KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 22, 2022

Ms. Marie N. Johnson
Counsel for the City of Schulenburg
Messer Fort McDonald
6371 Preston Road, Suite 200
Frisco, Texas 75034

OR2022-05291

Dear Ms. Johnson:

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# 931500 (COS ORR ID: SB120121PA).

The City of Schulenburg (the "city"), which you represent, received a request for the number of kilowatts per hour of power purchased by the city from the Lower Colorado River Authority (the "authority") during a defined period of time. Although you take no position as to whether the submitted information is excepted from disclosure under the Act, you state release of the submitted information may implicate the interests of the authority. Additionally, you state, and provide documentation showing, you notified the authority of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the authority. We have considered the submitted arguments and reviewed the submitted information.

Initially, you state, and we agree, only the portions of the submitted documents you marked are responsive to the request. This ruling does not address the public availability of the non-responsive information and the city need not release it to the requestor.

Section 552.133 of the Government Code excepts from disclosure a public power utility's information that is "reasonably related to a competitive matter." *Id.* § 552.133(b). Section 552.133 provides, in relevant part, as follows:

> (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 sixteen categories of information that are not competitive matters. *See id.* § 552.133(a-1)(2). The authority states it engages in competition in the electric utility markets and has the legislative and statutory authority to do so. Thus, the authority is a public power utility for purposes of section 552.133. The authority asserts the submitted information pertains to competitive matters specifically identified in section 552.133(a-1)(1) and the release of the information at issue would jeopardize the authority's position in the competitive electric market and provide an advantage to its competitors. Further, the authority states the information at issue is not among the sixteen categories of information expressly excluded from the definition of "competitive matter" by section 552.133(a-1)(2). Based upon the authority's

representations and our review, we find the information at issue relates to competitive matters as defined by section 552.133(a-1). Accordingly, we conclude the city must withhold the responsive 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 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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/be

Ref: ID# 931500

c: Requestor

Third Party

[1] As our ruling is dispositive, we need not address the remaining arguments against disclosure of the responsive information.