

cases, companies and persons that have had dealings with one another in the past will be in a better position than the Commission to judge the security of such an arrangement. There is thus nothing in these revisions that would, for example, prevent a regional council from obtaining data from member companies or from sharing it both with member and non-member companies. Nevertheless, in new §§ 4.32(k)(4), 16.7(d)(4), 141.300(d)(4), and 157.10(d)(4) of the Commission's regulations, the Commission has added language to the revisions to make as it as clear as possible that its CEII regulations do not prohibit or restrict voluntary disclosures of information pursuant to private arrangements.

17. With respect to the specific concerns raised by these commenters, the Commission does not believe such concerns are justified. Nothing in these revisions, or in Order No. 630 for that matter, addresses OASIS in any way and there should be no impact on it. The revisions made in this final rule apply only to specific sections and do not cover the Commission's regulations generally; the Commission has decided against including a "catch-all" provision, as suggested by one commenter,¹⁴ so as to avoid such unwanted consequences. The Commission also does not believe companies should be disadvantaged in obtaining Form No. 715 data. As Form No. 715 is an annual report, its timing can be anticipated and gaining access to CEII contained in it should be possible in a timely manner. Most likely, the same entities will seek access every year, so that permission in most cases will be quickly granted. The Commission's numerous statutory mandates are undergirded by principles of non-discrimination (*i.e.*, comparability). Thus, these revisions contemplate that all persons with a legitimate need for CEII will be able to gain access to it with a minimum of difficulty. The revisions already envision and intend to provide comparable treatment in access to CEII.

18. The Commission understands the Study Group's concern that CEII owners might discriminate in making information available to market participants, but believes that its concern may be premature. Failure to provide required Form No. 715 data would be a violation of the Commission's regulations, even without the changes to the regulations effected by this rule and Order No. 630. The Commission remains responsible for ensuring that companies comply with

its regulations, and the Commission will not tolerate abuses. Nor does the Commission believe that this final rule will necessarily do anything to enhance a CEII owner's ability to engage in such abuses. Form No. 715 data must still be submitted in full to the Commission. Should a company fail to disclose the data fully to a requester that has been granted access to CEII, that failure would be easy to identify. Furthermore, the Commission anticipates that companies such as the Study Group's members will have little trouble, and experience little delay, in obtaining such access. Finally, the Commission wishes to emphasize again that this final rule affects only those informational provisions that are specifically listed here. It does not apply generally across the industries that the Commission regulates. In the case of the electric market, no requirements are being affected in any way other than Form No. 715.

19. The Study Group recommended several suggestions to facilitate access to CEII consistent with security concerns. Their concern is that whatever process ultimately adopted by the Commission is reliable, non-discriminatory and easy to use. While we share the Study Group's concerns with the need to facilitate access, we continue to believe that the process contained in the final rule is sufficiently straightforward and should operate quickly in situations involving access to Form No. 715 data. Moreover, by employing standards set by outside entities in determining whether to grant access to CEII under the Commission's regulations, the Study Group's proposals would have the undesirable effect of requiring the Commission to monitor approval processes employed by these organizations to ensure that they provided sufficient security.

20. With respect to access and dissemination of information by entities such as BPA and Interior, it goes without saying that the Commission lacks authority to override obligations imposed by statute or regulation. Clearly, this final rule cannot, and is not intended to, prevent agencies from complying with the FOIA or NEPA, or to prevent persons or companies from complying with lawfully enacted regulations that require the provision of information. Finally, the question of intervenors obtaining information in a timely fashion was addressed in Order No. 630. 68 FR 9866.

B. Approval Process

21. Several commenters expressed concerns about the process for handling requests for access to CEII. Some

believed that the process for approval would be too slow and suggested changes to speed it up. Some recommended a pre-approval process.¹⁵ One commenter suggested that CEII owners be required to provide CEII to persons with OASIS passwords, or that regional transmission organizations be able to certify customers for access automatically.¹⁶ Another suggested a process whereby a requester must first go to the company, then file a request with the Coordinator.¹⁷ One commenter requested assurance that the Commission will not place requests for access on separate tracks, the point presumably being that there should not be a "slow track."¹⁸

22. Some of the comments about the approval process concerned the handling of CEII. One suggested that a CEII owner be required to notify everybody on the service list when information is determined not to be CEII.¹⁹ One asked the Commission to establish a time limit in which a CEII owner must provide information once a request for access has been granted.²⁰ Another suggested that the Commission employ standardized non-disclosure agreements, and that it specify that a recipient, once granted access to CEII, be permitted to use it for ongoing business activities, such as a consultant with more than one client.²¹ The Study Group also asked the Commission to clarify that, once a requester is granted access, it may communicate directly with the CEII owner.²² One commenter asked that the Commission establish guidelines for the Coordinator to follow, and suggested that CEII owners be involved in any negotiations over non-disclosure agreements.²³ Finally, one commenter requested that the Coordinator perform a monitoring role intended to determine whether companies are making required information available. This commenter stated that outsiders to the system cannot tell what information is being withheld.²⁴

23. All of the above comments address the approval process generally and, thus, are not appropriate for consideration as part of this docket. The NOPR proposed to follow the approval

¹⁵ Interior at pp. 1–2; Consumers Energy Company at pp. 3–6; Study Group at pp. 23–24.

¹⁶ Study Group at p. 22.

¹⁷ National Hydropower Association at pp. 3–4.

¹⁸ Northern Natural Gas at pp. 5–6.

¹⁹ Interior at p. 3.

²⁰ Northern Natural Gas at p. 4.

²¹ Study Group at pp. 22–23.

²² *Id.* at 24.

²³ PJM Interconnection, L.L.C. at pp. 3–5.

²⁴ Southwest Transmission Dependent Utility Group at pp. 1–2.

¹⁴ National Hydropower Association at p. 6.