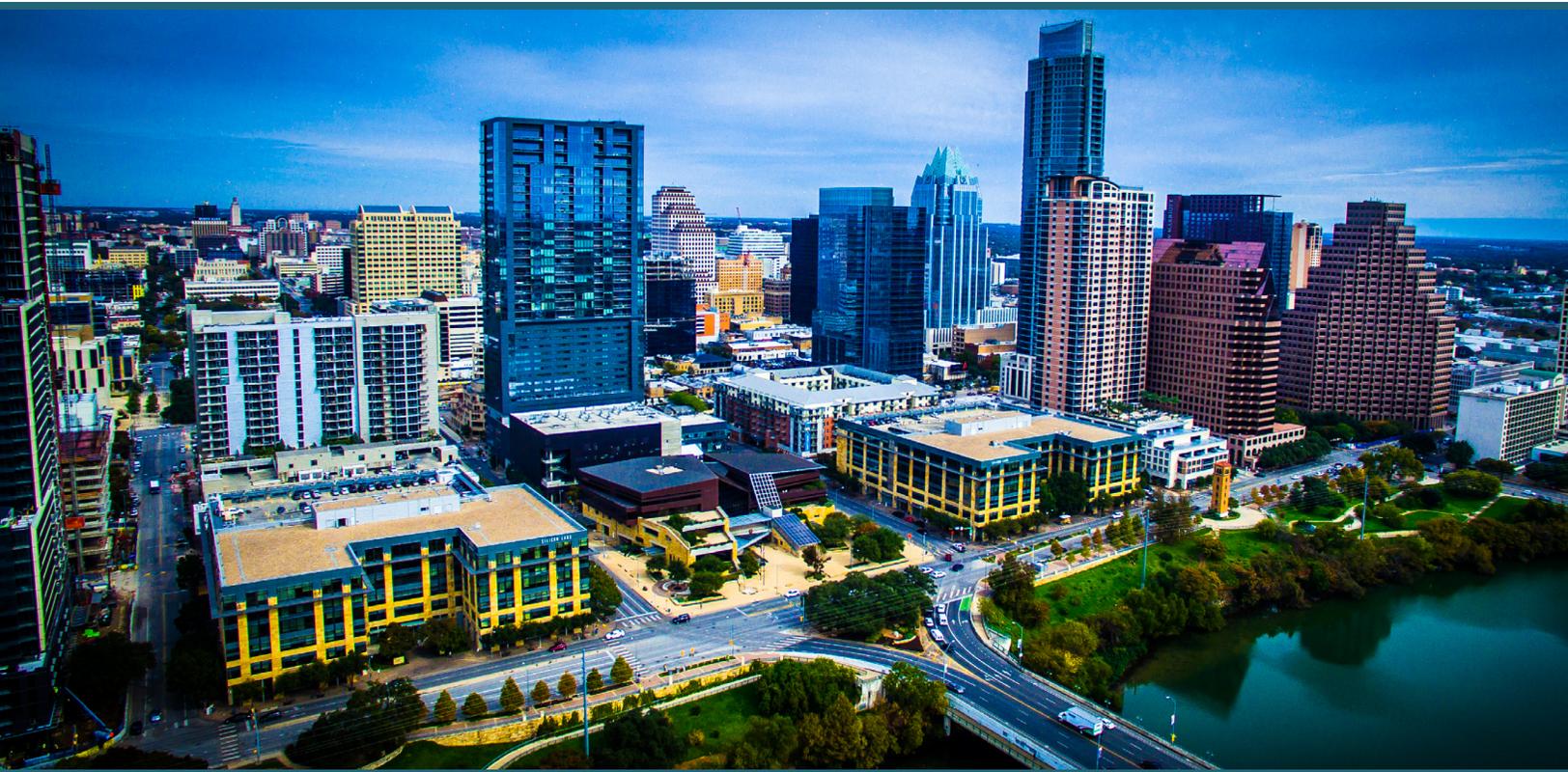


Investigation Report

Austin Energy: Solicitation and Acceptance of Secondary Employment and Misuse of City Resources

June 2017



We found evidence indicating that Steven Salinas, Electric Distribution Designer Lead for Austin Energy, solicited and accepted employment from developers over which he had discretionary authority through his City position, and that he misused City resources for his secondary employment. We found evidence that Salinas disclosed the nature of his secondary employment to his supervisor who, while recognizing that there may be potential ways for Salinas to use his City position to benefit his clients, indicated that he did not perceive it to conflict with Salinas' City duties. Salinas refused to cooperate with repeated requests for information that would indicate whether he may have had an additional conflict of interest as defined by City Code.

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Cover: Aerial view of downtown Austin,
iStock.com/RoschetzkyIstockPhoto

Allegation

In March 2016, the Office of the City Auditor received an allegation that an Electric Distribution Designer Lead for Austin Energy, Steven Salinas, had a conflict of interest stemming from his secondary employment.

The informant provided information suggesting that Salinas had secondary employment related to the design and installation of a dry utility system in coordination with Austin Energy. The informant alleged that this may result in a conflict of interest.

Background

Austin Energy’s mission is to “deliver clean, affordable, reliable energy and excellent customer service.” Austin Energy’s Distribution Services division provides “design, engineering, and construction [services for]...both overhead and underground lines, transformers, feeders, streetlights and other associated equipment to keep the system operating normally.”

Electric Distribution Designer Lead Steven Salinas was hired in 2010 and was classified into his current position in 2016. Salinas’ responsibilities include interfacing “regularly with contractors, engineers, developers, customers, etc.” and providing “leadership, work assignments, evaluations, training, and guidance to others.”

Investigation Results Summary

We found evidence indicating that Steven Salinas, Electric Distribution Designer Lead for Austin Energy, solicited and accepted employment from developers over which he exercised discretionary authority to design and approve Austin Energy service distribution plans. We also found that he misused City resources for this secondary employment.

We determined that Salinas disclosed his secondary employment to his supervisor who indicated that he did not perceive it to conflict with Salinas’ City duties.

Despite multiple requests from our office and Austin Energy management, Salinas refused to cooperate fully and we were unable to determine whether Salinas’ secondary employment constituted a conflict of interest as defined by City Code.

Finding 1

Solicitation and Acceptance of Secondary Employment Impairing Independence

We found evidence that Steven Salinas solicited or accepted employment on at least eight developments located in the region over which he is the lead Distribution Designer for Austin Energy. When interviewed by our office, Salinas confirmed his secondary employment designing and drafting telecommunication and gas line plans for development projects.

We found evidence that Salinas disclosed the nature of his secondary employment to his supervisor who, despite recognizing that there may be potential ways for Salinas to use his City position to benefit his clients, indicated that he did not perceive it to conflict with Salinas' City duties.

As an Electric Distribution Designer Lead, Salinas serves as a point of contact between the utility and developers that require power supplied by Austin Energy. Developers submit Electric Service Planning Applications that Salinas reviews for projects in his region and assigns to employees who then draw up plans that indicate how electric infrastructure will be built on the site. Salinas reviews and approves these plans before forwarding them to a professional engineer for final approval.

As part of his secondary employment, developers hire Salinas to draw up plans for telecommunication and gas service infrastructure for their project sites. Salinas stated that when he is drafting these plans, he must ensure that they do not interfere with Austin Energy's service infrastructure.

When interviewed by our office, Salinas confirmed that over the past approximately three years, he solicited or accepted secondary employment on at least eight developments that appear to be located in the region over which he is Austin Energy's Lead Distribution Designer. Of those, he performed work in a private capacity on at least three development projects over which he either designed or approved Austin Energy electric delivery service layouts in his official City capacity. These projects include:

- a 200,000+ square foot mixed use development featuring a high-end grocery store, shopping, dining, and other entertainment space. According to Salinas, he drafted the design layout for telecommunications for the development in late 2014. Austin Energy blueprints show that Salinas approved the Austin Energy electric service delivery designs in January 2015,
- a commercial business for which Salinas said he performed design work sometime in 2014. Austin Energy blueprints show that Salinas designed, drew, and approved the Austin Energy electric service delivery designs in February 2013, and
- a residential condominium development for which Salinas said he performed design and consulting work for the development's telecommunications and data infrastructure. Salinas did not specify when this work was performed. Austin Energy blueprints show that Salinas designed this development's Austin Energy electric service delivery designs, which were stamped by a professional engineer in March 2016.

Salinas drafted a contract for secondary employment for a project involving an additional development whose Austin Energy layouts he approved, but Salinas stated that he was not ultimately hired to perform this secondary employment:

- a residential development with more than 75 single-family homes, for which an unsigned Salinas Consulting contract from October 2015 shows that Salinas solicited work designing and drafting “all bidding and construction documents for the underground dry utilities.” Austin Energy blueprints show that Salinas approved this development’s Austin Energy electric service delivery designs in December 2015.

Investigation Criteria:

The City Code on Standards of Conduct states that no City official or employee shall solicit or accept other employment to be performed or compensation to be received if the employment or compensation could reasonably be expected to impair independence in judgment or performance of City duties.

City Code: Standards of Conduct §2-7-62 (H)(1)

See Investigation Criteria for More Details

Salinas identified four additional projects for which he solicited or accepted secondary employment. However, Salinas did not provide sufficient information to determine his involvement with these developments in his official City capacity other than the fact that they appear to be located within his Austin Energy region. These projects include:

- a location within a private community with a top-ranked golf course for which Salinas said he performed design and consulting work for the development’s telecommunications and data infrastructure,
- a development with custom homes for which Salinas said he performed design and consulting work for the development’s telecommunications and data infrastructure,
- a project involving a local business for which Salinas solicited but said he did not perform secondary employment, and
- a development project for which Salinas solicited but said he did not perform secondary employment.

Salinas’ secondary employment with these developers might reasonably be expected to impair his independence in judgment or performance of his City duties. Salinas’ City duties directly involve reviewing and approving plans for projects in his region, some of which are submitted by developers who are his secondary employers, and he therefore has purview over their submissions. City policies prohibit creating business relationships with persons or entities whose business could be affected by the employee’s performance of his City duties, and the problematic nature increases the closer the relationship of the secondary job is to the job the individual normally performs for the City. Secondary employment should not impair in any way an employee’s ability to satisfactorily perform all expected duties, including making decisions and carrying out in an objective fashion all the responsibilities of the employee’s position.

These acts appears to constitute violations of the following criteria, as detailed in the Investigation Criteria section:

- City Code § 2-7-62 Standards of Conduct - (H)(1): Solicit or Accept Employment
- City Personnel Policy - (L): Engaging in Other Employment

Finding 2

Misuse of City Resources

Investigation Criteria:

The City Code on Standards of Conduct states that no City official or employee shall use City facilities, personnel, equipment or supplies for private purposes, except to the extent such are lawfully available to the public.

City Code: Standards of Conduct §2-7-62 (J)

See Investigation Criteria for More Details

We found evidence that Salinas misused City resources for his secondary employment described above. Although Salinas stated that he performs his secondary employment work entirely out of his house, we found evidence that he misused his City computer for his secondary employment.

We found at least 19 documents on Salinas' City computer that appear to relate to Salinas' secondary employment. These documents include:

- several secondary employment contracts with dates ranging from 2014 to 2017 and
- several invoices for Salinas' professional services with dates in 2016 and 2017.

In addition, we found evidence indicating that Salinas misused his City-provided computer to access the internet for his secondary employment. This misuse includes:

- at least 30 instances in which Salinas accessed a non-City e-mail account that appears related to his secondary employment.

These acts appears to constitute a violation of the following criteria, as detailed in the Investigation Criteria section:

- City Code 2-7-62 (J): Misuse of City Resources
- Administrative Bulletin 06-03: Fraud
- City Personnel Policy (G): Use of City Resources
- Administrative Bulletin 98-06: Acceptable Internet Use

Finding 3

Refusal to Cooperate and Inconclusive Conflict of Interest

After multiple requests from our office and Austin Energy management, Salinas refused to provide payment information that would indicate whether his secondary employment constituted a violation of the City's conflict of interest provisions. Specifically, the payment information is necessary to determine whether Salinas had a substantial interest, as defined by City Code, in the developments over which he had discretionary authority through his City position. A substantial interest may have existed if the "funds received... during the previous 12 months or the previous calendar year equaled or exceeded \$5,000 in salary, bonuses, commissions or professional fees." City Code's conflict of interest provisions prohibit employees from participating in votes or decisions on matters in which they have a substantial interest.

Included in the documents we found on Salinas' City computer were:

- a May 2016 unsigned contract for Salinas Consulting for a proposed fee of \$15,000,
- an August 2016 unsigned contract for Salinas Consulting for a proposed fee of \$15,000,

Investigation Criteria:

City Administrative Bulletin 06-03 states that each City employee shall fully cooperate with an investigation. See *Investigation Criteria for More Details*

- a May 2016 Salinas Consulting invoice for a total amount due of \$10,000,
- a June 2016 Salinas Consulting invoice for a total amount due of \$10,000, and
- a January 2017 Salinas Consulting invoice for a total amount due of \$5,000.

While these fees could have created a substantial interest for Salinas, we were unable to determine whether any of these fees were collected by Salinas due to his refusal to cooperate. Additionally, we were unable to gather sufficient information to determine Salinas' involvement with these developments in his official City capacity other than the fact that they appear to be located within his Austin Energy region.

Salinas's refusal to cooperate appears to constitute a violation of the following criteria, as detailed in the Investigation Criteria section:

- Administrative Bulletin 06-03: Conduct of an Investigation

Due to Salinas' refusal to cooperate, we were unable to determine whether Salinas may have violated the following criteria, as detailed in the Investigation Criteria section:

- City Code § 2-7-63 Prohibition on Conflict of Interest – (A): Participation in a Decision Regarding a Substantial Interest

Appendix A - Subject Response

To: The Office of the City Auditor.

In response to your draft I did not solicit the work; it came to me through employment from the past. It was all Telecommunication and Gas layout design. I did not refuse to cooperate the request for information needed; I provided the information for the eight developments in which you mentioned in Finding 1 of your draft.

My supervisor when notified of my secondary employment did not perceive it to conflict with my duties. Due to the shortage of design staff it is part of my duties to design projects which are still reviewed by my peers and AE Professional Engineers.

On page 4 paragraph 1 you state that I solicited but was not hired to perform secondary employment, again I did not solicit the work I was approached.

On the advice of Austin Energy Management I was asked to inform the investigators of the City Audit Department that I released all the information I deemed necessary for their investigation.

As per your Investigation Result Summary I feel that I gave full cooperation by giving you my clients contact and information numbers which were contacted by you and your department, and still you were unable to constitute a conflict of interest as defined by City Code, which leads me to believe that this should be a closed case.

Steven E. Salinas
Electrical Distribution Designer Lead

Appendix B - Office of the City Auditor's Response to Subject Response

We have reviewed the Subject Response. We believe our findings stand.

Clarification: The Subject Response contains the statements:

"I did not refuse to cooperate the request for information needed; I provided the information for the eight developments in which you mentioned in Finding 1 of your draft," and "[o]n the advice of Austin Energy Management I was asked to inform the investigators of the City Audit Department that I released all the information I deemed necessary for their investigation."

While the Subject ultimately did provide the information needed for Finding 1, he only did so after we involved Austin Energy management. Additionally, the Subject never provided requested information regarding Finding 3. In a December 6, 2016, e-mail to our office, the Subject wrote *"I will not provide copies of my invoices as they have nothing to do with this investigation and are personal property..."* Our office again escalated the issue to Austin Energy management, but the Subject still refused to cooperate. The Subject was aware that his refusal to do so could be documented in the report issued by the Office of the City Auditor.

Appendix C - Management Response



MEMORANDUM

To: Nathan Wiebe, Chief of Investigations, Office of the City Auditor

From: Jackie A. Sargent, General Manager, Austin Energy *JAS*

CC: Mark Dombroski, Deputy General Manager, Austin Energy
Cindy Steffen, Human Resources Manager, Austin Energy

Date: May 31, 2017

Subject: Draft Investigation Report (IN 16023) re: Steve Salinas

Austin Energy (AE) is in receipt of the draft investigation report regarding allegations against AE employee Electrician Distribution Designer Lead Steve Salinas of Solicitation and Acceptance of Secondary Employment and Misuse of City Resources. Our AE Human Resources division will collaborate with AE management to review the report and findings to determine the appropriate next steps in this matter.

Our response will include a comprehensive review of AE and City policies and procedures related to Outside Employment and Use of City Resources. AE will communicate expectations to all AE employees regarding the proper reporting and approvals necessary to engage in Outside Employment as well as Use of City Resources. Further, AE will evaluate and strengthen controls to ensure departmental compliance with the aforementioned policies.

Should you need additional information, please contact Human Resources Manager Cindy Steffen at 512-322-6249.

The City of Austin is committed to compliance with the Americans with Disabilities Act (ADA). Reasonable modifications and equal access to communications will be provided upon request.

Investigation Criteria

Finding 1

Solicitation or Acceptance of Employment

City Code on Standards of Conduct states that no City official or employee shall solicit or accept other employment to be performed or compensation to be received while still a City official or employee, if the employment or compensation could reasonably be expected to impair independence in judgment or performance of City duties. *City Code: Standards of Conduct §2-7-62 (H)(1)*

City Personnel Policy states that all City employees are prohibited from engaging in other employment, which would interfere with the performance of their City duties and are prohibited from engaging in other employment, which would represent a conflict of interest. *City Personnel Policy - (L) Outside Employment*

Finding 2

Misuse of City Resources

City Code on Standards of Conduct states that no City official or employee shall use City facilities, personnel, equipment or supplies for private purposes, except to the extent such are lawfully available to the public. *City Code: Standards of Conduct §2-7-62 (J)*

City Administrative Bulletin 06-03 states that “Fraud” includes the misappropriation of funds, supplies, or another City resource. *Administrative Bulletin 06-03: Fraud, Waste, and Abuse Reporting, Investigation and Prevention*

City Personnel Policy states that Employees are prohibited from using City facilities, equipment, supplies, employee time, or any other City resource for personal use, except to the extent that such resources are available to the public, and that these resources are dedicated to City business. It further states that employees have no legitimate expectation of privacy when using these resources. *City Personnel Policy - I. Conditions of Work - (G) Use of City Resources*

City Administrative Bulletin 98-06 states that the use of City-provided internet, email and/or computer use must be related to, and for the benefit of, City Government. *Administrative Bulletin 98-06: Acceptable Internet Use*

Finding 3

Refusal to Cooperate and Inconclusive Conflict of Interest

City Administrative Bulletin 06-03 states that each City employee shall fully cooperate with an investigation. *Administrative Bulletin 06-03: Fraud, Waste, and Abuse Reporting, Investigation and Prevention*

City Code on Prohibition on Conflict of Interest states that a City official or employee may not participate in a vote or decision on a matter affecting a natural person, entity, or property in which the official or employee has a substantial interest. *City Code: Prohibition on Conflict of Interest § 2-7-63 (A)*

City Code defines a substantial interest to include an interest in another person or entity if funds received by the person from the other person or entity either during the previous 12 months or the previous calendar year equaled or exceeded \$5,000 in salary, bonuses, commissions or professional fees or \$20,000 in payment for goods, products or nonprofessional services, or 10 percent of the person’s gross income during that period, whichever is less. *City Code: Definitions § 2-7-2 (11)*

Methodology

To accomplish our investigative objectives, we performed the following steps:

- reviewed applicable City Code,
- conducted background research,
- conducted and analyzed computer forensics data,
- reviewed City work performed by the Subject,
- conducted interviews with employees in Austin Energy, and
- interviewed the Subject.

CAIU Investigative Standards

Investigations by the Office of the City Auditor are considered non-audit projects under the Government Auditing Standards and are conducted in accordance with the ethics and general standards (Chapters 1-3), procedures recommended by the Association of Certified Fraud Examiners (ACFE), and the ACFE Fraud Examiner's Manual. Investigations conducted also adhere to quality standards for investigations established by the Council of the Inspectors General on Integrity and Efficiency (CIGIE) and City Code.

The Office of the City Auditor, per City Code, may conduct investigations into fraud, abuse, or illegality that may be occurring. If the City Auditor, through the Integrity Unit, finds that there is sufficient evidence to indicate that a material violation of a matter within the office's jurisdiction may have occurred, the City Auditor will issue an investigative report and provide a copy to the appropriate authority.

In order to ensure our report is fair, complete, and objective, we requested responses from both the subject and the Department Director on the results of this investigation. Please find attached these responses in Appendix A and C.

The Office of the City Auditor was created by the Austin City Charter as an independent office reporting to City Council to help establish accountability and improve city services. We conduct investigations of allegations of fraud, waste, or abuse by City employees or contractors.

City Auditor

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