



Control Number: 35665



Item Number: 711

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COMMISSION STAFF'S PETITION
FOR THE SELECTION OF ENTITIES
RESPONSIBLE FOR TRANSMISSION
IMPROVEMENTS NECESSARY
TO DELIVER RENEWABLE
ENERGY FROM COMPETITIVE
RENEWABLE ENERGY ZONES

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2008 OCT 24 PM 1:26
BEFORE THE

PUBLIC UTILITY COMMISSION
OF TEXAS

**CPS ENERGY'S RESPONSES TO JOINT PARTIES'
THIRD REQUESTS FOR INFORMATION**

CPS Energy¹ responds to the Joint Parties' Third Requests for Information from CPS Energy filed on October 10, 2008. These responses are timely pursuant to Order No. 19² and PUC Procedural Rule 22.144(b)(2). Parties may treat the responses as if made under oath.

As explained within each response below, CPS Energy objected to JP-CPS 3-1, JP-CPS 3-2, and JP-CPS 3-4. Counsel for CPS Energy conferred with Mark Held, counsel for Electric Transmission Texas LLC, on October 16-17, 2008, but the two attorneys were unable to resolve their differences.

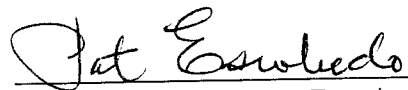
CPS Energy reserves the right to object at the time of hearing to the admissibility of the information produced.

Respectfully submitted,

CPS ENERGY
P.O. Box 1771
San Antonio, Texas 78296-1771
Telephone: (210) 353-5689
Facsimile: (210) 353-6832

¹ CPS Energy™ is the trade name of City Public Service of San Antonio, acting by and through the City Public Service Board.

² Order No. 19 Establishing Procedural Schedule (July 22, 2008).



Patricia Ana Garcia Escobedo

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CERTIFICATE OF SERVICE

I certify that a copy of this document has been sent via CREZ listserv on
October 24, 2008 to all parties of record.



JP-CPS 3-1

Please state whether the CTP Facilities will be treated as used in a private trade or business within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the "Code"). If not, please explain why not. If so, explain the legal basis for CPS's position that the CTP Facilities are eligible for financing with tax-exempt bonds. Please provide any documents that discuss, address, or relate to the issue of whether the CTP Facilities are eligible for financing with tax-exempt bonds.

RESPONSE:

CPS Energy objects to this request for information. "In general, a party may obtain discovery regarding any matter that ***is not privileged***" ³ Joint Parties request information regarding CPS Energy communications with legal counsel, and such communications are privileged.

Rule 503(b) of the Texas Rules of Evidence grants a client the privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client between the client or a representative of the client and the client's lawyer or a representative of the lawyer. ⁴ "Our rules recognize that our system of justice relies on a client's privilege to speak frankly and candidly with his or her attorney." ⁵

Because the privilege may be waived through voluntary disclosure or consent to disclosure under Texas Rule of Evidence 511, ⁶ CPS Energy does not respond to any portion of the request for information.

³ TEX. R. CIV. PROC. 192.3(a)(emphasis added).

⁴ TEX. R. EVID. 503(b)(1)(A).

⁵ *Duncan v. Bd. of Disciplinary Appeals*, 898 S.W.2d 759, 762 (Tex.1995).

⁶ TEX. R. EVID. 511 ("A person upon whom these rules confer a privilege against disclosure waives the privilege if: (1) the person or a predecessor of the person while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter unless such disclosure itself is privileged").

JP-CPS 3-2

Please state whether CPS has requested or received a preliminary opinion from nationally-recognized bond counsel with respect to the issue of whether the CTP Facilities are eligible for tax-exempt financing under Section 103 of the Code. If so, please describe that opinion. If CPS has received a preliminary opinion, please describe the opinion and provide copies of any documents that discuss, address, or relate to such opinion. If CPS has not requested a preliminary opinion, please explain why not and state whether CPS intends to obtain such an opinion.

RESPONSE:

CPS Energy objects to this request for information. "In general, a party may obtain discovery regarding any matter that ***is not privileged***"⁷ Joint Parties request information regarding CPS Energy communications with legal counsel, and such communications are privileged.

Rule 503(b) of the Texas Rules of Evidence grants a client the privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client between the client or a representative of the client and the client's lawyer or a representative of the lawyer.⁸ "Our rules recognize that our system of justice relies on a client's privilege to speak frankly and candidly with his or her attorney."⁹

Because the privilege may be waived through voluntary disclosure or consent to disclosure under Texas Rule of Evidence 511,¹⁰ CPS Energy does not respond to any portion of the request for information.

⁷ TEX. R. CIV. PROC. 192.3(a)(emphasis added).

⁸ TEX. R. EVID. 503(b)(1)(A).

⁹ *Duncan v. Bd. of Disciplinary Appeals*, 898 S.W.2d 759, 762 (Tex.1995).

¹⁰ TEX. R. EVID. 511 ("A person upon whom these rules confer a privilege against disclosure waives the privilege if: (1) the person or a predecessor of the person while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter unless such disclosure itself is privileged").

JP-CPS 3-3

Please identify all individuals, bodies or entities that authorized, approved or reviewed CPS's decision to submit the CTP Proposal on September 12, 2008.

RESPONSE:

CPS Energy responds to JP-CPS 3-3 subject to an agreement reached between counsel for CPS Energy with Mr. Mark Held, counsel for AEP and/or Electric Transmission Texas, that, by providing names in response to JP-CPS 3-3, CPS Energy does not waive any underlying privilege.

Al Lujan, CPS Energy Executive Vice President of Energy Delivery Services, recommended that CPS Energy submit the CTP Proposal on September 12, 2008.

Stephen Bartley, CPS Energy Deputy General Manager, authorized the decision to submit the CTP Proposal on September 12, 2008.

Milton Lee, CPS Energy General Manager and Chief Executive Officer, approved the decision to submit the CTP Proposal on September 12, 2008.

The CPS Energy Board of Trustees reviewed the decision to submit the CPS Energy CTP Proposal on September 12, 2008.

SPONSORING WITNESS: David L. Luschen

TITLE: Director of the Transmission and Substation Engineering Division, CPS Energy

JP-CPS 3-4

Please provide copies of all presentations, reports or communications that were made to parties listed in response to JP-CPS 3-3 in connection with those parties' authorization, approval or review of CPS's decision to submit its CTP proposal.

RESPONSE:

CPS Energy objects to this request for information. "In general, a party may obtain discovery regarding any matter that ***is not privileged***" ¹¹ Joint Parties request information regarding CPS Energy communications with legal counsel, and such communications are privileged.

Rule 503(b) of the Texas Rules of Evidence grants a client the privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client between the client or a representative of the client and the client's lawyer or a representative of the lawyer. ¹² "Our rules recognize that our system of justice relies on a client's privilege to speak frankly and candidly with his or her attorney." ¹³

Because the privilege may be waived through voluntary disclosure or consent to disclosure under Texas Rule of Evidence 511, ¹⁴ CPS Energy does not respond to any portion of the request for information.

¹¹ TEX. R. CIV. PROC. 192.3(a)(emphasis added).

¹² TEX. R. EVID. 503(b)(1)(A).

¹³ *Duncan v. Bd. of Disciplinary Appeals*, 898 S.W.2d 759, 762 (Tex.1995).

¹⁴ TEX. R. EVID. 511 ("A person upon whom these rules confer a privilege against disclosure waives the privilege if: (1) the person or a predecessor of the person while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter unless such disclosure itself is privileged").

JP-CPS 3-5

If the Commission were to award CTP facilities to CPS, please identify and describe any additional authorizations, approvals or reviews that need to be obtained before the CTP facilities can be completed as proposed in CPS's CTP proposal.

RESPONSE:

As explained in CPS Energy's September 12, 2008, CTP Proposal, if the Commission were to award CREZ facilities to CPS Energy and if CPS Energy is unable to agree with any land owner as to the cost of the easement needed for the Project, CPS Energy will request that the San Antonio City Council pass an ordinance condemning the easement property at issue.

CPS Energy also will seek authorization from the CPS Energy Board of Trustees and the San Antonio City Council to achieve the financing structure explained by CPS Energy in its responses to CPS Energy's Updated Responses to Commission Staff Questions numbers 19 and 20, filed as Highly Sensitive Protected Materials pursuant to the Protective Order in Docket No. 35665.

All bonds issued by CPS Energy require the approval of the Attorney General of Texas.

SPONSORING WITNESS: David L, Luschen; David Jungman

TITLE: Director of the Transmission and Substation Engineering Division, CPS Energy; Assistant Treasurer, CPS Energy