



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 23, 2015

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

OR2015-24533

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# 588269.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS Energy") received a request for a specified bid proposal. You claim the submitted information is excepted from disclosure under sections 552.104, 552.110, and 552.133 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of GreenStar. Accordingly, you state, and provide documentation showing, you notified GreenStar of the 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); *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 received comments from GreenStar. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). CPS Energy states it has specific marketplace interests in the information at issue because CPS Energy is "in competition with other electric energy suppliers in the wholesale power market, and could be in competition

with other utilities for electric customers in the future.” In addition, you state release of the information at issue would significantly impede CPS Energy’s chances of negotiating favorable agreements with clean energy companies. After review of the information at issue and consideration of the arguments, we find CPS Energy has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude CPS Energy may withhold the submitted information under section 552.104(a).¹

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/akg

Ref: ID# 588269

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Thomas Wright
GreenStar Products, Inc.
6900 Alamo Downs Parkway
San Antonio, Texas 78238
(w/o enclosures)

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.