

measures taken or planned to ensure safe management, operation, and maintenance of the project.³⁹⁸

415. These are items of information not specifically required to be included by the current regulations, but which the Commission staff requests as additional information in nearly every license proceeding in order to complete its NEPA and comprehensive development analyses. The NOPR found that obtaining this information with the application instead of via an additional information request will enable the staff to move forward more expeditiously to process license applications. No opposing comments were received on these proposed changes, and we are adopting them. A few commenters raised other miscellaneous filing requirement issues.

416. NOAA Fisheries requests a reduction in the number of paper copies that are required to be filed, and that we consider allowing filings to be made on compact disks (CDs) and by other electronic means. The Commission allows, indeed strongly encourages, electronic filing. Parties may also request waiver of the filing requirements in order to substitute a compact disk or CD-ROM for a hard copy filing.³⁹⁹ We are also reviewing our filing and distribution requirements Commission-wide with a view toward maximizing the use of e-filing and distribution of information, but that review is not complete at this time.

417. Interior requests that we require applicants to provide aerial photographs and/or satellite images to provide an overview of the project area. We think this is excessive in light of the requirements we are already imposing for electronically formatted maps, and the ready availability of United States Geological Survey and other maps.

5. Technical Changes

418. We are also taking this opportunity to correct various sections of the regulations to update them, or to cure incorrect cross-references, misspellings, or misstatements.⁴⁰⁰

W. Delegations of Authority

419. The proposed rule contemplated certain new delegations of authority to the Director, Office of Energy Projects,

in the context of the proposed integrated process. Specifically, these are authority to issue: (1) Act on requests to use the traditional licensing process; (2) issue a study plan determination; (3) resolve formal study disputes; and (4) resolve disagreements brought during the conduct of studies. Consistent with our decision to adopt the integrated process as described herein, we are adopting conforming modifications to our delegations to the Director.⁴⁰¹

X. Critical Energy Infrastructure Information

1. Order No. 630

420. In Order No. 630,⁴⁰² the Commission established standards and procedures for the handling of Critical Energy Infrastructure Information (CEII) submitted to or created by the Commission. CEII is information about existing or proposed critical infrastructure that relates to the production, generation, transportation, transmission, or distribution of energy; that could be useful to a person planning an attack on critical infrastructure; is exempt from mandatory disclosure under the Freedom of Information Act;⁴⁰³ and that does not simply give the location of the critical infrastructure.⁴⁰⁴ Critical infrastructure refers to existing or proposed systems and assets, the damage or destruction of which would harm the national security of the public health and safety.⁴⁰⁵ The purpose of the rule is to protect information on critical energy infrastructure that could be used by terrorists, while continuing to make public the information necessary for participation in the Commission's processes.

421. CEII is required to be redacted from filings made with the Commission. A hydroelectric license application could contain various kinds of information that are CEII. The preamble to the rule gives examples of such information, including: (1) General design drawings of the principal project works, such as those found in Exhibit F; (2) Maps, such as those found in Exhibit G; (3) Drawings showing technical details of a project, such as plans and specifications, supporting design reports, part 12 independent consultant reports,⁴⁰⁶ facility details, electrical transmission systems, communication

and control center information; and (4) GPS coordinates of any project features.

422. Of particular concern to the Commission in defining CEII was location information. Such information is particularly relevant, for example, to participants in the NEPA process. Consequently, the following types of location information were not considered to be 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. Such information is classified as "non-Internet public access," that is, information to be included in paper filings with the Commission and made be available in hard copy and through the Commission's public reference room, but which will not be available for viewing or downloading from Commission databases.⁴⁰⁷

423. Order No. 630 establishes procedures for persons to request CEII that has been filed with the Commission or to challenge CEII status.⁴⁰⁸

2. Conforming Rulemaking

424. Several commenters in the CEII rulemaking and on the NOPR in this proceeding⁴⁰⁹ noted that the Commission also requires regulated entities to provide directly to agencies, Indian tribes, and the public certain information that is CEII. The Commission agreed and stated that it would issue conforming rules to ensure consistent treatment of CEII by the Commission and regulated entities. A proposed conforming rule was issued on April 9, 2003.⁴¹⁰ Comments were due on May 16, 2003, and a final rule is being issued concurrent with this rule.⁴¹¹

425. The final conforming rule identifies various sections of 18 CFR Parts 4 and 16 that require direct disclosure of information that could include CEII. Public disclosure requirements in part 4 include: (1) Notification of applications to affected

³⁹⁸ Proposed 18 CFR 4.61(c)(9).

³⁹⁹ Such waivers are granted under the Commission Secretary's delegated authority in 18 CFR 375.302(i).

⁴⁰⁰ Corrections have been made to 18 CFR 2.1(a)(1); 2.7(b); 4.30(b)(9)(ii); 4.30(b)(23); 4.32(a)(5)(vi); 4.32(e)(2); 4.32(h); 4.33(a); 4.33(b); 4.37 introductory text; 4.37(b)(1); 4.39(a); 4.39(b); 4.40(b); 4.41(f)(6)(v); 4.41(f)(9)(i); 4.60(b); 4.61(f)(2); 4.70; 4.90; 4.91; 4.92; 4.93; 4.101; 4.200(c); 9.1; 9.10; 375.308(d)(11), (k)(1), (k)(2)(ii), and (k)(3).

⁴⁰¹ 18 CFR 375.308(aa).

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

⁴⁰³ 5 U.S.C. 552.

⁴⁰⁴ 18 CFR 388.113(c)(1).

⁴⁰⁵ 18 CFR 388.113(c)(2).

⁴⁰⁶ See 18 CFR part 12, Subpart D.

⁴⁰⁷ 68 FR at p. 9862.

⁴⁰⁸ 18 CFR 388.113.

⁴⁰⁹ Consumers, PSE, WPSR, NHA, WPPD, Oroville, EEI.

⁴¹⁰ Critical Energy Infrastructure Information (RM02-4-001, PL02-1-001), 68 FR 18538-18544 (Apr. 16, 2003); III FERC Stats. & Regs. ¶ 32,569 (Apr. 9, 2003).

⁴¹¹ Order No. 643, III FERC Stats. & Regs. Regulations Preambles 104 FERC ¶ 61,107 (July 23, 2003).