



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

April 2, 2020

Mr. Jim Kachelmeyer  
Assistant City Attorney  
City of Georgetown  
P.O. Box 409  
Georgetown, Texas 78627-0409

OR2020-10163

Dear Mr. Kachelmeyer:

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# 819639 (PIR: G009518-010720).

The City of Georgetown (the "city") received a request for information pertaining to the city's contracts with renewable energy power producers. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.133 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state you notified these 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 American Electric Power Energy Partners, Inc.; Buckthorn Westex, LLC; and EDF Renewables, Inc., f/k/a EDF Renewable Energy, Inc. 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:

(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). The city states Georgetown Utility Systems provides electric utility services and is governed by the Georgetown City Council. Thus, the city is a municipally-owned public power entity for purposes of section 552.133. The city asserts the information at issue pertains to the public electric utility’s competitive activities specifically identified by sections 552.133(a-1)(1)(A)-(D). Further, the city states the submitted information 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, we find the information at issue relates to competitive matters as defined by section 552.133(a-1). Thus, the city must withhold the submitted information under section 552.133 of the Government Code.<sup>1</sup>

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<sup>1</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/gw

Ref: ID# 819639

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: 3 Third Parties  
(w/o enclosures)