



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 10, 2009

Ms. Zandra L. Pulis
Senior Counsel
Legal Services Division
CPS Energy
P.O. Box 1771
San Antonio, Texas 78296

OR2009-01762

Dear Ms. Pulis:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 335459.

The City Public Service Board ("CPS"), an electric and gas utility owned by the City of San Antonio, received a request for the Power Purchase Agreement between CPS and Iberdola Renewables ("Iberdola") for the purchase of wind energy from the Penascal Wind Farm. You claim that the submitted information is excepted from disclosure under sections 552.104 and 552.133 of the Government Code. You also explain that the submitted information may contain a third party's proprietary information subject to exception under the Act. Accordingly, you have notified Iberdola of this request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).* We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments received from Iberdola pursuant to section 552.305(d) of the Government Code.

Section 552.133 of the Government Code exempts from disclosure a public power utility's information related to a competitive matter.¹ Section 552.133(b) provides:

Information or records are excepted from [disclosure] 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 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 § 552.133(b). A "competitive matter" is defined 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, and the release of which would give an advantage to competitors or prospective competitors. *Id.* § 552.133(a)(3). Section 552.133(a)(3) lists thirteen categories of information that may not be deemed competitive matters. *See id.* The attorney general may conclude that section 552.133 is inapplicable to the requested information only if, based on the information provided, the attorney general determines that 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. *Id.* § 552.133(c).

You inform us that CPS is a city-owned public power utility for purposes of section 552.133. You have also submitted a copy of CPS's competitive matters policy delineating categories of information that the CPS Board of Trustees has determined to be competitive matters for purposes of section 552.133. You assert that the submitted information comes within the scope of CPS's competitive matters policy and therefore is protected from public disclosure under section 552.133. After reviewing your arguments and the submitted information, we have no reason to conclude that CPS failed to act in good faith in determining this particular matter to be competitive. *See id.* Furthermore, we conclude that this information is

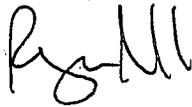
¹We note that the submitted information falls within the scope of section 552.022(a)(3) of the Government Code, which requires disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]" unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(3). Section 552.133(d) provides, however, that "[t]he requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under other law does not apply to information that is excepted from required disclosure under [section 552.133]." *Id.* § 552.133(d).

reasonably related to a competitive matter as defined by CPS's competitive matters policy. Therefore, based on your representations and our review, we conclude that CPS must withhold the submitted information in its entirety under section 552.133 of the Government Code.²

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/eb

Ref: ID# 335459

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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²As our ruling is dispositive, we need not address the remaining arguments raised by CPS and Iberdola.