

NOTICE REGARDING SECTION V.8 OF THE PEAK RELIABILITY UNIVERSAL DATA SHARING AGREEMENT

February 27, 2017

Attn: Peak UDSA Parties:

Prior to finalizing the Peak Universal Data Sharing Agreement (“UDSA”), the Fixing America’s Surface Transportation Act (“FAST Act”) was signed into law requiring, among other things, that the Federal Energy Regulatory Commission (“FERC”) issue rules related to Critical Electric Infrastructure Information (“CEII”) security. Among the FAST Act requirements and issues that the rules would address was penalizing United State Department of Energy (“USDOE”) employees who inappropriately release CEII. Largely due to the risk this presented to USDOE employees, especially including Bonneville Power Administration and Western Area Power Administration, the third party data sharing process originally drafted into the UDSA was removed and Section V.8 was added which reads as follows.

“Within 30 days of the effective date of a final rule on the designation and sharing of Critical Electric Infrastructure Security by FERC under section 215A(d)(2) of the Federal Power Act, Parties will engage in review of the Agreement and the previously adopted Exhibit A Peak Data Sharing Review Process to address how Peak will share data with third parties for the purpose of understanding, analyzing, reporting, or improving the operation of the BES, electric reliability, and related equipment and control systems. Parties will negotiate in good faith to create a data sharing review process, and any associated data categorization table for such data, to govern the sharing of Covered Data with third parties under this Agreement, in a manner that is consistent with the requirements of the final FERC rule.”

In December of 2016, FERC’s final rules in response to its FAST Act obligation were published in the Federal Register. Applying the sixty day effectivity delay, FERC’s rules will go into effect on February 20, 2017. From February 20, 2017, the UDSA Parties have thirty days to “engage in review of the Agreement” which would be on or before March 22, 2017.

Generally, FERC’s rules did not explicitly address the subject matter of UDSA Section V.8. That is, FERC’s rules do NOT provide any safe harbor that USDOE employees could employ to mitigate the risk they may face if they are determined to have inappropriately shared CEII. In fact, FERC’s Order specifically noted that the Commission’s rule does not address data sharing among industry groups or otherwise

and implies that existing data sharing practices among industry groups appear to be effective.¹ Similarly, the USDOE has not published notice of any specific rulemaking that would provide a safe harbor to its employees. Given no statutory or rule based safe harbor for USDOE employees to use, it appears that the risk present when the FAST Act was signed into law still remains. Indeed, informal discussions with BPA and WAPA representatives have indicated that the respective entities remain very concerned about this the risk this represents to them and their employees.

The UDSA itself does not go into detail as to what would constitute “review” of the previously considered Exhibit A Third Party Data Sharing Process. Additionally, “[a]ny material changes or amendments to [the UDSA] must be made in writing and signed by an authorized representative of at least eighty percent (80%) of the then existing Parties.” Among other things, a change is material “if it changes those who may receive Covered Data.”

To facilitate meeting the obligation embodied in Section V.8, Peak proposes to hold a webinar on Thursday March 9, 2017 at 10:00am to enable the Parties’ review of the UDSA and the previously considered Exhibit A. Please plan to participate and please plan to discuss on behalf of your represented Party. If you are unable to participate, comments can be submitted through Peak’s website until March 10, 2017. Comments can also be submitted by entities who are not UDSA Parties on Peak’s website during the same time period.

For reference, Peak has included with this notice the last version of Exhibit A prior to removing it from the UDSA. Additionally, Peak has also included with this notice a copy of FERC’s rules as published in the Federal Register.

¹ FERC Order Paragraph 122. The Final Rule facilitates voluntary sharing by allowing the public to request CEII and by adding to the Commission’s regulations a process whereby staff may share CEII in a proactive manner with a variety of entities. The Commission agrees with PJM’s comments that existing nonpublic voluntary sharing mechanisms within the energy industry are sufficient to encourage sharing information among the different groups and therefore there is no need for the Commission to establish requirements for sharing within the industry through tariff revisions or otherwise.¹⁹⁶ It is also unnecessary to adopt Public Interest Organizations’ and WIRAB’s recommendation that the Commission establish “whitelists” for third parties to use or to require entities sharing information outside of the Commission’s CEII process to adopt a particular NDA.