



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2009

Mr. Kipling D. Giles
Senior Counsel
Legal Services Division
CPS Energy
P.O. Box 1771
San Antonio, Texas 78296

OR2009-18050

Dear Mr. Giles:

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# 364957.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received a request for correspondence to or from two named CPS employees pertaining to a proposed nuclear plant expansion at the South Texas Project facility during a specified period of time, correspondence between a named individual and any CPS employee during a specified period of time, and any contracts, invoices, or scope-of-work documents pertaining to the named individual or his affiliates. You state some of the requested information will be released. You claim that the remaining requested information is excepted from disclosure under sections 552.103, 552.107, 552.111, and 552.133 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the

¹Although you raise section 552.101 of the Government Code in conjunction with Rule 503 of the Texas Rules of Evidence, this office has concluded that section 552.101 does not encompass discovery privileges. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). You also claim this information is protected under the attorney-client privilege based on Texas Rule of Evidence 503. In this instance, however, the information is properly addressed here under section 552.107, rather than rule 503. Open Records Decision No. 676 at 3 (2002).

requestor's representative. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 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).

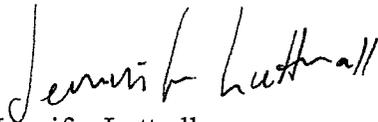
CPS is a public power utility for purposes of section 552.133. You inform us, and provide documentation showing, that the CPS Energy Board of Trustees (the "board"), as governing body of CPS, passed a resolution by vote pursuant to section 552.133 in which the board defined the information considered to be within the scope of the term "competitive matter." You assert that the submitted information comes within the scope of specified provisions within 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 board failed to act in good faith. *See id.* § 552.133(c). Upon review, we determine that the submitted information relates to

competitive matters in accordance with the submitted resolution. Therefore, CPS must withhold the submitted information pursuant to 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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 364957

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.