

RESOLUTION NO. _____

WHEREAS, Section 552.133 of the Texas Government Code provides an exception to the Texas Public Information Act for documents containing certain information relating to Austin Energy that the City Council determines in good faith to be "competitive" in nature, that is, would give advantage to competitors or prospective competitors, or disadvantage Austin Energy, if disclosed; and

WHEREAS, on December 1, 2005, the City Council adopted Resolution No. 20051201-002, which among other things set forth those categories of information the Council deemed competitive under Section 552.133 and also imposed certain reporting requirements upon the City Manager regarding Austin Energy; and

WHEREAS, with more than a decade having passed since the enactment of Section 552.133, the City Council now wishes to amend the list of matters it deems competitive in light of experience in the deregulated ERCOT market under the current resolution, and after receiving significant public input through a public process before the Electric Utility Commission; and

WHEREAS, the City Council strongly believes in public process and open government; and

WHEREAS, the City Council recognizes that in limited circumstances the need for the electric utility to operate in a competitive wholesale market and potential retail market requires Austin Energy to keep confidential certain information that is similarly withheld by other market participants; and

WHEREAS, the principles of open government and public disclosure require that any exceptions to these principles be allowed only to the extent necessary to accomplish the goal of maintaining the electric utility's ability to operate in a competitive manner and bring value to this community, and that any exceptions be limited in duration and mitigated to the fullest extent possible by other means of public reporting; and

WHEREAS, after appropriate deliberations, the Austin City Council, as the governing body of Austin Energy, has identified as of the present time those areas of information that it deems to be "competitive matters" under Section 552.133, as well as the potential harm to Austin Energy's competitive position and the nature of the potential advantage to existing or prospective competitors in the event information relating to such matters is required to be released upon request; and

WHEREAS, Texas Utility Code §17.005 requires the City Council to “adopt, implement, and enforce rules” that protect the entitlement of electric customers to “privacy of customer consumption and credit information” and to consumer privacy rights under the federal Fair Credit Reporting Act (15 U.S.C. §1681 et seq.); **NOW, THEREFORE,**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

1. That the City Council, in the exercise of good faith, hereby determines that the information listed on Exhibit A to this resolution constitutes “competitive matters” because they are related to present or future competitive activity of Austin Energy, and that, for the reasons including but not limited to those set out as to each matter, would, if disclosed, provide advantage to existing or prospective competitors of Austin Energy. None of the matters included in Exhibit A encompasses any of the thirteen subjects excluded from the definition of “competitive matters” under Section 552.133(a)(3). Therefore, the following information will always be made available upon written request:
 - a) information relating to the provision of distribution access service, including the terms and conditions of the service and the rates charged for the service but not including information concerning utility-related services or products that are competitive;
 - b) information relating to the provisions of transmission service that is required to be filed with the Public Utility Commission of Texas, subject to any confidentiality provided for under the rules of the commission;
 - c) information for the distribution system pertaining to reliability and continuity of service, to the extent not security-sensitive, that relates to emergency management, identification of critical loads such as hospitals and police, records of interruption, and distribution feeder standards;
 - d) any substantive rule of general applicability regarding service offerings, service regulation, customer protections, or customer service adopted by Austin Energy as authorized by law;
 - e) aggregate information reflecting receipts or expenditures of funds of Austin Energy, of the type that would be included in audited financial statements;
 - f) information relating to equal employment opportunity for minority groups, as filed with local, state, or federal agencies;

- g) information relating to Austin Energy's performance in contracting with minority business entities;
 - h) information relating to nuclear decommissioning trust agreements, of the type required to be included in audited financial statements;
 - i) information relating to the amount and timing of any transfer to the City of Austin's general fund;
 - j) information relating to environmental compliance as required to be filed with any local, state, or national environmental authority, subject to any confidentiality provided under the rules of those authorities;
 - k) names of public officers of Austin Energy and the voting records of those officers for all matters other than those within the scope of a competitive resolution provided for by this section;
 - l) a description of Austin Energy's central and field organization, including the established places at which the public may obtain information, submit information and requests, or obtain decisions and the identification of employees from whom the public may obtain information, submit information or requests, or obtain decisions; and
 - m) information identifying the general course and method by which Austin Energy's functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures.
2. That in addition, the City will also make available upon written request:
- a) salaries and perquisites for all Austin Energy personnel, including executives and key employees;
 - b) management, audit, and consulting reports, except those parts containing information related to "competitive matters"; and
 - c) information dealing with the distribution system, as well as transmission costs, transmission plans, and one line diagrams of the transmission system.
3. That consistent with the identification of such "competitive matters," the City Council declares all specified documents, or any documents containing such information, to be confidential, and authorizes the City Manager to determine which documents and other information are reasonably related to such matters and to seek to preserve their

confidentiality through the procedures provided for by the Texas Public Information Act. With the exception of customer electric consumption, credit, and personal information, the City Manager may release such documents and information on a case-by-case basis if he or she determines that the specific information requested would nonetheless not give advantage to competitors or prospective competitors if disclosed.

4. That the City Manager will provide a written report to the City Council on a quarterly basis listing all open records requests received regarding Austin Energy, including the requestor, the subject matter of the request, whether the responsive information was released, and if not, the reason for withholding the information. This report will be made available to the public through Austin Energy's website and the City Clerk's official postings. Austin Energy will also provide a contact person to assist individuals in answering questions related to their requests for information.
5. That the City Manager shall issue an annual report concerning Austin Energy that contains at a minimum the information specified in Exhibit B to this resolution. Upon issuance, the report shall be made the subject of a public hearing before the Electric Utility Commission.

ADOPTED: _____, 2010

ATTEST: _____
Shirley Gentry, City Clerk

EXHIBIT A
COMPETITIVE MATTERS

Regardless of whether it falls within a category listed in this Exhibit A, any information that is required to be filed with the Electric Reliability Council of Texas (ERCOT) or any regulatory agency shall not be deemed competitive if such information is required to be filed publicly or, if filed on a confidential basis, once such information is made public by ERCOT or such agency. If information filed with a regulatory agency is publicly available on the internet, Austin Energy shall maintain links on its website to where such information can be found.

1. Fuel, Wholesale Power, and Power Generation: Austin Energy operates within a competitive wholesale energy market as both a power generator and load serving entity. Austin Energy also conducts fuel and hedging transactions in a competitive market. As such, it competes to acquire and provide resources which may be in great demand and are often limited by location, time, available quantity, or the number of available suppliers and providers. Disclosure of the items listed below could disadvantage Austin Energy and its customers by providing competitors insights to Austin Energy's detailed operating needs, limits, costs, bid strategies, and advantages which drive strategy, procurement and sale activities. Therefore, the following categories of information are deemed to be competitive in nature:

- a. Contract terms, prices, proposals, and negotiations for fuel, including transportation and storage.
- b. Contract terms, prices, proposals, and negotiations for wholesale energy, capacity, or ancillary service purchases or sales.
- c. Market intelligence, data, research, forecasts, and strategies pertaining to future fuel and wholesale power prices, purchases, and sales, and related hedging, credits, and allowances.
- d. Quantities of fuel in storage or reserve or under contract or option to purchase.
- e. Bids and offers for the purchase or sale of wholesale power and fuel.
- f. Emissions and environmental credit or allowance transactions, positions, plans, or strategies.

- g. Fuel and power hedging instruments and transactions (including but not limited to swaps, put options, call options, swaptions, and congestion revenue rights), quantities hedged, hedging price positions, and hedging plans and strategies.
- h. Unit-specific design, operating and performance data, and production cost information, including heat rates, variable and fixed O&M costs, high and low operating limits, ramp rates, minimum up and down times, start-up costs and related information.
- i. Unit specific cost information relating to jointly-owned generation facilities, and meeting agendas and minutes for meetings between jointly-owned facility co-owners or representatives.
- j. Planned generation maintenance and outage schedules.
- k. Land acquisitions for potential power generation facilities (other than coal or nuclear based facilities).

Duration: Contracts under (a) and (b) shall cease to be deemed competitive two years after expiration or termination of the contract or five years after execution of the contract, whichever is earlier. The City Manager may override the five year limit by certifying in writing to the City Council that the particular contract remains competitive despite the passing of five years' time and providing the factual basis for such claim. Further, with respect to wholesale power contracts still in effect, the City Manager may nonetheless withhold information relating to scheduling and points of delivery which would reveal potential needs for transmission congestion hedging. Contracts for wholesale power purchases of greater duration than five years shall also be subject to the disclosure requirements set forth in Exhibit C to this resolution.

Items (c) through (i) shall cease to be deemed competitive two years after the date to which the information pertains or, in the case of transactions, two years after the date on which the transaction was settled. Forecasts and strategies, however, shall cease to be deemed competitive two years from the end of the period covered by the forecast or strategy.

2. **Customer Information:** In the event Austin Energy is opted into a competitive retail service environment, customer information is a crucial competitive asset – disclosure of such information would allow potential competitors to establish databases for the purpose of soliciting large and/or creditworthy customers while at the same time discriminating against

smaller customers or those with poor payment histories. Both outcomes would disadvantage Austin Energy in the marketplace. In addition, Austin Energy currently competes on a retail basis for non-electric services such as emergency interruptible load service, and would be disadvantaged if competitors had access to potential customer information.

The City Council further designates the following categories of information as confidential and directs the City Manager to take steps to protect such information pursuant to Texas Utility Code §17.005:

- a. All specific electric utility customer account, usage, and energy audit information, including but not limited to customer names, addresses, other personally identifying information such as driver license and social security numbers, credit and payment history, rate classification, and any other account information contained in the City customer information system or database.
- b. Electric customer consumption information.
- c. Retail electric sales and service contracts.
- d. The identity of customers participating in Austin Energy programs, including rebate, loan, and renewable energy programs.
- e. The identity and operating characteristics of customers within a specific rate class, including large commercial or "key" accounts.
- f. Non-aggregated survey or study information regarding retail customers.
- g. Questionnaire, study, or survey response information that allows a respondent to be personally identified.
- h. Retail market and customer research data from secondary sources.

Duration: Customer information identified under this resolution shall remain confidential indefinitely. Austin Energy may release anonymous residential customer information only if it is aggregated at a sample size no smaller than zip-code level, and anonymous commercial customer information only if the information sample comprises at least four customers and no single customer represents eighty percent or more of the sample in terms of consumption or revenue.

3. **Business Planning and Retail Product and Non-Electric Service Development:** Information regarding Austin Energy's plans, strategies, and costs for non-electric goods and services would give competitors valuable information regarding potential customers and

pricing, such as the ability to target customers or set prices below Austin Energy costs or undercut Austin Energy offers. Further, knowledge of Austin Energy employee development efforts could allow competitors to recruit valuable employees in which Austin Energy has made significant investment. Therefore the following information is deemed competitive:

- a. Job succession planning and strategies for employee development, including information, analyses, and assessments related to workforce development, including information contained in the Austin Energy Talent Management System. This exemption does not include employee salaries or benefits or information otherwise normally maintained in City personnel files.
- b. Primary and secondary market and customer research data relating to existing or potential retail products and services.
- c. Plans and strategies for retail product or service development.
- d. Contracts and prices for goods or services to be resold or marketed by Austin Energy on a retail basis.
- e. Retail sales and service contracts or transactions, and the identity of retail product and service customers.

Duration: Documents containing information identified under (b) shall cease to be deemed competitive after a period of four years from the date of creation. Information under (c) shall cease to be deemed competitive two years from the end of the period covered by the plan or strategy. Contracts under (d) shall cease to be deemed competitive two years after expiration or termination of the contract or five years after execution of the contract, whichever is earlier.

4. **District Cooling:** Austin Energy operates two district cooling systems without an exclusive service territory and negotiates contracts for service on an individual price basis. Disclosure of detailed cost and contract information would allow potential competitors to undercut Austin Energy's pricing and would impair Austin Energy's ability to negotiate favorable pricing with customers. Therefore the following information is deemed competitive:

- a. Contracts and pricing information for retail district cooling (chilled water) service.
- b. System-specific production cost information, including variable and fixed O&M costs.

- c. Market intelligence, research, forecasts, and strategies relating to district cooling services.

Duration: Contracts and pricing under (a) shall cease to be deemed competitive two years after expiration or termination of the contract or five years after execution of the contract, whichever is earlier. Items under (b) shall cease to be deemed competitive two years from the date to which the information pertains, and (c) shall cease to be competitive two years from the end of the period covered by the research, forecast, or strategy.

EXHIBIT B

ANNUAL REPORTING REQUIREMENTS

[UNDER DEVELOPMENT]

EXHIBIT C

LONG-TERM POWER PURCHASE DISCLOSURE REQUIREMENTS

[UNDER DEVELOPMENT]

