



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 20, 2017

Mr. Steven C. Biedermann
City Administrator
City of Seymour
P.O. Box 31
Seymour, Texas 76380

OR2017-24052

Dear Mr. Biedermann:

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# 681759.

The City of Seymour (the "city") received a request for a specified contract with AEP Energy Partners, Inc. ("AEP"). The city claims the submitted information is excepted from disclosure under section 552.133 of the Government Code. Additionally, the city states, and provides documentation showing, it notified AEP of the request for information and of AEP's right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 AEP objecting to the release of the information at issue. We have considered the submitted arguments and reviewed the submitted information.

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:

...

(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;

(C) effective fuel and purchased power agreements and fuel transportation arrangements and contracts[.]

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

The city states it provides electric utility services and, therefore, is a public power utility subject to section 552.133. The city asserts the submitted information pertains to its competitive activity because the information includes pricing information for purchased power subject to section 552.133(a-1)(1)(B). The city informs us the information at issue constitutes a purchased power agreement subject to section 552.133(a-1)(1)(C). The city explains release of this information would give competitors an advantage. The city also asserts 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 these representations and our review, we find the submitted information relates to competitive matters as defined by section 552.133(a-1). Thus, we conclude the city must withhold the submitted information under section 552.133 of the Government Code.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

¹As our ruling is dispositive, we do not address the other arguments to withhold this information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald A. Arismendez". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/tdw

Ref: ID# 681759

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)