



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 2, 2014

Mr. Jeffrey T. Ullmann  
Counsel for the City of Bartlett  
Knight & Partners  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

OR2014-09342

Dear Mr. Ullmann:

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# 524799.

The City of Bartlett (the "city"), which you represent, received two requests from different requestors for information pertaining to the city's wholesale electric supplier. You claim the submitted information is excepted from disclosure under section 552.133 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of AEP Energy Partners, Inc. ("AEP"). Accordingly, you state, and provide documentation showing, you notified AEP of the requests for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 (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 from AEP. We have reviewed the submitted information and the submitted arguments. We have also received and considered comments from one of the requestors. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.133 of the Government Code excepts from disclosure a public power utility's information that is "reasonably related to a competitive matter." *Id.* § 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:

(A) generation unit specific and portfolio fixed and variable costs, including forecasts of those costs, capital improvement plans for generation units, and generation unit operating characteristics and outage scheduling;

(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;

(D) risk management information, contracts, and strategies, including fuel hedging and storage;

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

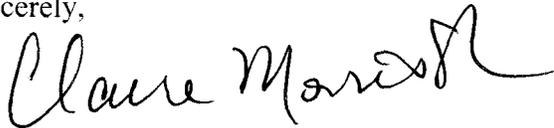
You state the city owns and operates an electric utility and distribution system that is a public power utility subject to section 552.133. You explain the city does not generate its own power, but purchases it from wholesale providers such as AEP. You assert the submitted information pertains to the city’s competitive activity, because it includes pricing information for purchased power, contract and usage information, and electric power pricing information subject to section 552.133(a-1). You explain release of this information would have a detrimental effect on the city’s competitive pricing options and the purchase of wholesale energy. You state, and we agree, 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 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.<sup>1</sup>

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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 524799

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

Ms. Alyssa J. Bowerman  
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1 Riverside Plaza  
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(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure.