

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.<sup>14</sup>

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.<sup>15</sup>

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.<sup>16</sup> 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.<sup>17</sup>

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.<sup>18</sup>

#### *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.<sup>19</sup> 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 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.<sup>20</sup> 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.<sup>21</sup> Complete copies of the filings must be made available in central locations in each county throughout the project area.<sup>22</sup> The required exhibits include material that might be CEII, such as flow diagrams and related data,<sup>23</sup> and total gas supply data.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> Under 18 CFR 4.34(i)(4)(i) and (i)(6)(iii), an applicant using alternative procedures must distribute 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 maps<sup>27</sup> and a general engineering design.<sup>28</sup> 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

<sup>18</sup> *Id.* at p. 9870.

<sup>19</sup> *Id.* at p. 9868.

<sup>20</sup> See "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.

<sup>21</sup> 18 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).

<sup>22</sup> 18 CFR 157.10(c).

<sup>23</sup> 18 CFR 157.14(a)(7)–(9).

<sup>24</sup> 18 CFR 157.14(a)(10).

<sup>25</sup> 18 CFR 4.32(a)(3)(ii).

<sup>26</sup> 18 CFR 4.32(b)(3)(i), (b)(4)(ii)–(iv).

<sup>27</sup> 18 CFR 4.38(b)(1)(i).

<sup>28</sup> 18 CFR 4.38(b)(1)(ii).

<sup>14</sup> *Id.* at p. 9870.

<sup>15</sup> *Id.* at pp. 9863, 9865.

<sup>16</sup> *Id.* at pp. 9869–70.

<sup>17</sup> *Id.* at pp. 9870–71.