

and the justification for non-disclosure of the information;

(ii) One of the following:

(A) In all cases where the privileged information or CEII can, as a practical matter, be segregated into a separate document or appendix:

(1) One copy of the electronic media and fourteen paper copies of a filing all without the privileged information or CEII, and all marked either "Privileged Information Contained in Separate Attachment" or "Critical Energy Infrastructure Information Contained in Separate Attachment," and

(2) One copy of the electronic media and one paper copy of a separate document or appendix, in both cases marked on media itself and on the front page either "Contains Privileged Information—Do Not Release" or "Contains Critical Energy Infrastructure Information—Do Not Release," with every page in the document or appendix marked either "Privileged Information—Do Not Release" or "Critical Energy Infrastructure Information—Do Not Release," and

(3) An index identifying each file on the media and whether it is public, contains Critical Energy Infrastructure Information, or contains other privileged information; or

(B) In cases where the privileged information or CEII cannot reasonably or coherently be separated into a separate document or appendix:

(1) One copy of a complete filing on the electronic media and a paper copy, both marked on the media itself and on the front page either "Contains Privileged Information—Do Not Release" or "Contains Critical Energy Infrastructure Information—Do Not Release," with every page containing privileged information or CEII marked either "Privileged Information—Do Not Release" or "Critical Energy Infrastructure Information—Do Not Release" and with the privileged information or CEII clearly and specifically identified, and

(2) One copy of the electronic media without the information for which privileged treatment is sought and with a statement that information has been removed for privileged treatment, together with fourteen paper copies without the information for which privileged treatment is sought,

(3) An index identifying each file on the media and whether it is public, contains Critical Energy Infrastructure Information, or contains other privileged information, and

(iii) The name, title, address, telephone number, e-mail address, and facsimile number of the person or persons to be contacted regarding the

request for privileged treatment of documents submitted to the Commission.

(c) *Effect of privilege claim*—(1) For documents filed with the Commission.

(i) The Secretary of the Commission will place documents for which privileged treatment is sought in accordance with paragraph (b)(1)(ii) of this section in a nonpublic file, while the request for privileged treatment is pending. By placing documents in a nonpublic file, the Commission is not making a determination on any claim for privilege. The Commission retains the right to make determinations with regard to any claim of privilege, and the discretion to release information as necessary to carry out its jurisdictional responsibilities.

(ii) The Secretary of the Commission will place the request for privileged treatment described in paragraph (b) of this section and a copy of the original document with the privileged information removed in a public file while the request for privileged treatment is pending.

(2) *For documents submitted to Commission staff.* The notification procedures of paragraphs (d), (e), and (f) of this section will be followed by staff before making a document public.

(d) *Notification of request and opportunity to comment.* When a FOIA or CEII requester seeks a document for which privilege is claimed, or when the Commission itself is considering release of the information, the Commission official who will decide whether to make the document public will notify the person who submitted the document and give the person an opportunity (at least five days) in which to comment in writing on the request. A copy of this notice will be sent to the requester.

(e) *Notification before release.* Notice of a decision by the Commission, the Chairman of the Commission, the Director, Office of External Affairs, the General Counsel or General Counsel's designee, a presiding officer in a proceeding under part 385 of this chapter, or any other appropriate official to deny a claim of privilege, in whole or in part, will be given to any person claiming that information is privileged no less than five days before public disclosure. The notice will briefly explain why the person's objections to disclosure are not sustained by the Commission. A copy of this notice will be sent to the FOIA or CEII requester.

(f) *Notification of suit in Federal courts.* When a FOIA requester brings suit to compel disclosure of information for which a person has claimed privileged treatment, the Commission

will notify the person who submitted the documents of the suit.

5. Add § 388.113 to read as follows:

§ 388.113. Accessing critical energy infrastructure information.

(a) *Scope.* This section governs access to critical energy infrastructure information (CEII). The rules governing submission of CEII are contained in 18 CFR 388.112(b). The Commission reserves the right to restrict access to previously filed documents as well as Commission-generated documents containing CEII.

(b) *Purpose.* The procedures in this section are available at the requester's option as an alternative to the FOIA procedures in § 388.108 where the information requested is exempted from disclosure under the FOIA and contains CEII.

(c) *Definitions.* For purposes of this section:

(1) *Critical energy infrastructure information* means 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.

(2) *Critical infrastructure* means 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.

(d) *Optional procedures for requesting critical energy infrastructure information.*

(1) An owner/operator of a facility, including employees and officers of the owner/operator, may obtain CEII relating to its own facility directly from Commission staff without going through the procedures outlined in paragraph (d)(3) of this section.

(2) An agent or representative of an owner/operator must obtain information from the owner/operator.

(3) If any other requester has a particular need for information designated as CEII, the requester may request the information using the following procedures:

(i) File a written request with the Commission's CEII Coordinator. The request shall contain the following: Requester's name, date and place of