



Phase 2B Workshop in Rulemaking 14-11-001

Thursday, March 29, 2018

San Francisco, CA



www.cpuc.ca.gov



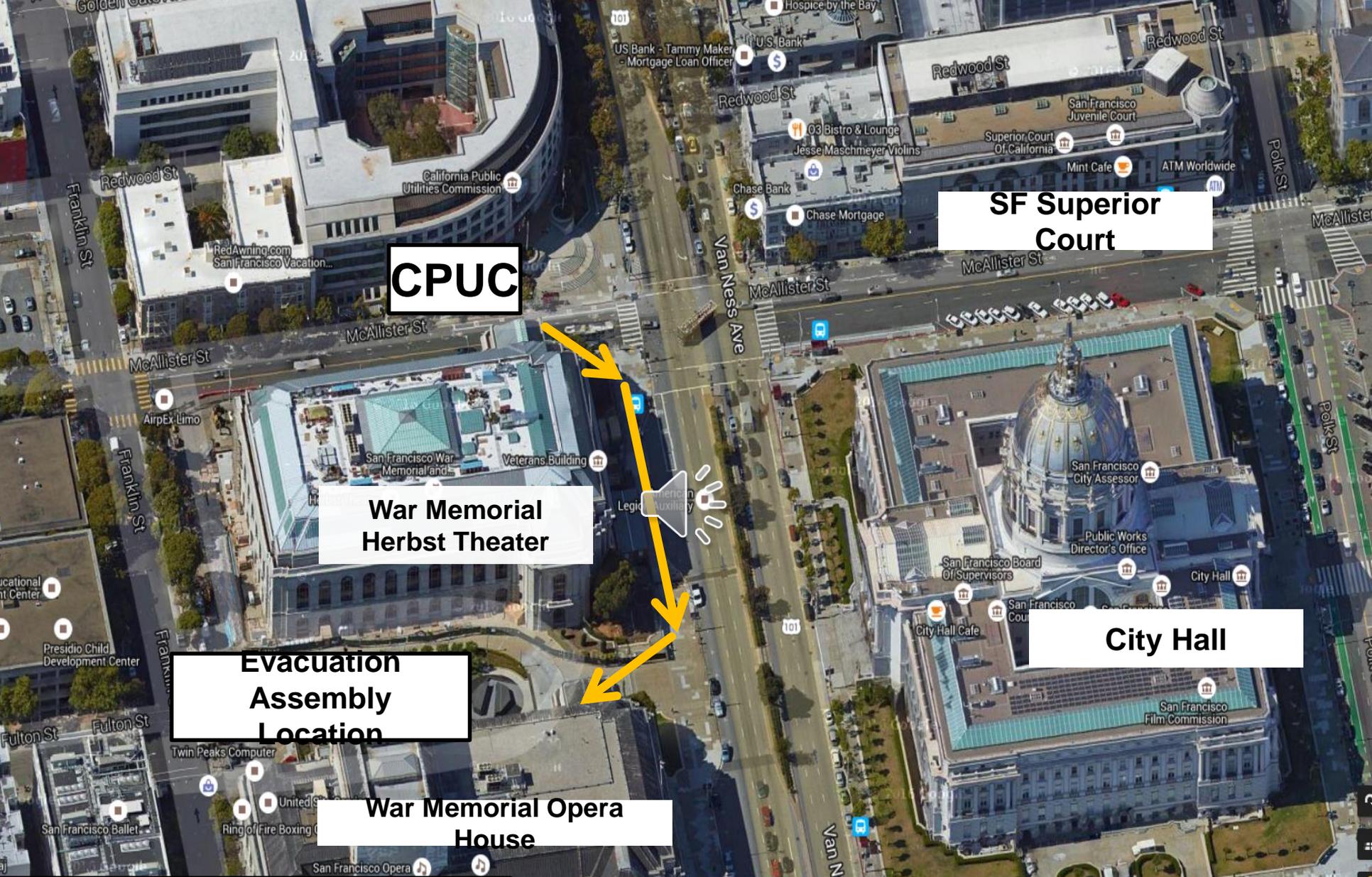


Emergency Evacuation

Safety is our number one priority:

Please listen to the emergency evacuation instructions for this location.





CPUC

**War Memorial
Herbst Theater**

**Evacuation
Assembly
Location**

**War Memorial Opera
House**

**SF Superior
Court**

City Hall





Agenda

- 1. Opening Remarks from President Picker**
- 2. Panel Discussion**
- 3. Presentation of Confidential Matrices**
- 4. Public Comment**





Opening Remarks

President Michael Picker





Panel Discussion

Panel Discussion: What types of information do different types of groups request per the California Public Records Act?

Moderator: James Wheaton – Founder and Senior Counsel, First Amendment Project (<https://www.thefirstamendment.org/>)

Panelist:

Local Government Representative: Marc Zafferano – City Attorney, City of San Bruno

(https://www.sanbruno.ca.gov/gov/city_departments/city_attorney.htm)

Community Group/Non-Profit Representative: Kimberly Pye – Attorney, Open Door Legal (<https://opendoorlegal.org/>)

Media Representative: Sammy Roth – Journalist, Desert Sun (<https://www.desertsun.com/staff/26671/sammy-roth/>) (appearance by telephone)





Presentation of Confidential Matrices

Presentations will occur in the following sequence: California Water Association, Independent Storage Providers, the TNC Working Group, Communications Industry Coalition, and Joint Energy Utilities Working group. Each matrix sponsor has 15 minutes to present and then questions from the audience will be allowed for 15 minutes. The next presentation will start immediately after unless a short break is necessary.





TNC Working Group Data Safety Recommendations

PRESENTATION BY:

LAURA BIESTO, SENIOR PUBLIC POLICY MANAGER

LYFT



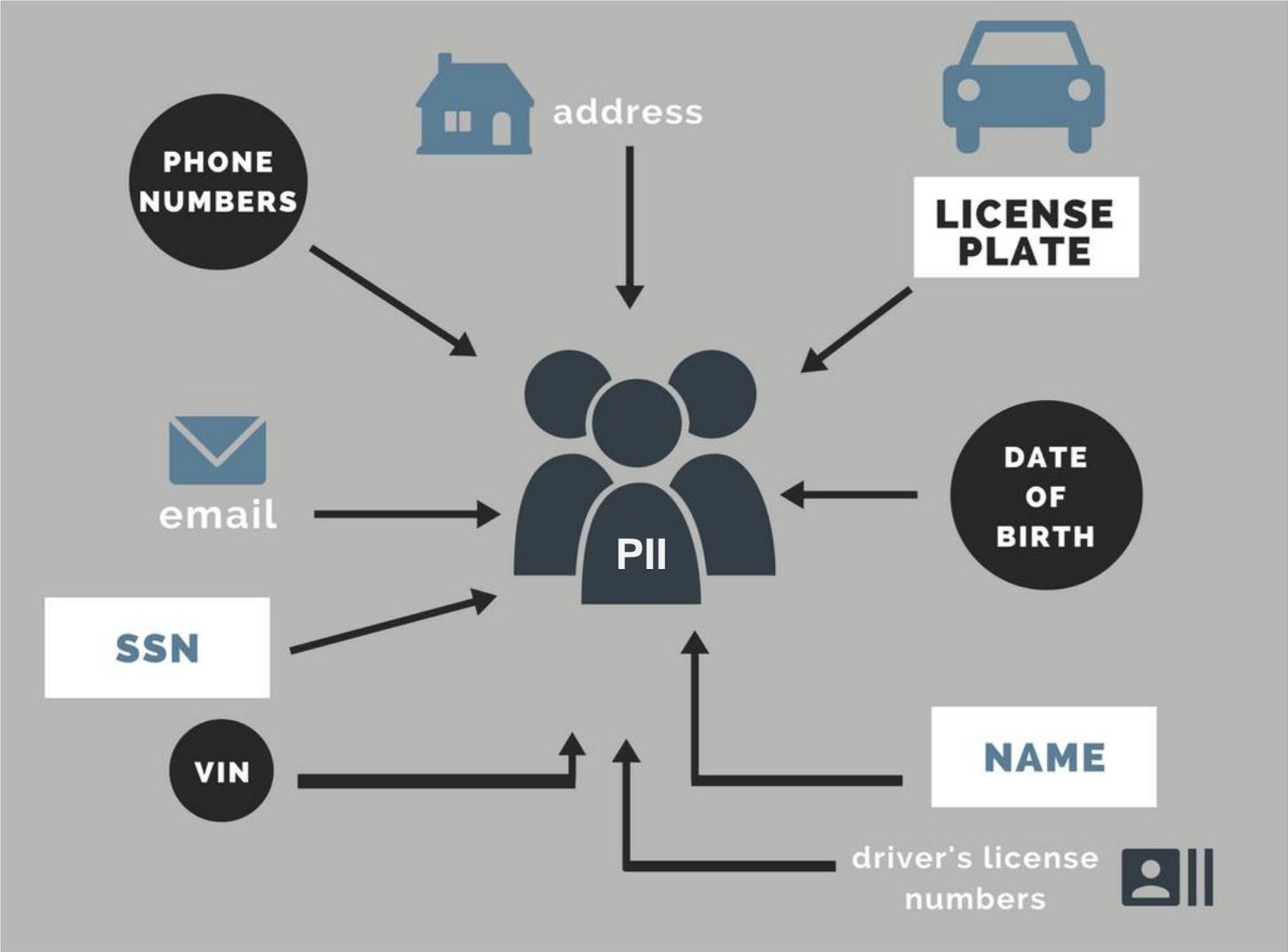
Rasier-CA, LLC





1. Protect User Information





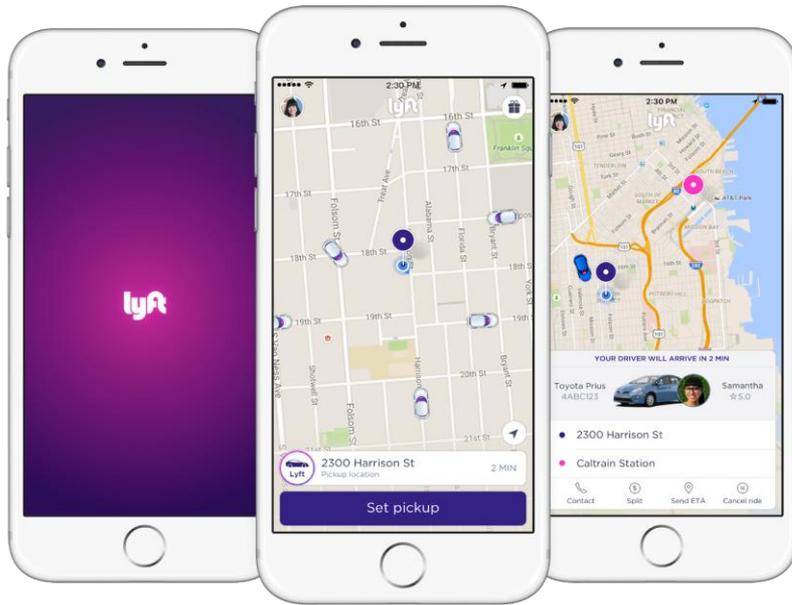


2. PII Found in Users' Files





User Files



- BACKGROUND CHECK REPORTS AND RELATED INFORMATION
- DMV DRIVING RECORD CHECK
- DRIVER TRIP HISTORY
- PASSENGER TRIP HISTORY
- PASSENGER PAYMENTS, INCENTIVES
- PASSENGER COMMUNICATIONS
- DRIVER PAYMENTS, INCENTIVES
- DRIVER COMMUNICATIONS





3. User Incident Files





4. Protect Services that Benefit Safety and Innovation





NUMBER OF USERS, DRIVERS.
PASSENGERS & VEHICLES



NONPUBLIC THIRD-PARTY AGREEMENTS



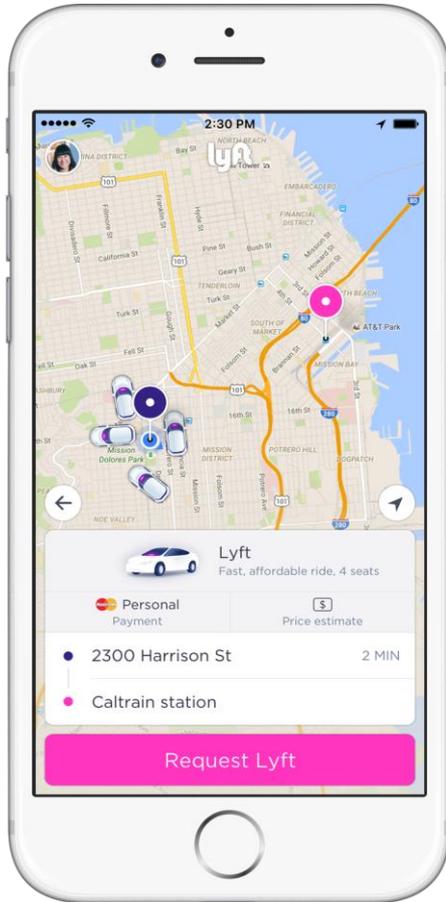
DRIVER TRAINING MATERIALS





5. Protect Competition in the Market





Trip & Location Data



DATE



TIME



LOCATION



DISTANCES



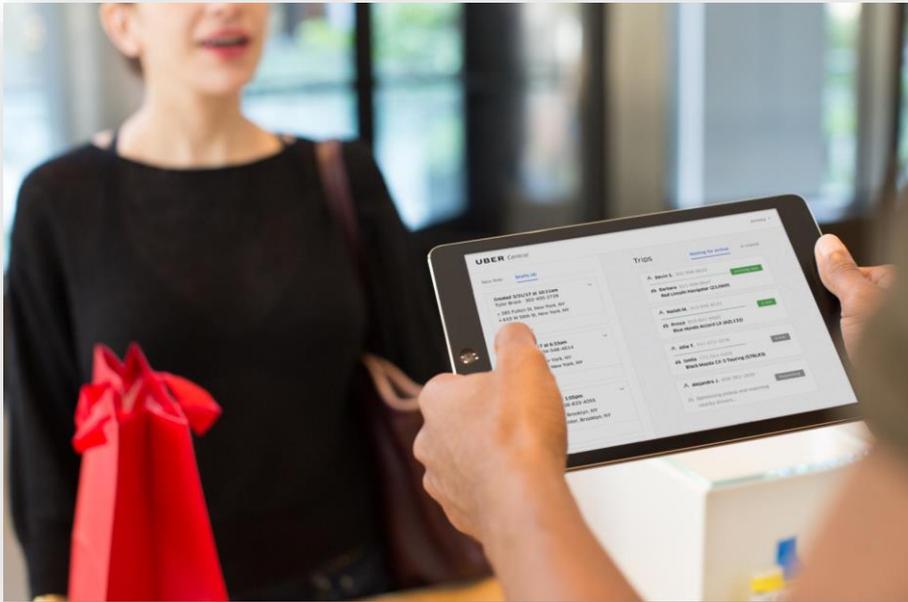
FARES

User & Vehicle Information





Proprietary Internal Processes



- MANAGING ACCIDENTS, INCIDENTS AND OTHER KEY METRICS
- NEW PRODUCT OR SERVICE OFFERINGS



Questions?

Contact: lbisesto@lyft.com





Joint Energy Utilities Working Group Presentation on Confidentiality Matrix Phase 2B Workshop

March 29, 2018



Overview

- ▶ Administrative Law Judge's (ALJ's) Ruling, dated March 8, 2018, established opportunity for review of the Joint Energy Utilities (JEU) Working Group's Proposed Confidentiality Matrix
- ▶ JEU will today review its Proposed Confidentiality Matrix, as modified to remove proposed confidential treatment of Section 315 Accident Reports
- ▶ As each topic is addressed, our presentation will address specific areas which ALJ's Ruling requested us to address



Proposed Confidentiality Matrix

Type of Information	Examples	Justification
<p>Personally identifiable information of regulated entity customers protected by Gov't. Code § 6254(c)</p>	<p>Social Security Numbers and other Government-Issued Identification Numbers such as Driver's License and Passport Numbers that are Uniquely Assigned to an Individual</p> <p>Names, addresses, and billing data</p> <p>Historic or present demand, loads, consumption data</p> <p>Medical Records</p> <p>Customer Energy Usage</p> <p>Customer Credit Ratings</p> <p>Customer Financial Information</p>	<p>Gov't Code §6254(c) (PRA expressly protects "Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy").</p> <p>Protected also under Gov't Code §§ 6254(a), (d), (k), 6254.7(d), 6255(a); Civil Code §§ 1798.21, 1798.81.5, 1798.82, 1798.85, 1798.80, 1798.89, 1798.90.1, 1798.98, 1798.99, 3426, 1798.3, 1798.24; Pub. Util. Code § 8380(d) (and associated CPUC Decisions D.11-07-056, D.12-08-045); Evid. Code § 1060; Cal. Const., art. I, § 1; and G.O. 77-M; HIPAA; HITECH</p>



Proposed Confidentiality Matrix

Type of Information	Examples	Justification
Personally Identifiable Information of Employees of Entities Subject to Commission Reporting Obligations	<p>Home address or phone number</p> <p>Social Security Numbers and other Government-Issued Identification Numbers such as Driver's License and Passport Numbers that are Uniquely Assigned to an Individual</p> <p>Education</p> <p>Financial matters</p> <p>Medical or employment history</p> <p>Statements attributed to the individual</p>	Protected under Civil Code §§ 1798.21, 1798.81.5, 1798.82, 1798.85, 1798.80, 1798.89, 1798.90.1, 1798.98, 1798.99, 3426, 1798.3, 1798.24; Evid. Code § 1060; Cal. Const., art. I, § 1; and G.O. 77-M; HIPAA; HITECH
Investigations of regulated entities covered by Gov't. Code § 6254(f)		Gov't. Code § 6254(f)



Proposed Confidentiality Matrix

Type of Information	Examples	Justification
Critical Energy Infrastructure and Cyber- and Physical- Security Sensitive Information	<p>Critical Energy Infrastructure Information (CEII), including without limitation CEII as defined by the regulations of the Federal Energy Regulatory Commission at 18 CFR § 388.113</p> <p>Cybersecurity Information</p> <p>Sensitive Security Information (SSI)</p> <p>NERC Critical Infrastructure Protection (CIP) Information</p> <p>Physical facility information</p> <p>Electric Facility information</p> <p>Gas facility information</p> <p>Nuclear facility information</p> <p>Cyber facility and system information, including encryption software/systems</p>	<p>Protected under Gov't Code §§ 6254(e), 6255(a); 6 U.S.C. § 131(5); 68 Fed. Reg. 9862 (Dep't of Energy Mar. 3, 2003) (final rule)</p> <p><u>CEII</u> 18 CFR §388.113(c); FERC Orders 630, 643, 649, 662, 683, and 702 (defining CEII)</p> <p><u>Critical Infrastructure Information</u> Gov't Code §§ 6254 (k), (ab) ("Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the Office of Emergency Services for use by that office"); 6 U.S.C. §§131(3) , 6 CFR § 29.2(b); 6 U.S.C. § 133(a)(1)(E), 6 CFR § 29.8 (defining CII and restricting its disclosure)</p> <p><u>Critical Electric Infrastructure Information</u> <i>Pub. L. 114-94</i> (FAST Act - Critical Electric Infrastructure Security) Amended December 4, 2015</p> <p><u>Sensitive Security Information</u> 49 CFR §§1520.5, 1520.9 (defining SSI and restricting its disclosure)</p> <p><u>NERC CIP Regulations</u></p> <p><u>Electric Facility Information</u></p> <p><u>Gas Facility Information</u> 6 USC 131-134; FERC Order 630; 49 CFR §§ 1520.5, 1520.9; Freedom of Information Act (FOIA) 5 USC 552(b)(4)</p> <p><u>Nuclear Facility Information</u> 10 CFR 810; 10 CFR 37; 10 CFR 2.390</p> <p><u>Cyber Facility and Security Information</u></p>



Proposed Confidentiality Matrix

- ▶ Types of Industry-specific infrastructure is discussed in detail in our proposed matrix
- ▶ Infrastructure visible to the public should be protected, as needed
 - ▶ Operating parameters and specific vulnerabilities of infrastructure visible to the public is not clear merely by looking at the infrastructure item and should be protected
- ▶ 6 U.S.C.A Section 131(3) defines Critical Infrastructure as “information not customarily in the public domain and related to the security of critical infrastructure or protected systems”
 - ▶ Even in the era of Google Earth, addresses and other locational information of critical infrastructure are not customarily in the public domain
 - ▶ While you might be able to see the site through Google Earth, the type of facility (*i.e.*, whether a line is for telecommunications, electricity, or cable) is not in the public domain and should not be made public



Proposed Confidentiality Matrix

Type of Information	Examples	Justification
Corporate, Financial and Proprietary Records, Trade Secrets, Intellectual Property, Non-public Material Financial Information Prohibited from Disclosure under Securities Laws and Other Proprietary or Competitive Sensitive Information	Business Plans Board Minutes Tax Returns Non-Public Company Financial Information Competitive Data (e.g., noncore competitive load growth opportunities, competitive gas acquisition information, pricing forecasts, supply and demand forecasts, and hedging policies) Benchmarking studies Non-public transmission information/ FERC Restricted Information Non-D.06-06-066 Market Sensitive Procurement Information Market Sensitive documents related to non-tariffed products See also documents listed under Third-Party Documents, slide 12	Protected under Gov't Code §§ 6254(e), (i), (k); 6254.7(d); 6254.15; 6255(a); 6276.44, Evid. Code § 1060, and Civil Code § 3426; SEC Rule 10b-5



Proposed Confidentiality Matrix

Type of Information	Examples	Justification
Privileged Attorney-Client Communications, Attorney Work Product, and Pending Litigation Information	<p>Claims Reports associated with Utility Incident Reports</p> <p>Claims Reserve Information</p> <p>Information Related to Potential or Pending Litigation or Investigations</p>	<p>Gov't Code §6254(k) (PRA expressly protects "Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege")</p> <p>Gov't Code §6276.04 ("Attorney-client confidential communication")</p> <p>Gov't Code §6276.04 ("Attorney work product")</p> <p>Code Civ. Proc. §§ 2018.010 <i>et seq.</i>; Evid. Code §§ 950 <i>et seq.</i></p>
Third Party Documents, including Vendor Bid and Pricing Information and Vendor Proprietary Information including Trade Secrets, Copyrighted and Other Intellectual Property	<p>Documents provided to utilities subject to non-disclosure or confidentiality agreements</p> <p>Contracts between the utility and third party vendors that contain confidentiality clauses</p> <p>Vendor bid and pricing information (including rates and invoices)</p> <p>Customer and vendor proprietary information</p> <p>Copyright materials obtained by the utility pursuant to license or other agreement</p>	<p><i>See</i> Gov't Code §§ 6254(k), 6255(a); <i>see, e.g.</i>, D.11-01-036.</p> <p><i>See, e.g.</i>, D.09-08-018, 2011 WL 660568 (2011) (agreeing that confidential prices and contract terms specifically negotiated with a program vendor is proprietary and commercially sensitive and should remain confidential).</p>



Proposed Confidentiality Matrix

- ▶ Attorney/client communications are privileged and confidential (unless the privilege is or has been intentionally waived).
- ▶ Preservation of privilege allows for timely disclosure to regulators without the prejudicial impact to the discloser.
 - ▶ Types of information:
 - ▶ Information related to potential or pending litigation/investigations
 - ▶ Claims reserve information
 - ▶ Claims investigation reports
- ▶ Legal support
 - ▶ Gov't Code § 6254(k)
 - ▶ Gov't Code § 6276.04
 - ▶ Code Civ. Proc. § 2018.010 et seq.
 - ▶ Cal. Evid. Code § 954
 - ▶ Cal. Evid. Code § 912



Proposed Confidentiality Matrix

- ▶ Invoices, quotes and pricing information are sensitive information
- ▶ Investor Owned Utilities (IOUs) are large, creditworthy entities that have the advantage of being reliable business partners
- ▶ If invoices, quotes, and pricing information provided to the IOUs become public, suppliers will offer prices that they would offer any buyer, not just the most reliable business partner
 - ▶ This will increase costs of goods and services to IOUs and result in less favorable terms and conditions
 - ▶ Ratepayers, who ultimately pay for the IOUs' operating costs, will pay for these cost increases



Competitive Disadvantage

- ▶ Is an analysis of a competitive disadvantage confidentiality claim different for regulated entities, which do not have a monopoly, and participate in a competitive marketplace?
 - ▶ As set forth in the matrix, general “competitive disadvantage” is not a category by itself, so these issues are not relevant to our matrix:
 - ▶ A-6: “Competitive Data (e.g., noncore competitive load growth opportunities, competitive gas acquisition information, commodity pricing forecasts, supply and demand forecasts, hedging policies, trade processes, material specifications, energy efficiency incentives)”
 - ▶ Proprietary Records, Trade Secrets, Intellectual Property, Non-public Material Financial Information Prohibited from Disclosure, Other Proprietary Information
 - ▶ (Still must qualify as confidential under applicable statute)

Voluminous Documents

- ▶ Purpose of proposal
 - ▶ 10-day turnaround for most data requests
 - ▶ Certain utility business divisions get substantial, regular requests for large documents
 - ▶ Most will never be subject of CPRA request
 - ▶ Streamline process





Voluminous Documents

▶ Examples

▶ SDG&E Custom Measure & Project Archive (CMPA) Selection

- ▶ Information provided to Energy Division for EE programs with projects that claim custom energy savings; includes project information such as usage, incentives, savings, invoices
- ▶ Just one response included one excel file with 9 tabs each with up to 358 lines
 - ↳ 5 subject matter experts, 13 hours (just for highlighting, declaration, review)

▶ SDG&E EE 2016 Audit Data Request

- ▶ 7 binders (financial information such as purchase orders, invoices, contracts, journal entries, labor costs)
 - ↳ 5 subject matter experts, 85 hours

▶ Total time on process in SDG&E's Customer Programs Group 1/8/18 - 3/12/18

- ▶ 12 employees, approximately 370 hours

▶ PG&E Capital Additions Audit

- ▶ 114 documents/files containing 2,131 pages of which 1,527 pages contained confidential information



Voluminous Documents

▶ Proposed Criteria / Procedure

1. Commission Staff must agree
2. Describe the categories of confidential information
3. Provide a sample of each category of confidential information
4. Specify that utility has applied process in the accompanying declaration or motion
5. Should the information be the subject of a future CPRA request, the Commission will require the information submitter to follow the standard approach to specifically marking each item



Questions?



Public Comment

- Each speaker has up to 3 minutes to speak.
- A bell will ring when time has expired.

