



May 14, 2001

Ms. Zandra L. Narvaez
Legal Services Division
City of San Antonio
P.O. Box 1771
San Antonio, Texas 78296-1771

OR2001-1972

Dear Ms. Narvaez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147136.

The City Public Service Board of San Antonio ("CPS") received a request for the rates the City of San Antonio has paid the Union Pacific Railroad Company ("Union Pacific") for the transportation of coal to certain power plants since 1999. You claim that the requested information is excepted from disclosure under sections 552.104, 552.110, and 552.131 of the Government Code. You further indicate that you notified Union Pacific of this request for information pursuant to section 552.305 of the Government Code. In turn, Union Pacific has submitted a letter to this office arguing that the requested information is excepted from disclosure under section 552.110 of the Government Code. We have considered all of the submitted arguments and reviewed the submitted information.

Section 552.131, as added by Senate Bill 7,¹ excepts from disclosure a public power utility's information related to a competitive matter. The exception defines "competitive matter" as a matter the public power utility governing body in good faith determines by vote to be related to the public power utility's competitive activity. The governing body must also determine that the release of the information would give an advantage to competitors or prospective competitors. Section 552.131(a)(3) lists thirteen categories of information that may not be deemed competitive matters, including "aggregate information reflecting receipts or expenditures of funds of the public power utility, of the type that would be included in audited financial statements." The attorney general may conclude that section 552.131 is inapplicable to the requested information only if, based on the information provided, the

¹Act of May 27, 1999, 76th Leg., R.S., ch. 405, § 46 (codified at Gov't Code § 552.131).

attorney general determines the public power utility governing body has not acted in good faith in determining that the issue, matter, or activity is a competitive matter or that the information requested is not reasonably related to a competitive matter. Gov't Code § 552.131(c). Further, section 552.131(b) provides:

Information or records are excepted from the requirements of Section 552.021 if the information or records are reasonably related to a competitive matter, as defined in this section. Excepted information or records include the text of any resolution of the public power utility governing body determining which issues, activities, or matters constitute competitive matters. Information or records of a municipally owned utility that are reasonably related to a competitive matter are not subject to disclosure under this chapter, whether or not, under the Utilities Code, the municipally owned utility has adopted customer choice or serves in a multiply certificated service area. This section does not limit the right of a public power utility governing body to withhold from disclosure information deemed to be within the scope of any other exception provided for in this chapter, subject to the provisions of this chapter.

Gov't Code § 552.131(b).

CPS passed a resolution by vote pursuant to section 552.131 in which it delineated a list of competitive matters, which, if disclosed, would provide an advantage to existing or potential competitors. You have provided this office with a portion of the resolution. Based on our review of your arguments and the resolution, we find the requested rate information relates to a competitive matter as defined under the CPS resolution. Furthermore, the requested information is not clearly among the thirteen categories of information expressly exempted from the definition of competitive matter, and we have no evidence CPS failed to act in good faith. Consequently, the rate information is excepted from disclosure and must be withheld pursuant to section 552.131. Based on this finding, we need not reach the remaining arguments for withholding the information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

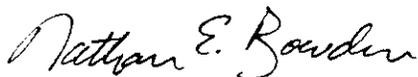
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 147136

Encl: Submitted documents

cc: Mr. Shaderick May
Escalation Consultants
P.O. Box 35666
Gaithersburg, Maryland 20885-3566
(w/o enclosures)

Ms. Beverly S. Greer
Union Pacific Railroad Company
1416 Dodge Street, Room 830
Omaha, Nebraska 68179-0001
(w/o enclosures)