Houston's First Battle Over Utility Rates

Harold L. Platt

In 1896 a revolution in urban technology triggered Houston's first confrontation over public utility rates. Using a new process to manufacture gas, the Hall Chemical Company proposed to sell the energy fuel for one-third the price currently charged by the established firm. The ensuing battle for the city franchise pitted a new technology against the old, and the community against the establishment. What made this particular contest remarkable was its unusual outcome—a decisive victory for the ordinary consumer.

A case study of Houston's battle for municipal reform reveals important insights on the interplay of franchise law, alternative technologies, and community politics. To be sure, various combinations of these forces are usually involved in the recurring struggle of American cities to upgrade public services and modern amenities. A peculiar configuration of these factors in 1896 helped to produce a significant advance in the public welfare, in addition to lower utility rates.

Because we have become an energy-intensive society, historical perspectives on these urban services are especially important. Along with the gas-guzzling automobile, electric and natural gas utilities have had a major influence in shaping the growth of the Sunbelt's urban centers since World War II. Northern city dwellers are even more dependent on energy from public utilities to provide heat and light for their very survival during the winter. In short, the consumption of unprecedented amounts of energy has become a necessity of everyday life in contemporary America.

Historically, city governments have always required utilities to obtain special franchises before they could inaugurate business. Their need to run pipes, tracks, and wires in the public streets allowed municipal fathers to trade right-of-way privileges for service and rate concessions. Initially, many cities, including Houston, granted "exclusive privileges" or monopolies to nascent enterprises in order to help reduce the high investment risks of expensive and often unproven technologies such as coal gas, telephones, and

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electricity. By the 1880s, however, city dwellers clearly recognized the tremendous potential of municipal franchises as economic bargaining tools as well as sources of political corruption. The age of urban reform revolved in large part around efforts to formulate franchise policies that would promote the general welfare. While city hall's reform campaigns rarely sustained competition between utility companies providing the same service, its encouragement of rivalry between different technologies proved more successful in advancing public goals.[1]

In the case of Houston's gas franchise, the competition offered by the inauguration of electric lighting services in 1882 had already forced the long-established firm, the Houston Gas Company, to make major concessions in services and rates. After enjoying monopolistic profits for more than fifteen years, the city's oldest utility enterprise suddenly had to respond to the challenge of an alternative source of light and power. But instead of putting the gas company out of business, the brilliant electric arc lamps sharply increased the demand for more light in Houston's homes and shops. The utility reacted by reducing rates by twenty-five percent to $3.00 per thousand cubic feet (MCF), and by extending services to the residential neighborhoods of the working class for the first time.

The Houston Gas Company profited handsomely as its network of pipes and mains expanded from 12 to 50 miles while its output of coal gas multiplied fivefold. By 1896 stockholders in the firm were enjoying an enviable net profit of over twenty-five percent on $90,000 worth of business.[2]

As these earnings indicate, gas rates in Houston remained high—two to three times the national average. However, the authority of city hall to order one of its franchise holders to lower its consumer rates had never been tested in Houston or in Texas. The threat of competition had always proven to be the city council's most effective weapon in winning service and rate concessions in the past. When the Hall Company presented a petition for a franchise to lay its pipes in the streets, the aldermen were again handed just this type of opportunity. In exchange for a right-of-way in the streets, the upstart firm promised to sell gas for between $.50 and $1.00 per MCF. It could offer such tremendous savings because it held a patent for manufacturing the energy fuel

[1]For an introduction to franchise politics, see Harold L. Platt, "The Modernization of an Urban Polity, Houston, 1892-1905," in Michael H. Ebner and Eugene M. Tobin, *The Age of Urban Reform* (Port Washington, NY, 1977), 28-42.

[2]On the coming of electric services, see Houston *Daily Post*, December 9-16, 1882; *ibid.*, March 1, 1883; Houston *Daily Sun*, December 15-16, 1882. On the rate reduction, see Houston *Daily Post*, January 23, 1889. On the development of light and power in Houston, see Harold L. Platt, *City Building in the New South: The Growth of Public Services in Houston, Texas, 1835-1920* (Philadelphia, 1983), chapters 4 and 6. On the status of services and company profits in 1896, see Houston *Daily Post*, May 30, 1896; Houston City Council Minutes, Book J: 266-67.

in a new way that enhanced ordinary coal gas with petroleum. In contrast, the Houston Gas Company had refused to lower its rates since 1889 despite the steady growth in its business and profits.[3]

Nevertheless, Mayor Horace Baldwin Rice and his majority bloc on the council opposed granting a franchise to the new venture. A member of one of the city's most prestigious families, Rice was a Houston native in his mid-thirties. Despite his youth, Rice had already served his political apprenticeship as a public cotton weigher and county commissioner. As the leader of the administration party, Rice set the tone of the debate in the council. He reiterated the old homilies on the virtues of monopoly versus the baleful effects of competition in the area of public utilities. For example, the mayor claimed that "radical changes in [too] short a time" should be avoided in government-business relations. The established firm, he told the council, should first be given a chance to compromise on the rate question. Some aldermen took this argument to its logical conclusion by objecting to competition of any kind in the utility sector.[4]

Only one alderman, Thomas Cronan of the Sixth Ward, was willing to fight for a new gas company. The hardware store clerk was a veteran reformer who had emerged as a ward leader (1884-1888) during the insurgency of Houston's Knights of Labor. He attempted to disarm his critics by pledging allegiance to the fundamental tenets of the New South Creed: the public authority should not harass private capital. On the contrary, Cronan recited the maxim that Southern cities must give every appearance of stability if they wanted to attract Northern capital and factories. "The principle should be . . . to invite capital and [to] encourage investment," the city booster proclaimed.[5]

But he departed from the views of the party regulars in drawing new links of reciprocity in government-business relations. The holders of profitable public franchises, he asserted, should be duty-bound to contribute to the general welfare. "In the present instance," the alderman stated, "capital has been invited and the consumers have built it to its present proportions." Now the company should pay back the community in the form of a rate cut. Cronan backed up his consumer appeal with a detailed report on the economics of the coal gas company. The dissenting alderman showed how the local company could make a substantial reduction in rates and still produce reasonable

[3]Houston City Council Minutes, Book J: 159; Houston *Daily Post*, November 17, 1896; *ibid.*, December 29, 1896; *ibid.*, April 12, 1897.

[4]Houston City Council Minutes, Book J: 204, for the Rice quotation; *ibid.*, 167, 179-80. On Rice's background, see Dermont H. Hardy and Ingham S. Roberts, *Historical Review of Southeast Texas* (Chicago, 1910), 2:491-92.

[5]Houston City Council Minutes, Book J: 256, for the quotation by Cronan; Houston *Daily Post*, April 1-6, 1886; Platt, *City Building*, 96-103, on the politics of the 1890s; Paul Gaston, *New South Creed* (New York, 1970), on postwar myths.

profits for the stockholders.[6]

He also argued that technological competition would advance New South goals of urban growth and industrial development. The Hall Company's novel technology, he predicted, would revolutionize the use of energy in Houston. Dependent on expensive coal from the East (prior to the discovery of oil in 1901), the high price of energy was one of the key factors retarding the growth of industry on the Texas Gulf Coast. Cheap gas would spur industrial expansion, Cronan believed, as well as improve the quality of life for the ordinary city dweller. But the dissenter's appeals for utility competition failed to convince a majority of the council. He could get its consent only to investigate the status of the Houston firm's original 1866 franchise.[7]

Over the next few months, however, a wide array of Houstonians organized behind the informed arguments of Alderman Cronan. The opportunity offered by the Hall Company to encourage competition among urban utility technologies became a popular reform cause. A parade of citizen's groups appeared before the council to demand an immediate and substantial rate cut. A local newspaper reinforced the protest movement by running a series of editorials to educate Houstonians about similar reform battles in other cities. "The people in different portions of the country," the Houston *Post* pointed out, "are now beginning to appreciate the value of public franchises and understand the public's powers and rights."[8]

The newspaper courageously echoed Alderman Cronan's call for a more equitable balance between the rights of the private sector and the public welfare. "The private companies have been too grasping [for profits]," blasted another editorial in the new muckraking style of journalism. The paper concluded its call for reform by attacking the outdated economic dogmas of the Rice administration. "We often talk of capital and its quickness to see its own interest," the *Post* asserted, "[but] the control of public [utility] plants by private individuals shows directly the opposite of good business sense . . . Reckless gouging, indifferent service, and disregard of popular protests are the rule rather than the exception."[9] The agitation of the community and the press had an impact on the course of the debate at city hall. Pressure mounted for cheaper gas, pressure that the politicians could ill afford to ignore since elections were held every two years.

Equally important, the council's investigation of the Houston Gas

[6]Houston City Council Minutes, Book J: 255-56.

[7]*Ibid.*, 256, 262, 266-67; Houston *Daily Post*, May 5, 1897.

[8]Houston *Daily Post*, April 20, 1897, for the quotation and news of citizen protests. Also see Houston City Council Minutes, Book J: 266-67, 273.

[9]Houston *Daily Post*, May 12, 1897, for the quotations. Also see *ibid.*, December 15, 18, 1896; *ibid.*, April 15, 20, 26, 1897; *ibid.*, May 9, 1897; *ibid.*, June 11, 1897, for additional editorials on utility franchises.

Company's franchise revealed new information critical to the outcome of the policy debate. The city's legal expert, John S. Stewart, uncovered the surprising fact that the local company was currently operating without a valid franchise. The firm's state charter of incorporation contained an unusual, direct grant of right-of-way privileges in the streets. But the charter had expired five years earlier, City Attorney Stewart reported.

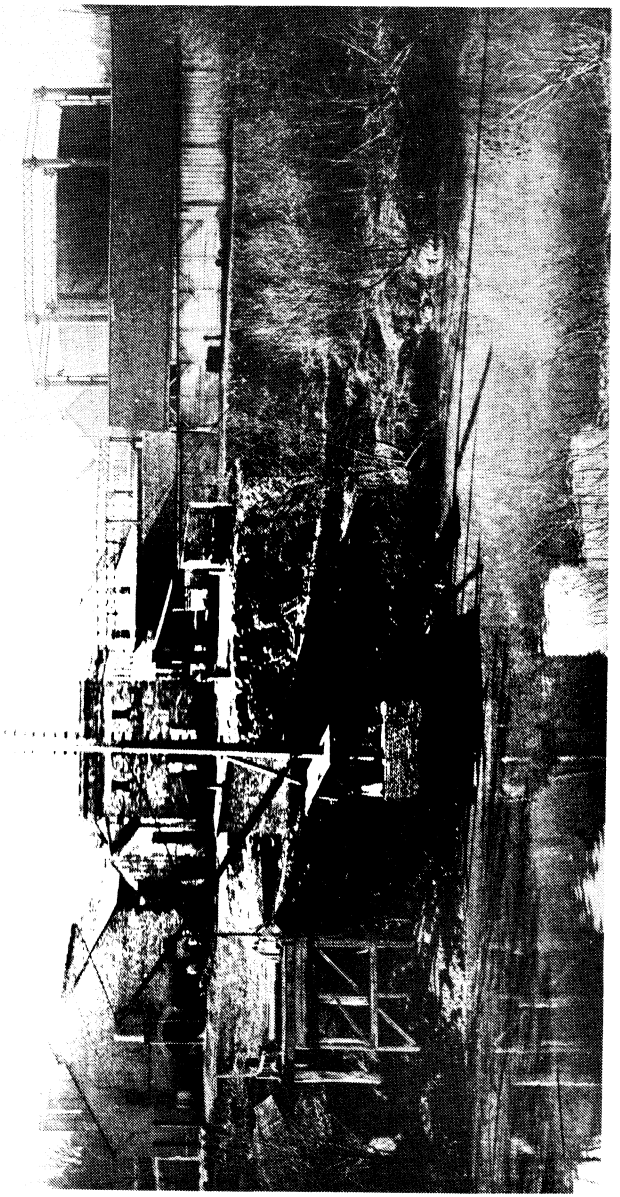
Faced with this disclosure, an aroused public, and the persistence of the Hall Company agents, the Houston Gas Company applied for a new franchise that contained a rate concession. Thomas W. House, Jr., who had succeeded his father as the second president of the firm, promised to supply gas at a reduced charge of two dollars per MCF if the city approved a fifty-year grant. In response, the promoters of the new technology proposed to sell gas for as little as thirty to eighty cents per MCF, a price the company was reportedly receiving in several other cities.

Still, five of the six aldermen chosen by Mayor Rice to review the rival petitions preferred to compromise with the local monopoly, and the administration remained firmly opposed to competition between the two technologies. But even the majority bloc raised its demands for more rate and service concessions from the Houston Gas Company. The aldermen now proposed to grant it a much shorter, fifteen-year franchise in exchange for a maximum rate of $1.50 per MCF, plus free heat and light in most municipal buildings.

Confronting an informed and fast-growing opposition, the local company agreed to the compromise. Moreover, the managers of the utility accepted several additional concessions which increased the power of the city to regulate service standards. The franchise bill stipulated that the council could order service extensions, demand the installation of meters and fix the price of making these connections, require a city-wide map of the distributor network, and monitor the illuminating qualities of the utility's product. In exchange, the negotiators pledged the administration's support for the fifteen-year grant. Mayor Rice also agreed to add a proviso for the creation of official meter inspectors who would help mediate customer complaints of overcharges. In May 1897 two-thirds of the aldermen voted to support this package; the entire matter seemed closed.[10]

But the arrogance of Houston Gas Company stockholders drove the Rice administration squarely onto the path of confrontation. Meeting the following month, the board of directors rejected the franchise and reiterated the original rate proposal of $2.00 per MCF. City officials felt jilted by this haughty contempt for their efforts. They had gone as far as they could to reach a politically acceptable compromise that still left the company with a secure

[10]*Ibid.*, May 18, 1897; Houston City Council Minutes, Book J: 255-56, 262, 266-67, 273-74.



The gasworks plant and office was located at 1513 Commerce Street, with Buffalo Bayou bounding the rear of the property.

monopoly. Mayor Rice now joined Alderman Cronan in demanding a judicial ruling on the limits of the city's powers over its utility enterprises. The administration now supported the dissenter's resolution to hire special legal advisors to prosecute the gas company for unlawful use of the streets. The case would determine whether or not a utility company could operate without a franchise in defiance of the public authority.[11]

The constitutional issues being posed by Houston's councilmen were under discussion in many cities. Beginning in the 1880s, the technological revolutions of electrical energy, telephones, and rapid transit sparked movements across the urban landscape for franchise reforms and better public services. In many cities, calls for the municipal ownership of essential utilities gained strength and respectability in the face of corporate arrogance and the corruption of the political process. By the 1890s confrontations between government and business in the courts were vigorously exploring the vague boundaries of the public's authority to regulate urban utility companies. Municipal reformers asked the state and federal judiciary to clarify two basic questions. First, how far did the regulatory power of the city extend over the management of the utility corporation? Did this "police power" encompass the authority to set maximum consumer rates? And second, if the courts affirmed the right of the city to regulate utility rates, where did the final authority rest to decide their "reasonableness?" Answers to these questions would largely determine the outcome of Houston's contest over gas rates.[12]

Soon after the aldermen decided to hire a special counsel in June 1897, the Houston Gas Company regained the initiative. Stockholders living in New York, including the mayor's wealthy uncle, William M. Rice, petitioned the U.S. District Court for a restraining order. The suit was a calculated maneuver by the out-of-state investors to shift the judicial battlefield from the state to the federal arena. This type of "forum shopping" for the most favorable court was a common tactic then as today. In the petition, company lawyers asked the federal judge to issue an injunction barring the municipal government from interfering with the utility's use of the streets. The attorneys claimed that this crucial franchise was automatically extended when the company renewed its state charter of incorporation.[13]

But the city's legal experts had already arrived at precisely the opposite conclusion. Reporting on the company's maneuvers to the city council, the special counsel presented an accurate picture of state and national public

[11]Houston City Council Minutes, Book J: 286, 294, 298, 300-01.

[12]See Charles W. McCurdy, "Justice Field and the Jurisprudence of Government-Business Relations," *Journal of American History* 61 (March 1975): 970-1005; Kenneth Fox, *Better City Government* (Philadelphia, 1977); Martin J. Schiesl, *The Politics of Efficiency* (Berkeley, 1977).

[13]Houston *Daily Post*, June 22, 27, 1897; *ibid.*, July 1, 1897; Houston City Council Minutes, Book J: 286, 294, 298, 300-01.

utility law. They correctly pointed out that the state statute allowing business corporations to amend or extend their charters was never intended to perpetuate extraordinary grants or privileges. In addition, Texas law now required urban utility enterprises to obtain franchise right-of-ways from local officials. In a similar way, Houston's municipal charter also contained deficiencies of power. The counselors could find no delegation of state authority to set consumer rates. The city could, however, accomplish this goal in two ways. Houston could either obtain the needed charter authority from the legislature, or get the gas company to sign a franchise contract that included a maximum rate proviso.[14]

Secretly, Houston Gas Company officers had made a similar assessment of the franchise issue. Since the politicians could no longer be cowed or tricked by the federal injunction, the company put its contingency plan into operation. At the conclusion of the special counsel's report, the utility's friends on the council introduced a new franchise proposal that cut the gas rate to $1.80 per MCF, but bound the city to this price for the next thirty years. The rate clause of the contract boldly stated that the price of gas in Houston could not be lowered without the express consent of the company. Otherwise, the "new" franchise was actually the compromise grant which had been rejected a few months earlier. The daily newspaper quickly reacted to the gas monopoly's arrogant strategy in fine muckraking style. Referring to the traction baron Charles T. Yerkes, the paper suggested that the utility had "evidently been taking lessons from the Chicago street car company."[15]

While Mayor Rice was out of town, the company's friends on the council steamrolled the franchise bill through the next session, six to four. At the last minute, however, Alderman Gustavus Street pulled a parliamentary coup. A loophole in the city charter empowered the mayor's legislative leader to vote twice: first as a ward representative, and then again as the acting mayor. Street vetoed the measure. The gas company's supporters realized that an attempt to muster an extra, seventh vote to override the veto would be futile. Withdrawing the proposal, the sponsor of the company bill admitted Street's move was "a good trick and well played."[16]

Rather than face the uncertainties of further skirmishes over the franchise, the utility company dropped its attempt to deny city authority over future price reductions. Gaining this concession, the majority bloc no longer needed the threat of technological competition to force concessions from the established firm. The Hall Company's continuing appeals for a franchise

[14]Houston City Council Minutes, Book J: 324-25; Houston *Daily Post*, August 24-26, 1897.

[15]Houston *Daily Post*, August 24-26, 1897; *ibid.*, August 27, 1897, for the quotation.

[16]*Ibid.*, August 31, 1897; *ibid.*, September 1, 5, 12, 1897; Houston City Council Minutes, Book J: 330.

now fell on deaf ears. As the municipal elections approached in April 1898, the Houston Gas Company managers agreed to sign the compromise grant with a $1.80 per MCF maximum rate and to withdraw the court injunction.[17] Houston's first battle over utility rates had ended.

The big winner in the contest was the consumer. A forty percent reduction in the price of the energy fuel meant that more and more city dwellers could afford to use gas lighting and cooking in their homes. In contrast, the technologically superior, albeit more expensive, alternative of electricity remained restricted to the shops, the factories, and the homes of the well-to-do for many years to come. Reflecting these results, the output of the gasworks doubled to 60 million cubic feet within five years of the rate decrease.[18] Ironically, then, the utility company also gained from cheaper gas in spite of its dogged pursuit of monopolistic profits. Even the large number of Houstonians who could not yet afford gas lighting benefited from city hall's victory over the utility enterprise. By setting a precedent for the city government to determine consumer rates, the battle helped broaden and strengthen the public welfare concept.

The economics of public utility rates today differ from those of a century ago, but the legal and political structure of government-business relations remains basically unchanged. Bound together by the necessity of supplying essential public services at reasonable prices in the modern city, each side has sought to enhance its position at the expense of the other. In the gas rate contest, an informed and organized citizenry, courageous elected officials, and legal experts combined to tip the balance of power to the side of the public interest. Although Mayor Rice favored the established firm, politically he could ill afford to ignore an aroused and united community, or the blatant arrogance of the utility company.

In most cases, the regulation of public utility companies has been removed from local governments and placed in the hands of state commissions. These insulated agencies have been traditionally unresponsive to the needs of urban ratepayers. Nonetheless, the recent advent of technological rivalry in several utility services has given city hall new opportunities to set franchise policy.

Of course, novel technologies by themselves do not necessarily mean that city dwellers will enjoy better services at a cheaper price. Current experiences with cable television should serve as a sufficient warning that technical innovation must be matched by equally creative public decision-making. In addition, planners and consumers need to weigh carefully the promise of immediate gains from novel technologies against their long-term impact on

[17]Houston City Council Minutes, Book J: 412, 417-18; Houston *Daily Post*, April 8, 1898.

[18]*Moody's Manual of Railroad and Corporation Securities* (New York, 1905), 1334; Houston *Daily Post*, March 2, 29, 1905.

the environment and the health of the citizenry. Thirty years later, for instance, the initial projections of "limitless" amounts of safe, cheap energy from nuclear power plants look illusory in the wake of frightening accidents, skyrocketing costs, and unresolved problems of managing radioactive wastes.

Cities today are facing policy decisions on an array of innovations in the fields of communications, waste disposal, and energy. In each area, competition between old and new methods offers the city a fresh opportunity to redefine franchise relations between government and business. The experience of the past shows that alternative technologies can effect significant improvements in urban life if an informed community gets involved in the political process of defining its franchise policies.