



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 23, 2006

Ms. Sarah Irwin Swanson  
Assistant Director of General Law  
Public Utilities Commission of Texas  
P.O. Box 13326  
Austin, Texas 78711

OR2006-00740

Dear Ms. Swanson:

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# 240675.

The Public Utility Commission of Texas (the "PUC") received a request for all correspondence between public officials, retail electric providers, and utility companies that references the electric rate discount program from September 1, 2005 to the present.<sup>1</sup> You state that the PUC has released the majority of the requested information. Although you take no position with respect to the requested information, you state that it may contain proprietary information subject to exception under the Act. Accordingly, pursuant to section 552.305, you state and provide documentation showing that you have notified interested third parties whose proprietary interests may be implicated of the request and of their opportunity to submit comments to this office.<sup>2</sup> See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits

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<sup>1</sup>The requestor has excluded email addresses and documents that have been filed in central records from this request. Therefore, any of this information within the requested documents is not responsive to the present request. This ruling does not address the public availability of the non-responsive information, and that information need not be released. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>The third parties you have notified are as follows: Direct Energy, L.P.; TXU Energy; and NECA Services.

governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Act in certain circumstances). We have reviewed the submitted information.

We note that 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 arguments for withholding the requested information from any interested third parties. Therefore, we have no basis to conclude that the release of any of the submitted information would harm the proprietary interests of any interested third party. *See, e.g.*, Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, we conclude that the PUC may not withhold any portion of the submitted information on the basis of any proprietary interest that Direct Energy, L.P., TXU Energy, and NECA Services may have in it. Because you make no arguments as to whether the information is excepted from disclosure, the PUC must release the submitted information to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll

free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Lehmann  
Assistant Attorney General  
Open Records Division

MAL/sdk

Ref: ID# 240675

Enc. Submitted documents

c: Mr. Randall Chapman  
Texas Legal Services Center  
815 Brazos, Suite 1100  
Austin, Texas 78701  
(w/o enclosures)

Mr. Robert Frank  
Direct Energy, L.P.  
12 Greenway Plaza, Suite 600  
Houston, Texas 77046  
(w/o enclosures)

Mr. Paul McKaig  
TXU Energy  
1717 Main Street, Suite 2000  
Dallas, Texas 75201  
(w/o enclosures)

Mr. Jack Donovan  
NECA Services  
80 South Jefferson Road  
Whippany, New Jersey 07981  
(w/o enclosures)