



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 9, 2018

Ms. Kasey Feldman-Thomason  
General Counsel  
Public Utility Commission of Texas  
P.O. Box 13326  
Austin, Texas 78711-3326

OR2018-03160

Dear Ms. Feldman-Thomason:

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# 694528 (PUC ID# 2017-11-012).

The Public Utility Commission of Texas (the "commission") received a request for information in the Retail Electric Provider Annual Reports regarding bill payment assistance during a specified time period.<sup>1</sup> You state you have released some information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of multiple third parties. Accordingly, you state, and provide documentation showing, you notified the affected third parties of the request for information and of their right 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 received comments from Affordable Power, Gas & Electric ("Affordable"); Accent Energy Texas, LP ("Accent"); Amigo Energy ("Amigo"); Constellation New Energy ("Constellation"); ENGIE

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<sup>1</sup>We note the commission asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Resources LLC (“ENGIE”); Entrust Energy (“Entrust”); Frontier Utilities (“Frontier”); Hudson Energy (“Hudson”); Infinite Energy (“Infinite”); Just Energy (“Just”); NRG Energy, Inc. (“NRG”); Stream Energy (“Stream”); Tara Energy (“Tara”); TXU Energy Retail Company, LLC (“TXU”); VEH, LLC (“VEH”); Veteran Energy (“Veteran”); and Xoom Energy (“Xoom”).<sup>2</sup> We have considered the submitted arguments and reviewed the submitted information.

Initially, you state portions of the submitted information, which you have indicated, are not responsive to the instant request because they do not pertain to bill payment assistance. The commission need not release nonresponsive information in response to this request, and this ruling will not address that information.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the remaining third parties explaining why their information should not be released. Therefore, we have no basis to conclude these third parties have a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the commission may not withhold any of the responsive information on the basis of any proprietary interests the remaining third parties may have in it.

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). 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. Affordable, Accent, Amigo, Constellation, ENGIE, Entrust, Frontier, Hudson, Infinite, Just, NRG, Stream, Tara, TXU, VEH, Veteran, and Xoom state they have competitors. In addition, they state release of the information at issue would provide competitors with an advantage in future competitive situations and harm their market positions. After review of the information at issue and consideration of the arguments, we find Affordable, Accent, Amigo, Constellation, ENGIE, Entrust, Frontier, Hudson, Infinite, Just, NRG, Stream, Tara, TXU, VEH, Veteran, and Xoom have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the commission may withhold the entirety of the responsive information pertaining to Affordable, Accent, Amigo, Constellation, ENGIE, Entrust, Frontier, Hudson, Infinite, Just,

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<sup>2</sup>We note NRG has submitted comments on behalf of its subsidiaries: Everything Energy LLC, Green Mountain Energy Company, Reliant Energy Retail Services LLC, and US Retailers LLC.

Stream, Tara, VEH, Veteran, and Xoom and the information NRG and TXU have indicated, which we have marked, under section 552.104(a) of the Government Code.<sup>3</sup> As no further exceptions to disclosure have been raised for the remaining information, it must be released.

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,



Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/gw

Ref: ID# 694528

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: 17 Third Parties  
(w/o enclosures)

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<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.