

process already established in Order No. 630 and stated that the Commission would not revisit issues already addressed in that order. 68 FR 18541. The procedures and guidelines for requesting and obtaining access to CEII, and for challenging CEII designations, were addressed at length in Order No. 630. This included timeliness, verification issues, standards for granting access, and the viability of a pre-approval process. *Id.* at 9863–65. Some of these issues are addressed again in the order on rehearing being issued concurrently. The Commission will not revisit these issues here.

24. Some clarification is, however, required with respect to several of these suggestions. The Commission does not have separate tracks for CEII access requests. There also is nothing in the Commission's regulations to prevent a requester from directly contacting a CEII owner, either before or after access is granted. Finally, the Commission does not believe it would be practical for the CEII Coordinator to perform a monitoring role. For the most part, the Commission's various regulations requiring that regulated companies make information available rely on voluntary compliance, regardless of whether CEII is involved. The Commission does not believe that the risk of a company simply flouting the regulations is any greater when CEII is involved than it has ever been. Existing mechanisms for dealing with companies that do not comply with their legal responsibilities should suffice in such situations.

25. This rule, as well as Order No. 630, represents the Commission's best efforts to achieve a delicate balance between the due process rights of interested persons to participate fully in its proceedings and its responsibility to protect public safety by ensuring that access to CEII does not facilitate acts of terrorism. The Commission believes that it has struck an appropriate balance; however, it intends to monitor the experiences under these two rules to ensure that it has done so. Therefore, in six months the Commission will solicit public comment to determine whether submitters or requesters of CEII are experiencing any problems with the new processes.

C. Miscellaneous Issues

26. The Interstate Natural Gas Association of America (INGAA) suggests that the Commission include 18 CFR 157.18 in the provisions being revised in this final rule.²⁵ That section governs applications to abandon

facilities or service and requires the applicant to file exhibits, including material, such as flow diagrams and detailed location information, that likely would include CEII. 18 CFR 157.18(c) and (g). The section includes only filing requirements, however, rather than requirements that information be made available to the public. Consequently, any CEII that the section requires be disclosed should already be covered by Order No. 630.

27. One commenter states that the use of the term "landowner" in proposed 18 CFR 157.6(d)(6) is too restrictive.²⁶ The revision as proposed in the NOPR referred to situations where the regulation might require disclosure of CEII "to a landowner." The notification provision is worded more broadly to require notification to "affected landowners and towns, communities, and local, state and federal governments and agencies." 18 CFR 157.6(d)(1). The Commission thus has replaced the phrase "to a landowner" with "to any person."

28. The Commission received a suggestion that it establish procedures specifying how and where information denied CEII treatment must be made available.²⁷ The Commission considers this unnecessary and potentially confusing, because different situations may be presented depending on the exact context. If a request that information be treated as CEII is rejected, then the underlying requirement to disclose the information remains operative and, absent any other provision or direction from the Commission, the owning company must comply as promptly as practicable.

29. The National Hydropower Association comments that the Commission should include a provision stating that a company may withhold information considered to be CEII even though it was made publicly available before the Commission enacted these revisions.²⁸ The Commission agrees with the underlying principle, but considers an explicit provision unnecessary. Neither Order No. 630 nor this final rule contains any provision requiring that CEII be disclosed because it was previously disclosed. In fact, as noted in Order No. 630, the Commission went to considerable effort to remove from its Web site documents that previously had been available to the public. 68 FR 9858. Absent an explicit provision requiring previously available CEII to remain available, the logical and intended conclusion is that such

information may be removed or made unavailable.

30. The National Hydropower Association also comments that a company owning CEII should not be required to make the information available to one requester solely because it was made available to another requester.²⁹ The Commission has already indicated its agreement with this principle. Order No. 630 explained that access is to be determined on a case-by-case basis. 68 FR 9864. The fact that one person or organization has been determined not to present a security risk obviously does not mean that a different person or organization would not do so. The Commission cautions owners of CEII, however, that it will not tolerate abuse of these revisions designed to discriminate against competitors or otherwise adversely affect competition in the energy markets. The revised rules are intended solely to enable owners of CEII to prevent information from getting into a terrorist's hands.

31. INGAA expresses concern over the provision in 18 CFR 157.10(d) requiring treatment of CEII to adhere to previous determinations, because companies may not be aware of previous determinations.³⁰ This should rarely be a problem because in most instances the previous determination will involve information owned by the same company. Nevertheless, the Commission has added the phrase "to the extent practicable" to new §§ 4.32(k)(2), 16.7(d)(2), 141.300(d)(2), and 157.10(d)(2).

32. Except as discussed above, the Commission adopts the proposed revisions to its regulations.

Information Collection Statement

33. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule. 5 CFR 1320.12. The public disclosure of information originally supplied by an agency to the recipient is, however, excluded from the coverage of the regulations. 5 CFR 1320.3(c)(2). The only information collection requirement contained in this final rule is a requirement that companies include a statement outlining the procedures for seeking access to CEII. Because that statement would be supplied by the Commission, the information collection regulations do not apply to this final rule.

²⁵ Northern Natural Gas at p. 3.

²⁶ *Id.* at 4–5.

²⁷ National Hydropower Association at p. 6.

²⁸ National Hydropower Association at p. 5.

²⁹ INGAA at pp. 3–4.

³⁰ INGAA at pp. 2–3.