical, water or telephone corporation, unless it is signed . . . by not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of the service" require the commission, upon the filing of such a complaint, to hold a full-scale rate hearing?

ANSWER: No.

A. R. S. Sec. 40-246 provides, in pertinent part, as follows:

"A. Complaint may be made by . . . any person or association or persons by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation or claimed to be in violation, of any provision of law or any order or rule of the commission, but no complaint shall be entertained by the commission, . . . as to the reasonableness of any rates or charges of any gas, electrical, water or telephone corporation, unless it is signed . . . by not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of the service.

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"C. Upon filing the complaint, the commission shall set the time when and a place where a hearing will be had upon it and shall serve notice thereof, . . . upon the party complained of not less than ten days before the time set for the hearing, . . ."

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Although the statute provides for a hearing upon the filing of a complaint, the statute is silent as to the type of hearing to be held. It seems clear to us that this hearing can only be directly related to the constitutional powers of the Corporation Commission pursuant to Article 15, Section 3, Arizona Constitution:

"The Corporation Commission shall have full power to, and shall prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations within the state for services rendered therein. . . ."

The procedure set up by the foregoing statute is, we believe, an activator procedure designed to initiate an inquiry by the Corporation Commission who has the power over rates.

Upon the filing of a complaint "as to the reasonableness of any rates or charges of any gas, electrical, water or telephone corporation. . . signed by twenty-five (25) consumers or purchasers or prospective consumers or purchasers of the service", the Commission would be complying with the provisions of A. R. S. Sec. 40-246 by holding a hearing to determine whether or not there is sufficient evidence to warrant a full-scale rate hearing. We can find no Arizona case covering this question. In Residents of City of Hartford v. Hartford Electric Light Company, 9 PUK N S 228 (1935), a petition signed by 15 customers of the utility alleged that the utility's rates were unreasonable and discriminatory. Upon receiving such petition, the Commission was required to set a hearing upon the complaint. The Commission, before proceeding to a full-scale rate hearing with its incidental burden of expense, required a prima facie showing that the rates were unreasonable. In deciding that there was not enough evidence alleged in the petition to justify a full-scale rate hearing, the Commission stated:

"A general rate inquiry necessarily occasions substantial expense to the state and the company. This expense must ultimately be paid, in part, at least, by the customers of the company. It would be entirely inequitable if a small group of customers could impose this burden upon all the others in the absence of a reasonable anticipation that a full investigation would result in a substantial reduction in the rates."

In Utility Users League v. Illinois Bell Telegraph Co., 43 PUR 3rd 38 (1961), the Commission, in considering a complaint as a request for a full-scale investigation of the utility's rates, stated:

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"... In this consideration, it must be borne in mind that formal rate investigations of large utilities such as this company are time-consuming and expensive, and ultimately such expense must be borne by the ratepayer. As the Illinois Supreme Court has observed: 'Certainly as a practical matter a utility should not, in the absence of explicit legislative direction, be required to embark upon a full-dressed justification of its rate structure every time an individual customer files a complaint....'"

It would be unreasonable to assume that the Legislature, in enacting A. R. S. Sec. 40-246, intended that each time a group of twenty-five consumers or purchasers, or prospective consumers or purchasers of a public service corporation filed a complaint as to the reasonableness of such corporation's rates and charges, the Commission would be required to hold a full-scale rate hearing. The provisions of the statute are complied with by the holding of a hearing to determine whether there is sufficient evidence to warrant a full-scale rate hearing. If the Commission determines that there is sufficient evidence, then arrangements would have to be made with the Legislature for funding the investigation and hearing, if necessary.

Respectfully submitted,

  
GARY K. NELSON  
The Attorney General *wen*

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