



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2010

Mr. Frank J. Garza
Law Offices of Davidson & Troilo, P.C.
7550 West IH-10, Suite 800
San Antonio, Texas 78229

OR2010-16094

Dear Mr. Garza:

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# 397792.

The Brownsville Public Utility Board ("BPUB"), which you represent, received a request for a copy of the executed contract between BPUB and Sempra Energy Solutions. You claim that the submitted information is excepted from disclosure under section 552.133 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.133 excepts from disclosure information held by a public power utility that is related to a competitive matter. *See* Gov't Code § 552.133(b). "Competitive matter" is defined as a matter that the public power utility governing body in good faith determines by vote to be related to the utility's competitive activity. *Id.* § 552.133(a)(3). The governing body also must determine, in like manner, that the release of the information would give an advantage to competitors or prospective competitors. *Id.* Section 552.133(a)(3) lists thirteen categories of information that may not be deemed to be competitive matters. The attorney general may conclude that section 552.133 is inapplicable to the information at issue 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. *Id.* § 552.133(c). Moreover, section 552.133(b) provides as follows:

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). You inform us that the submitted information is related to “competitive matters,” as defined in a resolution adopted by BPUB’s board of directors (the “board”) pursuant to section 552.133. You have submitted a copy of the resolution. We note 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. Moreover, we have no evidence that the board failed to act in good faith. *See id.* § 552.133(c). Therefore, based on your representations, the board’s resolution, and our review of the information at issue, we conclude that BPUB 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 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Mr. Frank J. Garza - Page 3

Ref: ID# 397792

Enc. Submitted documents

c: Requestor
(w/o enclosures)