ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 17, 2013

Mr. William P. Chesser
Deputy City Attorney for the City of Coleman
Messer, Rockefeller & Fort, PLLC
4400 Buffalo Gap Road, Suite 2800
Abilene, Texas 79606

OR2013-12230

Dear Mr. Chesser:

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# 493450.

The City of Coleman (the "city"), which you represent, received a request for the 2007 contract with amendments between the city and American Electric Power Energy Partners, Inc. ("AEPEP"). You claim that the submitted information is excepted from disclosure under sections 552.110 and 552.133 of the Government Code. Additionally, you state the submitted information may implicate the interests of AEPEP. Accordingly, the city notified AEPEP of the request for information and of its right to submit arguments stating why its information should not be released. *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 received comments from AEPEP. We have considered the submitted arguments and reviewed the submitted information.

Initially, you state a portion of the submitted information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2013-00209 (2013) and 2013-1141 (2013). In those rulings, we held the city must withhold the information at issue under section 552.133 of the Government Code. As you do not indicate there has been any change in the law, facts, and circumstances on which the previous rulings are based, we conclude the city must rely on Open Records Letter

Nos. 2013-00209 and 2013-1141 as previous determinations and continue to withhold the information at issue in accordance with those rulings.[1] *See* Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)). However, we will address the arguments for the remaining information not subject to Open Records Letter Nos. 2013-00209 and 2013-1141.

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). Section 552.133 provides in relevant part:

> (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;
> >
> > . . .
> >
> > (F) customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies[.]

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

You state the city owns and operates a municipal electric utility system that is a public power utility subject to section 552.133. You assert the submitted information pertains to the city's competitive activity because it includes pricing information for purchased power subject to section 552.133(a-1). You explain release of this information would give competitors an advantage. You indicate, and we agree, the information at issue is not among the fifteen

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[1]As we are able to make this determination, we need not address the remaining arguments for this information.

categories of information expressly excluded from the definition of "competitive matter" by section 552.133(a-1)(2). Based on your representations and our review, we find the submitted information relates to competitive matters as defined by section 552.133(a-1). Thus, we conclude the city must withhold the submitted information under section 552.133 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.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 493450

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Sophia Chang
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1 Riverside Plaza
Columbus, Ohio 43215-2373
(w/o enclosures)

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[2]As our ruling is dispositive, we need not address the remaining arguments against disclosure.