



# The Attorney General of Texas

January 12, 1982

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An Equal Opportunity/  
Affirmative Action Employer

Mr. Allen H. King  
General Counsel  
Public Utility Commission  
7800 Shoal Creek Boulevard  
Austin, Texas 78757

Open Records Decision No. 301

Re: Public disclosure of  
Public Utility Commission  
staff workpapers during  
hearing

Dear Mr. King:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to the availability of the working papers of staff accountants of the Public Utilities Commission during a rate increase hearing.

You indicate that on June 15, 1981, Southwestern Bell filed an application for rate increase with the Public Utilities Commission. Although the hearing has now been completed, a final order regarding the rate increase is not expected before late December. The material being sought here consists of the work papers of staff accountants of the Commission. They were prepared specifically in contemplation of the hearing before the Commission regarding the request for rate increase. You suggest that this information is excepted from disclosure by sections 3(a)(1), 3(a)(3) and 3(a)(11) of the Open Records Act.

Section 3(a)(3) excepts:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

The Open Records Act does not define "litigation." However, the section 3(a)(3) exception was designed to protect the interests of the state in adversary proceedings or in negotiations leading to the settlement thereof, and we have no doubt that "litigation" encompasses

proceedings conducted in quasi-judicial forums as well as strictly judicial ones. "Litigation" has been defined by the dictionary to include "a controversy involving adverse parties before an executive governmental agency having quasi-judicial powers and employing quasi-judicial procedures." Webster's Third International Dictionary at 1322. See San Antonio Public Service Company v. Long, 72 S.W.2d 696 (Tex. Civ. App. - San Antonio 1934, no writ). See also V.T.C.S. art. 6252-13a, §14 (procedures for contested cases under the Administrative Procedure and Texas Register Act). Statutes providing for the administrative resolution of a controversy generally provide for judicial review of the matter. See V.T.C.S. art. 1446c, §69; V.T.C.S. art. 6252-13a, §19. Thus, the dispute before an administrative agency may be moved to a judicial forum. The lawsuit is in effect a continuation of the same controversy.

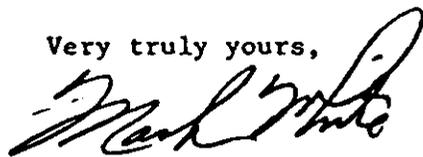
We believe the litigation exception may be applied to records relating to a contested case before an administrative agency. Although the state of Texas is not actually a "party" to an ex parte request for a rate increase, the staff of the Commission serves in an adversary role during a rate hearing. Adm. Proc. Code §052.01.00.11-052.01.00.121. A rate hearing is a "contested case" for purposes of the Administrative Procedure Act, article 6252-13a, section 3(2), V.T.C.S., since:

the legal rights, duties, or privileges of a party are to be determined by an agency after an opportunity for adjudicative hearing.

In our opinion, these factors are sufficient to bring a rate hearing within the ambit of section 3(a)(3). In addition, you indicate that a judicial appeal of the Commission's final order in this case is likely. See Open Records Decision Nos. 281, 270, 266 (1981). Cf. Southwestern Bell Telephone Company v. Public Utilities Commission, 571 S.W.2d 503 (Tex. 1978). In our opinion, section 3(a)(3) may properly be invoked in this ex parte rate increase hearing.

Both the attorney for the Commission and the assistant attorney general who represents the Commission have determined that the information should be withheld from disclosure under section 3(a)(3). We have examined the material you have submitted and have determined that it is relevant both to the rate hearing and to the potential judicial proceedings. We conclude therefore, that it is excepted from disclosure in its entirety under section 3(a)(3) of the Open Records Act. In view of this determination, we need not address your contentions regarding sections 3(a)(1) and 3(a)(11).

Very truly yours,



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