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## I. Introduction

1. This final rule makes specific changes to the Commission's 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. 68 FR 9857 (Mar. 3, 2003); III FERC Stats. & Regs. ¶ 31,140 (Feb. 21, 2003). 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. This final rule revises the Commission's regulations in the following areas: (1) 18 CFR part 4, which requires that applicants for hydropower licenses, permits, and exemptions make various types of information available to the public; (2) 18 CFR part 16, which requires that applicants for projects subject to sections 14 and 15 of the Federal Power Act, 18 U.S.C. 807–808, make specified information available to the public; (3) 18 CFR 141.300, establishing requirements for filing FERC Form No. 715, Annual Transmission Planning and Evaluation Report, which requires that portions of the form be made available to the public by the public utility upon request; and (4) 18 CFR part 157, which governs applications for certificates of public convenience and necessity, and for orders permitting and approving abandonment under Section 7 of the Natural Gas Act.

## II. Background

3. As explained in the Notice of Proposed Rulemaking (NOPR), 68 FR 18538, 18540 (Apr. 21, 2003), IV FERC Stats. & Regs. ¶ 32,569 (Apr. 9, 2003), 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. 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. 68 FR at 9858. Order No. 630 reaffirmed

that conclusion and established that the Commission would institute procedures to protect CEII submitted to it. *Id.*

4. 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. 68 FR at 9870. The order defined "critical infrastructure" in § 388.113(c)(2) 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. *Id.*

5. Order No. 630 adopted a process for submission of CEII to the Commission that largely parallels the process for submission of confidential materials in Section 388.112 of the Commission's regulations. That section now provides 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. 68 FR at 9870.

6. To handle requests for release of CEII, Order No. 630 established the position of CEII Coordinator. 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.

68 FR at 9870–71.<sup>1</sup> The CEII Coordinator will consider the requester's need for the information, as well as the information's sensitivity. In the event the request is granted, the CEII Coordinator may 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 § 385.713 of the Commission's regulations. *Id.* at 9870.

7. The Commission issued the final rule on February 21, 2003. 68 FR 9857 (Mar. 3, 2003), III FERC Stats. & Regs. ¶ 31,140 (Feb. 21, 2003). In doing so, it recognized that its regulations in some areas require companies to make information that might constitute CEII available directly to the public. Because Order No. 630 addressed only CEII in the possession of the Commission, this situation created a window of vulnerability whereby CEII that would be protected under Order No. 630 could become available to persons of malicious intent. This final rule is intended to close that window. 68 FR at 18540.

### A. The NOPR

8. The NOPR identified the following portions of the Commission's regulations as provisions that might require the disclosure of CEII:

#### Electric Transmission Provisions

FERC Form No. 715, Annual Transmission Plan and Evaluation Report, contains information that will likely constitute CEII. For example, part 2 requires power flow data, part 3 requires system maps and diagrams, and parts 4 and 5 require transmission planning data. The instructions to the form require submitting companies to make it available to the public upon request. 68 FR at 18540.

#### Natural Gas Provisions

Several provisions of part 157, which governs applications for certificates of public convenience and necessity and for orders permitting and approving abandonment, require that information be made available to the public that might constitute CEII. Information such as flow diagrams and gas supply data must be supplied on request to intervenors and made available in central locations in the project area. These provisions are found in 18 CFR 157.5(d), 157.10(b), 157.22(e)(3)–(4), and 157.203(d). 68 FR at 18540.

<sup>1</sup> In an order on rehearing of Order No. 630 being issued concurrently, the Commission has added the requirement that these requests be signed by the requester.