

114TH CONGRESS
1ST SESSION

H. R. 2402

To amend the Federal Power Act to prohibit the public disclosure of protected information, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 18, 2015

Ms. LOFGREN (for herself and Mr. GOWDY) introduced the following bill;
which was referred to the Committee on Energy and Commerce

A BILL

To amend the Federal Power Act to prohibit the public disclosure of protected information, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Critical In-
5 frastructure Act”.

6 **SEC. 2. PROTECTION OF INFORMATION.**

7 (a) IN GENERAL.—Part II of the Federal Power Act
8 (16 U.S.C. 824 et seq.) is amended by adding after section
9 215 the following new section:

1 **“SEC. 215A. PROTECTION OF INFORMATION.**

2 “(a) PROTECTION OF INFORMATION.—

3 “(1) PROHIBITION OF PUBLIC DISCLOSURE OF
4 PROTECTED ELECTRIC SECURITY INFORMATION.—
5 Protected electric security information—

6 “(A) shall be exempt from disclosure under
7 section 552(b)(3) of title 5, United States Code;
8 and

9 “(B) shall not be made available by any
10 State, local, or tribal authority pursuant to any
11 State, local, or tribal law requiring disclosure of
12 information or records.

13 “(2) INFORMATION SHARING.—

14 “(A) IN GENERAL.—The Commission shall
15 promulgate such regulations and issue such or-
16 ders as necessary to designate protected electric
17 security information and to prohibit the unau-
18 thorized disclosure of such protected electric se-
19 curity information.

20 “(B) SHARING OF PROTECTED ELECTRIC
21 SECURITY INFORMATION.—The regulations pro-
22 mulgated and orders issued pursuant to sub-
23 paragraph (A) shall provide standards for and
24 authorize the appropriate voluntary sharing of
25 protected electric security information with, be-
26 tween, and by Federal, State, local, and tribal

1 authorities, the Electric Reliability Organiza-
2 tion, regional entities, Information Sharing and
3 Analysis Centers established pursuant to Presi-
4 dential Decision Directive 63, owners, opera-
5 tors, and users of the bulk-power system in the
6 United States, and other entities determined
7 appropriate by the Commission. In promul-
8 gating such regulations and issuing such orders,
9 the Commission shall take account of the role
10 of State commissions in reviewing the prudence
11 and cost of investments, determining the rates
12 and terms of conditions for electric services,
13 and ensuring the safety and reliability of the
14 bulk-power system and distribution facilities
15 within their respective jurisdictions. In promul-
16 gating such regulations and issuing such orders,
17 the Commission may take into consideration the
18 Controlled Unclassified Information framework
19 established by the President. The Commission
20 shall consult, as appropriate, with Canadian
21 and Mexican authorities to develop protocols for
22 the voluntary sharing of protected electric secu-
23 rity information with, between, and by appro-
24 priate Canadian and Mexican authorities and

1 owners, operators, and users of the bulk-power
2 system outside the United States.

3 “(3) NO REQUIRED SHARING OF INFORMA-
4 TION.—Nothing in this section shall require a person
5 or entity in possession of protected electric security
6 information to share such information with Federal,
7 State, local, or tribal authorities, or any other per-
8 son or entity.

9 “(4) SUBMISSION OF INFORMATION TO CON-
10 GRESS.—Nothing in this section shall permit or au-
11 thorize the withholding of information from Con-
12 gress, any committee or subcommittee thereof, or
13 the Comptroller General.

14 “(5) DISCLOSURE OF NON-PROTECTED INFOR-
15 MATION.—In implementing this section, the Com-
16 mission shall protect from disclosure only the min-
17 imum amount of information necessary to protect
18 the security and reliability of the bulk-power system
19 and distribution facilities. The Commission shall seg-
20 regate protected electric security information within
21 documents and electronic communications, wherever
22 feasible, to facilitate disclosure of information that is
23 not designated as protected electric security informa-
24 tion.

1 “(6) DURATION OF DESIGNATION.—Informa-
2 tion may not be designated as protected electric se-
3 curity information for longer than 5 years, unless
4 specifically redesignated by the Commission.

5 “(7) REMOVAL OF DESIGNATION.—The Com-
6 mission shall remove the designation of protected
7 electric security information, in whole or in part,
8 from a document or electronic communication if the
9 Commission determines that the unauthorized disclo-
10 sure of such information could no longer be used to
11 impair the security or reliability of the bulk-power
12 system or distribution facilities.

13 “(8) JUDICIAL REVIEW OF DESIGNATIONS.—
14 Notwithstanding section 313(b), any determination
15 by the Commission concerning the designation of
16 protected electric security information under this
17 subsection shall be subject to review under chapter
18 7 of title 5, except that such review shall be brought
19 in the district court of the United States in the dis-
20 trict in which the complainant resides, or has his
21 principal place of business, or in the District of Co-
22 lumbia. In such a case the court shall examine in
23 camera the contents of documents or electronic com-
24 munications that are the subject of the determina-
25 tion under review to determine whether such docu-

1 ments or any part thereof were improperly des-
2 ignated or not designated as protected electric secu-
3 rity information.

4 “(b) DEFINITIONS.—For purposes of this section:

5 “(1) BULK-POWER SYSTEM; ELECTRIC RELI-
6 ABILITY ORGANIZATION; REGIONAL ENTITY.—The
7 terms ‘bulk-power system’, ‘Electric Reliability Or-
8 ganization’, and ‘regional entity’ have the meanings
9 given such terms in section 215.

10 “(2) DISTRIBUTION FACILITIES.—The term
11 ‘distribution facilities’ means facilities used in the
12 local distribution of electric energy.

13 “(3) ELECTROMAGNETIC PULSE.—The term
14 ‘electromagnetic pulse’ means one or more pulses of
15 electromagnetic energy emitted by a device capable
16 of disabling, disrupting, or destroying electronic
17 equipment by means of such a pulse.

18 “(4) GRID SECURITY THREAT.—The term ‘grid
19 security threat’ means a substantial likelihood of—

20 “(A)(i) a malicious act using electronic
21 communication or an electromagnetic pulse that
22 could disrupt the operation of those electronic
23 devices or communications networks, including
24 hardware, software, and data, that are essential

1 to the security or reliability of the bulk-power
2 system; and

3 “(ii) disruption of the operation of such
4 devices or networks, with significant adverse ef-
5 fects on the security or reliability of the bulk-
6 power system, as a result of such act or event;
7 or

8 “(B)(i) a direct physical attack on, or in-
9 tentional interference with, the bulk-power sys-
10 tem; and

11 “(ii) significant adverse effects on the se-
12 curity or reliability of the bulk-power system as
13 a result of such physical attack or interference.

14 “(5) GRID SECURITY VULNERABILITY.—The
15 term ‘grid security vulnerability’ means a weakness
16 in the bulk-power system that, in the event of—

17 “(A) a malicious act using electronic com-
18 munication or an electromagnetic pulse, would
19 pose a substantial risk of disruption to the op-
20 eration of those electronic devices or commu-
21 nications networks, including hardware, soft-
22 ware, data, and facilities, that are essential to
23 the security or reliability of the bulk-power sys-
24 tem; or

1 “(B) a direct physical attack, or inten-
2 tional interference with, the bulk-power system,
3 would pose a substantial risk of significant ad-
4 verse effects on the security or reliability of the
5 bulk-power system.

6 “(6) PROTECTED ELECTRIC SECURITY INFOR-
7 MATION.—The term ‘protected electric security in-
8 formation’—

9 “(A) means information generated by or
10 provided to the Commission, other than classi-
11 fied national security information, that is des-
12 ignated as protected electric security informa-
13 tion by the Commission under subsection
14 (a)(2)—

15 “(i) that specifically discusses or iden-
16 tifies grid security threats, grid security
17 vulnerabilities, or plans, procedures, or
18 measures to address such threats or
19 vulnerabilities; and

20 “(ii) the unauthorized disclosure of
21 which could be used in a malicious manner
22 to impair, attack, or interfere with the se-
23 curity or reliability of the bulk-power sys-
24 tem or distribution facilities; and

1 “(B) includes data, modeling, or represen-
2 tations related to grid security that could be
3 used to generate information described in sub-
4 paragraph (A).

5 “(7) SECURITY.—The definition of ‘security’ in
6 section 3(16) shall not apply to the provisions in this
7 section.”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) JURISDICTION.—Section 201(b)(2) of the
10 Federal Power Act (16 U.S.C. 824(b)(2)) is amend-
11 ed by inserting “215A,” after “215,” each place it
12 appears.

13 (2) PUBLIC UTILITY.—Section 201(e) of the
14 Federal Power Act (16 U.S.C. 824(e)) is amended
15 by inserting “215A,” after “215,”.

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