



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2012

Ms. Leslie Orton Haby
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2012-16322

Dear Ms. Haby:

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# 467990 (COSA File No. W009078-072312).

The City of San Antonio (the "city") received a request for any power purchase agreements for the purchase of solar energy by the City Public Service Board of the city d/b/a CPS Energy ("CPS"). You claim the submitted information is excepted from disclosure under sections 552.104 and 552.133 of the Government Code. We have considered comments submitted by CPS. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). You inform us the city has notified juwi solar Inc. ("juwi") and TX Solar I LLC ("TX Solar"), interested third parties, of the request for information and of the companies rights to submit arguments to this office as to why the requested information should not be released to the requestor. *See id.* § 552.305(d); *see also* Open Records Decision No. 542 at 3 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments submitted by juwi and TX Solar. 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 that is "reasonably related to a competitive matter." Gov't Code § 552.133(b).

The Texas Legislature recently amended section 552.133, which now provides in relevant part the following:

(a) In this section, “public power utility” means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

(a-1) For purposes of this section, “competitive matter” means a utility-related matter that is related to the public power utility’s competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors. The term:

(1) means a matter that is reasonably related to the following categories of information:

...

(B) bidding and pricing information for purchased power, generation and fuel, and Electric Reliability Council of Texas bids, prices, offers, and related services and strategies;

(C) effective fuel and purchased power agreements and fuel transportation arrangements and contracts[.]

Id. § 552.133(a)(a-1)(1)(B), (C). Section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *Id.* § 552.133(a-1)(2).

You state CPS is a city-owned utility, and CPS states it is a public power utility for purposes of section 552.133. CPS informs us the submitted information consists of an effective power purchase agreement for solar generated power and contains the agreed pricing and pricing structure for the power being purchased by CPS. CPS asserts release of the information at issue would result in competitive harm to CPS by providing its competitors with an advantage in the wholesale market and harm CPS’s ability to obtain solar energy at the best value. The information at issue is not among the fifteen categories of information expressly excluded from the definition of “competitive matter” by section 552.133(a-1)(2). Based on our review of the arguments and the submitted information, we find the submitted information relates to a competitive matter as defined under section 552.133(a-1). Thus, we conclude the city must withhold the submitted information from disclosure under section 552.133 of the Government Code.¹

¹As 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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 467990

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Lino Mendiola
Counsel for TX Solar I, L.L.C.
Andrews Kurth, L.L.P.
111 Congress Avenue, Suite 1700
Austin, Texas 78701
(w/o enclosures)

Mr. Jay T. Sonnenberg
General Counsel
juwi solar, Inc.
1805 25th Street, Suite 2054
Boulder, Colorado 80301
(w/o enclosures)

Mr. Kipling D. Giles
Senior Counsel
Legal Services Division
CPS Energy
P.O. Box 1771
San Antonio, Texas 78296
(w/o enclosures)