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U.S. Senator Tom Cotton Introduces Bill to Establish Consumer-Regulated Electric Utilities

U.S. Senator Tom Cotton has introduced a bill that would establish a new category of “consumer-regulated electric utility,” or CREU. Under the bill, a CREU would be exempt from regulation under the Federal Power Act and implementing regulations of the Federal Energy Regulatory Commission and the Department of Energy. Named the Decentralized Access to Technology Act, the bill has several primary purposes:

- Accelerate off-grid power plants.
- Exempt CREUs from federal energy regulations not designed for self-contained, “islanded” power systems.
- Enable data centers and other large loads to build their own electricity generation and transmission/distribution systems unconnected from the grid without impacting utilities’ retail ratepayers from costs that may become “stranded” if the large load is not around long enough to pay for the costs of utilities’ investments necessary to serve the loads.
- Limit eligibility to systems fully isolated from the bulk power grid to preserve grid reliability and safety.

The legislation is short, just a few pages, but its impact on federal energy regulation would be significant. Owners wanting to build their own power plants to serve affiliated data centers could avoid altogether the long and expensive interconnection queue process managed by regional transmission system operators and utilities, processes that often take a minimum of three years to get through. And because historically all new generation is required to connect to the regional, interconnected grid with electrons flowing to-and-fro at the speed of light, the interconnection process requires the investment of multiples of millions of dollars to pay for grid interconnection facilities and network upgrades to ensure the grid is balanced.

What the bill does not address is *State* regulation of public utilities. The biggest uncertainty involves utilities’ service territory rights—the right to exclusively serve “each and every” retail customer within its territory. This right remains unaffected by the proposed legislation because service territories, like other aspects of retail electric service, are governed by State, not federal law. Without additional clarification by State legislatures, it remains unclear how the CREUs and their customers would be exempted from this State law and related utility regulation.

Given the unprecedented electricity demand projected to serve data centers, something in the traditional utility model will need to give. And given the pent-up demand, Senator Cotton’s proposed legislation undoubtedly will accelerate that change.

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