



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 21, 2016

Ms. Tameka Harris  
PIA Support Specialist  
Public Utility Commission of Texas  
P.O. Box 13326  
Austin, Texas 78711

OR2016-23730

Dear Ms. Harris:

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# 631236 (PUC ID No. 2016-08-005).

The Public Utility Commission (the "PUC") received a request for all filings made by a named company during a specified time period. You state you have released some information to the requestor. 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 Agera Energy LLC ("Agera").<sup>1</sup> Accordingly, you state you notified Agera 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) (interested party may submit comments stating why information should or should not be released); *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

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<sup>1</sup>We note the PUC did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nevertheless, because third-party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider whether the submitted information must be withheld under the Act based on third-party interests. *See id.* § 552.302; Open Records Decision No. 150 at 2 (1977).

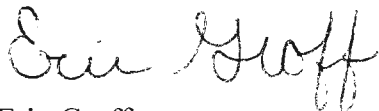
received comments from Agera. We have considered the submitted arguments and reviewed the submitted information.

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). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party’s property interest, a private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). 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.” *Id.* at 841. Agera states it has competitors. In addition, Agera states its competitors will benefit from the release of its information. After review of the information at issue and consideration of the arguments, we find Agera has established the release of its information would give advantage to a competitor or bidder. Thus, we conclude the PUC may withhold Agera’s information under section 552.104(a) of the Government Code.<sup>2</sup>

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](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,



Erin Groff  
Assistant Attorney General  
Open Records Division

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

Ref: ID# 631236

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)