

104 FERC ¶ 61,107
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 4, 16, 141 and 157

(Docket No. Docket No. RM03-6-000; Order No. 643)

Amendments to Conform Regulations With Order No. 630
(Critical Energy Infrastructure Information Final Rule)

(Issued July 23, 2003)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: This Final Rule revises the Federal Energy Regulatory Commission's regulations requiring companies to make information directly available to the public under certain circumstances. The revisions are necessary to conform these regulations to Order No. 630, which established guidelines for the handling of Critical Energy Infrastructure Information (CEII). In Order No. 630, the Commission determined that it must take steps to restrict the availability of sensitive information about the nation's energy infrastructure so as to reduce the possibility of terrorist attacks. In doing so, the Commission explained that CEII would be exempt from disclosure under the Freedom of Information Act (FOIA). The order set out a definition of CEII and established procedures for persons with a legitimate need for such information to follow in seeking access to it. Order No. 630 only covered information submitted to or prepared by the Commission. The revisions in this Final Rule address instances in which the Commission's rules and regulations require companies to make information available

Docket No. Docket No. RM03-6-000

- 2 -

directly to the public. The revisions are necessary to ensure that protection of CEII is consistent in both contexts.

EFFECTIVE DATE: The rule will become effective **[insert date 30 days after publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT:

Wilbur Miller
Office of General Counsel
Federal Energy Regulatory Commission
888 First Street, N.W.
Washington, DC 20426
(202) 502-8953

SUPPLEMENTARY INFORMATION:

104 FERC ¶ 61,107
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Amendments to Conform Regulations
With Order No. 630
(Critical Energy Infrastructure
Information Final Rule)

Docket No. RM03-6-000

ORDER NO. 643

FINAL RULE

(Issued July 23, 2003)

I. Introduction

1. This Final Rule makes specific changes to the Commission's regulations that require companies to make certain information available directly to the public. The changes are necessary to reconcile those regulations with Order No. 630, which established standards and procedures for the handling of Critical Energy Infrastructure Information (CEII) submitted to or created by the Commission. 68 FR 9857 (Mar. 3, 2003); III FERC Stats. & Regs. ¶ 31,140 (Feb. 21, 2003). Because Order No. 630 addressed only situations in which a person might seek access to CEII that is in the Commission's possession, further changes to ensure consistent treatment and protection of CEII are needed where companies possess CEII and are required by the Commission's regulations to make it available to the public unconditionally.

Docket No. Docket No. RM03-6-000

- 2 -

2. This Final Rule revises the Commission's regulations in the following areas: (1) 18 CFR Part 4, which requires that applicants for hydropower licenses, permits, and exemptions make various types of information available to the public; (2) 18 CFR Part 16, which requires that applicants for projects subject to Sections 14 and 15 of the Federal Power Act, 18 U.S.C. §§ 807-808, make specified information available to the public; (3) 18 CFR § 141.300, establishing requirements for filing FERC Form No. 715, Annual Transmission Planning and Evaluation Report, which requires that portions of the form be made available to the public by the public utility upon request; and (4) 18 CFR Part 157, which governs applications for certificates of public convenience and necessity, and for orders permitting and approving abandonment under Section 7 of the Natural Gas Act.

II. Background

3. As explained in the Notice of Proposed Rulemaking (NOPR), 68 FR 18538, 18540 (Apr. 21, 2003), IV FERC Stats. & Regs. ¶ 32,569 (Apr. 9, 2003), Order No. 630 arose from the Commission's concern that CEII could be employed by terrorists to engineer attacks against the nation's energy facilities. The Commission had previously taken steps to remove various categories of documents that were likely to contain CEII from public availability through the internet, the Federal Energy Regulatory Records Information System (FERRIS), and the Commission's public reference room. 68 FR at

Docket No. Docket No. RM03-6-000

- 3 -

9858. Order No. 630 reaffirmed that conclusion and established that the Commission would institute procedures to protect CEII submitted to it. Id.

4. Order No. 630 defined CEII in § 388.113(c)(1) of the Commission's regulations as information about proposed or existing critical infrastructure that:

- (i) Relates to the production, generation, transportation, transmission, or distribution of energy;
- (ii) Could be useful to a person in planning an attack on critical infrastructure;
- (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552; and
- (iv) Does not simply give the location of the critical infrastructure.

68 FR at 9870. The order defined "critical infrastructure" in § 388.113(c)(2) as:

existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

Id.

5. Order No. 630 adopted a process for submission of CEII to the Commission that largely parallels the process for submission of confidential materials in Section 388.112 of the Commission's regulations. That section now provides that an entity submitting CEII to the Commission is responsible for identifying and marking CEII with the legend "Contains Critical Energy Infrastructure Information—Do Not Release." Information identified as CEII is placed in a nonpublic file, with the Commission retaining the right

Docket No. Docket No. RM03-6-000

- 4 -

to make a determination whether CEII treatment has been properly claimed. The submitter is notified in the event any person or entity requests release of the CEII, and also prior to any release of the information being made. 68 FR at 9870.

6. To handle requests for release of CEII, Order No. 630 established the position of CEII Coordinator. A person desiring access to CEII must file a written request with the CEII Coordinator containing the following information:

Requester's name, date and place of birth, title, address, and telephone number; the name, address, and telephone 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.

68 FR at 9870-71.¹ The CEII Coordinator will consider the requester's need for the information, as well as the information's sensitivity. In the event the request is granted, the CEII Coordinator may impose conditions upon the requester's use of the information, including the requirement that the requester sign a non-disclosure agreement.

Determinations by the CEII Coordinator are subject to rehearing under § 385.713 of the Commission's regulations. Id. at 9870.

7. The Commission issued the final rule on February 21, 2003. 68 FR 9857 (Mar. 3, 2003), III FERC Stats. & Regs. ¶ 31,140 (Feb. 21, 2003). In doing so, it recognized that

¹In an order on rehearing of Order No. 630 being issued concurrently, the Commission has added the requirement that these requests be signed by the requester.

its regulations in some areas require companies to make information that might constitute CEII available directly to the public. Because Order No. 630 addressed only CEII in the possession of the Commission, this situation created a window of vulnerability whereby CEII that would be protected under Order No. 630 could become available to persons of malicious intent. This Final Rule is intended to close that window. 68 FR at 18540.

A. The NOPR

8. The NOPR identified the following portions of the Commission's regulations as provisions that might require the disclosure of CEII:

Electric Transmission Provisions

FERC Form No. 715, Annual Transmission Plan and Evaluation Report, contains information that will likely constitute CEII. For example, Part 2 requires power flow data, Part 3 requires system maps and diagrams, and Parts 4 and 5 require transmission planning data. The instructions to the form require submitting companies to make it available to the public upon request. 68 FR at 18540.

Natural Gas Provisions

Several provisions of Part 157, which governs applications for certificates of public convenience and necessity and for orders permitting and approving abandonment, require that information be made available to the public that might constitute CEII. Information such as flow diagrams and gas supply data must be supplied on request to intervenors and made available in central locations in the project area. These provisions

Docket No. Docket No. RM03-6-000

- 6 -

are found in 18 CFR §§ 157.5(d), 157.10(b), 157.22(e)(3)-(4), and 157.203(d). 68 FR at 18540.

Hydropower Provisions

Part 4, which governs licenses, permits, exemptions and other applications under the Federal Power Act, requires that applicants make various types of information about their projects available to the public, including items such as detailed maps and scientific studies. Specifically, under 18 CFR § 4.32(a)(3), an applicant for a preliminary license, permit or exemption must provide notification to affected property owners. Under § 4.32(b)(3)-(4), an applicant must make a copy of the application and exhibits available to the public for inspection and copying at specified locations. Under §§ 4.34(i)(4)(i) and 4.34(i)(6)(iii), an applicant using alternative procedures must distribute an information package and maintain a public file of all relevant documents. Finally, under § 4.38(g), which provides for pre-filing consultation in the case of an original license, the applicant must make available for public inspection various items, including detailed maps and design information. 68 FR at 18540. In addition, Part 16 of the Commission's hydropower regulations, which specifies procedures for takeover and relicensing of existing projects, contains notice provisions that require applicants to make items such as drawings, diagrams and emergency action plans available for public inspection. Such provisions are found at 18 CFR §§ 16.7(d)-(e) and 16.8(i). 68 FR at 18540

9. The NOPR also proposed to revise several sections that require information possibly constituting CEII to be made available to Indian tribes and other government agencies. Such provisions are found at 18 CFR §§ 4.32(b)(1)-(2), 4.38(b)(1), 4.38(c)(4), 4.38(d), 16.8(b)(1), 16.8(c)(4), and 16.8(d). As explained in the NOPR, the Federal Records Act, 44 U.S.C. § 3510(b), does not require one federal agency to accord the same treatment to information as another federal agency where the former receives the information directly from a third party. Consequently, to ensure consistent treatment of CEII, the Commission proposed to add provisions for instances where information must be provided to other agencies and to tribes that would parallel the proposed provisions applicable to information made available to the public. The Commission noted that its proposed revisions would not prohibit a company from sharing CEII with a government agency, but would only ensure that the Commission's regulations did not require it to disclose CEII. 68 FR at 18541.

10. The changes proposed by the NOPR were intended to parallel the treatment of CEII under Order No. 630. The NOPR proposed that a company required by the affected regulations to make available information that might constitute CEII would make a determination whether the information was in fact CEII. If it was, the company would omit the CEII from the information being made available and instead include a brief statement describing the omitted information without revealing CEII, and informing the reader of his or her right to challenge the omission through submission to the CEII

Docket No. Docket No. RM03-6-000

- 8 -

Coordinator under the procedures adopted in Order No. 630 and found in 18 CFR §§ 388.112 and 388.113. The NOPR added that companies would be expected to adhere to previous determinations made by the Commission or the Coordinator with respect to specific information. 68 FR at 18541.

11. The Commission issued the NOPR on April 9, 2003, and ultimately received twelve comments.²

B. Related Orders

12. The Commission on this date is issuing two other orders that have some bearing on this rulemaking. As noted, one is the order on rehearing from Order No. 630. The other is a Final Rule, in RM02-16, revising the Commission's hydropower licensing procedures. The hydropower revisions contain provisions requiring companies to make information available to the public that may constitute CEII. Consequently, the licensing rulemaking is adding a provision to 18 CFR Part 5 that will parallel the revisions made in this Final Rule.

III. Discussion

13. Some of the comments supported the proposals in the NOPR in whole or in large part.³ Disagreements or suggestions centered on several areas.

A. Availability of Needed Information

²A list of commenters is appended to this order.

³MidAmerican Energy Company at pp. 1-3; PJM Interconnection, L.L.C. at pp. 2-3; Southern California Edison at pp. 1-2.

14. Some commenters expressed concern that the NOPR, if adopted, would restrict market opportunities and interfere with other interests by keeping information away from persons with a legitimate need for it. One commenter expressed significant concerns that the NOPR would interfere with the operation of the electric market by making it difficult for market participants to obtain needed data.⁴ For example, the Study Group was concerned that information would become unavailable from OASIS;⁵ that transmission owners would selectively withhold Form No. 715 information, resulting in discrimination;⁶ that industry councils would be unable to obtain information for studies and models, or that some companies would be unable to obtain the studies or models themselves;⁷ and that intervenors would be unable to obtain needed information in a timely fashion.⁸ The Study Group specifically contends that the Commission should enunciate and enforce a comparability standard to ensure equal access to information.⁹ It also suggests a system under which CEII owners would be required to accept OASIS passwords, identification numbers employed by regional councils, or certifications made

⁴American Public Power Association & Transmission Access Policy Study Group (Study Group) at pp. 6-20.

⁵Id. at 6.

⁶Id. at 7-9.

⁷Id. at 10-18, 21.

⁸Id. at 18-20.

⁹Id. at 21.

by regional transmission organizations (RTOs) as proof that a person was a suitable recipient. Any dispute would be appealable to the CEII Coordinator.¹⁰

15. Other comments expressed similar concerns. One commenter stated that the use of the word "shall" in the proposed regulations might lead companies to believe that they were prohibited from disclosing CEII voluntarily.¹¹ The Bonneville Power Administration (BPA) noted that the Commission cannot prohibit it from disclosing information pursuant to statutory requirements such as the Freedom of Information Act (FOIA) and the National Environmental Policy Act (NEPA).¹² The Department of Interior (Interior) expressed concern that its access to information pursuant to its own statutory authorities might be hampered.¹³

16. The Commission believes that these concerns are misplaced. As the Commission stated in the NOPR, neither the revisions proposed there nor in Order No. 630 is intended to require companies to withhold CEII, or to prohibit voluntary arrangements for sharing information. These revisions are intended only to ensure that the Commission's regulations do not require the disclosure of CEII. 68 FR at 18541. There is nothing in these revisions that affects one entity's ability to reach appropriate arrangements for

¹⁰Id. at 22-23.

¹¹Consumers Energy Company at pp. 2-3.

¹²BPA, at p. 2.

¹³Interior at pp. 1-3.

sharing CEII and the Commission in fact encourages such arrangements. In many cases, companies and persons that have had dealings with one another in the past will be in a better position than the Commission to judge the security of such an arrangement. There is thus nothing in these revisions that would, for example, prevent a regional council from obtaining data from member companies or from sharing it both with member and non-member companies. Nevertheless, in new §§ 4.32(k)(4), 16.7(d)(4), 141.300(d)(4), and 157.10(d)(4) of the Commission's regulations, the Commission has added language to the revisions to make as it as clear as possible that its CEII regulations do not prohibit or restrict voluntary disclosures of information pursuant to private arrangements.

17. With respect to the specific concerns raised by these commenters, the Commission does not believe such concerns are justified. Nothing in these revisions, or in Order No. 630 for that matter, addresses OASIS in any way and there should be no impact on it. The revisions made in this Final Rule apply only to specific sections and do not cover the Commission's regulations generally; the Commission has decided against including a "catch-all" provision, as suggested by one commenter,¹⁴ so as to avoid such unwanted consequences. The Commission also does not believe companies should be disadvantaged in obtaining Form No. 715 data. As Form No. 715 is an annual report, its timing can be anticipated and gaining access to CEII contained in it should be possible in a timely manner. Most likely, the same entities will seek access every year, so that

¹⁴National Hydropower Association at p. 6.

permission in most cases will be quickly granted. The Commission's numerous statutory mandates are undergirded by principles of non-discrimination (i.e., comparability). Thus, these revisions contemplate that all persons with a legitimate need for CEII will be able to gain access to it with a minimum of difficulty. The revisions already envision and intend to provide comparable treatment in access to CEII.

18. The Commission understands the Study Group's concern that CEII owners might discriminate in making information available to market participants, but believes that its concern may be premature. Failure to provide required Form No. 715 data would be a violation of the Commission's regulations, even without the changes to the regulations effected by this rule and Order No. 630. The Commission remains responsible for ensuring that companies comply with its regulations, and the Commission will not tolerate abuses. Nor does the Commission believe that this final rule will necessarily do anything to enhance a CEII owner's ability to engage in such abuses. Form No. 715 data must still be submitted in full to the Commission. Should a company fail to disclose the data fully to a requester that has been granted access to CEII, that failure would be easy to identify. Furthermore, the Commission anticipates that companies such as the Study Group's members will have little trouble, and experience little delay, in obtaining such access. Finally, the Commission wishes to emphasize again that this final rule affects only those informational provisions that are specifically listed here. It does not apply

generally across the industries that the Commission regulates. In the case of the electric market, no requirements are being affected in any way other than Form No. 715.

19. The Study Group recommended several suggestions to facilitate access to CEII consistent with security concerns. Their concern is that whatever process ultimately adopted by the Commission is reliable, non-discriminatory and easy to use. While we share the Study Group's concerns with the need to facilitate access, we continue to believe that the process contained in the final rule is sufficiently straightforward and should operate quickly in situations involving access to Form No. 715 data. Moreover, by employing standards set by outside entities in determining whether to grant access to CEII under the Commission's regulations, the Study Group's proposals would have the undesirable effect of requiring the Commission to monitor approval processes employed by these organizations to ensure that they provided sufficient security.

20. With respect to access and dissemination of information by entities such as BPA and Interior, it goes without saying that the Commission lacks authority to override obligations imposed by statute or regulation. Clearly, this Final Rule cannot, and is not intended to, prevent agencies from complying with the FOIA or NEPA, or to prevent persons or companies from complying with lawfully enacted regulations that require the provision of information. Finally, the question of intervenors obtaining information in a timely fashion was addressed in Order No. 630. 68 FR at 9866.

B. Approval Process

21. Several commenters expressed concerns about the process for handling requests for access to CEII. Some believed that the process for approval would be too slow and suggested changes to speed it up. Some recommended a pre-approval process.¹⁵ One commenter suggested that CEII owners be required to provide CEII to persons with OASIS passwords, or that regional transmission organizations be able to certify customers for access automatically.¹⁶ Another suggested a process whereby a requester must first go to the company, then file a request with the Coordinator.¹⁷ One commenter requested assurance that the Commission will not place requests for access on separate tracks, the point presumably being that there should not be a "slow track."¹⁸

22. Some of the comments about the approval process concerned the handling of CEII. One suggested that a CEII owner be required to notify everybody on the service list when information is determined not to be CEII.¹⁹ One asked the Commission to establish a time limit in which a CEII owner must provide information once a request for

¹⁵Interior at pp. 1-2; Consumers Energy Company at pp. 3-6; Study Group at pp. 23-24.

¹⁶Study Group at p. 22.

¹⁷National Hydropower Association at pp. 3-4.

¹⁸Northern Natural Gas at pp. 5-6.

¹⁹Interior at p. 3.

access has been granted.²⁰ Another suggested that the Commission employ standardized non-disclosure agreements, and that it specify that a recipient, once granted access to CEII, be permitted to use it for ongoing business activities, such as a consultant with more than one client.²¹ The Study Group also asked the Commission to clarify that, once a requester is granted access, it may communicate directly with the CEII owner.²² One commenter asked that the Commission establish guidelines for the Coordinator to follow, and suggested that CEII owners be involved in any negotiations over non-disclosure agreements.²³ Finally, one commenter requested that the Coordinator perform a monitoring role intended to determine whether companies are making required information available. This commenter stated that outsiders to the system cannot tell what information is being withheld.²⁴

23. All of the above comments address the approval process generally and, thus, are not appropriate for consideration as part of this docket. The NOPR proposed to follow the approval process already established in Order No. 630 and stated that the Commission would not revisit issues already addressed in that order. 68 FR at 18541.

²⁰Northern Natural Gas at p. 4.

²¹Study Group at pp. 22-23.

²²Id. at 24.

²³PJM Interconnection, L.L.C. at pp. 3-5.

²⁴Southwest Transmission Dependent Utility Group at pp. 1-2.

The procedures and guidelines for requesting and obtaining access to CEII, and for challenging CEII designations, were addressed at length in Order No. 630. This included timeliness, verification issues, standards for granting access, and the viability of a pre-approval process. Id. at 9863-65. Some of these issues are addressed again in the order on rehearing being issued concurrently. The Commission will not revisit these issues here.

24. Some clarification is, however, required with respect to several of these suggestions. The Commission does not have separate tracks for CEII access requests. There also is nothing in the Commission's regulations to prevent a requester from directly contacting a CEII owner, either before or after access is granted. Finally, the Commission does not believe it would be practical for the CEII Coordinator to perform a monitoring role. For the most part, the Commission's various regulations requiring that regulated companies make information available rely on voluntary compliance, regardless of whether CEII is involved. The Commission does not believe that the risk of a company simply flouting the regulations is any greater when CEII is involved than it has ever been. Existing mechanisms for dealing with companies that do not comply with their legal responsibilities should suffice in such situations.

25. This rule, as well as Order No. 630, 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.

C. Miscellaneous Issues

26. The Interstate Natural Gas Association of America (INGAA) suggests that the Commission include 18 CFR § 157.18 in the provisions being revised in this Final Rule.²⁵ That section governs applications to abandon facilities or service and requires the applicant to file exhibits, including material, such as flow diagrams and detailed location information, that likely would include CEII. 18 CFR §§ 157.18(c) and (g). The section includes only filing requirements, however, rather than requirements that information be made available to the public. Consequently, any CEII that the section requires be disclosed should already be covered by Order No. 630.

27. One commenter states that the use of the term "landowner" in proposed 18 CFR § 157.6(d)(6) is too restrictive.²⁶ The revision as proposed in the NOPR referred to situations where the regulation might require disclosure of CEII "to a landowner." The notification provision is worded more broadly to require notification to "affected

²⁵INGAA at pp. 2-3.

²⁶Northern Natural Gas at p. 3.

landowners and towns, communities, and local, state and federal governments and agencies." 18 CFR § 157.6(d)(1). The Commission thus has replaced the phrase "to a landowner" with "to any person."

28. The Commission received a suggestion that it establish procedures specifying how and where information denied CEII treatment must be made available.²⁷ The Commission considers this unnecessary and potentially confusing, because different situations may be presented depending on the exact context. If a request that information be treated as CEII is rejected, then the underlying requirement to disclose the information remains operative and, absent any other provision or direction from the Commission, the owning company must comply as promptly as practicable.

29. The National Hydropower Association comments that the Commission should include a provision stating that a company may withhold information considered to be CEII even though it was made publicly available before the Commission enacted these revisions.²⁸ The Commission agrees with the underlying principle, but considers an explicit provision unnecessary. Neither Order No. 630 nor this Final Rule contains any provision requiring that CEII be disclosed because it was previously disclosed. In fact, as noted in Order No. 630, the Commission went to considerable effort to remove from its web site documents that previously had been available to the public. 68 FR at 9858.

²⁷Id. at 4-5.

²⁸National Hydropower Association at p. 6.

Absent an explicit provision requiring previously available CEII to remain available, the logical and intended conclusion is that such information may be removed or made unavailable.

30. The National Hydropower Association also comments that a company owning CEII should not be required to make the information available to one requester solely because it was made available to another requester.²⁹ The Commission has already indicated its agreement with this principle. Order No. 630 explained that access is to be determined on an case-by-case basis. 68 FR at 9864. The fact that one person or organization has been determined not to present a security risk obviously does not mean that a different person or organization would not do so. The Commission cautions owners of CEII, however, that it will not tolerate abuse of these revisions designed to discriminate against competitors or otherwise adversely affect competition in the energy markets. The revised rules are intended solely to enable owners of CEII to prevent information from getting into a terrorist's hands.

31. INGAA expresses concern over the provision in 18 CFR § 157.10(d) requiring treatment of CEII to adhere to previous determinations, because companies may not be aware of previous determinations.³⁰ This should rarely be a problem because in most instances the previous determination will involve information owned by the same

²⁹Naitonal Hydropower Association at p. 5.

³⁰INGAA at pp. 3-4.

Docket No. Docket No. RM03-6-000

- 20 -

company. Nevertheless, the Commission has added the phrase "to the extent practicable" to new §§ 4.32(k)(2), 16.7(d)(2), 141.300(d)(2), and 157.10(d)(2).

32. Except as discussed above, the Commission adopts the proposed revisions to its regulations.

INFORMATION COLLECTION STATEMENT

33. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule. 5 CFR § 1320.12. The public disclosure of information originally supplied by an agency to the recipient is, however, excluded from the coverage of the regulations. 5 CFR § 1320.3(c)(2). The only information collection requirement contained in this Final Rule is a requirement that companies include a statement outlining the procedures for seeking access to CEII. Because that statement would be supplied by the Commission, the information collection regulations do not apply to this Final Rule.

ENVIRONMENTAL ANALYSIS

34. 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. Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987). The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human

Docket No. Docket No. RM03-6-000

- 21 -

environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended. 18 CFR 380.4(a)(2)(ii). This rule is procedural in nature and therefore falls under this exception; consequently, no environmental consideration is necessary.

REGULATORY FLEXIBILITY ACT CERTIFICATION

35. The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. §§ 601-612, 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 proposed rule, if finalized, would not have such an impact on small entities.

DOCUMENT AVAILABILITY

36. 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.

37. From FERC's Home Page on the Internet, this information is available in 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,

Docket No. Docket No. RM03-6-000

- 22 -

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.

38. Assistance is available for FERRIS and the FERC's website during normal business hours. Contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at (866)208-3676, or for TTY, contact (202)502-8659.

EFFECTIVE DATE

39. These regulations are effective [**insert date 30 days after publication in the FEDERAL REGISTER**]. 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

18 C.F.R. Part 4

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 C.F.R. Part 16

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 C.F.R. Part 141

Electric power, Reporting and recordkeeping requirements.

Docket No. Docket No. RM03-6-000

- 23 -

18 C.F.R. Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,
Secretary.

In consideration of the foregoing, the Commission amends Parts 4, 16, 141 and 157, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

1. The authority citation for part 141 continues to read as follows:

Authority: 16 U.S.C. 791a-825r, 2601-2645; 42 U.S.C. 7101-7352.

2. Section 4.32 is amended by adding paragraph (k) to read as follows:

§ 4.32 Acceptance for filing or rejection; information to be made available to the public; requests for additional studies.

* * * * *

(k) Critical Energy Infrastructure Information.

(1) If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined in § 388.113(c) of this chapter, to any person, the

applicant shall omit the CEII from the information made available and insert the following in its place:

- (i) A statement that CEII is being withheld;
 - (ii) A brief description of the omitted information that does not reveal any CEII; and
 - (iii) This statement: "Procedures for obtaining access to Critical Energy Infrastructure Information (CEII) may be found at 18 CFR § 388.113. Requests for access to CEII should be made to the Commission's CEII Coordinator."
- (2) The applicant, in determining whether information constitutes CEII, shall treat the information in a manner consistent with any filings that applicant has made with the Commission and shall to the extent practicable adhere to any previous determinations by the Commission or the CEII Coordinator involving the same or like information.
- (3) The procedures contained in §§ 388.112 and 388.113 of this chapter regarding designation of, and access to, CEII, shall apply in the event of a challenge to a CEII designation or a request for access to CEII. If it is determined that information is not CEII or that a requester should be granted access to CEII, the applicant will be directed to make the information available to the requester.
- (4) Nothing in this section shall be construed to prohibit any persons from voluntarily reaching arrangements or agreements calling for the disclosure of CEII.

3. Section 4.34 is amended by adding paragraph (i)(9) to read as follows:

§ 4.34 Hearings on applications; consultation on terms and conditions; motions to intervene; alternative procedures.

* * * * *

(i) Alternative procedures.

* * *

(9) If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 4.32(k).

4. Section 4.38 is amended by adding paragraph (†)(h) to read as follows:

§ 4.38 Consultation requirements.

* * * * *

(h) Critical Energy Infrastructure Information. If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 4.32(k).

PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

5. The authority citation for part 16 continues to read as follows:

Authority: 16 U.S.C. 791a-825r; 42 U.S.C. 7101-7352.

6. Section 16.7 is amended by adding paragraph (d)(7) to read as follows:

§ 16.7 Information to be made available to the public at the time of notification of intent under section 15(b) of the Federal Power Act.

* * * * *

(d) Information to be made available. * * *

(7) (i) If paragraph (d) of this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined in § 388.113(c) of this chapter, to any person, the applicant shall omit the CEII from the information made available and insert the following in its place:

(A) A statement that CEII is being withheld;

(B) A brief description of the omitted information that does not reveal any CEII; and

(C) This statement: "Procedures for obtaining access to Critical Energy Infrastructure Information (CEII) may be found at 18 CFR § 388.113. Requests for access to CEII should be made to the Commission's CEII Coordinator."

(ii) The applicant, in determining whether information constitutes CEII, shall treat the information in a manner consistent with any filings that applicant has made with the Commission and shall to the extent practicable adhere to any previous determinations by the Commission or the CEII Coordinator involving the same or like information.

(iii) The procedures contained in §§ 388.112 and 388.113 of this chapter regarding designation of, and access to, CEII, shall apply in the event of a challenge to a

CEII designation or a request for access to CEII. If it is determined that information is not CEII or that a requester should be granted access to CEII, the applicant will be directed to make the information available to the requester.

(iv) Nothing in this section shall be construed to prohibit any persons from voluntarily reaching arrangements or agreements calling for the disclosure of CEII.

* * * * *

7. Section 16.8 is amended by adding paragraph ~~(k)~~(j) to read as follows:

§ 16.8 Consultation requirements.

* * * * *

(j) Critical Energy Infrastructure Information. If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 16.7(d)(7).

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

8. The authority citation for part 141 continues to read as follows:

Authority: 15 U.S.C. 79; 16 U.S.C. 791a-828c, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

9. Section 141.300 is amended by adding paragraph (d) to read as follows:

§ 141.300 FERC Form No. 715, Annual Transmission Planning and Evaluation**Report.**

* * * * *

(d) Critical Energy Infrastructure Information.

(1) If the instructions in Form No. 715 require a utility to reveal Critical Energy Infrastructure Information (CEII), as defined in § 388.113(c) of this chapter, to any person, the utility shall omit the CEII from the information made available and insert the following in its place:

(i) A statement that CEII is being withheld;

(ii) A brief description of the omitted information that does not reveal any CEII; and

(iii) This statement: "Procedures for obtaining access to Critical Energy Infrastructure Information (CEII) may be found at 18 CFR § 388.113. Requests for access to CEII should be made to the Commission's CEII Coordinator."

(2) The utility completing Form No. 715, in determining whether information constitutes CEII, shall treat the information in a manner consistent with any filings that utility has made with the Commission and shall to the extent practicable adhere to any previous determinations by the Commission or the CEII Coordinator involving the same or like information.

(3) The procedures contained in §§ 388.112 and 388.113 of this chapter regarding designation of, and access to, CEII, shall apply in the event of a challenge to a CEII designation or a request for access to CEII. If it is determined that information is not CEII or that a requester should be granted access to CEII, the utility will be directed to make the information available to the requester.

(4) Nothing in this section shall be construed to prohibit any persons from voluntarily reaching arrangements or agreements calling for the disclosure of CEII.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

10. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352.

11. Section 157.6 is amended by adding paragraph (d)(6) to read as follows:

§ 157.6 Applications; general requirements.

* * * * *

(d) Landowner notification.

* * *

(6) If paragraph (d)(3) of this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 157.10(d).

12. Section 157.10 is amended by adding paragraph (d) to read as follows:

§ 157.10 Interventions and protests.

* * * * *

(d) Critical Energy Infrastructure Information.

(1) If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined in § 388.113(c) of this chapter, to the public, the applicant shall omit the CEII from the information made available and insert the following in its place:

(i) A statement that CEII is being withheld;

(ii) A brief description of the omitted information that does not reveal any CEII; and

(iii) This statement: "Procedures for obtaining access to Critical Energy Infrastructure Information (CEII) may be found at 18 CFR § 388.113. Requests for access to CEII should be made to the Commission's CEII Coordinator."

(2) The applicant, in determining whether information constitutes CEII, shall treat the information in a manner consistent with any filings that applicant has made with

Docket No. Docket No. RM03-6-000

- 31 -

the Commission and shall to the extent practicable adhere to any previous determinations by the Commission or the CEII Coordinator involving the same or like information.

(3) The procedures contained in §§ 388.112 and 388.113 of this chapter regarding designation of, and access to, CEII, shall apply in the event of a challenge to a CEII designation or a request for access to CEII. If it is determined that information is not CEII or that a requester should be granted access to CEII, the applicant will be directed to make the information available to the requester.

(4) Nothing in this section shall be construed to prohibit any persons from voluntarily reaching arrangements or agreements calling for the disclosure of CEII.

13. In § 157.14, paragraph (a), introductory text, is revised to add the following sentence at the end, to read as follows:

§ 157.14 Exhibits.

(a) To be attached to each application. * * * If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 157.10(d).

* * * * *

14. In § 157.16, the introductory text is revised to add the following sentence at the end, to read as follows:

§ 157.16 Exhibits relating to acquisitions.

* * * If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 157.10(d).

* * * * *

15. Section 157.22 is amended by adding paragraph (e)(9) to read as follows:

§ 157.22 Collaborative procedures for applications for certificates of public convenience and necessity and for orders permitting and approving abandonment.

* * * * *

(e) * * *

(9) If paragraphs (e)(3) or (e)(4) of this section require an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 157.10(d).

* * * * *

16. Section 157.203 is amended by adding paragraph (d)(4) to read as follows:

§ 157.203 Blanket certification.

* * * * *

(d) Landowner notification. * * *

(4) If paragraphs (d)(1) or (d)(2) of this section require an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 157.10(d).

Docket No. Docket No. RM03-6-000

- 33 -

Appendix

List of Commenters

American Public Power Association and Transmission Access Policy Study Group
Bonneville Power Administration
Consumers Energy Company
Interstate Natural Gas Association of America
ISO New England
Mid-American Energy Company
National Hydropower Association
Northern Natural Gas
PJM Interconnection, L.L.C.
Southern California Edison
Southwest Transmission Dependent Utility Group
United States Department of the Interior