



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 13, 2008

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

OR2008-11066

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# 318849.

The Public Utility Commission of Texas (the "commission") received a request for all records relating to an emergency meeting held by the commission on May 29, 2008. You state that you will release most of the information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

During the Seventy-sixth legislative session, the Texas Legislature enacted Senate Bill 7 which introduced retail competition and customer choice to Texas. Under Chapter 39 of the Utilities Code, the Texas Legislature has found that the public interest is served by "protect[ing] the competitive process in a manner that ensures the confidentiality of competitively sensitive information during the transition to a competitive market and after the commencement of customer choice." *Id.* § 39.001(b)(4). You inform us that the Electric Reliability Council of Texas ("ERCOT") is the independent system operator established by section 39.151 of the Public Utility Regulatory Act, Title II of the Texas Utilities Code. You state that under section 39.151, ERCOT is directly responsible and accountable to the commission. *See* Util. Code § 39.151(d). You further state that the commission may require

ERCOT to provide reports and information relating to the performance of its duties. *See id.* § 39.151(d-1).

We note that pursuant to section 39.151(d) of the Utilities Code, the commission has adopted Substantive Rule section 25.362(e)(2), which provides that “[c]ommission employees, consultants, agents, and attorneys who have access to Protected Information pursuant to this section shall not disclose such information except as provided in this subsection and in accordance with the provisions of the Texas Public Information Act[.]” P.U.C. Subst. R. 25.362(e)(2); *see also* Util. Code § 39.151(d) (providing that the commission shall adopt and enforce rules related to the production and delivery of electricity among all market participants, and may delegate to an independent organization responsibilities for establishing or enforcing such rules).

Section 552.101 of the Government Code excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses information protected by other statutes. Section 1.3.1 of the ERCOT Protocols states that ERCOT or any market participant may not disclose “protected information” received from the other to “any person, corporation, or any other Entity except as specifically permitted in this Subsection and in these Protocols.” *See* ERCOT Protocols § 1.3.1. Among other things, “protected information” is characterized as follows:

[Information containing or revealing] Status of Resources including but not limited to Outages or limitations or scheduled or metered Resource data. The Protected Information status of this information shall expire if and when posted on the MIS pursuant to Section 12, Market Information System, but no later than one hundred and eighty (180) days after the applicable Operating Day.

See id. § 1.3.1.1(3). You state that the submitted e-mail correspondence “reflects a discussion relating to the status of resources and potential outages or limitations in the market.” You further state that the Protected Information status for this information has not yet expired. Based on your representations, our review of the relevant provisions, and our review of the submitted information, we agree that the information at issue must be withheld under section 552.101 in conjunction with ERCOT’s Protocols.

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 file suit in

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Bill Longley
Assistant Attorney General
Open Records Division

BL/eeg

Ref: ID# 318849

Enc. Submitted documents

c: Mr. Norman Butts
1260 Kenilwood Way, #8
Bowling Green, Kentucky 42104
(w/o enclosures)