

# **WIRAB Advice to Peak Reliability on Including Third Party Data Sharing in its Universal Data Sharing Agreement**

**May 24, 2017**

The Western Interconnection Regional Advisory Body (“WIRAB”) appreciates the opportunity to provide advice to Peak Reliability on whether the Peak Reliability Universal Data Sharing Agreement (“UDSA”) should be amended to include a third party data sharing process. Back in late 2015, in anticipation of a new Federal Energy Regulatory Commission (“FERC”) rule on Critical Electric Infrastructure Information (“CEII”) security, the Exhibit A Peak Data Sharing Review Process was removed from the final UDSA. Section V.8 was then added to the UDSA, directing Peak and UDSA signatories to:

“...engage in review of the [UDSA] and the previously adopted Exhibit A Peak Data Sharing Review process to address how Peak will share data with third parties... [and] 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 [the UDSA], in a manner that is consistent with the requirements of the final FERC rule [under section 215A(d)(2) of the Federal Power Act].”

Section 215A(d)(2) of the Federal Power Act was created when the President signed the Fixing America’s Surface Transportation Act (“FAST Act”) into law, requiring FERC to issue rules and definitions related to CEII security. Among other things, the FAST Act also requires FERC to ensure that appropriate sanctions are in place for federal employees who inappropriately release CEII. This poses a risk to employees of BPA and WAPA.

Peak’s “review” of the UDSA was to begin within 30 days of the effective date of FERC’s final rule on the designation and sharing of CEII. The final rule went into effect on February 21, 2017. Peak began its engagement with signatories of the UDSA on March 10, 2017, but failed to include all Peak stakeholders in that process. In the comments received by Peak on or before March 10th, nearly all commenters (8 in total), supported some sort of third party data sharing process, but an equally large portion of commenters believe that, due to the uncertainty of how FERC’s rules will pertain to United States Department of Energy (“U.S. DOE”) employees, including BPA and WAPA employees, it would be premature to address the issue at this time.

**The Peak UDSA should be amended to include a third party data sharing process.** WIRAB believes there is significant value in the research and development that can be gained from providing researchers, academics, national laboratories, and entrepreneurs with access to data collected by Peak, including CEII, provided these entities can protect CEII as well as or better than the industry. Innovation will occur in the electric industry when these types of entities can conduct their research and development using real data, rather than theoretical information. Western States and Provinces rely on the insights provided by new research and analysis when making public policy and regulatory decisions affecting the Western Interconnection. Allowing researchers and innovators access to data, even CEII data, can help Western Policymakers to advance the industry and to create a more reliable and efficient grid.

**The Peak UDSA should continue to provide security and protection for CEII data.** The previously adopted and removed Exhibit A Peak Data Sharing Review Process provides safeguards for the protection of CEII data. CEII data should not be shared with third party requestors that cannot adequately protect the data or that do not seek the data for legitimate purposes. Peak should continue to ensure that an appropriate balance is achieved between the protection of CEII data and the appropriate sharing of data with third party requestors.

Exhibit A of the UDSA was adopted and approved by the Peak Board around the same time the President signed the FAST Act into law, requiring FERC to issue rules related to CEII and incentivizing Peak to remove Exhibit A. Many stakeholders hoped that FERC's rules would provide the industry with further guidance on how to manage CEII. That was not the case.

However, most of the work Peak and its stakeholders conducted during drafting of the UDSA and its Exhibit A Peak Data Sharing Review Process is not effected by FERC's decisions. FERC's Order noted that the rulemaking does not address data sharing within the energy industry. Section V.8, and the Peak Board's Resolution adopting the UDSA with Exhibit A removed, state that parties to the UDSA will review the UDSA and Exhibit A to address how (not if) Peak will share data with third parties. Further, section V.8 states that parties "will negotiate in good faith to create a data sharing review process . . . and data categorization table[.]"

WIRAB makes the following recommendations on how Peak should move forward with respect to the UDSA Section V.8 provisions:

- 1. WIRAB recommends that the Peak Board direct Peak to reengage with all stakeholders in a robust review of the UDSA and Exhibit A, lead discussions on how to amend the UDSA to include a third party data sharing process, and begin sharing information that is not CEII with third party requestors.** The protection of CEII data is paramount, but not all data is categorized as CEII. Some of the data Peak collects was determined during the development of the original Exhibit A Data Sharing Review Process to be either Public, Non-Sensitive, or Sensitive Data. Peak also categorized some data in the Peak Data Categorization Table as Critical or Restricted Data that had more restrictive sharing requirements. The data in these two categories may likely be CEII, but data from the three less restrictive data categories should be shared with any viable requester with a valid request who can appropriately protect the requested data at this moment in time. The Data Categorization Table was vetted by stakeholders during the drafting of the UDSA and most data providers were in agreement with the data elements included in each category.

WIRAB believes Peak should do more with the Data Categorization Table and definitions and should work with its stakeholders to fine-tune the criteria and definitions for designating information as Public, Non-Sensitive, Sensitive, Critical, and Restricted. WIRAB believes that Peak has the opportunity to be an industry leader in identifying criteria that can be used to categorize bulk electric system data and in establishing an appropriate balance between protecting and securing CEII data and fostering research and development to improve bulk electric system reliability. Peak's Data Categorization Table still lacks clarity on Peak's reasoning for placing certain data into the data categories. Peak should develop a methodology and clear definitions for assigning data to each of the categories within the Data Categorization Table.

Without clear criteria, it will be difficult to categorize new data elements or to conduct a fair appeal process.

2. **WIRAB recommends that Peak and the UDSA signatories identify another trigger point for Peak and interested stakeholders to discuss how to deal with data categorized as Critical and Restricted.** The protection of data categorized as Critical and Restricted is of paramount importance, but it does not override the potential benefits of improved bulk electric system reliability in all instances. In other words, a blanket prohibition against sharing Critical and Restricted data may not always be in the public interest. Peak should reengage with interested stakeholders to improve the protocols that govern the sharing of Critical and Restricted data at the appropriate time.

WIRAB understands the concerns associated with uncertainty posed to BPA and WAPA employees and believes that data categorized as Critical and Restricted should not be shared until a rulemaking from the U.S. DOE can provide additional guidance and safe harbor to BPA and WAPA employees. It may be premature to reengage in sharing data that is routinely considered CEII without further direction from the U.S. DOE on how its employees would be effected if data was inappropriately shared.

However, WIRAB believes that providing researchers, academics, national laboratories, and entrepreneurs with appropriate access to Critical and Restricted data will be critical to driving essential industry transformations that will improve and support the reliability of the bulk power system. Accordingly, WIRAB recommends that the Peak Board commit to revisiting the amended UDSA and exploring the possibility of expanding the third party data sharing process once U.S. DOE or FERC take steps to provide additional guidance on this issue and safe harbor to BPA and WAPA employees.

In conclusion, WIRAB recommends that Peak amend the UDSA now to include a third party data sharing process and clear data category definitions that support sharing of Public, Non-Sensitive, or Sensitive data. Further, WIRAB recommends that Peak, the Peak Board, and UDSA signatories commit to revisiting the UDSA third party data sharing process—within a clear timeframe triggered by the effective date of a relevant U.S. DOE or FERC rule—to reconsider appropriate sharing of Critical and Restricted data.