

with the filing utility, they can always contact the filing utility directly.

5. Moreover, as noted in Order No. 630, the issue is not new. Prior to enactment of the CEII rule, a company could make a filing with a request for confidential treatment under 18 CFR 388.112. To date the Commission is unaware of this right preventing someone from filing a timely intervention or protest, or participating meaningfully in a Commission rate proceeding. There is no reason to think that the issue is any more acute under the CEII rule.

6. TAPS notes that the Commission has found portions of Form No. 715 data to be CEII, and TAPS claims that “geographic markets cannot be properly defined without assessing transmission capability and constraints.”<sup>7</sup> While knowledge of transmission capacity and constraints may better enable intervenors to participate effectively in merger and market rate proceedings, Order No. 630 should not prevent intervenors from getting such information. Form No. 715 is an annual filing that may be obtained through the CEII request procedures by those with a need for the information. In addition, nothing in Order No. 630 affects the requirement in Part 37 of the Commission’s regulations regarding Open Access Same-Time Information Systems (OASIS). Under 18 CFR 37.6, transmission providers are required to post transmission capability, transmission service products and prices, ancillary service offerings and prices, specific transmission and ancillary services requests and responses, transmission service schedules information, and other transmission-related communications. Neither this rule, nor the changes proposed in the NOPR in Docket No. RM03–6–000, affects the obligations of transmission providers to continue to provide this information. Accordingly, interested parties should have adequate information on hand to respond to filings made pursuant to sections 203, 205 and 206 of the Federal Power Act, 16 U.S.C. 824b, 824d, and 824e.

7. Finally, TAPS’s supplemental filing indicates a concern that the Commission’s CEII access procedures have somehow supplanted other mechanisms for obtaining CEII. For example, TAPS notes that “[r]egional reliability councils, RTOs and OASIS sites have procedures in place today that provide market participants with secure access to CEII,” and goes on to state that “[t]he Commission should not

interfere with these existing mechanisms—and indeed should build upon them to ensure secure access to CEII.”<sup>8</sup> The Commission does not intend to interfere with these mechanisms. Order No. 630 deals exclusively with the way in which information is submitted to and disseminated by the Commission; it is not intended to limit the ability of companies, reliability councils, RTOs and others to share CEII with those with a need for it. In fact, the Commission recognizes that these entities are often in the best position to judge the legitimacy of such requesters, and the Commission encourages these entities to provide information to legitimate requesters, reducing the number of CEII requests that the Commission itself must process.

#### *B. Changes to 18 CFR 388.112*

##### *1. Changes to Instructions Regarding Non-Internet Public Information*

8. The Commission is making several changes to the instructions in 18 CFR 388.112 regarding submission of CEII. The first change is to add an instruction in § 388.112(a)(3) regarding the filing of non-Internet public (NIP) information.<sup>9</sup> In Order No. 630, the NIP instructions appeared only in the preamble text. The Commission has decided for the sake of clarity to integrate NIP into the instructions in § 388.112 of its regulations. It is easier for filers to be able to rely on instructions in the regulations themselves without having to look at the preamble language in order to get complete instructions on preparing a filing. Accordingly, in order to include NIP in 18 CFR 388.112, the title of the section is changed from “Requests for privileged treatment of documents submitted to the Commission” to “Requests for special treatment of documents submitted to the Commission.” The instructions in § 388.112(b) of the Commission’s regulations are being revised to specify that NIP information should be segregated from other public information, and to direct filers to file the same number of NIP volumes that they file of other public volumes. This

is because NIP is circulated to staff in the same manner that public information is circulated. The only difference at the Commission between NIP information and public information is that NIP information is not available to the public through the on-line Federal Energy Regulatory Records Information System (FERRIS). NIP information is available, however, in the Commission’s Public Reference Room.

##### *2. Changes to the Number of Copies for Public Documents and CEII*

9. The instructions in Order No. 630 regarding submission of CEII were incorporated largely into the Commission’s then-existing regulation at 18 CFR 388.112 regarding requests for privileged treatment of documents. That existing regulation specified that an original and fourteen copies of public documents should be filed. This requirement was based on the Commission’s generic filing regulation found at 18 CFR 385.2004, which states that “[a]ny person filing under this chapter must provide an original of the filing and fourteen exact copies, unless otherwise required by statute, rule or order.” Unfortunately, however, unlike 18 CFR 385.2004, the regulation at 18 CFR 388.112 did not allow for situations where fewer or more than fourteen copies are required.<sup>10</sup> The language in § 388.112 of the Commission’s regulations therefore is being revised to require for public volumes, an original plus the requisite number of copies for that particular type of filing.

10. Order No. 630 specified that one version of CEII material be filed, mirroring the existing requirement for only one version of privileged information. Generally, in order to ensure tight control over privileged information such as trade secret information, the Commission prefers to receive only one version of such information. However, staff has found that having only one version of CEII material makes it difficult to process filings. The Commission has therefore determined that having two additional copies of CEII material will facilitate more efficient processing of filings containing CEII. Consequently, the filing provisions at §§ 388.112(b)(2)(A)(ii) and (B)(ii) of the Commission’s regulations are being revised to require an original and two copies of material containing CEII. The rule regarding the number of privileged filings will remain the same, requiring that one be filed.

<sup>8</sup> TAPS May 27, 2003 Motion to Supplement at p. 3.

<sup>9</sup> NIP information includes location maps and diagrams that don’t rise to the level of CEII. Order No. 630 provided the following examples of NIP: “(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.” 68 FR at p. 9862, IV FERC Stats. & Regs. at P 30.

<sup>10</sup> See, e.g., 18 CFR 157.6(a) (requiring an original and 7 copies of applications for certificates of public convenience and necessity).

<sup>7</sup> TAPS March 21, 2003 Rehearing Request at p. 4.