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ATTORNEY GENERAL OF TEXAS

April 17, 2020

Ms. Stacey L. Cormican  
Attorney  
CPS Energy  
P.O. Box 1771  
San Antonio, Texas 78296-1771

OR2020-11255

Dear Ms. Cormican:

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# 823052.

The City Public Service Board of San Antonio (the "CPS Energy") received a request for certain information pertaining to a specified collective. CPS Energy claims the submitted information is excepted from disclosure under sections 552.104 and 552.133 of the Government Code. Additionally, CPS Energy states release of the submitted information may implicate the proprietary interests of Atwell; Binkley & Barfield; CDS Muery; Cobb Fendley; Don Durden, Inc. d/b/a Civil Engineering Consultants ("CEC"); Half & Associates, Inc.; Kimley-Horn and Associates, Inc. ("Kimley-Horn"); Magnolia River; Mears Group, Inc. ("Mears"); Mendez Engineering; Merrick; Pape Dawson Engineers ("Pape Dawson"); Phaselink; Pond; Poznecki-Camarillo; and Vickrey and Associates ("Vickrey"). Accordingly, CPS Energy states, and provides documentation showing, it notified these interested third parties of the request for information and of their right to submit arguments to this office. *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 CEC, Kimley-Horn, Mears, Pape Dawson, and Vickrey. 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:

...

(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 service area for which the public power utility is the sole certificated retail provider[.]

*Id.* § 552.133(a)-(a-1)(1)(D)-(E). We note section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *See id.* § 552.133(a-1)(2). We understand CPS Energy is a municipally-owned utility. Thus, CPS Energy is a public power entity for purposes of section 552.133. CPS Energy asserts the information at issue 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, CPS Energy states 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 upon CPS Energy’s representations and our review, we find the information at issue relates to a competitive matter as defined by section 552.133(a-1). *See id.* § 552.133(a-1)(1)(A)-(F). Accordingly, we conclude CPS Energy must withhold the submitted information under section 552.133 of the Government Code.<sup>1</sup>

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->

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

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,

Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/mo

Ref: ID# 823052

Enc. Submitted documents

c: Requestor  
(w/o enclosures)