

UNITED STATES OF AMERICA 103 FERC ¶ 61, 023
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 4, 16, 141, 157

[Docket No. Docket No. Docket No. RM03-6-000]

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

(April 9, 2003)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking

SUMMARY: The Federal Energy Regulatory Commission is proposing to revise its regulations requiring that companies 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 to restrict availability of information that could be used in a terrorist attack against the nation's energy infrastructure, Order No. 630 explained that the Commission believed 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 proposed in this rulemaking address instances in which the Commission's rules and regulations require companies to make

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information available directly to the public. Revisions will be necessary to ensure that protection of CEII is consistent in both contexts.

DATES: Comments are due [**insert date 30 days after publication in the FEDERAL REGISTER**].

ADDRESSES: Federal Energy Regulatory Commission
888 First Street, N.E.
Washington DC, 20426

FOR FURTHER INFORMATION CONTACT:

Wilbur T. Miller
Office of General Counsel
Federal Energy Regulatory Commission
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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Docket No. Amendments to Conform
Regulations with Order No. 630
Docket No. RM03-6-000

(Critical Energy Infrastructure Information Final Rule)

NOTICE OF PROPOSED RULEMAKING

(April 9, 2003)

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (NOPR), the Commission proposes specific changes to its 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.¹ 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.

¹68 FR 9857 (Mar. 3, 2003); III FERC Stats. & Regs. ¶ 31,140 (Feb. 21, 2003).

2. The Commission is proposing to revise its regulations in several areas. These include 18 CFR Part 4, which requires that applicants for hydropower licenses, permits and exemptions make various types of information available to the public. Another area proposed for revision is 18 CFR Part 16, which requires that applicants for projects subject to Sections 14 and 15 of the Federal Power Act² make specified information available to the public. A third area is 18 CFR 141.300, which establishes requirements for filing FERC Form No. 715, Annual Transmission Planning and Evaluation Report. The instructions to Form No. 715 in turn require that portions of the form be made available to the public by the public utility upon request. Finally, 18 CFR Part 157 governs applications for certificates of public convenience and necessity, and for orders permitting and approving abandonment under Section 7 of the Natural Gas Act. Several sections in Part 157 require that certain information, some of which may be CEII, be made available by applicants to landowners or other members of the public.

A. Order No. 630

3. 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. In the wake of the September 11, 2001 tragedy, the Commission removed from easy public access various categories of documents that might contain CEII.³ The Commission issued a Notice of

²16 USC 807-808.

³See 67 FR 3129 (Jan. 23, 2002), IV FERC Stats. & Regs. ¶ 35,542 (Jan. 16,

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Inquiry⁴ on January 16, 2002, followed by a NOPR⁵ on September 5, 2002, seeking comments on the best procedures for protecting CEII. On February 21, 2003, the Commission issued a final rule in Order No. 630.⁶

4. In issuing the final rule, the Commission found that concerns for the safety of the public and the nation's energy systems compelled it to ensure that CEII is not readily available to the public.⁷ 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.⁸ Apart from reaffirming that decision, Order No. 630 stated the Commission's conclusion that, in light of the heightened appreciation for security concerns in the wake of the September 11 attack, information constituting CEII would be exempt from disclosure under one or more of the exemptions to FOIA.⁹ The Commission emphasized that Order No. 630 did not constitute a determination of

³(...continued)
2002).

⁴Id.

⁵*See* 67 FR 57994 (Sept. 13, 2002), IV FERC Stats. & Regs. ¶ 32,564, (Sept. 5, 2002).

⁶*See* note 1.

⁷68 FR 9857, at pp. 9858-59.

⁸Id. at p. 9858.

⁹5 U.S.C. 552; see 68 FR 9857 at pp. 9859-61, 9871-73 (Appendix B).

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the applicability of any FOIA exemption to any specific situation, but rather reflected the Commission's understanding of the exemptions' applicability to CEII, an understanding that informed the Commission's choices in the rulemaking. FOIA requests still must be processed on an individual basis as required by statute.¹⁰

5. 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.¹¹

The order defined "critical infrastructure" in § 388.113(c)(2) of the Commission's regulations 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.¹²

¹⁰68 FR 9857, at pp. 9859-60.

¹¹Id. at p. 9870.

¹²Id.

6. Of particular concern to the Commission in defining CEII was location information. Such information is particularly relevant, for example, to participants in the National Environmental Policy Act (NEPA) process. Consequently, the Commission concluded that the following types of location information would not be considered CEII:

(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.¹³

7. For submission of CEII to the Commission, Order No. 630 adopted a process that largely parallels the process for submission of confidential materials. The order revised section 388.112 of the Commission's regulations to provide 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 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.¹⁴

¹³Id. at p. 9862. The Commission stated, however, that it would not place this information on the internet. *Id.*

¹⁴Id. at p. 9870.

8. In reaching the conclusion that it could and should protect CEII, the Commission recognized that, in many instances, individuals and entities would have a legitimate need to obtain CEII. The Commission recognized, for instance, that interveners, landowners and other persons retained an interest in participating meaningfully in Commission proceedings. Order No. 630 also recognized other legitimate users of CEII, including state agencies and market participants seeking to develop new or expanded energy resources.¹⁵

9. In order to protect the legitimate interests of these and other users of CEII, Order No. 630 established the position of CEII Coordinator to consider requests for release of CEII. The order added § 375.313 to the Commission's regulations to delegate authority to that official to consider such requests, and also added § 388.113 to create procedures for requesting access to CEII.¹⁶ 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.¹⁷

¹⁵Id. at pp. 9863, 9865.

¹⁶Id. at pp. 9869-70.

¹⁷Id. at pp. 9870-71.

In determining whether to grant a request for CEII, the CEII Coordinator is required to balance the requester's need for the information against the information's sensitivity. In the event the request is granted, the CEII Coordinator is authorized to 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 section 385.713 of the Commission's regulations.¹⁸

B. CEII Made Available Directly to the Public

10. During the comment process, some commenters noted that the Commission requires companies to make certain information available directly to the public and that such information, if it contained CEII, would not be covered by the rulemaking that culminated in Order No. 630. The Commission agreed with the need to eliminate this inconsistent treatment and stated that it would address the matter in future modifications to its regulations.¹⁹ The Commission has identified several such portions of its regulations.

1. Electric Transmission Provisions

11. One provision proposed for revision relates to FERC Form No. 715, the Annual Transmission Plan and Evaluation Report. The Commission's regulations, at 18 CFR 141.300, require the filing of Form No. 715. The form itself, in its instructions, states

¹⁸Id. at p. 9870.

¹⁹Id. at p. 9868.

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that "[r]espondents must also make available to the public, upon request, in hard copy, the above items (Parts 1-6 of Form No. 715), and, in electronic form, items 1, 2, 4, 5, and 6." Some of the information that Form No. 715 calls for may include CEII.²⁰ For example, Part 2 requires "regional or subregional case base power flow data." Part 3 requires "transmission system maps and diagrams used by the Respondent for transmission planning." Part 4 requires detailed transmission planning reliability criteria. Part 5 requires transmission planning assessment practices.

2. Natural Gas Provisions

12. Another instance is the Commission's regulations governing applications for certificates of public convenience and necessity and for orders permitting abandonment. Under § 157.10(b), copies of applications, supplements and amendments under Part 157 of the Commission's regulations, including exhibits required by §§ 157.14, 157.16 and 157.18, must be supplied on request to interveners.²¹ Complete copies of the filings

²⁰See "New Reporting Requirements Implementing Section 213(b) of the Federal Power Act," 100 FERC ¶ 61,141 (2002). In this order, the Commission modified its practice of making Form 715 available to the public. Due to national security considerations, it determined that certain portions of Form 715 would no longer be made available on the Commission's web site or through its public databases. This change in policy was to remain in effect until the Commission took final action in Docket No. RM02-4-000. As explained above, a final rule was issued in Order No. 630, which is now pending rehearing.

²¹18 CFR 157.10(b). Materials that are voluminous or difficult to reproduce may be made available in an accessible central location in each county in the project area. 18 CFR 157.10(b)(1).

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must be made available in central locations in each county throughout the project area.²²

The required exhibits include material that might be CEII, such as flow diagrams and related data,²³ and total gas supply data.²⁴ In addition to § 157.10, §§ 157.6(d), 157.22(e)(3)-(4) and 157.203(d) may also on occasion require that CEII be made available to certain persons.

3. Hydropower Provisions

13. Part 4 of the Commission's regulations, which governs licenses, permits, exemptions and other applications under the Federal Power Act, contains a number of provisions that require applicants to make information about their projects available to the public. Under 18 CFR 4.32(a)(3), an applicant for a preliminary license, permit or exemption must provide notification to affected property owners. The notification must include Exhibit G to the application.²⁵ 18 CFR 4.32(b)(3) and (b)(4) require the applicant to make information, including a copy of the application and all exhibits, available to the public for inspection and reproduction at specified locations.²⁶ Under 18 CFR 4.34(i)(4)(i) and (i)(6)(iii), an applicant using alternative procedures must distribute

²²18 CFR 157.10(c).

²³18 CFR 157.14(a)(7)-(9).

²⁴18 CFR 157.14(a)(10).

²⁵18 CFR 4.32(a)(3)(ii).

²⁶18 CFR 4.32(b)(3)(i), (b)(4)(ii)-(iv).

an information package and maintain a public file of all relevant documents, including scientific studies. Finally, 18 CFR 4.38(g), which provides for pre-filing consultation in the case of an original license, requires the applicant to make available for public inspection various items, including detailed maps²⁷ and a general engineering design.²⁸

All of these provisions likely will require the public disclosure of CEII.

14. Part 16, which specifies procedures for the takeover and relicensing of existing projects, also contains public notification requirements. An applicant for a new license, at the time it notices its intention to apply for relicensing, must make available for public inspection²⁹ a number of items, including the original application, as-built drawings, diagrams, emergency action plans, and operation and maintenance reports.³⁰ In addition, the provisions regarding pre-filing consultation require that items including detailed maps and a general engineering design be made available for public inspection.³¹ These regulations would require the disclosure of CEII.

15. Parts 4 and 16, apart from containing provisions requiring that CEII be made available to the public, also in several instances require applicants to serve CEII on

²⁷18 CFR 4.38(b)(1)(i).

²⁸18 CFR 4.38(b)(1)(ii).

²⁹See 18 CFR 16.7(e).

³⁰18 CFR 16.7(d)(1)-(2).

³¹18 CFR 16.8(i); see 18 CFR 16.8(b)(1)(i)-(ii).

Indian tribes, resource agencies and other government offices. Such provisions are found at 18 CFR §§ 4.32(b)(1)-(2); 4.38(b)(1), (c)(4), (d); 16.8(b)(1), (c)(4), (d). In Order No. 630, the Commission noted that the Federal Records Act³² effectively requires a federal agency receiving information from another federal agency to treat it in the same manner that the originating agency would have treated it.³³ This requirement would not apply to the provisions listed above, however, because the resource agency would be receiving the CEII directly from the applicant, not from the Commission. Consequently, to ensure consistent treatment of CEII, the Commission proposes 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 notes that neither the proposals contained in this NOPR nor Order No. 630 is intended to require companies to withhold CEII. Instead, they are intended to ensure that the Commission's regulations do not require companies to reveal CEII. Consequently, the Commission anticipates that, in most instances, companies will share CEII with other federal agencies without requiring other agencies to request access to CEII.

II. DISCUSSION

³²44 USC § 3510(b).

³³68 FR 9857, at p. 9866.

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16. The Commission in this NOPR proposes to reconcile the requirements for making information available to the public with Order No. 630 by providing that companies subject to the disclosure requirements of Form No. 715 and Parts 4, 16 and 157 omit CEII from the information made available. Instead, the company would include a statement briefly describing the omitted information, without revealing CEII, and referring the reader to the procedures for challenging CEII claims and for requesting CEII. Such challenges and requests would take place under the procedures adopted in Order No. 630 and found in 18 CFR 388.112 and 388.113, employing the definition of CEII found at 18 CFR 388.113(c). Therefore, a member of the public could still obtain the information, but would have to follow procedures different from those applicable now.

17. The treatment of CEII under the proposed procedures should largely parallel the treatment of the same information filed with the Commission. Form No. 715 and Parts 4, 16 and 157 require that companies make available certain portions of information that they are submitting to the Commission. Consequently, the company should simply omit, from the information made available to the public, all materials designated as CEII in its submission to the Commission. The proposed revisions require that the company adhere to any previous determinations by the Commission or the CEII Coordinator as to the

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status of any information claimed to constitute CEII.³⁴ Thus, if information designated as CEII in the submission to the Commission is later determined not to constitute CEII, the company should make that information available as specified in the pertinent regulation. This approach should be relatively simple and straightforward. The Commission invites comments, however, on any other approach that might function better.

18. Besides § 157.10, other provisions in Part 157 could conceivably be interpreted as requiring the disclosure by a company of CEII. Section 157.6(d) requires notification to affected landowners, including a description of "the proposed project [and] its location (including a general location map)."³⁵ Where the Commission approves a pre-filing collaborative process, the applicant must maintain a public file of all relevant documents.³⁶ Finally, in the case of blanket certificates, an applicant must provide notice

³⁴Sections 157.6(d)(3)(iv), 157.22(e)(4), and 157.203(d) require information to be made available that would not necessarily be identical to information submitted to the Commission. For example, 18 CFR 157.6(d)(3)(iv) requires that an applicant include in a notice to landowners a description of the proposed project. This description would not necessarily be contained in the application submitted to the Commission. As explained below, the Commission believes that, as a practical matter, these three provisions will seldom if ever require an applicant to make CEII available. Should such a situation arise, it would be the applicant's responsibility to determine what information constituted CEII and omit it from the information made available.

³⁵18 CFR 157.6(d)(3)(iv).

³⁶18 CFR 157.22(e)(4).

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to landowners, including a brief description of facilities to be constructed or replaced.³⁷

In each of these cases, the Commission believes it should ordinarily be unnecessary for the applicant to release CEII. Where maps or other descriptions are required, it should be possible for the applicant to meet the requirement without including information so detailed or sensitive that it would require the inclusion of CEII, particularly given that Order No. 630 omitted location information from the definition of CEII. Where a NEPA Pre-Filing process or collaborative process is approved, there are no specific requirements that should lead to the disclosure of CEII. The regulation simply requires that the applicant make available all "relevant documents." The Commission does not interpret this provision as requiring the disclosure of CEII. Nevertheless, in the interest of caution the Commission is proposing to amend all three provisions to provide for the protection of CEII.

19. The Commission invites comment on provisions in its rules and regulations other than those specifically discussed in this NOPR that may require revisions to ensure consistency with Order No. 630.

20. The Commission notes that it does not intend to revisit issues already addressed in Order No. 630. Such issues include the need for protecting CEII, the definition of CEII, and the procedures for submitting and obtaining access to CEII.³⁸ The Commission also

³⁷18 CFR 157.203(d).

³⁸Those issues are still subject to rehearing as part of Docket No. RM02-4-000.

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notes that FOIA has no bearing on the matters discussed in this NOPR, as it concerns only requirements that companies make information available, not requests to obtain information from the Commission.

INFORMATION COLLECTION STATEMENT

21. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.³⁹ The public disclosure of information originally supplied by an agency to the recipient is, however, excluded from the coverage of the regulations.⁴⁰ The only information collection requirement contained in this proposed rulemaking 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 proposed rulemaking.

ENVIRONMENTAL ANALYSIS

22. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect

³⁸(...continued)

That proceeding remains the appropriate forum for their resolution.

³⁹5 CFR 1320.12.

⁴⁰5 CFR 1320.3(c)(2).

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on the human environment.⁴¹ The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human 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.⁴² This proposed rule, if finalized, is procedural in nature and therefore falls under this exception; consequently, no environmental consideration would be necessary.

REGULATORY FLEXIBILITY ACT CERTIFICATION

23. 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.

COMMENT PROCEDURE

⁴¹Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987).

⁴²18 CFR 380.4(a)(2)(ii).

⁴³5 U.S.C. 601-612.

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24. The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due **[insert date 30 days from publication in the FEDERAL REGISTER]** Comments must refer to Docket No. RM03-6-000, and may be filed either in electronic or paper format. Those filing electronically do not need to make a paper filing.

25. Documents filed electronically via the Internet can be prepared in a variety of formats, including WordPerfect, MS Word, Portable Document Format, Rich Text Format, or ASCII format, as listed on the Commission's web site at <http://ferc.gov>, under the e-Filing link. The e-Filing link provides instructions for how to Login and complete an electronic filing. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt of comments. User assistance for electronic filing is available at 202-502-8258 or by E-Mail to efiling@ferc.gov. Comments should not be submitted to the E-Mail address.

26. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426.

27. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street,

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N.E., Washington D.C. 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the FERRIS link.

DOCUMENT AVAILABILITY

28. 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.

29. 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, 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.

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

List of subjects

18 CFR Part 4

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

18 CFR Part 16

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

18 CFR Part 141

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 157

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

By direction of the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

In consideration of the foregoing, the Commission proposes to amend 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) 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 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.

- 3. Section 4.34 is amended by adding paragraph (i)(10) as follows:

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

* * * * *

- (i) Alternative procedures.

* * *

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

- 4. Section 4.38 is amended by adding paragraph (i) as follows:

§ 4.38 Consultation requirements.

* * * * *

(i) Critical Energy Infrastructure Information. If 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 § 4.32(k) of this subpart.

**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) 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) 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 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

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(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 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.

* * * * *

7. Section 16.8 is amended by adding paragraph (k) as follows:

§ 16.8 Consultation requirements.

* * * * *

(k) 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) of this subpart.

PART 141-STATEMENTS AND REPORTS (SCHEDULES)

9. 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.

10. Section 141.300 is amended by adding paragraph (d) 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 the public, 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

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(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 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.

**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**

11. 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.

12. Section 157.6 is amended by adding paragraph (d)(6) 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 a landowner, the applicant shall follow the procedures set out in § 157.10(d).

13. Section 157.10 is amended by adding paragraph (d) 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

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(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 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.

14. Section 157.14 is amended by revising paragraph (a) to read as follows:

§ 157.14 Exhibits.

(a) To be attached to each application. All exhibits specified must accompany each application when tendered for filing. Together with each exhibit applicant must provide a full and complete explanation of the data submitted, the manner in which it was obtained, and the reasons for the conclusions derived from the exhibits. If the Commission determines that a formal hearing upon the application is required or that testimony and hearing exhibits should be filed, the Secretary will promptly notify the

applicant that submittal of all exhibits and testimony of all witnesses to be sponsored by the applicant in support of his case-in-chief is required. Submittal of these exhibits and testimony must be within 20 days from the date of the Secretary's notice, or any other time as the Secretary will specify. Exhibits, except exhibits F, F-1, G, G-I, G-II, and H(iv), must be submitted to the Commission on electronic media as prescribed in § 385.2011 of this chapter. Interveners and persons becoming interveners after the date of the Secretary's notice must be advised by the applicant of the afore-specified exhibits and testimony, and must be furnished with copies upon request. If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to an intervener, the applicant shall follow the procedures set out in § 157.10(d).

* * * * *

15. Section 157.16 is amended by revising the introductory text to read as follows:

§ 157.16 Exhibits relating to acquisitions.

In addition to the exhibits required by § 157.14, every application involving acquisition of facilities must be accompanied by the exhibits listed below. Together with each exhibit applicant must provide a full and complete explanation of the data submitted, the manner in which it was obtained, and the reasons for the conclusions derived from the exhibits, unless the applicant includes a statement identifying the

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schedule and rate containing the required information and data filed as prescribed in § 385.2011 of this chapter. If the Commission determines that a formal hearing upon the application is required or that testimony and hearing exhibits should be filed, the Secretary will promptly notify the applicant that submittal of all the exhibits and testimony of all witnesses to be sponsored by the applicant in support of his case-in-chief is required. Submittal of these exhibits and testimony must be within 20 days from the date of the Secretary's notice, or any other time specified by the Secretary in the notice. Sections 157.6(a) and 385.2011 of this chapter will govern the submissions required to be furnished to the Commission. Interveners and persons becoming interveners after the date of the Secretary's notice must be advised by the applicant of the afore-specified exhibits and testimony, and must be furnished with copies upon request. If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to an intervener, the applicant shall follow the procedures set out in § 157.10(d).

* * * * *

16. Section 157.22 is amended by adding paragraph (e)(9) 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 paragraph (e)(3) or (e)(4) requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to the public, the applicant shall follow the procedures set out in § 157.10(d) of this subpart.

15. Section 157.203 is amended by adding paragraph (d)(4) as follows:

§ 157.203 Blanket certification.

* * * * *

(d) Landowner notification. * * *

(4) If paragraph (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 landowners, the applicant shall follow the procedures set out in § 157.10(d).