Summary of FERC’s NOPR Regarding CEII
July 18, 2016
Deb Scott
Vice President/General Counsel
and
Michelle Mizumori
Director of Strategy and Organizational Performance
Within 30 days of effective date engage in review of USDA

No later than December 2016 FERC Regulations Promulgated

June 2016 FERC NOPR Issued

December 2015 FAST Act

Where We’ve Been and What Comes Next
The FAST Act
(Fixing America’s Surface Transportation Act)

- Directed FERC to promulgate regulations to:
  - Establish criteria and procedures to designate information as Critical Electric Infrastructure Information (CEII);
  - Prohibit the unauthorized disclosure of CEII; and
  - Ensure there are appropriate sanctions in place for employees of FERC or the Department of Energy (DOE) who knowingly and willfully disclose CEII in an unauthorized manner.
The FAST Act (Cont.)

- Facilitate the voluntary sharing of CEII with, between, and by:
  - Federal, state, political subdivisions, and tribes;
  - NERC;
  - Regional entities (such as WECC);
  - Certain information sharing and analysis centers (such as ES-ISAC);
  - Owners, operators and users of critical electric infrastructure in the US; and
  - Other entities determined appropriate by FERC.
FERC Notice of Proposed Rulemaking

• FERC issued a Notice of Proposed Rulemaking (NOPR) with proposals to implement the FAST Act on June 16, 2016.
• Comments are due August 19th.
What the FERC NOPR Does

- Expands information designated as “CEII” and specifies that such CEII will be exempt from disclosure under the Freedom of Information Act.
- Provides specificity in designating CEII.
- Clarifies that adverse personnel action can be taken for unauthorized disclosure of CEII by FERC employees.
- Strengthens FERC’s Non-Disclosure Agreement requirements.
- Defines a process for FERC to voluntarily share CEII with entities specified under the FAST Act.
What the FERC NOPR Does Not Do

- *Does not address* which 3rd party entities may be deemed by FERC to be appropriate to share CEII.

- *Does not address* regulations that apply to Department of Energy
Critical Electric Infrastructure Information

• “CEII” is expanded to include information regarding other energy infrastructure, such as gas pipelines, LNG, oil and hydroelectric infrastructures.

• CEII will be exempt from Freedom of Information Act requests.
Critical Electric Infrastructure Information (Cont.)

• FERC proposes to refer to all such information as

  Critical Energy/Electric Infrastructure Information,

  and to use the abbreviation “CEII” for this term.

• FERC’s intent is to convey to the public that the revised CEII procedures cover more than just electric infrastructure.
Designation of CEII

• A submission of CEII to FERC:
  o Must be clearly marked as “CEII”;
  o Must justify need for the designation;
  o Must explain how long the CEII designation should apply, and why; and
  o Wherever feasible, must segregate CEII from non-CEII.
Duty to Protect CEII

• For external recipients of CEII, FERC will strengthen its Non-Disclosure Agreement (NDA) requirements.
Duty to Protect CEII (Cont.)

• NDA must minimally require that CEII:
  o Will only be used for the purpose it was requested;
  o Only be discussed with authorized recipients;
  o Kept in a secure place;
  o Be destroyed or returned to FERC upon request; and
  o FERC may audit compliance with the NDA.
Duty to Protect CEII (Cont.)

• Those requesting CEII must demonstrate a legitimate need for the information, specifically:
  o The extent a requester depends upon access to CEII;
  o Why a function cannot be performed without such access;
  o Whether other information is available that could facilitate the same objective;
  o How long the CEII will be needed; and
  o Whether the CEII is needed to participate in a specific hearing or settlement proceeding.
Voluntary Sharing of CEII

• When FERC is considering voluntarily sharing CEII, FERC will:
  o Provide notice to the submitter no less than 5 calendar days before disclosure.
Voluntary Sharing of CEII (Cont.)

- It may not be practical for FERC to give notice under circumstances, such as:
  - To maintain infrastructure security;
  - To address a potential threat; or
  - In other exigent circumstances.
Owner-Operator Requests

• Currently owner-operators may obtain certain CEII concerning its own facilities without signing an NDA.
  o This excludes FERC-generated information, except inspection/operation reports and any information directed to owner-operators.

• FERC is proposing to allow owner-operators to obtain all information related to their own facility.
Peak Comments on FERC NOPR on FAST Act
July 18, 2016

Michelle Mizumori
Director of Strategy and Organizational Performance
Data Sharing and Security must be balanced

• Reliability entities need to share data amongst themselves
  o Recommendation 11 of September 8 outage report

• Researchers create innovation to improve reliability

• Security is imperative and must be considered in all data sharing
Sharing “with, between and by” entities

• NOPR addresses how FERC shares *with* entities, but does not address sharing “between and by” entities
• Consistency in treatment is important
• Consistency among Federal Agencies at a minimum is essential
Clarity on what constitutes CEII

• Clear criteria are necessary
• Clarity benefits the industry as a whole
• Peak developed a Data Category Table to identify treatment of different types of data
Clarity on designation duration

• Five-year maximum is helpful, but more clarity is necessary
• Criteria for different durations creates consistency
• Re-designation process needs clarification to allow for certainty
Clarity on Data Requests

- 388.113(g)(1) should be expanded to include NERC Registered Entities, at a minimum including Reliability Coordinators
- 388.113(g)(1) should not be limited to “its own facility”
- 388.113(g)(2) should be clarified with respect to results of analysis on CEII data
- 388.113(g)(5) should be clarified with respect to what appropriate uses are
- 388.113(g)(5) should be clarified with respect to what types of entities are eligible to request data
- 388.113(h)(2) should be clarified with respect to what type of security is necessary
Other Comments

• Marking of electronically submitted data such as Situational Awareness FERC, NERC, and Regional Entities (SAFNR) should be clarified

• Treatment of masked or aggregated data should be clarified

• Recommend a Technical Conference
Next Steps

• **August 9, 2016** – Peak will post its draft comments on [www.peakrc.com](http://www.peakrc.com)

• **August 17, 2016** - If you want to be included on Peak’s comments, send an e-mail to Michelle Brooks ([mbrooks@peakrc.com](mailto:mbrooks@peakrc.com)) no later than noon (Pacific) on August 17.

• **August 19, 2016** - Comments are due
Roundtable Discussion
Thank You
For Your Participation