



Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

FREEDOM OF INFORMATION ACT/PRIVACY PROGRAM

April 23, 2018

In reply refer to: FOIA #BPA-2018-00529-F

Sara Creighton
Austin Evers
American Oversight
1030 15th Street, NW
Suite B255
Washington, DC 20005
foia@americanoversight.org

Dear Mr. Evers and Ms. Creighton:

This communication is the Bonneville Power Administration's (BPA) final response to your request for agency records submitted to the agency under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). Your records request was initially received by the Department of Energy (DOE), on November 16, 2017 and was assigned the FOIA Request No. DOE HQ-2018-00271-F. On January 12, 2018 your records request was transferred to BPA (as requested in your original FOIA request letter to DOE and in your December 12, 2017 follow-up email request to DOE). Your FOIA request was assigned a new tracking number of BPA-2018-00529-F and formally acknowledged by the agency on January 31, 2018.

Request

"All communications between DOE and any employee or representative of any of the entities listed in Appendix A containing any of the following search terms (whether in the body or subject):

- Section 202(c)
- § 202(c)
- Section 205
- § 205
- Section 206
- § 206
- "premature retirements of power plants"
- "shall establish a tariff that provides a just and reasonable rate"
- "essential energy and ancillary reliability services"

The search for responsive records should include all individuals and locations likely to contain responsive records, including to the Office of the Secretary, the Office of the Under

Secretary for Science and Energy and each of its offices, the Office of Energy Policy & Systems Analysis, and the four Power Marketing Administrations.

Please provide all responsive records from January 20, 2017, until September 28, 2017. Please note that we do not wish to obtain copies of any news or press clippings regarding these issues that are otherwise publicly available; accordingly you may omit press clippings from the documents provided to this request, unless the record includes commentary on the press coverage."

Response

As was the case in your December 11 and 12, 2017 email exchanges with Angelica Ruda at the DOE HQ FOIA Office, BPA requested that you advise the agency if you agreed to amend your request to those responsive records resulting from the searches described below. In compliance with email search confirmation exchanges between the agency and American Oversight, conducted throughout the month of February 2018, BPA proceeded with a response to your FOIA request by developing a list of terms to electronically search in conjunction with the list of outside entities shown in Appendix A of your FOIA request. As the agency discussed with you, searching the section numbers would likely have resulted in many false positives, especially given that 202 is the area code for Washington DC and 206 is the area code for a large region within BPA's service area (Seattle and environs). BPA reviewed the listed sections of the Federal Power Act and pulled potential search phrases from each. Here, then, is the list of search terms BPA used to match with the Appendix A entities:

- "premature retirements of power plants"
- "shall establish a tariff that provides a just and reasonable rate"
- "essential energy and ancillary reliability services"
- "shortage of electric energy"
- "sudden increase in the demand for electric energy"
- "necessary to meet the emergency"
- "unreasonable difference in rates"
- "refund effective date"
- "just and reasonable rate"

As noted in your FOIA request, the time period for the search is January 20, 2017 to September 28, 2017. The initial email search consisted of all email accounts at BPA. Based on those search results, described below, the agency has determined that a second targeted records custodian search phase would produce no additional responsive records.

A single responsive record (and a transmittal email) resulted from the search described above. That 16-page record and the 1-page transmittal email both accompany this communication in un-redacted form.

Certification

Your FOIA request is now closed with all available agency records provided. Pursuant to 10 C.F.R. § 1004.7(b)(2), I am the individual responsible for the release and redaction determinations described above.

Fee

In your original November 11, 2017 request to DOE, you requested a waiver of all fees associated with the processing of this request. That fee waiver request was granted by BPA and was memorialized in the agency's January 31, 2018 formal FOIA acknowledgment letter.

Appeal

This decision, as well as the adequacy of the search, may be appealed within 90 calendar days from your receipt of this letter pursuant to 10 C.F.R. § 1004.8. Appeals should be addressed to:

Director, Office of Hearings and Appeals,
HG-1, L'Enfant Plaza
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585-1615

The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. You may also submit your appeal to OHA.filings@hq.doe.gov, including the phrase "Freedom of Information Appeal" in the subject line. The appeal must contain all of the elements required by 10 C.F.R. § 1004.8, including a copy of the determination letter. Thereafter, judicial review will be available to you in the Federal District Court either: 1) in the district where you reside; 2) where you have your principal place of business; 3) where DOE's records are situated; or 4) in the District of Columbia.

You may contact BPA's FOIA Public Liaison, Sarah Westenberg, at the address at the letter header for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
E-mail: ogis@nara.gov
Phone: 202-741-5770; Toll-free: 1-877-684-6448; Fax: 202-741-5769

Questions about this communication may be directed to James King, CorSource Technology Group LLC, at jjking@bpa.gov or 503.230.7621.

Sincerely,



C. M. Frost
Freedom of Information/Privacy Act Officer

Attachment

Responsive agency records

CC

Anjelica Ruda, DOE FOIA Office
Alexander Morris, DOE FOIA Office

**BEFORE THE
UNITED STATES DEPARTMENT OF ENERGY**

**Grid Security Emergency Orders:
Procedure for Issuance**

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RIN 1901-AB40

COMMENTS OF THE EDISON ELECTRIC INSTITUTE

The Edison Electric Institute (“EEI”), on behalf of its members, respectfully submits these comments in response to the Notice of Proposed Rulemaking and Request for Comment (“NOPR”) issued by the U.S. Department of Energy (“DOE”) on December 7, 2016, in the above-referenced docket.¹ In the NOPR, DOE proposes to issue procedural regulations concerning the Secretary of Energy’s issuance of an emergency order following the President’s declaration of a grid security emergency, under the Federal Power Act (“FPA”), as amended.² EEI and its members appreciate the opportunity to provide the following comments to help DOE ensure the emergency procedures allow the Secretary of Energy to exercise this new authority effectively and expeditiously while ensuring that the owners and operators of critical electric infrastructure may maintain the reliability and safety of the energy grid. EEI also encourages DOE to take into consideration the comments filed by the American Public Power Association / Large Public Power Council (“APPA/LPPC” collectively), the ISO/RTO Council (“IRC”), the North American Electric Reliability Corporation (“NERC”), and the Transmission Access Policy Study Group (“TAPS”).

¹ See *Grid Security Emergency Orders: Procedures for Issuance*, 81 *Fed. Reg.* 88,136 (Dec. 7, 2016). DOE has issued the NOPR pursuant to section 61003 of Fixing America’s Surface Transportation Act (“FAST Act”), which promulgated a new section 215 of the Federal Power Act (“FPA”), codified at 16 U.S.C. § 824o-1.

² See 16 U.S.C. § 824o-1.

I. Interest of EEI

EEI is the trade association that represents all U.S. investor-owned electric companies. Our members provide electricity for 220 million Americans, operate in all 50 states and the District of Columbia, and directly and indirectly employ more than one million workers. EEI's members invest more than \$100 billion each year to build a smarter energy infrastructure and to transition to even cleaner generation resources. Reliable, affordable, secure, and increasingly clean energy powers the economy and enhances the lives of all Americans. EEI also has more than 60 international electric companies as International Members, and 250 industry suppliers and related organizations as Associate Members. Organized in 1933, EEI provides public policy leadership, strategic business intelligence, and essential conferences and forums. EEI's U.S. members serve approximately 70 percent of industries, businesses, and residential customers. As the owners and operators of a significant portion of the U.S. energy grid, EEI members have a direct interest in this proceeding because they may be directly impacted by any emergency order issued by the Secretary of Energy during a grid security emergency.

These comments make the following key points:

- **DOE should focus the emergency procedures on determining “what” needs to be accomplished as opposed to focusing on prescriptively determining “how” objectives should be accomplished in order to avoid unintended consequences.**
- **DOE should revise the proposed procedures to define the term “emergency measures” with respect to a “grid security emergency,” as defined in the FPA.**
- **DOE should clarify that an emergency order does not apply to storm restoration and recovery.**
- **DOE should revise its proposed emergency procedures to emphasize the importance of industry consultation before the Secretary issues an emergency order.**
- **DOE should work with industry to develop emergency procedures based on existing industry coordinating bodies to better define the process for**

communication of emergency orders.

- **DOE should clarify the emergency procedures to ensure electric companies have a meaningful opportunity to request clarification or rehearing of emergency orders.**
- **DOE should clarify the emergency procedures with respect to how electric companies will gain temporary access to classified information.**
- **DOE should clarify compliance documentation requirements.**
- **DOE should revise the emergency procedures to provide clarity with respect to enforcement actions.**

II. Comments

DOE is correct that a grid security emergency may result from a physical attack, a cyber-attack, a geomagnetic storm, or an electromagnetic pulse, damaging certain electricity infrastructure and potentially impairing the reliability of the Nation's energy grid.³ As a consequence, DOE's emergency procedures should be sufficiently flexible to address a grid security emergency⁴ and DOE should exercise its authority with the goal of "first, doing no harm." DOE's emergency procedures therefore, should reflect the fact that the North American energy grid is one of the most complex machines and interconnected networks ever constructed. Given the grid's complexity and interconnected nature, both domestically and with the energy grids of Canada and Mexico, it is essential that the owners and operators of the energy grid collaborate with DOE prior to issuance of any emergency order by the Secretary of Energy to ensure that orders will be efficiently communicated during an actual emergency. Owners and those with operational control of the energy grid must retain the ability to operate and manage assets under the existing operational process controls they have today regarding coordination with Reliability Coordinators. Additionally, owners and operators of the energy grid must have

³ See NOPR at 88136.

⁴ See *id.* at 88137.

flexibility to operate or manage assets while in close consultation and communication with DOE. It is essential that energy grid owners and operators be fully involved and in the operational lead at all stages of implementing a grid security emergency order.

A. DOE should focus the emergency procedures on determining “what” needs to be accomplished as opposed to focusing on prescriptively determining “how” objectives should be accomplished in order to avoid unintended consequences.

The underlying process for issuing emergency procedures and resulting emergency orders therefore, should provide adequate deference to the experience of the real-time operational organizations that know and understand the characteristics of the energy grid to help develop solutions that achieve the objective set out in an emergency order. DOE must work with owners and operators to ensure that emergency orders do not make the operating situation worse. Close consultation and coordination with industry is needed to make sure emergency orders take a “first, do no harm” approach.

To accomplish this, DOE should define in an emergency order “what” the desired security outcome would be in responding to a grid security emergency, but DOE should not prescriptively define “how” operators, working within unique systems and footprints, should achieve those results. For example, an emergency order that provides the instruction to prioritize service to military bases in an electric company’s service area is appropriate, whereas a specific instruction for an electric company to shed load at a particular location or to avoid shedding load at a different location attempts to achieve the same goal but does so in a manner that ultimately may prevent grid operators from using their knowledge and expertise most effectively in operating the energy grid to achieve the desired outcome.

Emergency orders should avoid defining the “how” for industry because owners and operators have established business continuity, emergency response and recovery, mutual

assistance, and blackstart recovery plans and procedures that address a range of threats. Owners and operators work across the industry with their stakeholders and local and state governments to ensure they are able to address infrastructure, engineering, grid stability, and stakeholder needs during an emergency. The industry also works closely with DOE through its trade associations and the Electricity Subsector Coordinating Council (“ESCC”) to ensure that industry response and recovery efforts are aligned in terms of unity of effort and unity of message. Thus, DOE should revise its rules to provide greater emphasis on the importance of early consultation with owners and operators using these established forums prior to the development of any grid security emergency order in order to define the desired outcomes for protecting and restoring the reliability of critical energy infrastructure.

DOE also should ensure that its emergency orders “first, do no harm” by making certain that the procedures for issuing emergency orders do not conflict with other regulatory requirements applicable to owners, users or operators of the energy grid that may be subject to an emergency order. The emergency procedures should address the issue of potential conflicts with other relevant regulatory authorities.⁵ In addition to addressing the problem of conflicts with other government actions, the emergency procedures also should not be at cross-purposes with well-established government response procedures outlined in the National Response Framework that address federal and state emergency coordination, or with existing industry-led mutual assistance agreements, spare equipment sharing programs, and industry-wide emergency response programs.⁶

⁵ For example, authorities such as NRC, EPA, DHS, NERC, etc., may regulate electric company assets as well as public safety, and may have analogous emergency authorities.

⁶ This includes, EEI’s National Response Event framework, APPA’s Mutual Aid Network, the Spare Transformer Equipment Program, new industry-led programs such as Grid Assurance and RESTORE, the nuclear sector’s FLEX program, among others.

B. DOE should revise the proposed procedures to define the term “emergency measures” with respect to a “grid security emergency,” as defined in the FPA.

To facilitate expeditious and efficient efforts by industry to implement an emergency order, DOE should define the term “emergency measures” in its procedures.⁷ The term “emergency measures” should be clarified to mean those measures designed to directly protect or restore the reliability of critical electric infrastructure during a “grid security emergency,” as that term is defined in Section 215A(a) of the FPA.⁸

Congress did not define the term “emergency measures” in the FAST Act. Section 215A(b) provides DOE with “authority to address grid security emergency,”⁹ and establishes that DOE emergency authority is contingent upon the President issuing and providing the Secretary “a written directive or determination identifying a grid security emergency.”¹⁰ This provision also states that DOE emergency orders may only require emergency measures during a grid security emergency.¹¹ Section 215A(a)(7) of the FPA defines the term “grid security emergency” to mean:

The occurrence or imminent danger of—

(A)(i) a malicious act using electronic communication or an electromagnetic pulse, or geomagnetic storm event that could disrupt the operation of those electronic devices or communications networks, including hardware, software, and data, that are essential to the reliability of critical electric infrastructure; and

(ii) disruption of the operation of such devices or networks with significant adverse effects on the reliability of critical electric infrastructure or of defense critical infrastructure, as a result of such act or event; or

⁷ See proposed section 205.380.

⁸ See FPA section 215A(b)(1).

⁹ FPA section 215A(b).

¹⁰ FPA section 215A(b)(1).

¹¹ See *id.*

(B)(i) a direct physical attack on critical electric infrastructure or on defense critical infrastructure; and

(ii) significant adverse effects on the reliability of critical electric infrastructure or of defense critical infrastructure as a result of such physical attack.

DOE should clarify that “emergency measures” are directly related to protecting or restoring the energy grid when there is an occurrence or imminent danger of a malicious act or a direct physical attack as described in the statutory definition of “grid security emergency.”

This clarification will provide industry with some reasonable certainty regarding the scope of actions or performance outcomes that might be included in an emergency order. Clarity with respect to the meaning of “emergency measures” is important so that energy grid owners and operators may more effectively plan and prepare to implement emergency orders. Defining “emergency measures” in this manner also is consistent with—and would give effect to—the NOPR’s observation that to minimize any disruptions from an attack on or natural damage to the Nation’s energy grid “responses will need to be tailored to particular circumstances.”¹² In sum, this clarification would help energy grid operators to better understand and prepare to more expeditiously implement potential emergency measures.

C. DOE should clarify that an emergency order does not apply to storm restoration and recovery.

DOE should clarify that the definition of “grid security emergency” does not expand DOE’s authority into the areas of storm restoration and recovery. The FAST Act does not appear to contemplate the Secretary of Energy issuing emergency orders addressing storm

¹² See NOPR at 88137.

restoration and recovery.¹³ DOE should find that the FAST Act provides the Secretary of Energy with authority to issue emergency orders to protect or restore reliability during a “grid security emergency,” but that the definition of “grid security emergency” limits DOE’s authority to issue emergency measures to directly address the occurrence or imminent danger of a malicious act or a direct physical attack as described in the statute.¹⁴ This does not include storm restoration or recovery, and, therefore, DOE should clarify that emergency orders will not address these electric sector activities.

D. DOE should revise its proposed emergency procedures to emphasize the importance of industry consultation before the Secretary issues an emergency order.

To ensure an efficient response and avoid confusion by entities subject to emergency orders, DOE’s emergency procedures should be revised to emphasize energy grid owners and operators and the ESCC’s early-on role in any industry consultation. The emergency procedures also should give greater emphasis that such consultation should be planned in advance and occur even before the Secretary of Energy issues an emergency order except in the most extreme circumstances.¹⁵ It is critical that DOE engage in consultation with energy grid owners and operators and the ESCC as early as possible because, without this consultation and coordination the Emergency & Incident Management Council (“EIMC”) will not have sufficient or even accurate information regarding the specifics of the state of grid security and operations to be in a

¹³ For the avoidance of doubt, EEI clarifies that it refers here to earthly storm restoration and recovery, and not to GMD events caused by solar storms and space weather, since geomagnetic storms are explicitly included in the definition of “grid security emergency” by the FAST Act.

¹⁴ See FPA section 215A(a)(7).

¹⁵ EEI acknowledges that the proposed rule does generally contemplate prior outreach to the ESCC, “to the extent practicable in light of the nature of the Grid Security Emergency and the urgency of the need for action,” among a large list of other entities to also be consulted. However, due to the critical role of the ESCC in communicating and coordinating with the industry owners, users and operators to be impacted by the emergency order, EEI believes it is critical that prior consultation with ESCC be emphasized as a priority consultation except in the most extreme circumstances.

position to create plans or determine recommendations for directives. Further, early consultation will put the ESCC in the best position to help DOE coordinate with other existing industry initiatives, procedures and protocols. As the principal liaison between the federal government and the electric power sector—with the mission of coordinating efforts to prepare for, and respond to, national-level disasters or threats to critical infrastructure—the ESCC is strategically positioned at this time to serve the central role in the “outreach and consultation” process as laid out by DOE in the NOPR.

DOE also should revise its proposed procedures to emphasize that the Secretary of Energy should consult with the Nuclear Regulatory Commission (“NRC”) before issuing emergency orders that apply to nuclear power plants. Nuclear power plants may have specific needs that require them to remain connected to the energy grid or to have priority in restoration of offsite power. The NRC has requirements to ensure safe operation and shutdown of nuclear power plants in order to protect public health and safety. The NRC is the expert in such critical situations and should be a priority for consultation when an emergency order may potentially involve or impact nuclear generation.

DOE also should plan for ongoing engagements with industry so that all parties can understand the processes and expectations, and can develop relationships that will allow for a continuous improvement of the processes needed to implement emergency orders. To this extent, EEI supports the proposal by APPA/LPPC for DOE to undertake a joint dialogue with industry and NERC to establish a set of shared parameters governing the nature of emergency orders that DOE may issue.¹⁶ In such a dialogue, DOE and stakeholders could consider the process used in the recent study of the Strategic Transformer Reserve, where input was solicited

¹⁶ See Joint Comments of APPA/LPPC, at p.3, filed in the above-captioned proceeding, February 6, 2016.

directly from owners and operators, in workshops and via written comments, as a good example of a collaborative industry-government approach that may inform further improvements to the emergency procedures. Additionally, as procedures and specific emergency authorities are contemplated, it would be valuable for industry and DOE to test these through exercises to gain experience with the communication and coordination processes necessary to implement these types of orders. This type of collaboration with industry then could inform potential ongoing improvements to the emergency procedures.

E. DOE should work with industry to develop emergency procedures based on existing industry coordinating bodies to better define the process for communication of emergency orders.

The emergency procedures should ensure that the communication of an emergency order uses established communications processes through industry coordinating bodies so that users, owners and operators may efficiently take action upon notification.

The proposed rule contemplates that DOE will communicate the content of emergency orders to the “parties subject to the order.” DOE should be aware that depending on the nature of the emergency order and the action that must be taken, the parties subject to an order may have to communicate and coordinate with other operating entities prior to taking any actions. For example, a transmission owner or transmission operator may have to communicate the contemplated actions to its Reliability Coordinator prior to taking equipment out of service, in order to ensure the reliability and safety of the entire system. Further, that Reliability Coordinator may have to issue directives to other entities (for example generators, other transmission operators) and/or coordinate with its neighboring Reliability Coordinator(s). To avoid the risk of conflicting orders, confusion and adverse operating conditions that result in additional risk to the grid, existing communication protocols should be leveraged to inform

operating entities during real-time operations rather than having DOE directly contact parties subject to any order. The industry has existing processes in place or can modify existing procedures to ensure operating coordination. In addition, there may be actions required under an order, such as those related to physical security that do not contemplate operating actions on the Bulk Power System. The industry communications protocols and approaches in this manner is preferable to DOE trying to determine which other operating entities (*i.e.*, other than the parties subject to the order) need to be notified.

For example, utilizing or adapting existing industry communication protocols through the ESCC and the Electricity Information Sharing and Analysis Center (“E-ISAC”) provides the ability to reach organizations that are Registered Entities of NERC, as well as other non-registered entities that are users of the E-ISAC portal and that may be subject to or impacted by emergency orders. The industry can work with DOE through the ESCC which includes owners and operators, industry trade associations, the E-ISAC and NERC to determine the best way to utilize or modify existing communication protocols to ensure emergency orders are disseminated appropriately. Further, NERC Alerts are not the preferred alert mechanism system for communicating orders to owners and operators of critical electric infrastructure regarding a grid security emergency as they do not mandate action that may be needed in the case of an emergency order.¹⁷

To avoid the risk that the communication of emergency orders can be used as a new threat vector, the emergency order communication process should include a validation process that includes the Reliability Coordinators and the companies required to take action. Employing some method of validation will reduce the risk that bad actors launch a grid-related attack and

¹⁷ See Comments of The North American Electric Reliability Corporation, at p.4 filed in the above-captioned proceeding.

will undermine integrity in the communications process, and will provide a “defense in-depth”¹⁸ approach to reliably maintaining the energy grid with complementary levels of monitoring, operations and coordination. EEI and its members look forward to working with DOE to clarify the communication process.

F. DOE should clarify the emergency procedures to ensure electric companies have a meaningful opportunity to request clarification or rehearing of emergency orders.

Given that the FAST Act provides for an emergency order to expire no later than 15 days after its issuance, DOE should revise the emergency procedures to ensure that electric companies will be able to obtain timely clarification.¹⁹ Also, it is not clear how a request for reconsideration in proposed § 205.385 of the emergency procedures would be treated under the FPA or if such a request is different than the right of rehearing provided for in proposed § 205.390. DOE should eliminate reference to a request for reconsideration and instead provide a right to rehearing.²⁰ Moreover, DOE should clarify that a rehearing is not simply for the purpose of preserving appellate rights. A request for rehearing should be the basis for DOE to consider whether emergency orders warrant modification or reversal. If an emergency order cannot be physically implemented or required actions would violate safety, equipment, regulatory or statutory requirements, there must be a very clear and expedited process for electric companies subject to an emergency order to seek clarification or rehearing of an emergency order.

In addition, proposed § 205.385 states that any request for clarification or reconsideration

¹⁸ A “defense in-depth” approach is a layered grid security strategy that incorporates redundant approaches to manage risk.

¹⁹ The Secretary of Energy may reissue emergency orders for subsequent periods, not to exceed 15 days for each such period, provided that the President, for each such period, issues and provides to the Secretary of Energy a written directive or determination that the grid security emergency identified continues to exist or that the emergency measures continues to be required.

²⁰ EEI supports APPA/TAPS proposal to combine sections 205.385 and 205.390 for greater clarity.

of an emergency order will be submitted to the Secretary and posted on DOE's website "consistent with CEII [critical energy infrastructure information] criteria." In Order No. 833, the Federal Energy Regulatory Commission ("Commission") declined to specify whether voluntary sharing of CEII with other federal agencies under its FAST Act authority would be pursuant to Commission CEII regulations, criteria and interpretations, or whether a separate CEII regime specific to DOE would apply.²¹ EEI requests that DOE clarify which CEII criteria would apply to this proposed scenario regarding determinations of such information included in a request for reconsideration/rehearing.

G. DOE should clarify the emergency procedures with respect to how electric companies will gain temporary access to classified information.

During a grid security emergency, timely intelligence inclusive of known techniques, tactics and procedures must be shared with affected companies in order for senior leadership to make sound decisions and enable their personnel to execute their operational plans to protect and/or restore the reliability of critical electric infrastructure in a safe and efficient manner. DOE and other federal government agencies should provide as much unclassified information as possible to the industry to expedite company efforts to comply with any emergency order; however, declassifying information in the context of the time constraints of a grid security emergency may not be feasible. Therefore, EEI supports DOE's proposal to provide temporary access to classified information, related to a grid security emergency, for which emergency measures are issued, to key personnel of any entity subject to such emergency orders. EEI and its members are eager to work with DOE to develop procedures to determine how to identify and communicate with key personnel at electric companies. The proposed emergency procedures

²¹ See Order 833, Final Rule, *Regulations Implementing FAST ACT Section 61003 – Critical Electric Infrastructure Security and Amending Critical Energy Infrastructure Information: Availability of Certain North American Reliability Corporation Databases to the Commission*, 157 F.E.R.C. ¶ 61,123 at PP 39-41 (2016) (to be codified at 18 C.F.R. Parts 375 and 388).

currently are not clear with respect to how DOE will provide this access or the criteria constituting the identification of key personnel. Moreover, there are uncertainties regarding what regulation or statute will govern the use of confidential information, how information owners will be notified, how disclosure to unauthorized personnel will be addressed and how will the information be disposed of after it is no longer required to execute the emergency order.

DOE should clarify that, under the emergency procedures, temporary access to classified information means DOE will grant key personnel of an entity subject to an emergency order access to relevant classified information on a one-day, read-in basis. This method has been available to industry in the past under emergency circumstances; however, a repeatable process has not been executed in recent years. With time being of the essence, DOE should develop a process in coordination with industry to identify locations nationwide that will allow for entry of industry members within less than 24-hours' notice. DOE also should clarify, coordinate with other federal partners and develop a procedure as to how access to classified spaces, such as the national network of state and regional fusion centers and FBI field offices, can be utilized by owners and operators of critical electric infrastructure in a grid security emergency.

Additionally, DOE should clarify at what classified level (i.e. Secret, Top Secret, etc.) the Secretary of Energy would grant such temporary access. DOE also should clarify whether the Secretary of Energy would provide a temporary "Top Secret" clearance, should the level of such information be classified at that level and key personnel hold a "Secret" clearance.

Lastly, given that § 215A(d)(5) of the FPA provides for DOE to "develop protocols for voluntary sharing of CEII with Canadian and Mexican authorities and owners, operators and users...", DOE should clarify what information (classification level) of company/proprietary information would be shared with the Canadian and/or Mexican authorities, owners, operators

and users. Furthermore, DOE should clarify whether U.S. electric companies would be notified and how they will be notified by DOE that proprietary information would be shared or is being shared with the Canadian and/or Mexican authorities, owners, operators and users. The developed procedures and protocols must provide certainty as to what agency's regulations or statutes are guiding the use and disclosure of the confidential information to provide a path or remedy if confidential information is mishandled, inadvertently disclosed to unauthorized personnel or lost. At the end of the day, well-defined guidance is essential to address the eventual disposition of the information after it is no longer required.

H. DOE should clarify compliance documentation requirements.

Given that DOE proposes to require the ordered party or parties to provide a detailed account of actions taken to comply with the terms of the order, DOE should provide further detail with regard to what compliance documentation electric companies will be expected to provide immediately and to maintain on an ongoing basis.

I. DOE should revise the emergency procedures to provide clarity with respect to enforcement actions.

EI supports the proposal by APPA/LPPC and APPA/TAPS for DOE to revise the emergency procedures to correctly reflect the limited scope of DOE's enforcement authority.²² Additionally, DOE should revise its proposed procedures to clarify what procedures apply with respect to enforcement actions and ensure such procedures provide that electric companies may air and resolve disputes over compliance with emergency orders. DOE also should ensure such procedures provide an opportunity for electric companies subject to enforcement actions arising from emergency orders to show good cause for noncompliance.

²² See APPA/LPPC comments at p.6; *see also* APPA/TAPS comments at p.7.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Edison Electric Institute respectfully requests that DOE ensure that any future action ordered as a result of this proceeding is consistent with the comments discussed above.

Respectfully submitted,

EDISON ELECTRIC INSTITUTE

/s/ Scott I. Aaronson

Executive Director, Security and Business
Continuity

Aryeh B. Fishman
Associate General Counsel, Regulatory Legal
Affairs

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Dated: February 6, 2017

King, James J (CONTR) - CGI-7

From: Ken Hall <khall@hallenergyconsulting.com>
Sent: Thursday, February 09, 2017 5:27 AM
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Cc: John Meckley ; Mealiea, Wallace
Subject: STEP - DOE Emergency Authority Rulemaking Comments
Attachments: Final EEI Comments-NOPR on DOE Emergency Authority2-6-17.pdf

EEI, on behalf of its members submitted the attached comments in response to the Notice of Proposed Rulemaking issued on DOE Emergency Authority.

In the NOPR, DOE proposes to issue procedural regulations concerning the Secretary of Energy's issuance of an emergency order following the President's declaration of a grid security emergency, under the Federal Power Act ("FPA").

Regards,
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