



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 8, 2011

Mr. Rodrigo J. Figueroa
Counsel for CPS Energy
Cox Smith Matthews Inc.
112 East Pecan Street, Suite 1800
San Antonio, Texas 78205

OR2011-12965

Dear Mr. Figueroa:

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# 429227.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received two requests from different requestors for contracts and letters of intent between CPS and five named companies. You state you have released some of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.104, 552.131, 552.133, and 552.139 of the Government Code. Additionally, you state release of the remaining requested information may implicate the interests of third parties. Accordingly, you state CPS notified the third parties of the requests for information and of their right to submit arguments stating why their information should not be released.¹ See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by Consert, Summit, and Sun Edison.

¹The third parties notified pursuant to section 552.305 are: Cold Car USA; Consert Inc. ("Consert"); GreenStar Products, Inc.; Summit Texas Clean Energy, LLC ("Summit"); and Sun Edison LLC ("Sun Edison").

Section 552.104 excepts from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. This exception protects a governmental body’s interests in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the “competitive advantage” aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate that it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body’s legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body’s demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

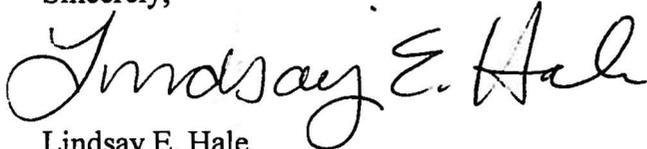
You explain that CPS is in competition with other electric energy suppliers in the wholesale power market, and clean energy and clean energy-related products and services is “a competitive sub-category of the general energy market.” Additionally, you explain the information at issue pertains to CPS entering into partnerships with companies to meet its goals regarding clean energy. You state that CPS is in competition with other electric energy suppliers in the wholesale power market, as well as in competition with other cities, to obtain partnerships with clean energy companies. Based on your representations, we find you have established CPS has legitimate marketplace interests in the purchase and sale of electricity and clean energy for the purposes of section 552.104. You argue that release of the information at issue would harm CPS’s interests in the competitive clean energy market because it would “significantly impede [CPS’s] chances of negotiating favorable agreements with clean energy companies and would give other cities . . . a competitive advantage in enticing clean energy companies to their city.” Furthermore, you argue release of the negotiation and/or agreement terms, including pricing structure, allocation of liabilities, allocation of intellectual property rights, and incentives, would undermine CPS’s ability to compete against other cities, as well as give an advantage to clean energy companies in their partnership negotiations with CPS. Based on your representations and our review, we find you have demonstrated release of the information at issue will cause specific harm to CPS’s interests as a competitor in the clean energy marketplace. Accordingly, we determine CPS may withhold the information at issue under section 552.104 of the Government Code.²

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.

²As our ruling is dispositive, we need not address your remaining arguments, or the arguments of the third parties who submitted comments, for this information.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/bs

Ref: ID# 429227

Enc. Submitted documents

c: Requestors
(w/o enclosures)

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