



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 16, 2010

Mr. Kipling D. Giles  
Senior Counsel  
Legal Services Division  
CPS Energy  
P.O. Box 1771  
San Antonio, Texas 78296

OR2010-02230

Dear Mr. Giles:

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# 370360.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received a request for all responses to the request for proposals issued by CPS for 100 megawatts of solar generated electricity and a copy of any contracts signed pursuant to the request for proposals. You claim that the requested information is excepted from disclosure under sections 552.104 and 552.133 of the Government Code. You also state that portions of the submitted information may implicate the proprietary interests of third parties. Accordingly, you state that you notified the third parties of the request for information and of their right to submit arguments to this office as to why its information should not be released.<sup>1</sup> 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

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<sup>1</sup>The interested third parties are Acciona Solar Power, Inc.; SunPower; Consolidated Solar Tech; Elements Markets, LLC; enXco Development Corporation ("enXco"); eSolar, Inc. ("eSolar"); Honeywell Building Solutions SES; Juwi Solar, Inc. ("Juwi"); Martifer Renewable Solar Thermal, LLC; MMA Renewable Ventures, LLC; NRG Energy, Inc. ("NRG"); Oak Leaf Energy Partners; Sithe Global Power, LLC; SunEdison Utility Solutions, LLC; Stirling Energy Systems, Inc. ("SES"); Premier CIRE Systems Inc.; Solar Monkey; Verdes Solaris Energy; SolarReserve, LLC ("SolarReserve"); Solar Point Partners LLC; SkyGen Solar Energy LLC; Penn Real Estate Group, Ltd.; and SolarVotaics.

third party to raise and explain applicability of exception in the Act in certain circumstances). Pursuant to section 552.305(d), we have received comments from enXco, eSolar, Juwi, NRG, SES, and SolarReserve objecting to the release of its information. 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 the requirements of Section 552.021 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.

Gov't Code § 552.133(b). Section 552.133(a)(3) defines a "competitive matter" 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) also provides thirteen categories of information that may not be deemed competitive matters. 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 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. *Id.* § 552.133(c).

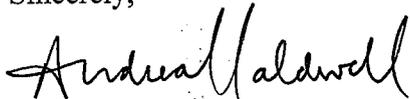
CPS is a public power utility for purposes of section 552.133. You inform us, and provide documentation showing, that the CPS Energy Board of Trustees (the "board"), as governing body of CPS, passed a resolution by vote pursuant to section 552.133 in which the board defined the information considered to be within the scope of the term "competitive matter." You assert that the submitted information comes within the scope of specified provisions within the resolution. 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. Furthermore, we have no evidence that the board failed to act in good faith. *See id.* § 552.133(c). Upon review, we determine that the submitted information relates to competitive matters in accordance with the submitted resolution. Therefore, CPS must

withhold the submitted information pursuant to 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](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, toll free at (888) 672-6787.

Sincerely,



Andrea L. Caldwell  
Assistant Attorney General  
Open Records Division

ALC/eeg

Ref: ID# 370360

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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