

property owners, which must include Exhibit G to the application;<sup>412</sup> (2) a copy of the application and all exhibits, available to the public for inspection and reproduction at specified locations;<sup>413</sup> (3) an applicant using alternative procedures must distribute an information package and maintain a public file of all relevant documents, including scientific studies;<sup>414</sup> and (4) in pre-filing consultation for an original license application, the requirement to make available for public inspection various items,<sup>415</sup> including detailed maps<sup>416</sup> and a general engineering design.<sup>417</sup>

426. Public disclosure requirements in part 16 include: (1) When the NOI is issued, a number of items, including the original application, as-built drawings, diagrams, emergency action plans, and operation and maintenance reports;<sup>418</sup> and (2) during pre-filing consultation, detailed maps and a general engineering design must be made available for public inspection.<sup>419</sup> Parts 4 and 16 also in several instances require applicants to serve CEII on Indian tribes, resource agencies, and other government offices.<sup>420</sup>

427. The NOPR proposed to provide that regulated entities subject to the disclosure requirements of Parts 4 and 16 omit CEII from the information made available to agencies, Indian tribes, and the public. Instead, they would include with their filing 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 under the procedures adopted in Order No. 630.<sup>421</sup> Therefore, a member of the public could still obtain the information, but would have to follow procedures different from those applicable now. That proposal is adopted in the final rule.

428. Neither the regulations promulgated in Order No. 630 nor the proposals contained in the proposed conforming rule are 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 participants in the licensing process without requiring those entities to request access to CEII through the Commission.

429. The rules also do not alter the ability of state agencies to obtain data directly from regulated companies pursuant to whatever authorities those agencies have. State agencies are also presumed to have a need to know information involving issues that are within their area of responsibility. They may submit requests for information regarding entities outside their jurisdictions with an explanation of the need.

### 3. CEII in the Integrated Process

430. Several commenters stated that the final rule needs to clarify how the information filing and distribution aspects of the license application process would work in concert with the CEII regulations.<sup>422</sup> They observe that some of the information in the PAD required to be filed and distributed appears to be non-Internet public information and CEII.<sup>423</sup>

431. The information filing and disclosure requirements of part 5 are not covered by Order No. 630, or the proposed conforming rule. We are therefore including in the new part 5 regulations a provision consistent with the revisions to Parts 4 and 16 promulgated in Order Nos. 630 and 630-A.<sup>424</sup>

432. Long View recommends that the requirements of Exhibit F to the license application be made consistent with the CEII rules. This is not a matter of conforming Exhibit F to the CEII rules, but rather making Exhibit F subject to the rules, which it is.

433. One commenter stated that the form which entities requesting CEII are to use is not available on the Commission's Web site and that the form does not provide a name or office number for the person to whom the submission is to be made. These omissions will shortly be remedied.<sup>425</sup>

### Y. Transition Provisions

434. Nearly all the comments on the proposed transition provisions were made by industry representatives. Only Idaho Power found the three-month transition period to be reasonable, as

long as flexibility is provided for the few existing licensees who would be immediately affected. HRC and NYSDEC agree.

435. Requests for extension of the transition period range from six months to six years, during which time applicants would have complete choice of process.<sup>426</sup> The commenters assert that more time is needed to fully consider the rule after it is finalized and to switch from the initial consultation document and public information requirements of the current rules to the PAD, and that a three-month period reduces the six-month window provided by the rules for submittal of the NOI to three months for some licensees.<sup>427</sup> The Process Group recommended a one to two year transition period.

436. In light of these comments, we have concluded that the integrated process should become the default process on July 23, 2005. Until that time, potential license applicants will be able to select the integrated process or the traditional process as it currently exists (except for increased public participation, changes in miscellaneous filing requirements, and a later deadline date for filing of the water quality certification application). At the end of the two-year period, the integrated process will become the default process. All potential applicants will have to file the NOI and PAD, and obtain Commission authorization to use the traditional process.<sup>428</sup>

437. All other proposed changes to the regulations will, as proposed, take effect on October 23, 2003.

438. EEI requests that changes to the *ex parte* rule in connection with reversal of the policy on intervention by cooperating agencies should not apply to any projects for which an NOI has

<sup>426</sup> Six months to one year (NHA); one year (Troutman, EEI, PG&E, SCE, Georgia Power); one to two years (Process Group); and five-six years (Long View).

<sup>427</sup> This would be the case when the effective date of the rule falls within the six-month window. In this regard, Georgia Power and Troutman recommend against making the NOI deadline date the trigger date for applicability of the rule. They recommend instead the six-month period of five to five and one-half years before license expiration. A licensee for whom the six-month period includes the effective date of the rule could choose the traditional process by filing its NOI prior to the effective date of the rule, or choose the integrated process by filing its NOI after the effective date (and not making a request to use the traditional process). Alternatively, Georgia Power, Duke, and NEU request that guidance and special consideration be given to requests for waiver of the rule for the few projects for which the NOI is due very close to the effective date of the rule.

<sup>428</sup> The two-year period is irrelevant for purposes of the ALP because the requirements for approval do not change.

<sup>412</sup> 18 CFR 4.32(a)(3)(ii).

<sup>413</sup> 18 CFR 4.32(b)(3)(i), (b)(4)(ii)-(iv).

<sup>414</sup> 18 CFR 4.34(i)(4) and (i)(6)(iii).

<sup>415</sup> 18 CFR 4.38(g).

<sup>416</sup> 18 CFR 4.38(b)(1)(i).

<sup>417</sup> 18 CFR 4.38(b)(1)(ii).

<sup>418</sup> 18 CFR 16.7(d)(1)-(2).

<sup>419</sup> 18 CFR 16.8(b)(2)(i)-(ii).

<sup>420</sup> 18 CFR 4.32(b)(1)-(2); 4.38(b)(1), (c)(4), (d); 16.8(b)(1), (c)(4), (d).

<sup>421</sup> See proposed 18 CFR 4.32(k), 4.34(i)(10), 4.38(i), 16.7(d)(7), and 16.8(k).

<sup>422</sup> Consumers, PSE, WPSR, NHA, WPPD, Oroville, EEI.

<sup>423</sup> They cite proposed 18 CFR 5.4(c)(2)(H), (I), (K) and (L).

<sup>424</sup> 18 CFR 5.30 (Critical Energy Infrastructure Information).

<sup>425</sup> The CEII request form is being developed and will soon be posted on the Commission's Web site at <http://www.ferc.gov>.