



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 29, 2022

Ms. Stacey Cormican
Attorney
CPS Energy
500 McCullough
San Antonio, Texas 78215

OR2022-26236

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# 966527.

The City Public Service Board of San Antonio d/b/a CPS Energy ("CPS Energy") received a request for the bid tabulation pertaining to a specified request for proposals. CPS Energy claims the submitted information is excepted from disclosure under section 552.133 of the Government Code. Additionally, CPS Energy states release of the submitted information may implicate the proprietary interests of Alamo Filter Company; Joe W. Fly Company; and Next Step Industries. Accordingly, CPS Energy states, and provides documentation showing, it 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 considered the claimed exception 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[.]

Id. § 552.133(a)-(a-1)(1)(A). 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 states the information at issue pertains to the public electric utility's competitive activity specifically identified by section 552.133(a-1)(1). 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 these representations and our review, we find the submitted information relates to a competitive matter as defined by section 552.133(a-1). *See id.* § 552.133(a-1). Accordingly, we conclude CPS Energy must withhold the submitted information under section 552.133 of the Government Code.

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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/jxd

Ref: ID# 966527

c: Requestor

3 Third Parties