



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 6, 2022

Ms. Jasmin Augustus
Public Information Coordinator
Public Utility Commission of Texas
P.O. Box 13326
Austin, Texas 78711

OR2022-16182

Dear Ms. Augustus:

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# 949216 (PUC ID No. 2022-03-008).

The Public Utility Commission of Texas (the "commission") received a request for certain types of reports pertaining to specified entities during a stated period of time. You state the commission has released some information to the requestor. Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the information at issue may implicate the proprietary interests of unspecified third parties. Accordingly, you state, and provide documentation demonstrating, the commission notified these third parties of the request for information and of their 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 3000 Energy Corp. d/b/a Penstar Power ("Penstar"); Accent Energy Texas, LP d/b/a IGS Energy ("IGS"); Alliance Power Company, LLC ("Alliance"); Brooklet Energy Distribution ("Brooklet"); CenterPoint Energy Houston Electric, LLC ("CenterPoint"); Constellation NewEnergy, Inc. ("Constellation"); Exxon Mobil Corporation ("ExxonMobil"); Gexa Energy, LP, and Frontier Utilities, LLC (collectively, "Gexa"); Just Energy Texas, LP ("Just"); MidAmerican Energy Services, LLC ("MES"); NRG Energy, Inc. ("NRG"); Pogo Energy, LLC f/k/a Plug Energy, LLC ("Pogo"); Route 66 Wind Power, LLC ("Route 66"); South Plains Wind Energy II, LLC ("SPW"); Summer Energy, LLC ("Summer"); Vistra Corp. ("Vistra"); Volt Electricity Provider, LP ("Volt");

Windrose Power and Gas, LLC (“Windrose”); and Young Energy, LLC (“Young”). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note several third parties argue against the release of information the commission has not submitted to this office for our review. This ruling does not address information that was not submitted by the commission and is limited to the information the commission has submitted for our review.¹ *See* Gov’t Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

Next, we note several third parties assert some of the information at issue is not responsive to the present request for information. However, we also note the Act requires a governmental body to make a good-faith effort to relate a request to information the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Because the commission has submitted the information at issue for our review, we find the commission has made a good-faith effort to submit information that is responsive to the request, and we will address the arguments against disclosure of this 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* Gov’t Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any remaining third party explaining why the information at issue should not be released. Thus, we have no basis to conclude any remaining third party has a protected proprietary interest in the information at issue. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Therefore, the commission may not withhold any portion of the submitted information on the basis of any proprietary interest the remaining third parties may have in it.

IGS, Constellation, Gexa, Just, NRG, and Young raise section 552.110(b) of the Government Code for their information at issue.² Additionally, Alliance, Brooklet, Constellation, Gexa, Just, MES, NRG, Penstar, Pogo, Summer, Vistra, Volt, Windrose, and Young raise section 552.110(c) of the Government Code for their information at issue.³ Section 552.110(b) of the Government Code states, “information is [excepted from required

¹ As we are able to make this determination, we need not address the arguments against disclosure of this information.

² Although Young cites to former subsection 552.110(a) of the Government Code in its brief, we understand it to raise current subsection 552.110(b) of the Government Code based on the substance of its argument.

³ Although Alliance, Brooklet, MES, Penstar, Pogo, Summer, Volt, Windrose, and Young cite to former subsection 552.110(b) of the Government Code in their briefs, we understand them to raise current subsection 552.110(c) of the Government Code based on the substance of their arguments.

disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *See id.* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Id. § 552.110(a). Section 552.110(c) of the Government Code excepts from disclosure “commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” *Id.* § 552.110(c). Upon review, we conclude Alliance, Brooklet, Constellation, Gexa, Just, MES, NRG, Penstar, Pogo, Summer, Windrose, Vistra, Volt, and Young have demonstrated their information at issue, which we have marked and indicated, constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the commission must withhold the information we have marked and indicated under section 552.110(c) of the Government Code.⁴ Additionally, upon review, we find IGS has demonstrated its information at issue, which we have marked and indicated, constitutes trade secrets. Accordingly, the commission must withhold the information we have marked and indicated under section 552.110(b) of the Government Code.⁵

In summary, the commission must: (1) withhold the information we have marked and indicated under section 552.110(c) of the Government Code; (2) withhold the information we have marked and indicated under section 552.110(b) of the Government Code; and (3) release the remaining 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

⁴ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

⁵ As our ruling is dispositive, we need not address IGS’s remaining argument against disclosure of this information.

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/be

Ref: ID# 949216

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 18 Third Parties
(w/o enclosures)