

Commission has not encountered a problem with submitters of privileged information subject to a FOIA request not being able to respond timely. These time frames come into play in situations involving confidential business information that is highly sensitive to submitters. If the current time frames are adequate in such situations, they should be adequate where CEII is requested. It should be noted that the Commission does send notice directly to the submitter, usually by facsimile as well as by mail and frequently alerts the submitter by telephone too, and does not rely on constructive notice.

69. Moreover, as discussed in the NOPR,¹⁷³ decisions by the CEII Coordinator, which will be made pursuant to authority delegated here in new § 375.313 of the Commission's regulations,¹⁷⁴ will be subject to requests to the Commission for rehearing.¹⁷⁵ As is true for all orders issued under delegated authority, the time limit for a request for rehearing is thirty days.¹⁷⁶ In addition, the Commission's rules specifically provide that a request for rehearing does not stay the order being challenged unless the Commission orders otherwise.¹⁷⁷ The

Commission has found these procedures to be workable in various contexts over the years and believes they will continue to function well in connection with requests for CEII.

K. Other Issues

70. In response to the NOPR, several commenters suggested that the Commission review the information that it collects to determine if such collections are necessary. They reason that if the Commission does not have the information, it cannot be subject to disclosure under the FOIA. Southern is concerned about this, particularly where the information may be available through the Open Access Same-time Information System (OASIS).¹⁷⁸ The Commission agrees with these commenters' logic. As noted in the NOPR, the Commission will be examining its information collections to see where collections can be scaled back or eliminated without compromising fulfillment of its statutory responsibilities.¹⁷⁹ This will most likely be done in conjunction with the periodic Office of Management and Budget clearance process.

71. Commenters also seek Commission action to amend requirements that companies make information available where the Commission is protecting the same information from disclosure.¹⁸⁰ Conversely, at least one commenter, the Transmission Access Policy Study Group, requested that the Commission confirm that it is not eliminating requirements that companies make this information available.¹⁸¹ The Commission intends to eliminate the inconsistent treatment, and will be making future modifications to its regulations to effect these changes. Until those regulations are changed, the requirements remain in place unless a company successfully obtains a waiver from the requirement.

III. Information Collection Statement

72. The Office of Management and Budget's (OMB's) regulations require that OMB approve certain information collection requirements imposed by agency rule.¹⁸² In the NOPR, the Commission estimated the annual public reporting burden as follows:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC-603	200	200	.25	50

Total Annual Hours for Collection (reporting + record keeping, if appropriate) = 50 hours. Information Collection Costs: The NOPR estimated the cost to comply with these requirements. It projected the average annualized cost of all respondents to be: Annualized Capital Startup Costs: The Commission estimated that to respond to this information collection will be a one-time cost of \$12.50 per respondent. (50 hours @ \$50 hourly rate ÷ 200).

73. None of the commenters challenged the estimates provided in the NOPR. On October 1, 2002, OMB approved without change, the Commission's request for approval of the information collection required by the proposed rule, and assigned it OMB No. 1902-0197. The only information collection changes from the NOPR to the final rule are the added requirement in new § 388.113(d)(3)(i) of the

Commission's regulations¹⁸³ that requesters provide their date and place of birth and the request that they provide their social security number. OMB regulations provide an exemption where a person is required to provide only facts that are necessary for identification.¹⁸⁴ The requirement that a requester provide his or her date and place of birth and the request that a requester provide his or her social security number are intended to verify the identity of the requester. For that reason, this collection need not be resubmitted to OMB for approval.

IV. Environmental Analysis

74. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.¹⁸⁵ Included in the

exclusions are rules that are clarifying, corrective, or procedural or that do not substantively change the effect of the regulations being amended.¹⁸⁶ This rule is procedural in nature and therefore falls under this exception; consequently, no environmental consideration is necessary.

V. Regulatory Flexibility Act Certification

75. The Regulatory Flexibility Act of 1980 (RFA)¹⁸⁷ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect. The Commission certifies that this rule does not have such an impact on small entities.

¹⁷³ 67 FR 57994 at p. 58001, FERC Stats. & Regs. ¶ 32,564 at p. 34,550.

¹⁷⁴ 18 CFR 375.313.

¹⁷⁵ 18 CFR 385.1902(a).

¹⁷⁶ 18 CFR 385.713(b).

¹⁷⁷ 18 CFR 385.713(e).

¹⁷⁸ Southern at p. 11.

¹⁷⁹ 67 FR 57994 at p. 58000, n. 41, FERC Stats. & Regs. ¶ 32,564 at p. 34,547, n. 41.

¹⁸⁰ *E.g.*, INGAA at p. 12; Puget Sound Energy, Inc. at pp. 5-6.

¹⁸¹ Transmission Access Policy Study Group at p. 7.

¹⁸² 5 CFR part 1320 (2002).

¹⁸³ See new 18 CFR 388.113(d)(3)(i).

¹⁸⁴ 5 CFR 1320.3(h)(1).

¹⁸⁵ Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987).

¹⁸⁶ 18 CFR 380.4(a)(2)(ii).

¹⁸⁷ 5 U.S.C. 601-612.