

In Support of Protecting Critical Electric Infrastructure Information from Public Disclosure

1 The Federal Energy Regulatory Commission (FERC) and Department of Energy (DOE) routinely
2 generate or receive from the electric power industry sensitive but unclassified electric sector information
3 that, if publicly disclosed, could be used by bad actors to threaten the security and reliability of the
4 electric sector and the country. In addition, as units of state and local governments, public power utilities
5 are often subject to broad state open records laws that may require them, upon request, to release sensitive
6 electric sector information.

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8 Recognizing the importance of protecting such sensitive information from public disclosure, Congress in
9 the Section 61003 of the 2015 FAST Act (P.L. 114-94) defined the terms critical electric infrastructure
10 (CEI), critical electric infrastructure information (CEII), and defense critical electric infrastructure
11 (DCEI) and prohibited the disclosure of CEII under federal, state, and local open records laws. The
12 FAST Act directed FERC, after consultation with DOE, to promulgate regulations necessary to “(A)
13 establish criteria and procedures to designate information as critical electric infrastructure information;
14 [and] (B) prohibit the unauthorized disclosure of critical electric infrastructure information.” The law
15 specifies that information designated as CEII may not be designated as such for longer than five years,
16 unless specifically re-designated by FERC or DOE.

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18 FERC issued a final rule to implement the provisions of Section 61003 on November 17, 2016. DOE
19 issued a Notice of Proposed Rulemaking on October 29, 2018, to establish procedures for the designation
20 of CEII; a final rule has not yet been issued. Both the rulemakings and the relevant provisions of the
21 FAST Act leave potential gaps in the framework for protecting CEII from inappropriate disclosure. Some
22 stakeholders are concerned that the implicit inclusion of cybersecurity systems and assets in the
23 definitions of CEI and DCEI should be made explicit. Stakeholders are also concerned that DOE’s
24 authority to promulgate its own regulations to designate CEII is not clear. Finally, protecting CEII from
25 disclosure for a period of five years is inadequate for an industry that regularly invests in systems and
26 assets that have a life span of decades. While FERC or DOE can redesignate information as CEII after
27 five years, there is an unacceptable risk that sensitive information will be disclosed by default.

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29 To protect against such disclosure, congressional action is needed that directs FERC and DOE to
30 strengthen CEII disclosure protections.

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32 **NOW, THEREFORE, LET IT BE RESOLVED:** That the American Public Power Association
33 (APPA) urges Congress to amend the definitions of critical electric infrastructure (CEI) and defense
34 critical electric infrastructure (DCEI) in the FAST Act to explicitly include cybersecurity measures and
35 assets; and

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37 **BE IT FURTHER RESOLVED:** That APPA urges Congress to give the Department of Energy (DOE)
38 clearer authority to promulgate its own rules to designate critical electric infrastructure information
39 (CEII); and

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41 **BE IT FURTHER RESOLVED:** That APPA urges Congress to amend the FAST Act to make it clear
42 that CEII submitted to the Federal Energy Regulatory Commission (FERC) or DOE must be treated as
43 such even if FERC or DOE does not immediately designate the information as CEII; and

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45 **BE IT FURTHER RESOLVED:** That APPA urges Congress to amend the FAST Act to protect CEII
46 for a period longer than five years.