

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 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 May 16, 2003.

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

FOR FURTHER INFORMATION CONTACT: Wilbur T. Miller, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502-8953.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. In this Notice of Proposed Rulemaking (NPR), 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.

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 inquiry⁴ on January 16, 2002, followed by a NPR⁵ 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 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

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-minutes 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

² 16 U.S.C. 807-808.

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

⁴ *Id.*

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

⁶ See note 1.

⁷ 68 FR 9857, at pp. 9858-59.

⁸ *Id.* at p. 9858.

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

¹⁰ 68 FR 9857, at pp. 9859-60.

¹¹ *Id.* at p. 9870.

¹² *Id.*

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

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