

104 FERC ¶ 61,106

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 388

(Docket Nos. RM02-4-001 and PL02-1-001; Order No. 630-A)

Critical Energy Infrastructure Information

(Issued July 23, 2003)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule, Order on Rehearing.

SUMMARY: On February 21, 2003, the Commission issued a final rule amending its regulations to establish a procedure for gaining access to critical energy infrastructure information (CEII) that would otherwise not be available under the Freedom of Information Act (FOIA). The Commission herein is denying the petition for rehearing filed by the Transmission Access Policy Study Group (TAPS), amending the final rule to increase the numbers of copies filed, and clarifying the filing process for submitting CEII, and one provision of the regulation regarding requests for CEII.

EFFECTIVE DATE: The revisions implemented in this order on rehearing of the final rule will become effective [**insert date 30 days after publication in the FEDERAL REGISTER**].

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**SUPPLEMENTARY INFORMATION:**

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

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FINAL RULE

ORDER NO. 630-A

(Issued July 23, 2003)

**I. HISTORY**

1. On February 21, 2003, the Federal Energy Regulatory Commission (Commission) issued a final rule in Order No. 630 establishing procedures for the public to use to submit and request access to critical energy infrastructure information (CEII) that would otherwise not be available to them under the Freedom of Information Act, 5 U.S.C. 552 (FOIA). Order No. 630 is the most recent step the Commission has taken to protect information regarding critical energy infrastructure since the September 11, 2001 terrorist attacks on the United States. On October 11, 2001, the Commission took the initial step of issuing a policy statement in Docket No. PL02-1-000 removing from easy public access certain previously public documents.<sup>1</sup> On January 16, 2002, the Commission issued a notice of inquiry in Docket No. RM02-4-000 to determine what

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<sup>1</sup>See 66 FR 52917 (Oct. 18, 2001), 97 FERC ¶ 61,030 (Oct. 11, 2001).

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regulatory changes, if any, should be made to restrict unfettered general public access to CEII.<sup>2</sup> Later that year, the Commission issued a notice of proposed rulemaking and statement of revised policy in the same docket, proposing procedures for submitting and requesting CEII and the creation of a new position of CEII Coordinator.<sup>3</sup> The Commission issued the final rule in Order No. 630 approximately five months later.<sup>4</sup>

2. On March 21, 2003, the Transmission Access Policy Study Group (TAPS) filed a timely request for rehearing of Order No. 630. The Commission granted rehearing for the limited purpose further reconsideration on April 21, 2003. TAPS filed a motion on May 27, 2003 seeking to supplement its prior request for rehearing, and asking that the Commission consider comments filed by TAPS and the American Public Power Association (APPA) regarding the notice of proposed rulemaking in Docket No. RM03-6-000, Amendments to Conform Regulations with Order No. 630, IV FERC Stats. & Regs. ¶ 32,569 (2003).<sup>5</sup>

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<sup>2</sup>See 67 FR 3129 (Jan. 23, 2002), IV FERC Stats. & Regs. ¶ 35,542 (Jan. 16, 2002).

<sup>3</sup>See 67 FR 57994 (Sept. 13, 2002), IV FERC Stats. & Regs. ¶ 32,564 (Sept. 5, 2002).

<sup>4</sup>68 FR 9857 (Mar. 3, 2003), III FERC Stats. & Regs. ¶ 31,140 (Feb. 21, 2003).

<sup>5</sup>The Commission will consider TAPS's supplemental comments, but notes that the comments were filed after the statutory deadline for filing rehearing requests, and thus are not preserved for consideration on appeal. See, e.g., 16 U.S.C. 8251.

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3. As discussed in more detail below, the Commission denies TAPS's request for rehearing. Nevertheless, the Commission is revising Order No. 630 to reflect its experience in implementing the final rule. Specifically, this order revises Order No. 630 to change the CEII filing instructions, the CEII request procedures, and the instructions for requesting rehearing of the CEII Coordinator's decision.

## **II. DISCUSSION**

### **A. TAPS's Request for Rehearing**

4. In its request for rehearing, TAPS claims that the CEII rule creates "a conflict between deadlines placed on intervenors in Commission proceedings . . . and the time frames for the release of CEII." TAPS Request at p. 1. TAPS cites as an example rate filings under Section 205 of the Federal Power Act. According to TAPS, the Commission's CEII request process would likely take at least 20 business days to complete, thus preventing an intervenor from gaining access to relevant CEII until after the 21-calendar day limit for filing interventions and protests had passed. The Commission disagrees. Initially, a potential intervenor would typically not require access to CEII in order to file a notice of intervention or motion to intervene. As for a protest, as discussed in Order No. 630, it is unlikely that there will be CEII contained in a Section 205 filing, which typically must be acted on within 60 days, or any other filing with statutory deadlines, and in the unusual case where there is such information, it is likely that there will be enough publicly available information to enable an intervenor to

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respond to the filing.<sup>6</sup> Moreover, in the unlikely event that there is need for an intervenor to obtain access to CEII, the intervenor may request a reasonable extension of time to file a protest. Separately, as most intervenors in Section 205 rate cases, the typical cases where statutory deadlines are relevant, have ongoing relationships with the filing utility, they can always contact the filing utility directly.

5. Moreover, as noted in Order No. 630, the issue is not new. Prior to enactment of the CEII rule, a company could make a filing with a request for confidential treatment under 18 CFR 388.112. To date the Commission is unaware of this right preventing someone from filing a timely intervention or protest, or participating meaningfully in a Commission rate proceeding. There is no reason to think that the issue is any more acute under the CEII rule.

6. TAPS notes that the Commission has found portions of Form No. 715 data to be CEII, and TAPS claims that "geographic markets cannot be properly defined without assessing transmission capability and constraints."<sup>7</sup> While knowledge of transmission capacity and constraints may better enable intervenors to participate effectively in merger and market rate proceedings, Order No. 630 should not prevent intervenors from getting such information. Form No. 715 is an annual filing that may be obtained through the CEII request procedures by those with a need for the information. In addition, nothing in

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<sup>6</sup>68 FR at p. 9866; III FERC Stats. & Regs. ¶ 31,140 at P 55.

<sup>7</sup>TAPS March 21, 2003 Rehearing Request at p. 4.

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Order No. 630 affects the requirement in Part 37 of the Commission's regulations regarding Open Access Same-Time Information Systems (OASIS). Under 18 CFR 37.6, transmission providers are required to post transmission capability, transmission service products and prices, ancillary service offerings and prices, specific transmission and ancillary services requests and responses, transmission service schedules information, and other transmission-related communications. Neither this rule, nor the changes proposed in the NOPR in Docket No. RM03-6-000, affects the obligations of transmission providers to continue to provide this information. Accordingly, interested parties should have adequate information on hand to respond to filings made pursuant to Sections 203, 205 and 206 of the Federal Power Act, 16 U.S.C. 824b, 824d, and 824e.

7. Finally, TAPS's supplemental filing indicates a concern that the Commission's CEII access procedures have somehow supplanted other mechanisms for obtaining CEII. For example, TAPS notes that "[r]egional reliability councils, RTOs and OASIS sites have procedures in place today that provide market participants with secure access to CEII," and goes on to state that "[t]he Commission should not interfere with these existing mechanisms – and indeed should build upon them to ensure secure access to CEII."<sup>8</sup> The Commission does not intend to interfere with these mechanisms. Order No. 630 deals exclusively with the way in which information is submitted to and disseminated by the Commission; it is not intended to limit the ability of companies,

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<sup>8</sup>TAPS May 27, 2003 Motion to Supplement at p. 3.

reliability councils, RTOs and others to share CEII with those with a need for it. In fact, the Commission recognizes that these entities are often in the best position to judge the legitimacy of such requesters, and the Commission encourages these entities to provide information to legitimate requesters, reducing the number of CEII requests that the Commission itself must process.

**B. Changes to 18 CFR 388.112**

**1. Changes to Instructions Regarding Non-Internet Public Information**

8. The Commission is making several changes to the instructions in 18 CFR 388.112 regarding submission of CEII. The first change is to add an instruction in § 388.112(a)(3) regarding the filing of non-Internet public (NIP) information.<sup>9</sup> In Order No. 630, the NIP instructions appeared only in the preamble text. The Commission has decided for the sake of clarity to integrate NIP into the instructions in § 388.112 of its regulations. It is easier for filers to be able to rely on instructions in the regulations themselves without having to look at the preamble language in order to get complete instructions on preparing a filing. Accordingly, in order to include NIP in 18 CFR 388.112, the title of the section is changed from "Requests for privileged treatment of

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<sup>9</sup>NIP information includes location maps and diagrams that don't rise to the level of CEII. Order No. 630 provided the following examples of NIP: "(1) USGS 7.5 minute topographic maps showing the location of pipelines, dams, or other aboveground facilities, (2) alignment sheets showing the location of pipeline and aboveground facilities, right of way dimensions, and extra work areas; (3) drawings showing site or project boundaries, footprints, building locations and reservoir extent; and (4) general location maps." 68 FR at p. 9862, IV FERC Stats. & Regs. at P 30.

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documents submitted to the Commission" to "Requests for special treatment of documents submitted to the Commission." The instructions in § 388.112(b) of the Commission's regulations are being revised to specify that NIP information should be segregated from other public information, and to direct filers to file the same number of NIP volumes that they file of other public volumes. This is because NIP is circulated to staff in the same manner that public information is circulated. The only difference at the Commission between NIP information and public information is that NIP information is not available to the public through the on-line Federal Energy Regulatory Records Information System (FERRIS). NIP information is available, however, in the Commission's Public Reference Room.

## **2. Changes to the Number of Copies for Public Documents and CEII**

9. The instructions in Order No. 630 regarding submission of CEII were incorporated largely into the Commission's then-existing regulation at 18 CFR 388.112 regarding requests for privileged treatment of documents. That existing regulation specified that an original and fourteen copies of public documents should be filed. This requirement was based on the Commission's generic filing regulation found at 18 CFR 385.2004, which states that "[a]ny person filing under this chapter must provide an original of the filing and fourteen exact copies, unless otherwise required by statute, rule or order." Unfortunately, however, unlike 18 CFR 385.2004, the regulation at 18 CFR 388.112 did not allow for situations where fewer or more than fourteen copies are

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required.<sup>10</sup> The language in § 388.112 of the Commission's regulations therefore is being revised to require for public volumes, an original plus the requisite number of copies for that particular type of filing.

10. Order No. 630 specified that one version of CEII material be filed, mirroring the existing requirement for only one version of privileged information. Generally, in order to ensure tight control over privileged information such as trade secret information, the Commission prefers to receive only one version of such information. However, staff has found that having only one version of CEII material makes it difficult to process filings. The Commission has therefore determined that having two additional copies of CEII material will facilitate more efficient processing of filings containing CEII. Consequently, the filing provisions at §§ 388.112(b)(2)(A)(ii) and (B)(ii) of the Commission's regulations are being revised to require an original and two copies of material containing CEII. The rule regarding the number of privileged filings will remain the same, requiring that one be filed.

### **3. Changes to Other Filing Instructions**

11. The Commission is also revising the filing instructions in 18 CFR 388.112(b) to remove language directing filers to segregate CEII and privileged material wherever practical into separate documents or appendices, and instead directing filers to file CEII,

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<sup>10</sup>See, e.g., 18 CFR 157.6(a) (requiring an original and 7 copies of applications for certificates of public convenience and necessity).

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privileged, and NIP in separate "volumes." Since Order No. 630 became effective, the Commission has received numerous filings that have been difficult to process because of confusion regarding which portions are public, which are NIP, which are CEII, and which are privileged. The staff in the Office of the Secretary and the staff in the Office of the Executive Director who process filings and are responsible for placing documents into FERRIS are not the same staff that review the documents for substantive content. The processing staff does not have the time to read each filing page-by-page to see where materials may be marked for special treatment in the middle of a document. By using the term "volume," the Commission is specifying that materials for which special treatment is sought be physically separate from other portions of the filing, making for easier processing, with less of a chance for NIP, CEII, or privileged information to inadvertently be logged in as standard public information. The Commission is also deleting parallel filing instructions that allowed filers to redact material from a filing instead of using the separate volume approach. The redaction approach results in numerous versions of the same material being filed, increasing filer costs, staff processing time, and the possibility of confusion. For this reason, the regulation will no longer include a redaction option in 18 CFR 388.112.

12. In addition, the Commission is revising the filing provisions to reflect that filings should be marked and packaged according to instructions provided by the Secretary's Office. In Order No. 630, the Commission provided detailed instructions in 18 CFR

388.112(b) regarding the marking, packaging, and filing of CEII. The Commission has now determined to provide general instructions in the regulatory text with more detailed information provided in instructions from the Secretary's Office. This allows the Commission more flexibility and will permit the details to be modified as the need arises. Key elements, such as the numbers of copies required, are still covered by the regulation itself.

#### **4. Changes to Effect and Notification Provisions**

13. The Commission is revising the language in paragraphs (c), (d), and (e) of § 388.112 of its regulations to specifically reference CEII requests. In Order No. 630, the language in these provisions refers to both traditional privileged information and CEII as privileged information. To eliminate the potential for confusion, the Commission believes it is necessary to clearly distinguish between CEII and materials that companies have traditionally submitted with requests for privileged treatment, such as confidential information or Privacy Act information. Accordingly, the Commission is amending § 388.112(c) of its regulations to clarify that it applies to claims for CEII status as well as privileged claims. Similarly, the Commission is amending 18 CFR 388.112(d) to include language to clarify that it is relevant to CEII requests. The Commission also is amending § 388.112(e) of its regulations to clarify that the Commission will notify submitters prior to releasing information for which the submitter has requested CEII

treatment. In addition, language is added in both 388.112(d) and (e) to clarify that the five days referred to in each are calendar days.

### **C. Changes to 18 CFR 388.113 CEII Request Procedures**

14. After several months of experience processing CEII requests, the Commission is changing 18 CFR 388.113 to make certain minor changes to its CEII request procedures. The Commission is amending § 388.113(d)(3)(i) of its regulations to require that CEII requesters sign their CEII. Although 18 CFR 385.2005(a) already requires that any filing made with the Commission be signed, the Commission is revising § 388.113(d)(3)(i) to specify that CEII requests should be signed. As with § 385.2005, the purpose of the signature is to verify that the signer knows the contents of the filing and that "the contents are true as stated to the best knowledge and belief of the signer."<sup>11</sup> In addition, the Commission is amending that same section to require requesters to provide their birth name and any other names that they may have had or been known by in addition to their current name. This will help the Commission verify the identity of the requester where the birth name or other names do not match the requester's current name. Finally, 18 CFR 388.113(d)(3)(i) is being revised to read that requests "must" contain specific information listed in the regulation.<sup>12</sup> This will make it more clear that the information is mandatory.

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<sup>11</sup>See 18 CFR 385.2005(a)(2)(ii) (2003).

<sup>12</sup>The original language in Order No. 630 stated that a request "shall" contain the listed information in 18 CFR 388.113(d)(3)(i).

15. In response to requests from Federal agencies, the Commission is also revising the CEII request regulations at § 388.113(d)(3)(i) to require less personal information from a Federal agency requester who requests information in an official capacity. Employees at Federal agencies are subject to background checks as a condition of their Federal employment. Consequently, Federal employees require less screening prior to gaining access to CEII. The Commission, therefore, is adding a sentence to 18 CFR 388.113(d)(3)(i) to clarify that “Federal agency employees making requests on behalf of Federal agencies may omit their social security number, and date and place of birth.”

16. The Commission also is adding language at the end of § 388.112(d)(ii) of its regulations to direct that “[C]opies of requests for rehearing of the CEII Coordinator’s decision should be served on the CEII Coordinator and the Associate General Counsel for General Law.” This will facilitate the Commission’s processing of rehearing requests by ensuring that relevant staff is notified of the request as soon as possible.

#### **D. Clarification Regarding LNG Environmental Resource Reports**

17. Order No. 630 listed information that the Commission considers to be CEII because it provides more than simply location information. In error, that listing included "environmental resource reports for LNG facilities."<sup>13</sup> It should have read

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<sup>13</sup>68 FR 9857 at p. 9862, III FERC Stats. & Regs. P 31.

"environmental resource report 13 for LNG facilities," which contains engineering and design information for liquified natural gas facilities.<sup>14</sup>

### **E. Review of Effectiveness of CEII Process**

18. This rule, as well as the final rule in RM03-6, represents the Commission's best efforts to achieve a delicate balance between the due process rights of interested persons to participate fully in its proceedings and its responsibility to protect public safety by ensuring that access to CEII does not facilitate acts of terrorism. The Commission believes that it has struck an appropriate balance; however, it intends to monitor the experiences under these two rules to ensure that it has done so. Therefore, in six months the Commission will solicit public comment to determine whether submitters or requesters of CEII are experiencing any problems with the new processes.

### **III. INFORMATION COLLECTION STATEMENT**

19. The Office of Management and Budget's (OMB's) regulations require that OMB approve certain information collection requirements imposed by agency rule.<sup>15</sup> OMB approved the final rule issued in Order No. 630 on May 2, 2003. Two changes have been made to the information collection requirements in this order on rehearing. The number of copies of CEII have been changed from one original to an original plus two copies in order to facilitate staff review of filings. This requirement does not exceed OMB's

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<sup>14</sup>See 18 C.F.R. 380.12(o).

<sup>15</sup>5 CFR Part 1320 (2003).

restriction against requiring more than an original plus two copies and does not change the burden estimates.<sup>16</sup> In addition, the revised rule requires requesters to identify any other names by which they have been known, and to give the dates they used such names. This requirement is intended to verify the identity of the requester. OMB regulations provide an exemption where a person is required to provide only facts that are necessary for identification.<sup>17</sup> Again, this change does not change the burden estimates. Although the Commission believes these changes are not substantive or material changes requiring OMB approval, a courtesy copy is being submitted to OMB.

#### **IV. ENVIRONMENTAL ANALYSIS**

20. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.<sup>18</sup> Included in the exclusions are rules that are clarifying, corrective, or procedural or that do not substantively change the effect of the regulations being amended. This rule is clarifying and procedural in nature and therefore falls under the exceptions; consequently, no environmental consideration is necessary.

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<sup>16</sup>See 5 CFR 1320.5(d)(2)(iii).

<sup>17</sup>5 CFR 1320.3(1).

<sup>18</sup>Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Regulations Preambles 1986-1990 ¶ 30,783 (1987).

**V. REGULATORY FLEXIBILITY ACT CERTIFICATION**

21. The Regulatory Flexibility Act of 1980 (RFA)<sup>19</sup> generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect. The Commission certifies that this rule does not have such an impact on small entities.

**VI. DOCUMENT AVAILABILITY**

22. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

23. From FERC's Home Page on the Internet, this information is available in the Elibrary or the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

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<sup>19</sup>5 U.S.C. 601-612.

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24. User assistance is available for FERRIS and the FERC's website during normal business hours via e-mail at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or TTY, contract (202) 502-8659, or through the Public Reference Room at (202) 502-8371 Press 0.

## **VII. EFFECTIVE DATE**

25. The revisions implemented in this order on rehearing of the rule are effective **[insert date 30 days after publication in the FEDERAL REGISTER].**

26. The provisions of 5 U.S.C. § 801 regarding Congressional review of Final Rules do not apply to this Final Rule, because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

### **List of subjects in 18 CFR Part 388**

Confidential business information, Freedom of information

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

In consideration of the foregoing, the Commission amends part 388, Chapter I, Title 18, Code of Federal Regulations, as follows:

**PART 388—INFORMATION AND REQUESTS**

1. The authority citation for part 388 continues to read as follows:

**Authority:** 5 U.S.C. 301-305, 551, 552 (as amended), 553-557; 42 U.S.C. 7101-7352.

2. In § 388.112, the heading is revised, paragraph (a)(3) is added, and paragraphs (b) through (e) are revised, to read as follows:

§ 388.112 Requests for special treatment of documents submitted to the Commission.

(a) Scope. \* \* \*

(3) Any person submitting documents containing maps or diagrams that reveal the location of critical energy infrastructure as defined in § 388.113 but do not rise to the level of CEII should follow the procedures for filing non-Internet public (NIP) information.

(b) Procedures. A person claiming that information warrants special treatment as NIP, CEII, or privileged must file:

(1) A written statement requesting NIP, CEII or privileged treatment for some or all of the information in a document, and the justification for special treatment of the information; and

(2) The following, as applicable:

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(i) An original plus the requisite number of copies of both the public and NIP volumes, if any, filed and marked in accordance with instructions issued by the Secretary;

(ii) An original plus two copies of the CEII volume, if any, filed and marked in accordance with instructions issued by the Secretary; and

(iii) An original only of the privileged volume, if any, filed and marked in accordance with instructions issued by the Secretary.

(c) Effect of privilege or CEII claim.

(1) For documents filed with the Commission:

(i) The Secretary of the Commission will place documents for which privileged or CEII treatment is sought in accordance with paragraph (b) of this section in a nonpublic file while the request for privileged or CEII treatment is pending. By placing the documents in a nonpublic file, the Commission is not making a determination on any claim of privilege or CEII status. The Commission retains the right to make determinations with regard to any claim of privilege or CEII status, and the discretion to release information as necessary to carry out its jurisdictional responsibilities.

(ii) The Secretary of the Commission will place the request for privileged or CEII treatment and a copy of the original document without the privileged or CEII information in a public file while the request is pending.

(2) For documents submitted to Commission staff. The notification procedures of paragraphs (d), (e), and (f) of this section will be followed by staff before making a document public.

(d) Notification of request and opportunity to comment. When a FOIA or CEII requester seeks a document for which privilege or CEII status has been claimed, or when the Commission itself is considering release of such information, the Commission official who will decide whether to release the information will notify the person who submitted the document and give the person an opportunity (at least five calendar days) in which to comment in writing on the request. A copy of this notice will be sent to the requester.

(e) Notification before release. Notice of a decision by the Commission, the Chairman of the Commission, the Director, Office of External Affairs, the General Counsel or General Counsel's designee, a presiding officer in a proceeding under part 385 of this chapter, or any other appropriate official to deny a claim of privilege, in whole or in part, or to make a limited release of CEII, will be given to any person claiming that the information is privileged or CEII no less than five calendar days before disclosure. The notice will briefly explain why the person's objections to disclosure are not sustained by the Commission. A copy of this notice will be sent to the FOIA or CEII requester.

5. In § 388.113 paragraphs (d)(3)(i) and (d)(3)(ii) are revised to read as follows:

388.113 Accessing critical energy infrastructure information.

\* \* \* \* \*

(d) Optional procedures for requesting critical energy infrastructure information. \* \* \*

(3) \* \* \*

(i) File a signed, written request with the Commission's CEII Coordinator. The request must contain the following: requester's name (including any other name(s) which the requester has used and the dates the requester used such name(s)), date and place of birth, title, address, and telephone number; the name, address, and telephone number of the person or entity on whose behalf the information is requested; a detailed statement explaining the particular need for and intended use of the information; and a statement as to the requester's willingness to adhere to limitations on the use and disclosure of the information requested. Requesters are also requested to include their social security number for identification purposes. Federal agency employees making requests on behalf of Federal agencies may omit their social security number, and date and place of birth.

(ii) Once the request is received, the CEII Coordinator will determine if the information is CEII, and, if it is, whether to release the CEII to the requester. The CEII Coordinator will balance the requester's need for the information against the sensitivity of the information. If the requester is determined to be eligible to receive the information requested, the CEII Coordinator will determine what conditions, if any, to place on release of the information. Where appropriate, the CEII Coordinator will forward a non-disclosure agreement (NDA) to the requester for execution. Once the requester signs any

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required NDA, the CEII Coordinator will provide the requested critical energy infrastructure information to the requester. The CEII Coordinator's decisions regarding release of CEII are subject to rehearing as provided in § 385.713 of this chapter. Copies of requests for rehearing of the CEII Coordinator's decision must be served on the CEII Coordinator and the Associate General Counsel for General Law.

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