



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 23, 2009

Mr. Vic Ramirez
Associate General Counsel
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220

OR2009-10239

Dear Mr. Ramirez:

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# 349967.

The Lower Colorado River Authority ("LCRA") received a request for eleven categories of information regarding the Sandy Creek Energy Station, including the power purchase agreement, the instrument of conveyance to LCRA of an ownership interest in the Sandy Creek Energy Station, and the participation agreement that LCRA has joined with the Sandy Creek Energy Association.¹ You state that you will release information responsive to eight categories of information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.133 of the Government Code. You also explain that the submitted information may implicate the proprietary interests of third parties. Accordingly, you have notified Brazos Sandy Creek Electric Cooperative, Inc., Sandy Creek Energy Associates, L.P. ("SCEA"), and Sandy Creek Services, LLC of this 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 § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments from SCEA. We have also considered comments submitted by the requestor. Gov't Code § 552.304 (interested party

¹LCRA states it sought and received clarification from the requestor. *See* Gov't Code § 552.222 (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Section 552.133 of the Government Code excepts from disclosure a public power utility's information related to a competitive matter. Section 552.133(b) provides:

Information or records are excepted from [required public disclosure] if the information or records are reasonably related to a competitive matter, as defined in this section. Excepted information or records include the text of any resolution of the public power utility governing body determining which issues, activities, or matters constitute competitive matters. Information or records of a municipally owned utility that are reasonably related to a competitive matter are not subject to disclosure under this chapter, whether or not, under the Utilities Code, the municipally owned utility has adopted customer choice or serves in a multiply certificated service area. This section does not limit the right of a public power utility governing body to withhold from disclosure information deemed to be within the scope of any other exception provided for in this chapter, subject to the provisions of this chapter.

Id. § 552.133(b). A "competitive matter" is defined as a matter the public power utility governing body in good faith determines by vote to be related to the public power utility's competitive activity, and the release of which would give an advantage to competitors or prospective competitors. *See id.* § 552.133(a)(3). However, section 552.133(a)(3) lists thirteen categories of information that may not be deemed competitive matters. *See id.* The attorney general may conclude that section 552.133 is inapplicable to the requested information only if, based on the information provided, the attorney general determines that the public power utility governing body has not acted in good faith in determining that the issue, matter, or activity is a competitive matter or that the information requested is not reasonably related to a competitive matter. *See id.* § 552.133(c).

We understand that LCRA is the governing body of a public power utility. You have also submitted a copy of the LCRA Board's Policy 103 and Policy 202, which delineate categories of information that the Board has, by vote as we understand, determined to be competitive matters for purposes of section 552.133. You assert that the submitted information falls within the categories of LCRA's competitive matters and therefore is protected from public disclosure under section 552.133. We have no reason to conclude that LCRA failed to act in good faith in determining this particular matter to be competitive. Furthermore, we conclude that this information is reasonably related to a competitive matter as defined by LCRA's competitive matters policy and the submitted information is not among the thirteen categories of information that section 552.133(a)(3) expressly excludes from the definition of competitive matter. *See id.* § 552.133(a)(3). Therefore, based on your representations and our review, we conclude that the submitted information is excepted from disclosure by section 552.133 of the Government Code. As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/dls

Ref: ID# 349967

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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