

July 23, 2025

**VIA ELECTRONIC FILING**

Tamara Smith - Chief  
Office of the Attorney General of Texas  
Open Records Division  
300 W. 15<sup>th</sup> Street  
Austin, TX 78701

Re: ***Open Records Request by Jennifer McCall for records related to power generation plans in Kendall and Kerr Counties***

**Request ID No. 66319558**

Dear Ms. Smith:

On July 1, 2025<sup>1</sup>, Lower Colorado River Authority (LCRA) received an open records request from Jennifer McCall for "...all plans presented to LCRA for Battery Energy Storage in Kendall and/or Kerr County for coordination and/or implementation, not in your critical infrastructure plan. What are your plans for upgrading your substations and yards among publicly known sites in both Kendall and Kerr Counties?" Ms. McCall's request is attached as **Exhibit A**. LCRA provided information on three expected projects for Battery Energy Storage Systems (BESS) in Kendall and Kerr Counties to Ms. McCall and determined that additional information responsive to the request is excepted from disclosure.

LCRA initially asserted all exceptions under the Act, including but not limited to §§ 552.101, 552.104, 552.110, 552.111 and 552.133 of the Texas Public Information Act (*the Act*), Chapter 552 of the *Texas Government Code*. After further consideration, LCRA has determined that the requested records are excepted from disclosure under certain exceptions, including but not limited to, §§ 552.101, 552.104, 552.111 and 552.133.

**Background Information**

LCRA's nonprofit corporation, LCRA Transmission Services Corporation (LCRA TSC), operates and maintains over 5,000 circuit miles of transmission lines and equipment at more than 450 substations in Texas, to provide vital links between power plants and the statewide power grid.

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<sup>1</sup> LCRA's offices were closed in observance of the Independence Day holiday on July 4; therefore, this brief is timely filed on Wednesday, July 23, the fifteenth business day from receipt of the request.

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As a Transmission Service Provider in the Electric Reliability Council of Texas (ERCOT) region, LCRA TSC must provide open, nondiscriminatory access to the transmission system to any load seeking interconnection, including BESS, as set forth in the Texas Utilities Code and ERCOT Protocols and procedures.

The exhibits listed below relate to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### **Exhibits**

**Exhibit B-1:** [REDACTED]

[REDACTED]

**Exhibit B-2:** [REDACTED]

[REDACTED]

**Exhibit B-3:** [REDACTED]

[REDACTED]

### **Exceptions**

#### **Section 552.101 – Information Requested Confidential Under Other Law**

Section 552.101 excepts information from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.

This section makes clear that the Act does not mandate the disclosure of information that other law requires be kept confidential. §552.352(a) states: “A person commits an offense if the person distributes information considered confidential under the terms of this chapter.” A violation under §552.352 is a misdemeanor constituting official

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misconduct.<sup>2</sup> In its discretion, a governmental body may release to the public information protected under the Act's exceptions to disclosure but not deemed confidential by law.<sup>3</sup> On the other hand, a governmental body has no discretion to release information deemed confidential by law.<sup>4</sup> Due to the fact that the Act prohibits the release of confidential information and because the improper release of confidential information constitutes a misdemeanor, the attorney general may raise §552.101 on behalf of a governmental body. However, the attorney general, ordinarily, will not raise other exceptions that a governmental body has failed to claim.<sup>5</sup>

By providing that all information a governmental body collects, assembles, or maintains is public unless expressly excepted from disclosure, the Act prevents a governmental body from making an enforceable promise to keep information confidential unless the governmental body is authorized by law to do so.<sup>6</sup> Thus, a governmental body may rely on its promise of confidentiality to withhold information from disclosure only if the governmental body has specific statutory authority to make such a promise. Unless a governmental body is explicitly authorized to make an enforceable promise to keep information confidential, it may not make such a promise in a contract<sup>7</sup> or a settlement agreement.<sup>8</sup> In addition, a governmental body may not pass an ordinance or rule purporting to make certain information confidential unless the governmental body is statutorily authorized to do so.<sup>9</sup>

### **Critical Infrastructure – Homeland Security**

Section 552.101 states that “[I]nformation is excepted from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 418.181, Government Code, relating to *confidentiality of certain information relating to critical infrastructure*, makes confidential documents or portions of documents if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.”

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<sup>2</sup> Gov't Code §552.352(b), (c).

<sup>3</sup> *Id.* §552.007; see *Dominguez v. Gilbert*, 48 S.W.3d 789, 793 (Tex. App. – Austin 2001, no pet.).

<sup>4</sup> See Gov't Code §552.007; *Dominguez*, 48 S.W. 3d at 793. But see discussion of informer's privilege beginning on page 76 of the 2006 Public Information Handbook.

<sup>5</sup> See Open Records Decision Nos. 445 at 3 (1987), 325 at 1 (1982).

<sup>6</sup> Attorney General Opinion H-258 at 3 (1974); see Attorney General Opinions JM-672 at 1-2 (1987), JM-37 at 2 (1983); Open Records Decision Nos. 585 at 2 (1991), 514 at 1 (1988), 55A at 2 (1975).

<sup>7</sup> See Attorney General Opinion JM-672 at 2 (1987); Open Records Decision No. 514 at 1 (1988).

<sup>8</sup> See Open Records Decision No. 114 at 1 (1975).

<sup>9</sup> See *Indus. Found v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); *Envoy Med. Sys. v. State*, 108 S.W. 3d 333,337 (Tex. App. – Austin 2003, no pet.); Open Records Decision No. 594 at 3 (1991).

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The Legislature has demonstrated its intent to protect certain critical infrastructure by adding Chapter 421, Homeland Security, and §§ 418.176–418.183, Subchapter H, Chapter 418, to the Government Code. Section 421.002(a) of the Government Code - authorizes the Governor of Texas to direct homeland security in Texas and to develop a statewide homeland security strategy that improves the state's ability to: 1) detect and deter threats to homeland security; (2) respond to homeland security emergencies; and (3) recover from homeland security emergencies.

Section 421.002(a), Government Code, states that the Governor's homeland security strategy shall coordinate homeland security activities among and between local, state, and federal agencies and the private sector and must include specific plans for... protecting critical infrastructure. Chapter 421 defines an "agency" to mean "any governmental entity." "Governmental entity" is not defined in Chapter 418. However, it does define a "Local government entity" to mean a county, incorporated city, independent school district, public junior college district, emergency services district, *other special district*, joint board, or other entity defined as a political subdivision under the laws of this state that maintains the capability to provide mutual aid. LCRA is a conservation and reclamation district that was created by the Texas Legislature in 1934 and qualifies as a special district. LCRA is a "local governmental entity" and, as such, is within the purview of the provisions of Chapters 418 and 421 of the Government Code.

Section 418.181, Government Code, *Confidentiality of Certain Information Relating to Critical Infrastructure*, states that "[T]hose documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism." The Legislature has demonstrated its intent to provide governmental bodies, such as LCRA, with protections over information and documentation that, if released, would reveal vulnerabilities of the critical infrastructure assets and the systems that the governmental body has instituted to protect those assets.

"Critical infrastructure" is defined to include all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation."<sup>10</sup> LCRA coordinates with the Governor's office and other local, state and federal agencies in protecting its critical infrastructure assets. It is necessary for LCRA to maintain alert status and take all necessary precautions to protect its critical infrastructures against those terroristic threats.

As a vital component of the power grid, BESS and their connecting transmission substations are considered critical infrastructure, designed to provide grid reliability, protection from power outages, and back-up power in emergencies. Damage or

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<sup>10</sup> Gov't Code §421.001(2).

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disruption to BESS and transmission substations could lead to a widespread power outage. In recent years there have been increased reports of physical attacks on electric substations, such as the attacks on substations in the Pacific Northwest and North Carolina in 2022 which caused large-scale power outages and severe damage to these facilities. LCRA takes protective measures to secure its critical infrastructure sites, including BESS and substation facilities, as their function is necessary to maintain continuity of the power grid and support LCRA's statutory purposes and mission critical operations, including the critical infrastructure operations of its transmission operations.

The type of information included in representative sample Exhibit B, contains and depicts [REDACTED]

[REDACTED] The release of this information would provide a person with the type of information necessary to evaluate, plan, and carry out a terrorist act or related criminal activity. The release of the requested information would allow a person to plan and carry out the disruption of electric power critical to the protection of homeland security during an emergency by allowing them to target the power grid at BESS and transmission substations. The release of this information would jeopardize the functions vital to the security, governance, public health and safety, and economy of the state. Therefore, the type of information requested and represented by Exhibit B is excepted from disclosure under § 552.101 and Chapters 421 and Chapter 418 of the Government Code, including § 418.181, Government Code.

### **Section 552.133 Exception - Competitive Electric Exception**

Section 552.133(b) of the Act states that "Information or records are excepted from the requirements of Section 552.021 if the information or records are reasonably related to a competitive matter, as defined in this section. Information or records of a municipally owned utility that are reasonably related to a competitive matter are not subject to disclosure under this chapter, whether or not, under the Utilities Code, the municipally owned utility has adopted customer choice or serves in a multiple certificated service area. This section does not limit the right of a public power utility governing body to withhold from disclosure information deemed to be within the scope of any other exception provided for in this chapter, subject to the provisions of this chapter."

A "public power utility" is defined in §552.133(a) (1) as "an entity providing electric or gas utility services that is subject to the provisions of ..." Chapter 552, Texas Government Code. Section 552.133(a-1) defines a "competitive matter" to mean "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 means a matter that is reasonably related to the following categories of information:

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(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.

The definition of “competitive matter” also includes a list of 15 categories that may not be deemed competitive matters. (See, §552.133(a-1)(2), Texas Government Code.)

The type of information requested, contained and represented in Exhibit B relates to certain categories of information included and described in § 552.133(a-1) (A, E and F) above, and is considered confidential competitive electric information. As discussed further below, the release of this information would jeopardize LCRA’s position in the competitive wholesale power and transmission services markets.

The information in Exhibit B includes



The release of the requested information would allow an LCRA competitor in the transmission services and power generation markets to obtain information that would allow it to gain a competitive advantage over LCRA in the wholesale power and transmission services market and in any negotiations with LCRA customers.

Per its enabling act, LCRA operates exclusively in a deregulated wholesale electric market, and by law, LCRA’s rates are cost-based. (Texas Special District Local Laws Code 8503.011 (c)). In order to claim the exception under §552.133, LCRA must

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demonstrate that the release of the requested information would give advantage to competitors or prospective competitors. LCRA is a governmental body, with the express authority to compete in the wholesale electric utility market. LCRA has specific marketplace interests in that market. Furthermore, the release of the requested information would result in specific harm to LCRA's marketplace interests.

## **1. LCRA Is a Governmental Body with Authority to Engage in Utility Competition.**

The Public Information Act, Chapter 552, Texas Government Code, defines a "governmental body" to mean:

- (i) a board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members;
- (ii) a county commissioner's court in the state;
- (iii) a municipal governing body in the state;
- (iv) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;
- (v) a school district board of trustees;
- (vi) a county board of school trustees;
- (vii) a county board of education;
- (viii) the governing board of a special district;
- (ix) the governing body of a nonprofit corporation organized under Chapter 67, Water Code, that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code;
- (x) a local workforce development board created under Section 2308.253;
- (xi) a nonprofit corporation that is eligible to receive funds under the federal community services block grant program and that is authorized by this state to serve a geographic area of the state; and
- (xii) the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds; and

(B) does not include the judiciary.<sup>11</sup>

LCRA is a river authority created under the authority of Article 16, §59, of the Texas Constitution. LCRA was created as a conservation and reclamation district by the Texas Legislature in 1934. Therefore, LCRA is a governmental body as defined in Chapter 552, Texas Government Code.

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<sup>11</sup> Texas Government Code. Chapter 522, § 552.003((1)(A).

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LCRA has the legislative and statutory authority to engage in competition in the electric utility markets. Pursuant to its enabling legislation, as amended<sup>12</sup>, and authority granted to the LCRA by laws other than its enabling act<sup>13</sup>, LCRA is authorized “to develop and generate water power and electric energy within the boundaries of the district and to distribute and sell water power and electric energy, within or without the boundaries of the district...” LCRA’s mix of hydroelectric, coal and natural gas generating plants provide wholesale power to about 800,000 people in more than 50 counties.

The Public Utility Regulatory Act in Chapter 31, Texas utilities Code defines an “electric utility” to mean:

... a person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Subchapter C, Chapter 184, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:

- (A) a municipal corporation;
- (B) a qualifying facility;
- (C) a power generation company;
- (D) an exempt wholesale generator;
- (E) a power marketer;
- (F) a corporation described by Section 32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;
- (G) an electric cooperative;
- (H) a retail electric provider;
- (I) this state or an agency of this state; or
- (J) a person not otherwise an electric utility who:
  - (i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;
  - (ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or

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<sup>12</sup> Lower Colorado River Authority Act of 1934, Chapter 8503, Special District Local Laws Code, as amended.

<sup>13</sup> See, Title 2, Utilities Code (the Public Utility Regulatory Act); Chapters 26, 30, 49, 51 and 152, Texas Water Code; Title 9, Chapter 1371, Government Code; Section 51.121 and Chapter 71 Natural Resources Code; Chapter 366, Health and Safety Code; and Sections 31.092 and 62.082, Parks and Wildlife Code.

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(iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Subchapter C, Chapter 184.<sup>14</sup>

As such, LCRA is an “electric utility” as defined in the Public Utility Regulatory Act. Since 1995, wholesale electricity sales have been “deregulated” and are a competitive activity. In addition to its enabling act, LCRA has a number of other powers to help fulfill its mission. However, the original intent has remained the same: to serve as a steward of the land and water resources in its 10-county statutory district and to provide the people of Texas with a reliable supply of reliable, low-cost electric power.

Based upon the facts related above: 1) LCRA is a “governmental body” as defined in Chapter 552 of the Code<sup>15</sup>; 2) LCRA has the legislative and statutory authority to engage in competition in the electric utility markets; and 3) LCRA is a “public utility” under §31.002(6) of the Texas Utilities Code.

## **2. LCRA Has Specific Electric Utility Marketplace Interests.**

As stated above, LCRA is authorized to develop and generate electric energy within its boundaries and to distribute and sell water power and electric energy, within or without the boundaries of the district. Per its enabling act, LCRA’s marketplace interests span its district boundaries and certain areas beyond its boundaries.

LCRA supplies electricity to more than a million residents who live in part or all of fifty-three counties in Central and Southeast Texas. The LCRA provides electricity through more than thirty wholesale electric customers, including twenty-nine cities and four electric cooperatives. At a minimum, LCRA’s electric utility marketplace interests cover these areas.

## **3. Possibility of Specific Harm to LCRA’s Marketplace Interests If Requested Information Is Released.**

The type of information included in representative samples in Exhibits B contains representative information relating to:

- (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;

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<sup>14</sup> Texas Utilities Code, §31.002(6) (Vernon’s 2010)

<sup>15</sup> Texas Government Code, §552.003(1) (Vernon’s 2001).

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- (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.

The type of information contained and represented in Exhibit B [REDACTED]

[REDACTED]. As discussed further below, the release of this information would jeopardize LCRA's position in the competitive electric market and provide an advantage to its competitors in that market.

LCRA's wholesale power services customers have the option to obtain some of their electricity requirements from sources other than LCRA. The release of the type of information requested would provide competitors and proposed competitors with advantageous information over LCRA in the transmission and wholesale electric utility marketplace. Specifically, [REDACTED]

[REDACTED] Therefore, the release of the type of information contained and represented in Exhibit B would provide competitors with an unfair advantage, [REDACTED]

The information included and represented in Exhibit B is not within any of the 15 categories of information that may not be deemed competitive matters, and thereby excluded from exception, under §552.133(a-1)(2)(A-O). Therefore, the type of documents and information represented and included in Exhibits B is the type of information that is protected from disclosure pursuant to § 552.133 of the Act.

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### **Section 552.104 Exception – Information Relating to Competition or Bidding**

Section 552.104 of the Act states that:

- (a) Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.
- (b) The requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under law does not apply to information that is excepted from required disclosure under this section.

LCRA believes that the type of information included and represented in Exhibit B is excepted from disclosure pursuant to the exception described in §552.104. The type of information contained and represented in Exhibit B [REDACTED]

Information and discussions reflected in Exhibit B also includes [REDACTED]

The release of the type of information included and represented in Exhibit B [REDACTED]

[REDACTED] The release of this information would jeopardize LCRA's position in the competitive electric markets and provide an advantage to its competitors in those marketplaces.

In order to claim the exception under §552.104, LCRA must be a governmental body, with the express authority to compete in a certain market, in this case, the transmission

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and wholesale electric utility power services markets. LCRA must also demonstrate that 1) it has specific marketplace interests; and 2) that there is a possibility of specific harm to these marketplace interests from the release of the requested information.<sup>16</sup>

### **1. LCRA Is a Governmental Body with Authority to Engage in Utility Competition.**

The Public Information Act, Chapter 552, Texas Government Code, defines a “governmental body” to mean:

- (i) a board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members;
- (ii) a county commissioner’s court in the state;
- (iii) a municipal governing body in the state;
- (iv) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;
- (v) a school district board of trustees;
- (vi) a county board of school trustees;
- (vii) a county board of education;
- (viii) the governing board of a special district;
- (ix) the governing body of a nonprofit corporation organized under Chapter 67, Water Code, that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code;
- (x) a local workforce development board created under Section 2308.253;
- (xi) a nonprofit corporation that is eligible to receive funds under the federal community services block grant program and that is authorized by this state to serve a geographic area of the state; and
- (xii) the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds; and

(B) does not include the judiciary.<sup>17</sup>

LCRA is a river authority created under the authority of Article 16, §59, of the Texas Constitution. LCRA was created as a conservation and reclamation district by the Texas Legislature in 1934. Therefore, LCRA is a governmental body as defined in Chapter 552, Texas Government Code.

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<sup>16</sup> See Office of the Attorney General of State of Texas 2010 Public Information Handbook, p. 87.

<sup>17</sup> Texas Government Code. Chapter 522, § 552.003((1)(A).

LCRA has the legislative and statutory authority to engage in competition in the electric utility markets. Pursuant to its enabling legislation, as amended<sup>18</sup>, and authority granted to the LCRA by laws other than its enabling act<sup>19</sup>, LCRA is authorized “to develop and generate water power and electric energy within the boundaries of the district and to distribute and sell water power and electric energy, within or without the boundaries of the district...” LCRA’s mix of hydroelectric, coal and natural gas generating plants provide wholesale power to about 800,000 people in more than 50 counties.

The Public Utility Regulatory Act in Chapter 31, Texas utilities Code defines an “**electric utility**” to mean:

... a person or river authority that owns or operates for compensation in this state equipment or facilities **to produce, generate, transmit, distribute, sell, or furnish** electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Subchapter C, Chapter 184, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:

- (A) a municipal corporation;
- (B) a qualifying facility;
- (C) a power generation company;
- (D) an exempt wholesale generator;
- (E) a power marketer;
- (F) a corporation described by Section 32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;
- (G) an electric cooperative;
- (H) a retail electric provider;
- (I) this state or an agency of this state; or
- (J) a person not otherwise an electric utility who:
  - (i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;
  - (ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or

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<sup>18</sup> Lower Colorado River Authority Act of 1934, Chapter 8503, Special District Local Laws Code, as amended.

<sup>19</sup> See, Title 2, Utilities Code (the Public Utility Regulatory Act); Chapters 26, 30, 49, 51 and 152, Texas Water Code; Title 9, Chapter 1371, Government Code; Section 51.121 and Chapter 71 Natural Resources Code; Chapter 366, Health and Safety Code; and Sections 31.092 and 62.082, Parks and Wildlife Code.

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(iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Subchapter C, Chapter 184.<sup>20</sup>

As such, LCRA is an “electric utility” as defined in the Public Utility Regulatory Act. Since 1995, wholesale electricity sales have been “deregulated” and are a competitive activity. In addition to its enabling act, LCRA has a number of other powers to help fulfill its mission. However, the original intent has remained the same: to serve as a steward of the land and water resources in its 10-county statutory district and to provide the people of Texas with a reliable supply of reliable, low-cost electric power.

Based upon the facts related above: 1) LCRA is a “governmental body” as defined in Chapter 552 of the Code<sup>21</sup>; 2) LCRA has the legislative and statutory authority to engage in competition in the electric utility markets; and 3) LCRA is a “public utility” under §31.002(6) of the Texas Utilities Code.

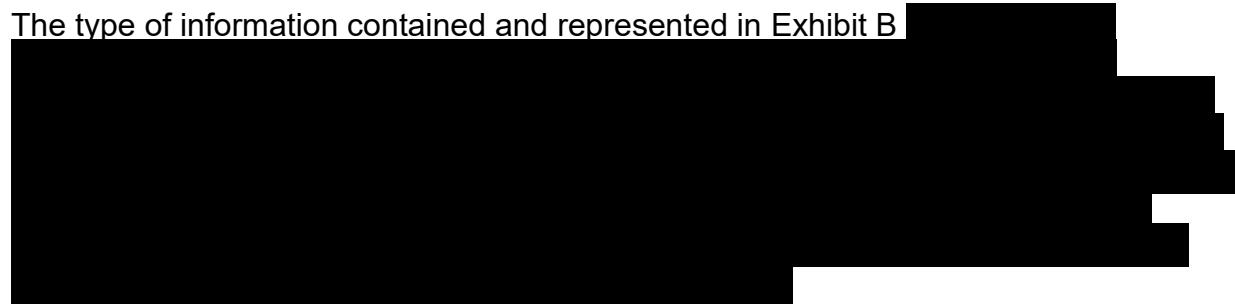
## **2. LCRA Has Specific Electric Utility Marketplace Interests.**

As stated above, LCRA is authorized to develop and generate electric energy within its boundaries and to distribute and sell water power and electric energy, within or without the boundaries of the district. Per its enabling act, LCRA’s marketplace interests span its district boundaries and certain areas beyond its boundaries.

LCRA supplies electricity to more than a million residents who live in part or all of fifty-three counties in Central and Southeast Texas. The LCRA provides electricity through more than thirty wholesale electric customers, including twenty-nine cities and four electric cooperatives. At a minimum, LCRA’s electric utility marketplace interests cover these areas.

## **3. Possibility of Specific Harm to LCRA’s Marketplace Interests If Requested Information Is Released.**

The type of information contained and represented in Exhibit B

A large rectangular area of the page is completely blacked out with a solid redaction, obscuring several paragraphs of text. There are a few small white rectangular areas where the redaction is incomplete, likely where lines of text were cut off.

<sup>20</sup> Texas Utilities Code, §31.002(6) (Vernon’s 2010)

<sup>21</sup> Texas Government Code, §552.003(1) (Vernon’s 2014).

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The information represented in Exhibit B also reflects [REDACTED] [REDACTED]. As discussed further below, the release of this information would jeopardize LCRA's position in the competitive transmission and wholesale electric utility power services markets and provide an advantage to its competitors in the marketplace.

The type of information represented in Exhibit B contains

## The release of the requested information

LCRA's wholesale power and transmission services customers have the option to obtain some of their electricity requirements from sources other than LCRA. The release of the information contained and represented in Exhibit B would [REDACTED]

Therefore, the  
information protected

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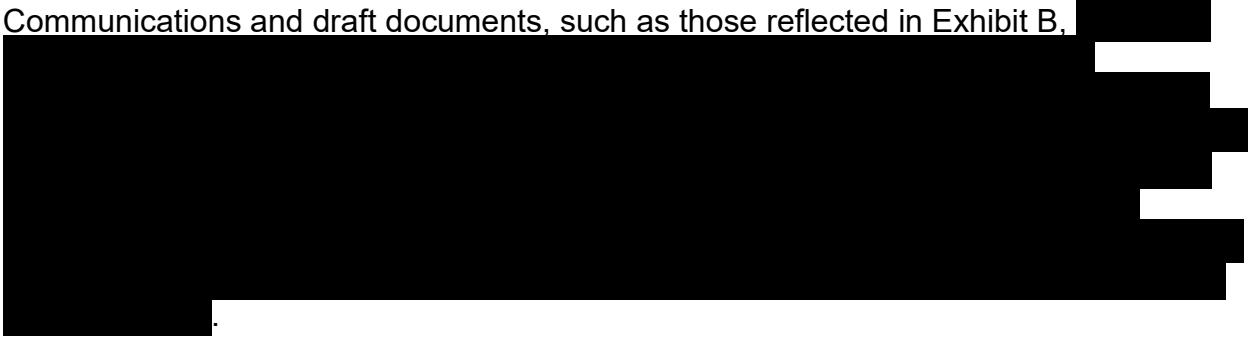
### **Section 552.111 - Inter-agency, Intra-agency Memoranda and Deliberative Processes**

Section 552.111 excepts from required public disclosure information any “interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency...” This includes the deliberative process privilege and work product privilege.

#### **A. Deliberative Process Exception**

Section 552.111 has been read to incorporate the deliberative process privilege into the Public Information Act for intraagency and interagency communications.<sup>22</sup> The deliberative process privilege, as incorporated into the Public Information Act, protects from disclosure intraagency and interagency communications consisting of advice, opinion or recommendations on policymaking matters of the governmental body at issue.<sup>23</sup> The purpose of withholding advice, opinion or recommendations under section 552.111 is “to encourage frank and open discussion within the agency in connection with its decision-making processes” pertaining to policy matters.<sup>24</sup>

Communications and draft documents, such as those reflected in Exhibit B, [REDACTED]



Section 552.111 “also protects drafts of a document that has been or will be released in final form to the public and any comments or other notations on the drafts because they

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<sup>22</sup> *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); *Lett v. Klein Indep. Sch. Dist.*, 917 S.W.2d 455, 456 (Tex. App.—Houston [14th Dist.] 1996, writ denied); *Tex. Dep’t of Pub. Safety v. d Gilbreath*, 842 S.W.2d 408, 412–13 (Tex. App.—Austin 1992, no writ); Open Records Decision No. 615 at 5 (1993).

<sup>23</sup> *City of Garland v. Dallas Morning News*, 22 S.W. 3d at 361, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152, 158 (Tex. App. – Austin 2001, no pet.); Open Records Decision No. 615 at 5 (1993).

<sup>24</sup> *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref’d n.r.e.); see also *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 361 (Tex. 2000); *Lett v. Klein Indep. Sch. Dist.*, 917 S.W.2d 455, 456, 457 (Tex. App.—Houston [14th Dist.] 1996, writ denied); *Tex. Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 412 (Tex. App.—Austin 1992, no writ).

Tamara Smith  
Chief, Open Records Division  
Jennifer McCall ORR  
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necessarily represent advice, opinion, and recommendations of the drafter as to the form and content of the final document." Exhibit B reflects and consists of [REDACTED]

[REDACTED] it is the type of documents and communications that are excepted from disclosure pursuant to § 552.111 of the Act.

Pursuant to § 552.301 of the Texas Government Code, LCRA is exercising its right to request an opinion from your office and decline to release the requested information for the purpose of requesting an Attorney General decision. Accordingly, LCRA requests your decision under §§ 552.301(a), (b) and (e) & 552.305 of the Texas Government Code.

Please do not hesitate to contact me at (512) 578-7754 if you should have any questions. Thank you for your attention to this matter.

Sincerely,

*Leah Yousefi*

Leah Yousefi  
Counsel

cc: Jennifer McCall (via email: *Jennifer.Mccall@co.kendall.tx.us*, redacted, without exhibits)