



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 31, 2013

Mr. Frank J. Garza
Counsel for the West Texas Municipal Power Agency
Davidson, Troilo, Ream & Garza, PC
7500 West Interstate 10, Suite 800
San Antonio, Texas 78229-5815

OR2013-19051

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# 504234.

The West Texas Municipal Power Agency (the "agency"), which you represent, received a request for certain records pertaining to fuel costs, the agency's financial records, and the agency's board. You state you will release some information to the requestor. You claim 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 representative sample of information.¹

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 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.

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(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:

...

(C) effective fuel and purchased power agreements and fuel transportation arrangements and contracts;

...

(E) plans, studies, proposals, and analyses for system improvements, additions, or sales, other than transmission and distribution system improvements inside the service area for which the public power utility is the sole certificated retail provider; and

(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)(C), (E), (F). We note section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *See id.* § 552.133(a-1)(2).

We understand the agency is a municipally owned utility for purposes of section 552.133. You assert the submitted information pertains to competitive matters and seek to withhold the submitted information under section 552.133(b). 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 your representations and our review, we find the submitted information relates to a competitive matter as defined by section 552.133(a-1). *See id.* § 552.133(a-1)(1)(C), (E), (F). Thus, the agency 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.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,

A handwritten signature in black ink, appearing to read 'Nneka Kanu', with a large loop at the end.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 504234

Enc. Submitted documents

c: Requestor
(w/o enclosures)