

Opinion No. 77-01

January 20, 1977

OPINION OF: Toney Anaya, Attorney General

BY: Steven Asher, Assistant Attorney General

TO: The Honorable John L. Thompson, New Mexico State Representative, State Capitol, Santa Fe, New Mexico 87503

NATURAL GAS-WELL HEAD REGULATION-PUBLIC UTILITIES-PUBLIC SERVICE COMMISSION-SECTION 68-5-4, NMSA.-Neither the Public Service Commission nor any other New Mexico agency has jurisdiction to establish the well head price of intrastate natural gas.

QUESTIONS

Does Section 68-5-4(B) or any other New Mexico statute authorize the Public Service Commission of New Mexico or any other state agency to regulate the price of natural gas at the well head?

CONCLUSIONS

No.

ANALYSIS

The New Mexico Public Service Commission is an administrative body created by statute. Its authority and jurisdiction, therefore, must be founded either expressly or by necessary implication in the same statutory authority. *New Mexico Electrical Service Company v. New Mexico Public Service Commission*, 81 N.M. 683, 684, 472 P.2d 648 (1970).

OPINION

Section 68-5-4 N.M.S.A., 1953 Comp., sets forth the Commission's general rate-making authority. It provides, *inter alia*:

A. The commission shall have general and exclusive power and jurisdiction to regulate and supervise every public utility in respect to its rates and service regulations . . . all in accordance with the provisions; and subject to the reservation of, the Public Utility Act [68-3-1 to 68-11-4] and to do all things necessary and convenient in the exercise of its power and jurisdiction . . .

B. The sale, furnishing or delivery of gas, water or electricity by any person to a utility for resale to or for the public shall be subject to regulation by the commission but only to the extent necessary to enable the commission to determine that the cost to the utility of such gas, water or electricity at the place where the major distribution to the public begins shall be reasonable and that the methods of delivery thereof shall be adequate; Provided, however, that nothing herein contained shall be construed to permit regulation by the commission of {*76} production or sale price, at the wellhead, of gas or petroleum. Laws, 1941, Ch. 84, § 17; Laws 1963; Ch. 55, § 1.

The Commission's authority under Section 68-5-4(B) was interpreted by the New Mexico Supreme Court in *Maestas v. New Mexico Public Service Commission*, 85 N.M. 571, 514 P.2d 847 (1973). *Maestas* was a challenge to the approval by the Commission of a rule of Southern Union Gas Company (now Gas Company of New Mexico) establishing a "cost of gas adjustment clause." In brief, the clause allowed the Company to add a surcharge to its monthly bill to consumers to reflect certain increases in fuel costs which the Company paid its own gas suppliers.

Appellants had pointed out to the Court that the prices which the Company's suppliers could charge the Company (and which the Company could pass to ratepayers under the clause) were unregulated by either the Federal Power Commission ("FPC") or the New Mexico Public Service Commission (and, further, that some of the Company's suppliers were subsidiaries of the Company).

In reviewing the Appellants' claims, the Court provided the following interpretation of 68-5-4(B) which is central to this Attorney General's Opinion:

The above provision [68-5-4(B)] makes it abundantly clear that the Commission can disallow, for rate-making purposes, any portion of a price paid by a utility which the Commission finds to be unreasonable unless well head transactions are involved. Here, the subsidiary Producing Company is involved in such well head transactions and thus is not covered by Commission regulation . . . *Id.* 85 N.M. at 573-74.

In sum, as interpreted in *Maestas* decision, 68-5-4 N.M.S.A. does give the Public Service Commission some authority to review the prices of certain intra-state sales of natural gas to a utility (e.g. Gas Co.). However, the nature of this grant of authority is the power only to determine whether the sale prices (set by the parties) are "unreasonable" (i.e., outside of a range of acceptable prices), in which case they should be disallowed for rate-making purposes, as expenses of the utility.

Furthermore, as interpreted in the *Maestas* decision, this authority of the Public Service Commission to determine the "reasonableness" of prices is limited to sales other than (i.e., after) the sale from the well head. We would understand that such sales subject to the jurisdiction of the Commission include, for example, a sale to a utility by a party (e.g., Southern Union Gathering Company) which is not a producer, but which had purchased its gas from a producer.

{*77} Conversely, in *Maestas* the Court held that the Commission does not have this authority to determine the reasonableness of prices when the sales (for resale) are at the well head (e.g., a sale by Southern Union Production Company to Gas Company).

Furthermore, although the situation was not raised in *Maestas*, Section 68-5-4(B) expressly denies the Public Service Commission any authority whatsoever to directly set the specific price of sales (for resale) at the well head.

Neither *Maestas* nor any other reported decision discusses the authority of any other New Mexico agency over the well head price of intra-state gas. However, a review of the statutes indicates that no agency in New Mexico has the authority to set the well head price of intra-state natural gas. Consequently, the well head price of intra-state natural gas cannot be regulated without a grant of appropriate authority by the Legislature.

ATTORNEY GENERAL

Toney Anaya, Attorney General

[n*](#) Under the Natural Gas Act, 15 U.S.C.A. § 717, Congress gave the Federal Power Commission the authority to regulate only:

(1) the transportation of gas in interstate commerce;

(2) its sale in interstate commerce for resale; and

(3) the regulation of natural gas companies engaged in such transactions or sales. See, e.g. **Panhandle Eastern Pipeline Co. v. Public Service Commission of Indiana**, 332 U.S. 507, 516 (1947).

1976

76-40

76-39

76-38

76-37

76-36

76-35

76-34

76-33

76-32

76-31

76-30

76-29

76-28

76-27

76-26

76-25

76-24

76-23

76-22

76-21

76-20

76-19

76-18

76-17

76-16

76-15

76-14

76-13

76-12

76-11

76-10

76-09

76-08

76-07

76-06

76-05

76-04

76-03

76-02

76-01