

**MEMORANDUM OF UNDERSTANDING BETWEEN U.S. NUCLEAR REGULATORY
COMMISSION (“NRC”) AND THE FEDERAL ENERGY REGULATORY
COMMISSION (“FERC”) REGARDING THE TREATMENT OF CRITICAL
ENERGY/ELECTRIC INFRASTRUCTURE INFORMATION (“CEII”)**

1. Preamble

Pursuant to 18 C.F.R. § 388.113(a), the NRC and FERC enter into this Memorandum of Understanding (“MOU”). Under the Fixing America’s Surface Transportation Act (“FAST Act”),¹ Critical Energy/Electric Infrastructure Information (“CEII”) is defined as information “designated as critical electric infrastructure information by the Commission or the Secretary of the Department of Energy pursuant to subsection (d).” The Commission’s CEII regulation further provides:

Nothing in this section limits the ability of any other Federal agency to take all necessary steps to protect information within its custody or control that is necessary to ensure the safety and security of the electric grid. To the extent necessary, such agency may consult with the CEII Coordinator regarding the treatment or designation of such information.

NRC and FERC mutually agree that it is important to protect CEII to ensure the safety and security of the electric grid. This MOU sets forth the basic parameters under which NRC and FERC will cooperate under 18 C.F.R. § 388.113(a) to protect the material in the NRC’s possession that may be CEII.

2. Scope

A. General Responsibilities and Guidelines

NRC and FERC will mutually coordinate and manage the tasks undertaken pursuant to this MOU. This MOU recognizes the responsibilities of the individual agencies and does not diminish in any way the responsibility of either party or take away any authority from any either party to pursue its regulatory programs. These cooperative efforts shall be implemented so as to avoid regulatory conflicts.

B. Identification and Labeling of CEII in the Custody of NRC

The parties acknowledge FERC’s CEII regulations do not limit the ability of NRC to take all steps to protect information that it considers to be CEII. Consequently, NRC staff will be responsible for initially identifying information in its custody that contains CEII, as defined by 18 C.F.R. § 388.113(c). NRC staff agrees to prominently label document(s) as CEII and to handle the document(s) in accordance with the FAST Act, FERC’s CEII regulations, as applicable, and

¹ Pub. L. No. 114-94, § 61,003, 129 Stat. 1312, 1773-1779 (2015) ((codified at 16 U.S.C. 824o-1) (FAST Act).

this MOU, as described below. FERC staff will be available to consult with NRC staff about any CEII.

C. Consultation with FERC's CEII Coordinator

If material that NRC staff considers CEII that is protected under Exemption 3 is requested under the Freedom of Information Act (FOIA)² or another public disclosure law, NRC staff may consult with FERC's CEII Coordinator to receive a supporting determination of the designation of the material as CEII pursuant to Section 215A of Part II of the Federal Power Act, 116 U.S.C. 824o-1. To assist the CEII Coordinator in this process, NRC agrees to:

1. Include a concise summary indicating why the NRC believes the information meets the definition of CEII;
2. Provide an explanation of how long the material should be CEII (up to five years) and whether renewal of CEII treatment will likely be needed;
3. Identify on the document(s) which portions or pages contain CEII or could reasonably be expected to lead to the disclosure of CEII and, as appropriate, to segregate those portions of document(s) that are not CEII; and
4. If the document was submitted to the NRC from an outside entity and the NRC sought comments about the potential disclosure, include any comments from the submitter.

The CEII Coordinator will endeavor to provide NRC staff a determination within ten (10) business days. If the material is highly technical, voluminous, or otherwise requires additional deliberation, the CEII Coordinator or his designee will alert NRC as soon as practicable. Any NRC document provided to FERC for a CEII consultation will at all times remain the property of the NRC. In providing a determination, the CEII Coordinator will share the information only with those FERC staff members necessary to assist with an assessment of the potential CEII. The decision to invoke FOIA Exemption 3 remains with NRC at all times. Moreover, if a member of the public or another Federal Agency requests that FERC share or disclose any NRC document, FERC will refer that request to the NRC for their processing and determination.

D. Protection and Handling of CEII

NRC accepts all responsibility for the care, handling, and protection of any NRC document that is determined to be CEII by the CEII Coordinator. As to any NRC material the CEII Coordinator agrees is CEII, NRC will handle that information consistent with its procedures for handling other similar sensitive security material. At a minimum, the NRC will handle its CEII in a similar manner to FERC, which will include the following:

- All documents that have been deemed to contain CEII must be labeled;

² 5 U.S.C § 552 (2012).

- All labels must be prominently displayed on each page of the document (preferably on the top center of the document);
- When transporting or disseminating CEII, reasonable care must be exercised with the material to ensure that it is not easily accessible or visible to individuals not authorized to view it; and
- Secure methods of dissemination of CEII must be utilized, such as encryption for electronic transmission and certified mail for hardcopy dissemination.

NRC will accept responsibility for any disclosure of CEII by NRC employees. To that end, NRC will address knowing and willful disclosure of CEII by its employees and will impose appropriate disciplinary penalties in accordance with law.

3. General Provisions

A. **Amendments.** Either party may request changes to this MOU. Any changes, modifications, revisions or amendments to this MOU that are mutually agreed upon by and between the parties to this MOU shall be incorporated by written instrument, and effective when executed and signed by all parties to this MOU.

B. **Applicable Law.** The construction, interpretation and enforcement of this MOU shall be governed by Federal law.

C. **Entirety of Agreement.** This MOU represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.

D. **Severability.** Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

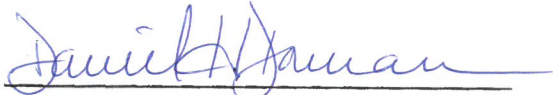
E. **Sovereign Immunity.** FERC and NRC do not waive their sovereign immunity by entering into this MOU, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

F. **Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of a third party beneficiary, and this MOU shall not be construed so as to create such status. The rights, duties and obligations contained in this MOU shall operate only between the parties to this MOU, and shall inure solely to the benefit of the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU.

4. Effective Date and Termination

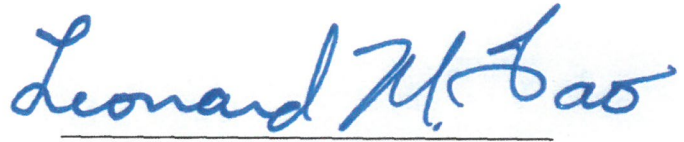
This MOU is effective upon signing by the last signatory. This MOU will expire two years from the date of execution unless renewed by mutual written agreement. This MOU may be terminated at any time by mutual written agreement of the parties, or by one party after 60 days' written notice.

Agreement



Daniel H. Dorman
Executive Director for Operations (Acting)
U.S. Nuclear Regulatory Commission

6 June 2018
Date



Leonard Tao
CEII Coordinator
Director, Office of External Affairs
Federal Energy Regulatory Commission

June 5, 2018
Date