



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 22, 2019

Mr. Adam Aldrete  
Legal Counsel  
CPS Energy  
P.O. Box 1771  
San Antonio, Texas 78296

OR2019-19842

Dear Mr. Aldrete:

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# 776341.

The City Public Service Board of San Antonio (“CPS Energy”) received a request for information pertaining to its contract with Itron, Inc. (“Itron”) for advanced metering infrastructure and distribution automation. You claim the requested information is excepted from disclosure under sections 552.101, 552.104, 552.133, and 552.139 of the Government Code. You also state release of some of the submitted information may implicate the proprietary interests Itron. Accordingly, you state, and provide documentation showing, you notified Itron of the request for information and of the right to submit arguments to this office as to why the submitted information 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 Itron. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup>We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this

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:

(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:

...

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

(E) plans, studies, proposals, and analyses for system improvements, additions, or sales, other than transmission and distribution system improvements inside the services area for which the public power utility is the sole certificated retail provider[.]

*Id.* § 552.133(a), (a-1)(D)-(E). Section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *Id.* § 552.133(a-1)(2). You state CPS Energy is a municipally-owned electric utility. Thus, CPS Energy is a public power entity for purposes of section 552.133. You assert the submitted information pertains to the public electric utility's competitive activity specifically identified by sections 552.133(a-1)(1)(D) and 552.133(a-1)(1)(E). Further, we understand 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). *See id.* Based on your representations and our review, we find the submitted information relates to competitive matters as defined by section 552.133(a-1). Thus, we conclude CPS Energy must withhold the submitted information under section 552.133 of the Government Code.<sup>2</sup>

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office.

<sup>2</sup>As our ruling is dispositive, we need not address 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](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

EMG/mo

Ref: ID# 776431

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)