



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 10, 2009

Mr. Michael S. Copeland  
Utility Attorney  
City Attorney's Office  
215 East McKinney Street  
Denton, Texas 76201

OR2009-12769

Dear Mr. Copeland:

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# 356140.

The City of Denton (the "city") received a request for "any agreement(s) between the city of Denton and NextEra Energy Resources LLC." You claim that the submitted information is excepted from disclosure under section 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 provide documentation showing you have notified NextEra Energy Resources L.L.C. of the request and of its opportunity to submit comments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Section 552.133 of the Government Code excepts from disclosure a public power utility's information related to a competitive matter. Section 552.133(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 § 552.133(b). Section 552.133(a)(3) defines a "competitive matter" as a utility-related 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. *See id.* § 552.133(a)(3). However, section 552.133(a)(3) also provides thirteen categories of information that may not be deemed competitive matters. 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 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 the city owns and operates a public power utility, Denton Municipal Electric ("DME"). In addition, you inform us, and provide documentation showing, that the Denton City Council (the "council"), as governing body of DME, passed a resolution by vote pursuant to section 552.133 in which the council defined the term "competitive matter." This resolution defines, among other things, "[p]urchasing information, including bids, proposals, and contracts," to be within the scope of the term "competitive matter." You assert that the submitted information comes within the scope of the resolution. The submitted information is not among the thirteen categories of information that section 552.133(a)(3) expressly excludes from the definition of competitive matter. Furthermore, we have no evidence that the council failed to act in good faith. *See id.* § 552.133(c). Consequently, we determine that the submitted information relates to competitive matters in accordance with the submitted resolution. Therefore, the city must withhold the submitted information pursuant to section 552.133 of the Government Code.

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](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, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/eeg

Ref: ID# 356140

Enc. Submitted documents

c: Requestor  
(w/o enclosures)