



Federal Energy Regulatory Commission
November 17, 2016
Open Commission Meeting
Staff Presentation
Item E-4 & M-1

"Good morning Chairman Bay and Commissioners,

"Agenda item E-4 is a draft Final Rule in which the Commission amends its regulations to implement the requirements of the Fixing America's Surface Transportation (FAST) Act as set forth in section 215A(d)(2) of the Federal Power Act (FPA). The draft Final Rule also amends the Commission's existing Critical Energy Infrastructure Information procedures. These changes are intended to comply with the FAST Act as well as improve the overall efficiency of the Commission's procedures for certain infrastructure information that is submitted to, or generated by, the Commission.

"On June 16, 2016, the Commission issued a Notice of Proposed Rulemaking (NOPR) to amend its regulations to implement the provisions of the FAST Act pertaining to the designation, protection and sharing of CEII. The proposed amendments included, among other things, the creation of criteria and procedures for designating information as CEII; a specific prohibition on unauthorized disclosure of that information; sanctions for knowing and willful unauthorized disclosure of CEII by certain federal personnel; a process for voluntary sharing of CEII; and changes to the existing process for requesting CEII. In response to the NOPR, nineteen entities filed comments and two entities filed reply comments.

"The draft Final Rule largely adopts the amendments proposed in the NOPR. In addition, the draft Final Rule modifies or otherwise clarifies certain proposals made in the NOPR based on the review of the comments.

"Now, we will provide a summary of agenda item M-1, which is a draft Final Rule in which the Commission amends its regulations to implement the requirements of the FOIA Improvement Act of 2016. The draft Final Rule also clarifies the General Counsel's authority to respond to administrative appeals of FOIA determinations.

"On June 30, 2016, President Obama signed the Freedom of Information Act (FOIA) Improvement Act of 2016. The Act addresses a range of procedural issues, including requirements that agencies establish a minimum of 90 days for requesters to file an administrative appeal and that they provide dispute resolution services at various times throughout the FOIA process. The Act, among other provisions, also codifies the Department of Justice's "foreseeable harm" standard and creates a 25 year limit for the deliberative process privilege.

"Congress directed agencies to review their existing FOIA regulations and, where appropriate, make revisions to implement the provisions of the Act within 180 days (which would be before December 27, 2016). After undertaking a review of Commission regulations in accordance with Section 3 of the Act, this draft Final Rule revises FERC's FOIA regulations, specifically 18 C.F.R. sections 388.106-10. Additionally, consistent with the current FOIA administrative appeal provisions, the draft Final Rule also clarifies, in other parts of the regulations, that the General Counsel is authorized to issue final determinations on administrative FOIA appeals.

"This concludes our presentation. We are happy to take any questions you may have."