UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 388

(Docket Nos. RM02-4-003, PL02-1-003; Order No. 662)

Critical Energy Infrastructure Information

(Issued June 21, 2005)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this final rule amending its regulations for gaining access to critical energy infrastructure information (CEII). These changes are being made based on comments filed in response to the March 3, 2005 notice seeking public comment on the effectiveness of the Commission's CEII rules. The final rule removes federal agency requesters from the scope of the rule, modifies the application of non-Internet public (NIP) treatment, and clarifies obligations of requesters. It also discusses changes that will be made to non-disclosure agreements.

EFFECTIVE DATE: The rule will become effective immediately upon publication in the FEDERAL REGISTER.

FOR FURTHER INFORMATION CONTACT:

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Critical Energy Infrastructure Information — Docket Nos. RM02-4-003
PL02-1-003

ORDER NO. 662

FINAL RULE

(Issued June 21, 2005)

1. On March 3, 2005, the Commission issued a "Notice Soliciting Public Comment" (the Notice) on its procedures for dealing with critical energy infrastructure information (CEII). 70 Fed. Reg. 12,867 (Mar. 16, 2005). The Commission's CEII procedures were established by Order Nos. 630 and 630-A. See Critical Energy Infrastructure Information, Order No. 630, 68 Fed. Reg. 9,857 (Mar. 3, 2003), FERC Stats. & Regs. ¶ 31,140 (2003); order on reh'g, Order No. 630-A, 68 Fed. Reg. 46,456 (Aug. 6, 2003), FERC Stats. & Regs. ¶ 31,147 (2003). After soliciting public comment on the effectiveness of the rules in February 2004, the Commission amended 18 CFR 388.113 and clarified some other issues regarding CEII in Order No. 649.[1] After receiving comments in response to its most recent Notice, the Commission further amends and clarifies 18 CFR 388.113 and its CEII process.

[1] Critical Energy Infrastructure Information, Order No. 649, 69 Fed. Reg. 48,386 (Aug. 10, 2004).

Background

2. Shortly after the attacks on September 11, 2001, the Commission began its efforts with respect to CEII. See Statement of Policy on Treatment of Previously Public Documents, 66 Fed. Reg. 52,917 (Oct. 18, 2001), 97 FERC ¶ 61,130 (2001). As a preliminary step, the Commission removed documents such as oversized maps that were likely to contain detailed specifications of facilities from its public files and Internet page, and directed the public to use the Freedom of Information Act (FOIA) request process in order to request such information.[2] After receiving responses to a notice of inquiry (NOI) it issued on January 16, 2002, 67 Fed. Reg. 3,129 (Jan. 23, 2002), FERC Stats. & Regs. ¶ 35,542 (2002), the Commission issued a notice of proposed rulemaking (NOPR) regarding CEII, which proposed expanding the definition of CEII to include detailed information about proposed facilities as well as those already licensed or certificated by the Commission. Notice of Rulemaking and Revised Statement of Policy, 67 Fed. Reg. 57,994 (Sept. 13, 2002); FERC Stats. & Regs. ¶ 32,564 (2002). The Commission issued Order No. 630 on February 21, 2003, defining CEII to include information about proposed facilities, and to exclude information that simply identified the location of the infrastructure. Order No. 630, 68 Fed. Reg. 9,857, FERC Stats. & Regs. ¶ 31,140. After receiving a request for rehearing on Order No. 630, the Commission issued Order No. 630-A on July 23, 2003, denying the request for rehearing, but amending the rule in several respects. Order No. 630-A, 68 Fed. Reg. 46,456, FERC Stats. & Regs. ¶ 31,147.

[2] The FOIA process is specified in 5 U.S.C. 552 and the Commission's regulations at 18 CFR 388.108.

Specifically, the order on rehearing made several minor procedural changes and clarifications, added a reference in the regulation regarding the filing of non-Internet public (NIP) information, a term first described in Order No. 630, and added the aforementioned commitment to review the effectiveness of the new process after six months. The February 13, 2004 notice facilitated the review contemplated in Order No. 630-A. This order continues the Commission's ongoing commitment to evaluate the effectiveness of the CEII regulations by addressing the comments received in response to its March 3, 2005 Notice.

Summary And Discussion Of Comments Received

A. Introduction

3. In its March 3, 2005 Notice, the Commission specifically invited comments on the following issues: (i) Is the CEII designation being misused or claimed for information that does not meet the definition? (ii) Is there a need for the non-Internet public designation? Is it currently too broad? Are there location maps that should be available on the Internet? (iii) Does it make sense for the Commission to protect (either as CEII or NIP) information that is readily publicly available, for instance in the USGS maps? (iv) Are there classes of information that are not appropriate for release even when a legitimate requester agrees to the terms of an appropriate non-disclosure agreement? The Commission received seventeen responses to its notice.[3] While some of the comments address the specific questions raised by the Commission, the majority of the comments relate more to the Commission's processing of requests for CEII.

[3] See Appendix A.

Commenters raise issues regarding verification of requesters, use of non-disclosure agreements and how to ensure compliance with such agreements. In addition, several commenters raise concerns about CEII claims in the context of market-based rate (MBR) filings, and how the typical CEII response times makes it difficult to participate in such proceedings. At least one commenter raises issues regarding owner operator requests for information about their own facilities. Finally, as part of its review of the CEII process, the Commission is revisiting its rules as regards to federal agency requests. These issues are discussed below.

B. Misuse of CEII Designation

4. The March 3, 2005 notice specifically asked whether the CEII designation was being misused by filers to claim protection for information that does not meet the definition of CEII. The majority of commenters addressing this issue say they are not aware of a problem with misuse of the CEII designation.[4] With one exception discussed below, over-designation does not appear to be an issue.

5. The one area the commenters identify as a potential problem is MBR filings. Both the Transmission Access Policy Study Group (TAPS) and the American Public Power Administration (APPA) raise the issue of whether CEII protection is warranted for these filings. APPA claims that there is "widespread designation of simultaneous import

[4] See e.g., Duke Energy Corporation (Duke) at p. 3, El Paso Corporation's Pipeline Group (El Paso) at p. 3, International Transmission Company (ITC) at p. 2, Interstate Natural Gas Association of America (INGAA) at p. 1, MidAmerican Energy Company (Mid American) at p. 2, National Hydropower Association (NHA) at p. 1, Pacific Gas & Electric Company (PG&E) at p. 1, and Williston Basin Interstate Pipeline Company (Williston Basin) at p. 3.

capability studies as CEII, with such designations appearing to apply to data and information that does not appear to be CEII."[5] Similarly, TAPS evidences concern that "CEII claims are overbroad, especially in the MBR context where entire simultaneous transmission studies and underlying workpapers are designated as CEII."[6] TAPS questions whether all such information qualifies as CEII. Both APPA and TAPS suggest that the Commission commit to perform random audits of CEII filings.[7] TAPS also encourages the Commission to stress that requesters must make every effort to segregate public information from CEII, and only withhold the CEII from ready public access. TAPS further states that submitters should provide thorough descriptions of the material designated as CEII, and the justification for such label.[8]

6. We appreciate commenters' concerns that CEII claims in the MBR context may be overbroad, particularly where entire simultaneous transmission studies and underlying work papers are designated as CEII. In an effort to achieve proper designation of material as CEII while avoiding misuse of the CEII designation, we encourage requesters to make every effort to segregate public information from CEII and to only withhold the CEII from ready public access. To this end, we emphasize that 18 CFR 388.112(b)(1) requires submitters to provide a justification for CEII treatment. The way to properly justify CEII treatment is by describing the information for which CEII treatment is requested and explaining the legal justification for such treatment. The Commission may

[5] APPA at p. 2.

[6] TAPS at p. 4.

[7] APPA at p. 3, TAPS at p. 4.

[8] TAPS at pp. 4-5.

audit random CEII MBR filings in the future to verify that the CEII label is not being misused.

C. Re-Evaluation of the Non-Internet Public Designation

7. The Commission's most recent Notice requested comment regarding the need for the non-Internet public (NIP) designation, whether the current NIP definition is too broad and should exclude certain location maps. Only about half of the commenters specifically address the NIP issue. Duke claims that the NIP designation is not necessary given that much of the NIP information is already accessible to the public through other means, and information that contains sufficient detail could be treated as CEII. Similarly, Edison Electric Institute (EEI) and ITC state that information that raises security concerns should be treated as CEII, not NIP; however, EEI is in favor of use of the NIP category as a fallback.[9] Williston Basin favors keeping the NIP category, stating "[a]bsent a reversal of the Commission's determination that location information does not qualify as CEII, [it] believes the need for the [NIP] designation is unequivocal." Williston Basin at p. 3. INGAA, NHA, and PG&E also appear to favor retaining the NIP category.[10]

8. After analyzing the advantages and disadvantages of the NIP category, we have decided to retain a NIP category, modified to exclude certain general information. To date, the NIP label has been applied to "location maps and diagrams that do not rise to the level of CEII." The following documents previously have been identified as NIP: "(1) USGS 7.5 minute topographic maps showing the location of pipelines, dams, or other

[9] EEI at p. 4, ITC at p. 2.

[10] See e.g., INGAA at pp. 1-2, NHA at p. 2, and PG&E at p. 1.

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."[11] Anyone wishing to obtain NIP may get it upon request from the Public Reference Room or from Commission staff; however it is not made available to the public through the Commission's Internet site.

9. The Commission has decided to modify the definition of NIP to exclude general, stylized non-system location maps, and to henceforth, make such maps available through the Commission's Internet site. "Stylized non-system location maps" are those showing generalized project facility locations and little more information than the state in which the facilities are located. Topographic maps, alignment sheets, and drawings with project specifics will continue to be treated as NIP, as will maps that show the location of the national, regional, or specific pipeline systems.

D. Protection of Information that is Publicly Available Elsewhere

10. Eight entities responded to the question of whether it made sense for the Commission to protect (either by NIP or CEII designation) information that is publicly available elsewhere. Duke and El Paso say there is no need for the Commission to attempt to protect information that was available to the public from another source.[12] However, most of the others support some sort of protection for sensitive information regardless of whether it may be available elsewhere. For instance, INGAA advocates the

[11] Critical Energy Infrastructure Information, Order No. 630-A, 68 Fed. Reg. 46,456 , n.9 (Aug. 6, 2003), FERC Stats. & Regs. ¶ 31,147 (2003).

[12] See e.g., Duke at p. 6; and El Paso at p. 3.

Commission make its own determination of whether information should be protected, "so as not to exacerbate a security problem that might already exist," explicitly referencing the Commission's NIP treatment for USGS maps depicting pipeline facilities as appropriate although the maps may be available through other sources.[13] ITC, MidAmerican, NHA, PG&E, and Williston Basin likewise support some level of protection for such information, with NHA stating that "[r]ather than lowering its standards, NHA would urge other agencies that handle CEII and NIP documents to raise the bar and come up to the level of protection rightly provided by FERC."[14]

11. In light of the comments received, the Commission will continue to protect information that it believes poses a risk to the security of the infrastructure, even where the information may be publicly available elsewhere, as long as the information fits within the definition of NIP (as revised) or CEII.

E. Special Protection for Especially Sensitive Information

12. The final issue posed in the Notice was whether there is information that may not be appropriate for release even where a CEII requester agrees to abide by the terms of an NDA. Nine commenters responded to that question, with the majority stating that especially sensitive information is not always appropriate for release.[15] The types of information companies cite as examples include commercially sensitive (or trade secret

[13] INGAA at p. 2.

[14] ITC at pp. 2-3, MidAmerican at pp. 3-4, NHA at p. 2, PG&E at p. 1, and Williston Basin at p. 5.

[15] See Chandeleur Pipe Line Company and Sabine Pipe Line LLC (Chandeleur & Sabine) at p. 4, Duke at pp. 6-7, El Paso at p. 4, INGAA at p. 2, PG&E at p. 1, Weaver's Cove Energy LLC and Mill River Pipeline LLC (Weaver's Cove) at p. 7, and Williston Basin at pp. 5-6.

type) information,[16] privileged information (attorney-client, attorney work product, or deliberative process),[17] cultural resources information,[18] LNG and pipeline project details,[19] and security information.[20]

13. ITC and MidAmerican are the exceptions, with ITC indicating that as long as the requester follows the CEII request process, evidences a legitimate need for the information, and agrees to abide by the NDA, that he or she should be given the information requested. MidAmerican says it "is not aware of a class of information that in all cases should not be considered for public release upon execution of [an NDA] to a properly screened requestor with a legitimate need for the information."[21]

14. The Commission's existing rule specifies that the decision whether to release CEII involves a balancing of the potential harm from release against the requester's need for the information. This balancing implicitly recognizes that information may not be suitable for release where the extreme sensitivity of the information outweighs a requester's legitimate need for that information. The Commission already made such a determination in the case of some particularly sensitive information related to LNG tanker attacks.[22] In addition, in several instances the Commission has withheld information because it fell within the Commission's deliberative process privilege or

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[16] Duke at pp. 6-7,

[17] Duke at p. 7.

[18] Id.

[19] El Paso at pp. 3-4.

[20] INGAA at p. 2, PG&E at p. 1, and Weaver's Cove at p. 7.

[21] MidAmerican at p. 4.

[22] See, e.g., Alfred Lima, 110 FERC ¶ 61,002 (Jan. 5, 2005).

contained cultural resources information that the Commission did not release prior to its creation of CEII. In light of the comments received, the Commission intends to continue to withhold CEII in the instances where the potential harm from disclosure outweighs the requester's need for the information

F. Requester Verification Issues

15. Many of the commenters encourage the Commission to adopt stricter standards when it comes to verifying the legitimacy and need of requesters. Commenters ask that the Commission follow a standard, articulated process of verifying requesters' legitimacy and need, and require requesters to provide sufficiently detailed statements of need and intended use of the information for the record.[23]

16. Form No. 715 data is of particular concern to several requesters, including BPA, FirstEnergy, and PG&E. Bonneville Power Administration (BPA) encourages the Commission to "require a clear and detailed explanation of why the data from each utility or interconnection is needed, how the data will be used by the requester, and how the requester will prevent its release to any other person."[24] FirstEnergy argues that "the rationale that consultants provide a valuable service to the public has nothing to do with the Commission's responsibility to determine what specifically a particular purported

[23] FirstEnergy Corporation on behalf of its operating companies Ohio Edison, The Cleveland Electric Illumination Company, Toledo Edison, Pennsylvania Electric Company, Pennsylvania Power Company, Metropolitan Edison Company, Jersey Central Power & Light Company, and American Transmission Systems, Inc. (FirstEnergy) at pp. 3-4.

[24] BPA at p. 2.

consultant is going to do with the CEII or to prevent the unauthorized disclosure of CEII to third parties."[25]

17. Form No. 715 presents unique issues because that information is not typically requested in order to participate in a particular Commission proceeding, rather, it is often requested by consultants and academics using the data to create models in order to advise clients and potential clients. The Commission continues to recognize the valuable service provided by these consultants and researchers, and believes that the benefits derived from legitimate consultants and researchers performing such work are substantial. The Commission also realizes that much of their work may be done prior to being engaged by a particular client. Where the work is being done on behalf of a particular client, the regulation requires that the requester identify the client on whose behalf the CEII is being requested. Where the research or product is being developed generally, and there is not yet a client, the requester should provide information by which the Commission can verify his or her legitimacy, such as identifying a past client for whom the consultant has provided similar services or their university affiliation. Such information will help the Commission verify that the requester is providing legitimate services or conducting valuable research. It would be counterproductive to deny requests simply because the consultant or researcher could not identify a particular client on whose behalf the work is being performed.

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[25] FirstEnergy at p. 7. FirstEnergy also claims the Form No. 715 data is confidential commercial information that is provided with the expectation of confidential treatment. The Commission notes that prior to the creation of CEII, Form No. 715 data was publicly available, undercutting FirstEnergy's argument that it is confidential commercial information.

18. Another issue regarding Form No. 715 request arises when a consultant or other requester doesn't clearly articulate why he or she needs data for all regions. Requesters are reminded to justify in their requests why they need the information they have requested. Requesters are warned that failure to do so may result in denial of their requests. This is not a change from the current regulation, which requires requests provide "a detailed statement explaining the particular need for and intended use of the information." 18 CFR 388.113(d)(3)(i). The Commission intends to be more rigorous in analyzing whether a request complies with the regulatory requirement, and will expect to see detailed descriptions regarding the need for the information and the intended use of the information. It will not be sufficient, for instance, to simply say the information is needed to analyze the transmission system. The Commission will look for details such as what type of analysis is being performed, what portions of the system are being analyzed, and who are the potential clients or customers who may benefit from the analysis.

19. PJM Interconnection, L.L.C. (PJM) encourages the Commission to seek assistance from the Department of Homeland Security, the Federal Bureau of Investigation, and other law enforcement agencies regarding "requester identification and verification procedures as well as making case-by-case decisions about whether to disclose information."[26] The Commission is exploring options available through other federal agencies, in particular the possible use of existing databases maintained by other agencies in order to screen CEII requesters.

[26] PJM at pp. 5-6.

20. Commenters also raise issues regarding the Commission's notice and comment process. More than one commenter notes difficulties in getting notice and comments letters on a timely basis.[27] Chandeleur & Sabine requests that the Commission provide notice to the corporate official designated to receive service.[28] Duke encourages the Commission to provide notice using electronic means.[29] Several commenters are requesting longer notice and comment periods.[30]

21. The Commission currently is providing submitters with either five business days or seven calendar days in which to comment on requests. Where the Commission has the submitter's e-mail address or facsimile number, it will use one of those methods to convey the notice and comment letter to the submitter. We believe in most instances this will provide sufficient time to enable submitters to comment on the request. One problem with routinely giving ten days or more for responses to notice and comment letters is that it extends the time for response, which can be critical where the information is requested in order to participate in a Commission proceeding.[31] If a submitter requires additional time, it should request more time from the contact person identified in the Commission's notice and comment letter.

22. For now, the Commission is not planning to change the notice and comment process to notify the person designated to receive service on behalf of a company. There

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[27] See BPA at p. 3, Chandeleur & Sabine at p. 2, INGAA at p. 3,

[28] Chandeleur & Sabine at p. 3.

[29] Duke at p. 8.

[30] See e.g., Duke at p. 7, and INGAA at p. 3.

[31] See Weaver's Cove at p. 2, discussing how lengthy CEII processing times can delay a substantive proceeding. See also discussion below regarding market based rate filings.

has not been a broad call from submitters to change the person notified; the current method of notifying the person submitting the information at issue generally seems to be working for most companies. Adding additional contacts to the notice and comment mailing lists complicates the notice and comment process, especially with regard to requests (for CEII such as Form Nos. 715 and 567) that involve large numbers of submitters.

G. Non-Disclosure Agreement Issues

23. Several companies offer suggestions regarding NDAs, voicing a common concern with respect to compliance with NDAs.[32] EEI and PG&E both raise questions regarding how consultants and advisors use CEII to advise clients without revealing the CEII to the clients themselves.[33] FirstEnergy states that it is impossible "to meaningfully assess the risk that the CEII may be improperly disclosed to others (regardless of the execution of an NDA)."[34] Several of the commenters suggest that the Commission undertake to audit compliance with the NDAs.[35] The Commission agrees that random audits may be useful in the future to ensure compliance with NDAs. Given that to date the NDAs have not included any clause whereby the requester agrees to such audit, the Commission believes that the NDAs should be revised accordingly, and audits should be restricted to those requesters who receive information pursuant to the revised NDAs. In addition, the Commission will add language to NDAs notifying requesters that a violation of the NDA

[32] See EEI at pp. 3-4, FirstEnergy at pp. 1-5, and 9-10, PG&E at pp. 1-2, and PJM at p. 7.

[33] EEI at p. 3, and PG&E at p. 2.

[34] FirstEnergy at p. 5.

[35] See EEI at pp. 3-4, FirstEnergy at pp. 9-10, and PG&E at p. 2.

could result in civil or criminal sanctions. This will provide requesters with an additional incentive to comply with the terms of the NDA.

H. Market-Based Rate Filings Issues

24. APPA and TAPS evidence particular concern with market based rate [MBR] filings where the filer claims CEII treatment for portions of its filing. As discussed above, one concern is whether filers are over-designating portions of such filings as CEII, particularly where simultaneous transmission studies and underlying work papers are designated as CEII. Another concern is whether interveners have sufficient time to respond to market based rate filings for which CEII is claimed. TAPS urges the Commission to "synchronize the time available to respond to MBR filings with the need to obtain CEII," citing the difficulty in responding within 21 days when it can take 30 days or more to obtain access to CEII.[36] TAPS recommends that the Commission adopt a policy "to respond favorably to intervenor motions for additional time to prepare interventions and protests where it is necessary to obtain and analyze CEII."[37]

25. In response to commenters' concerns that intervenors should have sufficient time to respond to MBR filings for which CEII is claimed, the Commission is willing to consider on a case-by-case basis requests for extensions of time to prepare protests to MBR filings where an intervenor demonstrates that it needs additional time to obtain and analyze CEII. Intervenors should file a request for an extension of time before the deadline for comments runs, explicitly stating that they have filed a CEII request and are

[36] TAPS at pp. 2-3.

[37] TAPS at p. 4.

waiting for a response. If a CEII request is filed in a case involving a new application for MBR authority, however, the Commission's ability to grant a request for an extension of time would necessarily be limited by the statutory action date in such a case. In all MBR cases in which CEII is filed, the Commission strongly encourages the parties to either promptly negotiate a protective order in the proceeding governing access to the CEII, or privately negotiate for the submitter to provide the data to interested parties pursuant to an appropriate non-disclosure agreement. Either one of these alternative approaches is more likely to expedite the requester's receipt of the information.

I. Miscellaneous Issues

26. The Commission received several miscellaneous comments regarding its CEII processing. Weaver's Cove notes an apparent inconsistency in requiring a company like Weaver's Cove to submit a CEII request in order to obtain a response prepared by someone who made a responsive filing (marked as CEII) after gaining access to the Weaver's Cove original CEII pleading.[38] Weaver's Cove urges staff to automatically release such information to the original submitter. The problem with this approach is that it is not guaranteed that the responsive pleading does not contain additional CEII that was not already contained in the original CEII filing. It could be that the responsive pleading is marked as CEII because it contains CEII about a similar project. In that case, it would not be fair to automatically release the CEII. Instead, the Commission encourages entities to negotiate to get the information directly from the submitters. In fact, the Commission prefers that requesters negotiate directly with submitters whenever practical.

[38] Weaver's Cove at p. 5.

27. PJM encourages the Commission to clarify that CEII released to an RTO, NERC or reliability coordinator does not invalidate the information's protection as CEII.[39] As far as the Commission is concerned, such limited releases to entities with a clear need to know such information would not result in loss of CEII protection.

I. Federal Agency Requests

28. In the course of reviewing its CEII regulations and processing, the Commission has revisited processing of federal agency requests. As the Commission gets more involved in reliability issues, its need to share information, particularly CEII, with fellow federal agencies increases. In light of this increased need to share CEII, the current system of requiring federal agencies to file formal CEII requests is impractical and unwieldy. For this reason, the Commission has decided to permit federal agencies to request CEII outside of the normal CEII process. As previously noted in Order No. 630-A, federal employees pose less of a security risk because most are screened as part of their federal employment.[40] Henceforth, federal agency requesters can request CEII directly from the Commission without filing formal CEII requests under 18 CFR 388.113. Submitters of CEII will not be given notice and an opportunity to comment on federal agency requests. In order to control release of CEII, authority to approve federal agency requests is

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[39] PJM at p. 6.

[40] Order No. 630-A, 68 Fed. Reg. 46,456 at P 15, FERC Stats. & Regs. ¶ 31,147. The Commission further reduced burdens on federal agency requesters in the CEII final rule it issued on August 3, 2004, which found that one an agency was granted to CEII in a particular docket, it no longer needed to file a formal CEII request to obtain additional CEII in that same docket. Critical Energy Infrastructure Information, Order No. 649, 69 Fed. Reg. 48,386 at P 16 (Aug. 10, 2004), 108 FERC ¶ 61,121 (2004).

restricted to Commission officials at or above the level of division director.[41] The regulation at 18 CFR 388.113(d) is amended to reflect this change.

Information Collection Statement

29. The Office of Management and Budget's (OMB's) regulations require that OMB approve certain information collection requirements imposed by agency rule. 5 CFR 1320.12 (2004). This final rule does not impose any additional information collection requirements. Therefore, the information collection regulations do not apply to this final rule.

Environmental Analysis

30. 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.[42] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusions 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.

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[41] A representative of the requesting agency will, however, still be required to sign an acknowledgment and agreement recognizing the legal protections afforded to CEII, and agreeing that requests from the public for the information (including requests filed under the Freedom of Information Act, 5 U.S.C. 552) will be referred to the Commission for processing.

[42] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 Fed. Reg. 47,897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987).

Regulatory Flexibility Act Certification

31. The Regulatory Flexibility Act of 1980 (RFA)[43] 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

32. 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 D.C. 20426.

33. From FERC's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

34. User assistance is available for eLibrary and the FERC's website during normal business hours. For assistance, please contact FERC Online Support at 1-866-208-3676 (toll free) or 202-502-6652 (e-mail at FERCOnlineSupport@FERC.gov), or the Public

[43] 5 U.S.C. 601-612.

Reference Room at 202-502-8371, TTY 202-502-8659 (e-mail at public.referenceroom@ferc.gov).

Effective Date

35. These regulations are effective immediately upon publication in the FEDERAL REGISTER. In accordance with 5 U.S.C. 553(d)(3), the Commission finds that good cause exists to make this Final Rule effectively immediately. The regulatory changes in the rule concern matters of internal operations and will not affect the rights of person appearing before the Commission. There is, therefore, no reason to make it effective at a later time.

36. 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.

37. The Commission is issuing this as a final rule without a period for public comment. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice, or where the agency finds that notice and comment is unnecessary. The regulatory changes concern only matters of agency procedure and will not significantly affect regulated entities or the general public.

List of subjects in 18 CFR Part 388

Confidential business information, Freedom of information.

By the Commission.

(S E A L)

Linda Mitry,
Deputy 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. Amend § 388.113 as follows:

   a. Redesignate paragraph (d)(2) as (d)(3) and amend the references from (d)(2) to (d)(3) in paragraph (d)(1),

   b. Remove the sentence "Federal agency employees making requests on behalf of Federal agencies may omit their social security number, and date and place of birth" from new paragraph (d)(3)(i); and

   c. Add new paragraph (d)(2) to read as follows:

§ 388.113 Accessing critical energy infrastructure information.

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(d) Accessing critical energy infrastructure information.

(1) An Owner/operator of a facility, including employees and officers of the owner/operator, may obtain CEII relating to its own facility directly from Commission staff without going through the procedures outlined in paragraph (d)(3) of this section. Non-employee agents of an owner/operator of such facility may obtain CEII relating to the owner/operator's facility in the same manner as

owner/operators as long as they present written authorization from the owner/operator to obtain such information.

(2) An employee of a federal agency acting within the scope of his or her federal employment may obtain CEII directly from Commission staff without following the procedures outlined in paragraph (d)(3). Any Commission employee at or above the level of division director or its equivalent may rule on federal agency representatives' requests for access to CEII.

(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 requested has used and the dates the requester used such names(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.

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APPENDIX A

List of Commenters

Abbreviation	Name
APPA	American Public Power Association
BPA	Bonneville Power Administration
Chandeleur and Sabine	Chandeleur Pipe Line Company and Sabine Pipe Line LLC
Duke	Duke Energy Corporation
EEI	Edison Electric Institute
El Paso	El Paso Corporation's Pipeline Group
FirstEnergy	FirstEnergy Corporation on behalf of its operating companies Ohio Edison, The Cleveland Electric Illuminating Company, Toledo Edison, Pennsylvania Electric Company, Pennsylvania Power Company, Metropolitan Edison Company, Jersey Central Power & Light Company, and American Transmission Systems, Inc.
ITC	International Transmission Company
INGAA	Interstate Natural Gas Association of America
MidAmerican	MidAmerican Energy Company
NHA	National Hydropower Association
PG&E	Pacific Gas & Electric Company
PJM	PJM Interconnection, L.L.C.
SCE	Southern California Edison Company
TAPS	Transmission Access Policy Study Group
Weaver's Cove	Weaver's Cove Energy LLC & Mill River Pipeline LLC
Williston Basin	Williston Basin Interstate Pipeline Company