

Access to Customer Information: What's Permitted and What's Not

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Purpose of Presentation

- ▶ Provide an overview of laws and regulations in Texas affecting access to customer information maintained by public power companies.
- ▶ Provide a framework for analyzing customer information access issues.



Texas Provisions

- ▶ Public Utilities Regulatory Act & regulations
- ▶ Utilities Code
- ▶ Public Information Act



Public Utilities Regulatory Act

- ▶ Texas Utilities Code, §§ 39.101 and 17.001
- ▶ Public Utilities Commission of Texas (PUCT) is responsible for ensuring the protection of customer consumption and credit information
- ▶ MOUs are responsible for issuing rules to accomplish this objective

PUCT Regulations

- ▶ Rule 25.275(I) applicable to MOUs
- ▶ Customer information compiled by transmission/distribution business unit (TDBU) must be protected
- ▶ Applies only after opt-in
- ▶ Requires records of information releases under the exceptions

PUCT Regulations

▶ Allowable exceptions:

- To ERCOT
- To shared services provider
- Where authorized or requested to do so by the PUCT or by law, regulation or legal process
- To federal, state or local governmental entity or in connection with a court or administrative proceeding involving the customer or the TDBU (must seek protective order and notify customer)
- To facilitate customer choice;
- To Provider of Last Resort; and
- Upon customer request to third person prior to service termination



Texas Utilities Code

- ▶ Texas Utilities Code, §§ 182.051 et seq
- ▶ Protects personal and usage information
 - Address
 - Telephone number
 - Social Security number
 - Any information relating to the volume or units of utility usage
- ▶ Customer must request that the information not be disclosed



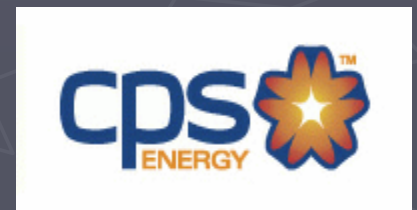
Texas Utilities Code

- ▶ Permitted exceptions for personal information:
 - Government official in official capacity
 - Utility employee for business purposes
 - Consumer reporting agency
 - Person authorized by the customer to receive information
 - Another entity providing water, wastewater, sewer, gas, garbage, electricity or drainage service for compensation



Texas Public Information Act

- ▶ Texas Government Code, chapter 552
- ▶ The Act:
 - Gives the public the right to request access to government information
 - Based on the principle that government is the servant and not the master of the people
 - Is a tool that the people can use to retain control over the instruments they have created
 - Construed liberally by the Attorney General



Texas Public Information Act

- ▶ The requestor:
 - Anybody can request information
 - A person, or his authorized representative, has a special right of access to information about himself
- ▶ The request:
 - Must be in writing
 - No magic language necessary
 - ▶ Does not have to say “Open Records Request”
 - Strict timelines associated with requesting opinions



Texas Public Information Act

► The response:

- Prohibited by law from asking why the information is being requested
- Request can be clarified
- Generally, information must be disclosed unless it is excepted by the Act



Texas Public Information Act

- ▶ The response – withholding information
 - CPS cannot withhold information on its own
 - A request for an opinion must be made within ten business days of receiving the request
 - A brief in support of the request must be made within fifteen business days
 - Failure to request an opinion presumes the information is public absent a compelling reason to withhold
 - AG generally renders an opinion within 45 days of request for opinion



Texas Public Information Act

Examples of exceptions to required disclosure:

- Public power utility competitive matters
- Social security numbers
- Commercial or Financial Information
- Credit card numbers
- Information confidential by law

Competitive Exception

- ▶ CPS Energy competitive matters resolution
 - Original resolution passed in 1999; modified in 2000, and 2005
- ▶ Identifies types of competitive information
- ▶ Information must be reasonably related to competitive matters
- ▶ Act prohibits AG from finding that the information is not competitive information unless it finds that:
 - Board failed to act in good faith; or
 - The information sought is not reasonably related to a competitive matter



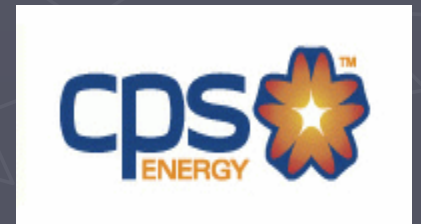
Competitive Exception

- ▶ Objective: level playing field amongst IOUs and MOUs
- ▶ MOU does not need to be in competition
- ▶ Trumps PIA's list of "super-public" information
- ▶ Provides a compelling reason to withhold



Competitive Matters

- ▶ A “Competitive Matter” is a utility-related matter that the Board in good faith determines by a vote is related to CPS Energy’s competitive activity, including commercial information, and would, if disclosed, give advantage to competitors.....



Competitive Matters

- ▶ Frequently invoked sections:
 - Fuel purchases (actual and budgeted)
 - Business unit financial statements
 - Customer information
 - Generating unit design, operating and performance data
 - Critical non-fuel procurement activities
 - Employee information
 - Contracts and proposals for shared services



Types of Protected Customer Information

- ▶ Names & addresses
- ▶ Consumption
- ▶ Bill amounts
- ▶ Average bill amounts
- ▶ Connect dates
- ▶ Disconnect dates
- ▶ Inactive meter addresses
- ▶ Facility type
- ▶ Expected usage



Sharing Information

- ▶ CPS Energy may share information with other governmental entities subject to the Act without waiving its confidentiality or competitiveness
 - Include letter or agreement regarding the confidentiality of the information
- ▶ Does not include governmental entities from other states



CPS Energy Customer Information Privacy Policy

- ▶ Customer information and proprietary information is private
- ▶ Disclosure only to:
 - Customer or authorized rep, including social services agencies;
 - CPS and agents for business;
 - Entities for whom CPS bills (limited);
 - Criminal law enforcement agents;
 - Governmental entity in connection with court or administrative proceeding involving customer or CPS; and
 - As required or authorized by law, regulation or legal process



Questions?

