

By: Ogden

S.B. No. 1613

A BILL TO BE ENTITLED

AN ACT

relating to the application of the public meetings and public information laws to public power utilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (c), Section 551.086, Government Code, is amended to read as follows:

(c) This chapter does not require a public power utility governing body to conduct an open meeting to deliberate, vote, or take final action on any competitive matter, as that term is defined by Section 552.133 ~~[in Subsection (b)(3). Before a public power utility governing body may deliberate, vote, or take final action on any competitive matter in a closed meeting, the public power utility governing body must first make a good faith determination, by majority vote of its members, that the matter is a competitive matter that satisfies the requirements of Subsection (b)(3). The vote shall be taken during the closed meeting and be included in the certified agenda or tape recording of the closed meeting. If a public power utility governing body fails to determine by that vote that the matter satisfies the requirements of Subsection (b)(3), the public power utility governing body may not deliberate or take any further action on the matter in the closed meeting]~~. This section does not limit the right of a public power utility governing body to hold a closed session under any other exception provided for in this chapter.

1 SECTION 2. Section 552.133, Government Code, is amended to
2 read as follows:

3 Sec. 552.133. EXCEPTION: PUBLIC POWER UTILITY COMPETITIVE
4 MATTERS. (a) In this section, "public[+

5 ~~[(1) "Public]~~ power utility" means an entity providing
6 electric or gas utility services that is subject to the provisions
7 of this chapter.

8 (a-1) For purposes of this section, "competitive

9 ~~[(2) "Public power utility governing body" means the~~
10 ~~board of trustees or other applicable governing body, including a~~
11 ~~city council, of a public power utility.~~

12 ~~[(3) "Competitive]~~ matter" means a utility-related
13 matter that ~~[the public power utility governing body in good faith~~
14 ~~determines by a vote under this section]~~ is related to the public
15 power utility's competitive activity, including commercial
16 information, and would, if disclosed, give advantage to competitors
17 or prospective competitors. The term:

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

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

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

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

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

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

10 (F) customer billing, contract, and usage
11 information, electric power pricing information, system load
12 characteristics, and electric power marketing analyses and
13 strategies; and

14 (2) does not [~~but may not be deemed to~~] include the
15 following categories of information:

16 (A) information relating to the provision of
17 distribution access service, including the terms and conditions of
18 the service and the rates charged for the service but not including
19 information concerning utility-related services or products that
20 are competitive;

21 (B) information relating to the provision of
22 transmission service that is required to be filed with the Public
23 Utility Commission of Texas, subject to any confidentiality
24 provided for under the rules of the commission;

25 (C) information for the distribution system
26 pertaining to reliability and continuity of service, to the extent
27 not security-sensitive, that relates to emergency management,

1 identification of critical loads such as hospitals and police,
2 records of interruption, and distribution feeder standards;

3 (D) any substantive rule or tariff of general
4 applicability regarding rates, service offerings, service
5 regulation, customer protections, or customer service adopted by
6 the public power utility as authorized by law;

7 (E) aggregate information reflecting receipts or
8 expenditures of funds of the public power utility, of the type that
9 would be included in audited financial statements;

10 (F) information relating to equal employment
11 opportunities for minority groups, as filed with local, state, or
12 federal agencies;

13 (G) information relating to the public power
14 utility's performance in contracting with minority business
15 entities;

16 (H) information relating to nuclear
17 decommissioning trust agreements, of the type required to be
18 included in audited financial statements;

19 (I) information relating to the amount and timing
20 of any transfer to an owning city's general fund;

21 (J) information relating to environmental
22 compliance as required to be filed with any local, state, or
23 national environmental authority, subject to any confidentiality
24 provided under the rules of those authorities;

25 (K) names of public officers of the public power
26 utility and the voting records of those officers for all matters
27 other than those within the scope of a competitive resolution

1 provided for by this section;

2 (L) a description of the public power utility's
3 central and field organization, including the established places at
4 which the public may obtain information, submit information and
5 requests, or obtain decisions and the identification of employees
6 from whom the public may obtain information, submit information or
7 requests, or obtain decisions; ~~[or]~~

8 (M) information identifying the general course
9 and method by which the public power utility's functions are
10 channeled and determined, including the nature and requirements of
11 all formal and informal policies and procedures;

12 (N) salaries and total compensation of all
13 employees of a public power utility; or

14 (O) information publicly released by the
15 Electric Reliability Council of Texas in accordance with a law,
16 rule, or protocol generally applicable to similarly situated market
17 participants.

18 (b) Information or records are excepted from the
19 requirements of Section 552.021 if the information or records are
20 reasonably related to a competitive matter, as defined in this
21 section. ~~[Excepted information or records include the text of any~~
22 ~~resolution of the public power utility governing body determining~~
23 ~~which issues, activities, or matters constitute competitive~~
24 ~~matters.]~~ Information or records of a municipally owned utility
25 that are reasonably related to a competitive matter are not subject
26 to disclosure under this chapter, whether or not, under the
27 Utilities Code, the municipally owned utility has adopted customer

1 choice or serves in a multiply certificated service area. This
2 section does not limit the right of a public power utility governing
3 body to withhold from disclosure information deemed to be within
4 the scope of any other exception provided for in this chapter,
5 subject to the provisions of this chapter.

6 (c) ~~[In connection with any request for an opinion of the~~
7 ~~attorney general under Section 552.301 with respect to information~~
8 ~~alleged to fall under this exception, in rendering a written~~
9 ~~opinion under Section 552.306 the attorney general shall find the~~
10 ~~requested information to be outside the scope of this exception~~
11 ~~only if the attorney general determines, based on the information~~
12 ~~provided in connection with the request:~~

13 ~~[(1) that the public power utility governing body has~~
14 ~~failed to act in good faith in making the determination that the~~
15 ~~issue, matter, or activity in question is a competitive matter, or~~

16 ~~[(2) that the information or records sought to be~~
17 ~~withheld are not reasonably related to a competitive matter.~~

18 ~~[(d)]~~ The requirement of Section 552.022 that a category of
19 information listed under Section 552.022(a) is public information
20 and not excepted from required disclosure under this chapter unless
21 expressly confidential under law does not apply to information that
22 is excepted from required disclosure under this section.

23 SECTION 3. Subdivision (3), Subsection (b), Section
24 551.086, Government Code, is repealed.

25 SECTION 4. This Act takes effect immediately if it receives
26 a vote of two-thirds of all the members elected to each house, as
27 provided by Section 39, Article III, Texas Constitution. If this

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1 Act does not receive the vote necessary for immediate effect, this

2 Act takes effect September 1, 2011.