



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 4, 2016

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

OR2016-17548

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# 621563.

The City Public Service Board of San Antonio d/b/a CPS Energy ("CPS Energy") received a request for information pertaining to the cost of complying with federal regulations for a specified coal-burning unit as well as information pertaining to alternative energy solutions. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.133 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Sargent & Lundy, L.L.C. ("Sargent & Lundy"). Accordingly, you state, and provide documentation showing, you notified Sargent & Lundy of the request for information and of its rights to submit arguments to this office as to why the information at issue 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 considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also considered

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

comments submitted by the requestor. *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 that is "reasonably related to a competitive matter." Gov't Code § 552.133(b). Section 552.133 provides in relevant part the following:

(a) In this section, "public power utility" means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

(a-1) For purposes of this section, "competitive matter" means a utility-related matter that is related to the public power utility's competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors. The term:

(1) means a matter that is reasonably related to the following categories of information:

(A) generation unit specific and portfolio fixed and variable costs, including forecasts of those costs, capital improvement plans for generation units, and generation unit operating characteristics and outage scheduling;

(B) bidding and pricing information for purchased power, generation and fuel, and Electric Reliability Council of Texas bids, prices, offers, and related services and strategies;

...

(E) plans, studies, proposals, and analyses for system improvements, additions, or sales, other than transmission and distribution system improvements inside the service area for which the public power utility is the sole certificated retail provider[.]

Id. § 552.133(a)-(a-1)(1)(A), (B), (E). Section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *Id.* § 552.133(a-1)(2).

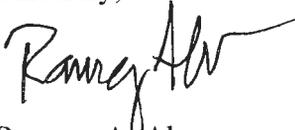
You assert CPS Energy is a municipally-owned electric utility. Thus, CPS Energy is a public power utility for purposes of section 552.133. You inform us the submitted information pertains to generation unit specific and portfolio fixed and variable costs; pricing information for purchased power, generation, and fuel; and plans for system improvements. You further explain if this information is released it would place CPS Energy at a competitive disadvantage in the wholesale energy market, as it would help others determine CPS

Energy's power generation costs and strategies. You state the information at issue is not among the fifteen categories of information expressly excluded from the definition of "competitive matter" by section 552.133(a-1)(2). Based on your representations and our review, we find the information at issue relates to competitive matters as defined by section 552.133(a-1). Thus, we conclude CPS Energy must withhold the submitted information 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.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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/som

Ref: ID# 621563

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.