



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 23, 2017

Mr. Vic Ramirez
Associate General Counsel
Lower Colorado River Authority
P. O Box 220
Austin, Texas 78767-0220

OR2017-24165

Dear Mr. Ramirez:

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# 681407.

The Lower Colorado River Authority (the "authority") received a request for a specified purchase agreement. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.133 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2009-10239 (2009). In that ruling, we determined the authority must withhold the submitted information under section 552.133 of the Government Code. However, the 82nd Legislature amended section 552.133 of the Government Code in 2011 pursuant to Senate Bill 1613. *See* Act of May 24, 2011, 82nd Leg., R.S., ch. 925, § 2, 2011 Tex. Gen. Laws 2340, 2340 (codified as an amendment to Gov't Code § 552.133). Therefore, because the law on which Open Records Letter No. 2009-10239 was based has changed, the authority may no longer rely on it as a previous determination. *See* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We will, however, address your arguments against disclosure of this information.

Section 552.133 of the Government Code exempts 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;

(C) effective fuel and purchased power agreements and fuel transportation arrangements and contracts;

(D) risk management information, contracts, and strategies, including fuel hedging and storage;

(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; and

(F) customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies[.]

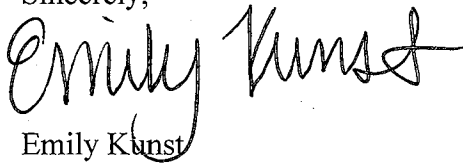
Id. § 552.133(a), (a-1)(1). Section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *Id.* § 552.133(a-1)(2).

You assert the authority is a public power utility for purposes of section 552.133. You inform us the submitted information pertains to customer billing, contract and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies information. You explain the release of the submitted information would jeopardize the authority's position in the competitive electric market and provide an advantage to its competitors. 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 the authority 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/tdw

Ref: ID# 681407

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.