

Sponsors: Colorado Association of Municipal Utilities; Washington Public Utility Districts Association; American Municipal Power; Ohio Municipal Electric Association

In Support of Protecting Critical Electric 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 government, 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.

7
8 Recognizing the importance of protecting such sensitive information from public disclosure, Congress in
9 the Section 61003 of the 2015 Fixing America’s Surface Transportation (FAST) Act (P.L. 114-94) defined
10 the terms critical electric infrastructure (CEI), critical electric infrastructure information (CEII), and
11 defense critical electric infrastructure (DCEI) and prohibited the disclosure of CEII under federal, state,
12 and local open records laws. The FAST Act directed FERC, after consultation with DOE, to promulgate
13 regulations necessary to “(A) establish criteria and procedures to designate information as critical electric
14 infrastructure information; [and] (B) prohibit the unauthorized disclosure of critical electric infrastructure
15 information.” The law specifies that information designated as CEII may not be designated as such for
16 longer than five years, unless specifically re-designated by FERC or DOE.

17
18 FERC issued a final rule to implement the provisions of Section 61003 on November 17, 2016. DOE
19 issued a final rule to establish procedures for the designation of CEII on March 16, 2020. Both the
20 rulemakings and the relevant provisions of the FAST Act leave potential gaps in the framework for
21 protecting CEII from inappropriate disclosure. Some stakeholders are concerned that the implicit
22 inclusion of cybersecurity systems and assets in the definitions of CEI and DCEI should be made explicit.
23 Moreover, protecting CEII from disclosure for a period of five years is inadequate for an industry that
24 regularly invests in systems and assets that have a life span of decades. While FERC or DOE can
25 redesignate information as CEII after five years, there is an unacceptable risk that sensitive information
26 will be disclosed by default.

27
28 To protect against such disclosure, congressional action is needed that directs FERC and DOE to
29 strengthen CEII disclosure protections.

30

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

35
36 **BE IT FURTHER RESOLVED:** That APPA urges Congress to amend the FAST Act to make it clear
37 that critical electric infrastructure information (CEII) submitted to the Federal Energy Regulatory
38 Commission (FERC) or Department of Energy (DOE) must be treated as such even if FERC or DOE does
39 not immediately designate the information as CEII; and

40
41 **BE IT FURTHER RESOLVED:** That APPA urges Congress to amend the FAST Act to protect CEII for
42 a period longer than five years.

Adopted at the Legislative & Resolutions Committee Meeting

February 27, 2024

Sunsets in March 2032