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ATTORNEY GENERAL OF TEXAS

September 9, 2016

Mr. Norbert Hart
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City of San Antonio
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San Antonio, Texas 78283

Mr. Rogelio Pena
Assistant City Attorney
City of San Antonio
P.O. Box 83996
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OR2016-20345

Dear Mr. Hart and Mr. Pena:

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# 625729 (COSA File No. W128377-062216).

The City of San Antonio (the "city") received a request for specified information pertaining to the Smart Grid initiative of the city's Public Service Board d/b/a CPS Energy ("CPS"). Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of third parties. You also inform us release of the submitted information may implicate the interests of CPS. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights to submit arguments to this office as to why the submitted information should not be released.¹ *See* Gov't Code §§ 552.304 (interested party may submit comments stating why information should or should not be released), .305(d); *see also* Open Records Decision No. 542 (1990) (statutory

¹The third parties notified pursuant to section 552.305 of the Government Code are Black & Veatch Management Consulting, L.L.C.; Landis+Gyr; and Silver Springs Network.

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 CPS and Landis+Gyr. We have reviewed the submitted information and the submitted arguments. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 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 (Tex. 2015). CPS informs us it has specific marketplace interests in the information at issue because CPS is competing with other electric energy suppliers in the wholesale power market. In addition, CPS states release of the information at issue “would allow competing cities, city-owned utilities, and private utilities to offer more favorable terms to clean energy associated companies, which would harm CPS’s competitive position in future procurements of clean energy opportunities.” After review of the information at issue and consideration of the arguments, we find CPS has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the submitted information under section 552.104(a) of the Government Code. As our ruling is dispositive, we need not consider the remaining arguments against disclosure.

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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/bw

Ref: ID# 625729

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)