

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 388

(Docket No. RM06-23-000)

Critical Energy Infrastructure Information

(Issued September 21, 2006)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to revise its regulations to: allow an annual certification for repeat requesters of Critical Energy Infrastructure Information (CEII); allow an authorized representative to file an executed non-disclosure agreement; make the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2000) fee schedule applicable to CEII requests; provide CEII appeal rights that are compatible with FOIA appeal rights; grant landowners the right to obtain alignment sheets directly from Commission staff; and abolish the non-Internet public category of information. This notice of proposed rulemaking also seeks comments on the CEII portions of various forms and reports submitted to the Commission. The proposed rule offers a more efficient process for handling CEII requests and provides submitters of CEII with guidance on what materials the Commission accepts as containing CEII.

DATES: Comments are due [**insert date 30 days after publication in the FEDERAL REGISTER**]. Reply Comments are due [**insert 15 days after comment due date**].

ADDRESSES: You may submit comments, identified by Docket No. RM06-11-000, by one of the following methods:

- Agency Web Site: <http://ferc.gov>. Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble.
- Mail: Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, N.E., Washington, D.C. 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Critical Energy Infrastructure Information

Docket Nos. RM06-23-000

NOTICE OF PROPOSED RULEMAKING

(September 21, 2006)

Introduction

1. In the three years since the issuance of Order No. 630, the Commission has continually monitored and evaluated the effectiveness of the Critical Energy Infrastructure Information (CEII) process. Critical Energy Infrastructure Information, Order No. 630, 68 FR 9857 (Mar. 3, 2003), FERC Stats. & Regs. ¶ 31,140 (2003); order on reh'g, Order No. 630-A, 68 FR 46456 (Aug. 6, 2003), FERC Stats. & Regs. ¶ 31,147 (2003). The most recent review indicates that changes are needed to assure the rules work in the manner intended. As explained below, the Commission seeks comments on: (1) revisions to its regulations regarding CEII requests; (2) the limited portions of various forms and reports the Commission now defines as containing CEII; and (3) its proposal to abolish the non-Internet public (NIP) designation. In a final rule and notice of regulatory changes issued concurrently with this notice of proposed rulemaking, the Commission: (1) makes the following changes to its regulations (a) the definition of CEII is clarified, and (b) requesters are required to submit executed non-disclosure agreements (NDA) with their requests; (2) provides notice that, for CEII requests, the notice and opportunity to comment on a request will be combined with the notice of release; and (3) reiterates its

requirement that submitters segregate CEII from other information and file as CEII only information which truly warrants being kept from public access.

2. The proposed rule (1) offers a more efficient process for handling CEII requests and (2) provides submitters with guidance on what materials the Commission accepts as containing CEII.

Background

3. The Commission began its efforts with respect to CEII shortly after the attacks of September 11, 2001. See Statement of Policy on Treatment of Previously Public Documents, 66 FR 52917 (Oct. 18, 2001), 97 FERC ¶ 61,130 (2001). The Commission's initial step was to remove from its public files and Internet page documents such as oversized maps that were likely to contain detailed specifications of facilities licensed or certified by the Commission, directing the public to request such information pursuant to the Freedom of Information Act (FOIA) process detailed in 5 U.S.C. 552 (2000) and in the Commission's regulations at 18 CFR 388.108 (2001). In September 2002, the Commission issued a notice of proposed rulemaking regarding CEII, which proposed an expanded definition of CEII to include detailed information about proposed facilities as well as those already licensed or certificated by the Commission. Notice of Rulemaking and Revised Statement of Policy, 67 FR 57994 (Sept. 13, 2002); FERC Stats. & Regs. ¶ 32,564 (2002). The Commission issued its final rule on CEII on February 21, 2003, defining CEII to include information about proposed facilities, and to exclude information that simply identified the location of the infrastructure. Order No. 630, 68 FR 9857, FERC Stats. & Regs. ¶ 31,140. After receiving a request for rehearing on

Order No. 630, the Commission issued Order No. 630-A on July 23, 2003, denying the request for rehearing, but amending the rule in several respects. Order No. 630-A, 68 FR 46456, FERC Stats. & Regs. ¶ 31,147. Specifically, the order on rehearing made several minor procedural changes and clarifications, added a reference in the regulation regarding the filing of NIP information, a term first described in Order No. 630, and added the aforementioned commitment to review the effectiveness of the new process after six months. Also on July 23, 2003, the Commission issued Order No. 643, which revised the Commission's regulations to require companies to make certain information available directly to the public under certain circumstances. These revisions were necessary to conform the regulations to Order No. 630. Order No. 643, 68 FR 52089, FERC Stats. & Regs. ¶ 31,149 (2003). In Order No. 662, the Commission modified its CEII regulations to ease the burden on agents of owners or operators of energy facilities that are seeking CEII relating to the owner/operator's own facility. The rule also simplified federal agencies' access to CEII. Order No. 662, 70 FR 37031, FERC Stats. & Regs. ¶ 31,189 (2005).

Proposed Revisions To Regulations

A. Section 388.113 -- Accessing critical energy infrastructure information

4. The Commission proposes to revise § 388.113 of its regulations to allow an annual certification for repeat requesters, i.e., repeat requesters would not be required to file a new non-disclosure agreement (NDA) with each subsequent request. The current regulation sets forth a process where a requester provides to the CEII Coordinator detailed information about the requester and his or her need for the information, which

the CEII Coordinator uses in determining whether to release the information. The proposed regulation would provide that a requester provide such detailed information with an initial request. Once the CEII Coordinator determines that the requester does not pose a security risk, the requester would not have to provide such detailed information with subsequent requests during the calendar year. This would decrease the processing time of requests as Commission staff would not have to verify the requester with subsequent requests. It is important to note that the CEII Coordinator would continue to carefully consider submitters' responses that identify security risks associated with releasing CEII to particular requesters.

5. With each subsequent request, the requester would still be required to provide detailed information as to why he or she needs the information. Such need would be implicated, for example, if the requester is an intervener in a proceeding or a landowner affected by a proposed facility. Such individuals may require access to information in order to participate meaningfully in the proceeding. The requester would also be required to attest that the information supplied with an initial request has not changed.

6. The Commission also proposes to revise § 388.113 of its regulations to allow an authorized representative of an organization to execute an NDA on behalf of all that organization's employees. The Commission would verify an organization and require that the organization verify its own users. In the event of an unauthorized disclosure of CEII by a member or employee of the organization, the Commission will hold the authorized representative and the entity accountable and take all action available to the

Commission to deal with the violation. Repeat requests would be subject to the annual certification described above.

7. The Commission further proposes to revise § 388.113 of its regulations to include a fee provision. Commission staff currently expends valuable time and resources searching, reviewing, and copying documents responsive to CEII requests. The current regulations would be modified to follow the fee schedule used for FOIA requests.

8. Another regulatory change the Commission proposes is to revise 18 CFR § 388.113(d)(3)(ii). Currently, the CEII Coordinator, or his or her designee, issues a delegated order in response to a CEII request. Section 388.113(d)(3)(ii) provides that this decision is subject to rehearing pursuant to § 375.713 of the Commission's regulations. The Commission proposes that CEII determinations no longer be subject to rehearing. As explained below, CEII requests would be processed in a manner similar to other requests for non-public information.

9. The September 11, 2001 attacks prompted the Commission to remove from easy public access previously public documents that detail the specifications of proposed or existing energy facilities licensed or certificated by the Commission. Before the attacks, the Commission was never faced with such security issues. Therefore, in these early days of CEII, the Commission sought to reconcile its regulatory responsibilities under its enabling statutes and Federal environmental laws with the need to protect the safety and well being of American citizens from attacks on our nation's energy infrastructure. To that end, the Commission allowed the CEII Coordinator, or her designee, to make CEII determinations by delegated orders, which are subject to rehearing.

10. In light of over three years experience processing CEII requests, the Commission now finds that CEII determinations need not be made by delegated orders. In making this determination, the Commission is in no way compromising the security of the information or unduly restricting the public access to it.

11. Under existing procedures, a request for rehearing concerning a CEII determination is reviewed by the entire Commission and is then subject to review by the appropriate appellate court. See 18 CFR § 385.713 (2006). Other than CEII requests, when the Commission makes a determination regarding the release of non-public information, it is not subject to rehearing. For example, by statute, when the agency informs a requester of non-public information, i.e. a FOIA requester, of the reason(s) for withholding information, the requester is limited to filing an administrative appeal to the Commission's General Counsel, with no right to a Commission rehearing. This promotes judicial economy and preserves Commission resources. If the requester is dissatisfied with the General Counsel's determination, the requester must seek a de novo review in a U.S. District Court prior to going before an appellate court. 18 CFR § 388.108(c)(1), 388.110 (2006).

12. The Commission emphasizes that CEII, like other non-public documents, is maintained in the Commission's non-public files pursuant to § 388.107 of its regulations. The Commission's determination to place CEII or other non-public information in its non-public files or to release such information need not be done by a Commission order which allows the right to rehearing. Rather, a release of CEII should be processed similarly to the release of other non-public information specified in § 388.107 of its

regulations. Therefore, the Commission proposes that the CEII Coordinator, or her designee, issue a letter providing notice of a determination to grant or deny a CEII request. As CEII by definition is exempt from release under the FOIA, the Commission's determination to release CEII is a voluntary one that is analogous to a discretionary release under the FOIA. Accordingly, a dissatisfied CEII requester may seek the information pursuant to the FOIA and may ultimately pursue a remedy in district court pursuant to the court's jurisdiction under the FOIA. A dissatisfied submitter may seek injunctive relief similar to that sought in a reverse FOIA action.¹ Thus, even though the Commission would no longer subject CEII determinations to rehearing, comparable administrative and judicial remedies remain available.

13. In revised § 388.113(d), the Commission proposes to grant access to alignment sheets filed pursuant to § 380.12(3) of the Commission's regulations to landowners for the route across or in the vicinity of their property. Such landowners would be able to obtain alignment sheets from the CEII Coordinator without submitting an NDA. Thus, landowners will not be restricted from discussing the information shown in the detailed

¹ The Court of Appeals for the District of Columbia Circuit has defined a "reverse" FOIA action as one in which the "submitter of information -- usually a corporation or other business entity" that has supplied an agency with "data on its policies, operations or products -- seeks to prevent the agency that collected the information from revealing it to a third party in response to the latter's FOIA request." CNA Fin. Corp. v. Donovan, 830 F.2d 1132, 1133 n.1 (D.C. Cir. 1987).

alignment sheets with others even though the detailed alignment sheets are CEII. The Commission encourages landowners to first request this information from applicants.

B. Section 388.112 -- Requests for special treatment of documents submitted to the Commission

14. By way of background, in Order No. 630, the Commission explained that it considers the following types of gas and hydropower location information outside the definition of CEII: (1) USGS 7.5-minute topographic maps showing the location of pipelines, dams, or other aboveground facilities; (2) alignment sheets showing the location of pipeline and aboveground facilities, right of way dimensions, and extra work areas; (3) drawings showing site or project boundaries, footprints, building locations and reservoir extent; and (4) general location maps. In order to alleviate concerns about making this information so easily available, the Commission instructed filers to segregate this non-CEII location information into a separate volume or appendix, clearly label it NIP, and submit it with instructions that it not be placed on the Internet. The information remained, and still remains, publicly available through the Public Reference Room.

15. The NIP designation has resulted in much confusion, with many individuals utilizing the CEII or the FOIA procedures in an effort to obtain NIP information. The Commission proposes to abolish the NIP designation. The Commission has concluded that there is little to be gained by protecting information that can be gleaned from a visual inspection of the facility, or that is otherwise easily attainable from other sources, such as the United States Geological Survey or commercial mapping firms. See 67 FR 57994, 58000. Most of the information designated as NIP is readily available on the Internet.

For companies that currently file maps showing simply the location of pipeline and aboveground facilities as NIP, they would file these documents as public. For companies that file detailed alignment sheets pursuant to § 380.12(c)(3) of the Commission's regulation, they would all be filed as CEII. We note that this proposed change would be prospective and any documents currently filed as NIP would retain that designation.

Proposed Revisions To CEII Designation For Information Collected

16. The CEII process was not intended as a mechanism for companies to withhold from public access information that does not pose a risk of attack on the energy infrastructure. Therefore, in an effort to achieve proper designation while avoiding misuse of the CEII designation, the Commission requires submitters to segregate public information from CEII and to file as CEII only information which truly warrants being kept from ready public access. To this end, the Commission emphasizes that the Commission's regulation at 18 CFR 388.112(b)(1) requires that submitters provide a justification for CEII treatment. The way to properly justify CEII treatment is by describing the information for which CEII treatment is requested and explaining the legal justification for such treatment.

17. The Commission retains its concern for CEII filing abuses and will take action against applicants or parties who knowingly misfile information as CEII, including rejection of an application where information is mislabeled as CEII. The Commission offers the following proposals on how various types of documents should be filed. We note that these proposals are for prospective filings. All documents currently filed at the Commission will retain their current designations. The Commission directs the Director

of the Office of External Affairs to post on the Commission's website, from time to time, clarifying guidelines regarding CEII.

A. Guidelines for filing Resource Report 13

18. These proposed guidelines provide instructions on how to file Resource Report 13. In the Commission's experience, Resource Report 13 contains public information, CEII, and privileged information. It is imperative that the information submitted be filed in its proper designation. Pursuant to 388.112(b) of the Commission's regulations, these designations must be clearly labeled and filed as separate volumes. The Commission emphasizes that submitters must segregate public information, CEII, and privileged information and file them in separate volumes. Further, submitters must only file as CEII or privileged information which truly warrants exemption from ready public access.

1. Public

19. The filing of Resource Report 13 should include a public volume for posting on eLibrary. In general, narratives such as descriptions of facilities and processes are public. However, if there are specific engineering details or design details of a critical infrastructure in narrative form, the information may be CEII or privileged. Examples of public aspects of Resource Report 13 include design, engineering, and operating philosophies, as well as general descriptions of hazard detection and control.

2. CEII

20. Only limited information meets the CEII category and should be filed as such. CEII only includes specific engineering and detailed design information about liquefied natural gas facilities, components, tanks, and systems. Examples of CEII include:

detailed piping and instrumentation diagrams; equipment and tank detail drawings; and detailed hazard detection and control location specifics.

3. Privileged

21. In general, manufacturer's proprietary or business confidential design information, and cultural resource reports are examples of privileged documents. Privileged documents are generally documents that are exempt from release pursuant to an act of Congress. For example, cultural resources may be exempt from release pursuant to the National Historic Preservation Act and should be filed as privileged. Also, material which a submitter can justify as exempt from public release pursuant to FOIA exemption 4 should be filed under this criterion. In order to qualify for Exemption 4 protection, the information must be (1) commercial or financial, (2) obtained from a person, and (3) privileged or confidential. Generally, in order to be "confidential" for purposes of Exemption 4, disclosure of the information must either impair the government's ability to obtain similar information in the future, or cause substantial harm to the competitive position of the submitter of the information. See National Parks & Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974).

B. Guidelines for filing natural gas pipeline flow diagrams and associated information

22. These proposed guidelines provide instructions on how to file natural gas pipeline flow diagrams and associated information including the diagrams filed in Exhibits G and G-1 of pipeline certificate applications, Exhibit V of abandonment applications, FERC

Form 567, and other flow diagrams submitted for the analysis of gas pipeline applications.

23. In general, natural gas pipeline flow diagrams are considered CEII. However, supporting information submitted with these flow diagrams often contains information that should be public. In the Commission's experience, information filed with the flow diagrams contains public information, CEII, and privileged information. Again, it is crucial that the information submitted be filed in its proper designation and in separate, clearly labeled volumes. See 18 CFR § 388.112(b) (2006).

1. Public

24. In general, narratives such as descriptions of facilities and processes are public. However, if there are specific engineering details and design details of a critical infrastructure in narrative form, the information may be CEII or privileged. Examples of public information include design assumptions, engineering and operating philosophies, most design specifications of equipment and pipelines, and narrative descriptions of pipeline operations.

2. CEII

25. CEII only includes specific engineering and detailed design information about pipeline facilities, components, and equipment. Examples of CEII include detailed natural gas flow diagrams filed in Exhibits G and G-1 of pipeline certificate applications, Exhibit V of abandonment applications, and FERC Form No. 567. Also, pipeline computer simulation models may be considered CEII unless they contain proprietary or business confidential information, in which case they should be filed as privileged.

3. Privileged

26. In general, documents containing manufacturer's proprietary or business confidential design information are examples of privileged documents. Material which a submitter can justify as exempt from public release pursuant to FOIA exemption 4 should be filed under this criterion.

C. Guidelines for filing documents pertaining to the Commission's Division of Dam Safety and Inspections

27. These proposed guidelines provide further instructions on how to file documents relating to hydropower projects with the Commission's Division of Dam Safety and Inspections (D2SI). Some D2SI documents contain only public information and some only CEII. In general, D2SI documents are not filed with a claim of privilege.

1. Public

28. In general, narratives such as descriptions of facilities and processes are public. However, if there are specific engineering details and design details of a critical infrastructure in narrative form, the information may be CEII or privileged. Examples of public information include general design, engineering, and operating philosophies.

2. CEII

29. Only limited information meets this category and should be filed as CEII. CEII only includes engineering, security, and detailed design information about proposed or existing critical infrastructure. Examples of CEII include detailed drawings and specifications, numerical analyses in inspection reports, dam safety and technical reports,

emergency action plans, hazard classification, construction design reports, public safety plans, and extreme event reports.

D. Guidelines for filing documents pertaining to the Commission's Division of Hydropower Licensing

30. These proposed guidelines provide further instructions on how to file documents relating to applications to license hydropower projects with the Commission's Division of Hydropower Licensing (DHL). In hydropower licensing, only Exhibit F is considered to be CEII material. Exhibit F consists of design drawings of critical energy infrastructure information and a Supporting Design Report. Exhibit F is contained in applications for hydropower licenses. All other DHL documents contain only public information. In general, DHL documents are not filed with a claim of privilege.

E. Guidelines for filing FERC Form 715 Annual Transmission Planning and Evaluation Report

31. These proposed guidelines provide further instructions on how to file parts of the FERC Form 715, Annual Transmission Planning and Evaluation Report (Form 715). The Form 715 is comprised of the following parts: Part 1, Identification and Certification; Part 2, Power Flow Base Cases; Part 3, Transmitting Utility Maps and Diagrams; Part 4, Transmission Planning Reliability Criteria; Part 5, Transmission Planning Assessment Practices; and Part 6, Evaluation of Transmission System Performance. Some parts of the Form 715 contain public information and some contain CEII. In general, Form 715 does not contain privileged information.

1. Public

32. In general, narratives such as descriptions of facilities and processes are public. The information found in Part 1 contains the filer's identification and contact information. This information should be filed publicly. Similarly, Parts 4 and 5 contain generic criteria used in evaluating and testing the filer's system. This generic information does not qualify as CEII and should be filed publicly.

2. CEII

33. CEII only includes engineering, security, and detailed design information about proposed or existing infrastructure. Information in Part 2 provides an electrical model and analysis of the filer's actual transmission system. Part 3 provides detailed one-line diagrams and geographic location and identification of all system components. Part 6 provides details of potential weaknesses of the filer's transmission system including possible solutions. These three parts contain CEII and should be filed as such.

Information Collection Statement

34. The Office of Management and Budget's (OMB's) regulations require that OMB approve certain information collection requirements imposed by agency rule. See 5 CFR 1320.12 (2006). This notice of proposed rulemaking does not impose any additional information collection requirements. Therefore, the information collection regulations do not apply to this final rule.

Environmental Analysis

35. 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. 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). The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusions are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended. 18 CFR 380.4(a)(2)(ii). This notice of proposed rulemaking is procedural in nature and therefore falls under this exception; consequently, no environmental consideration is necessary.

Regulatory Flexibility Act Certification

36. The Regulatory Flexibility Act of 1980 (RFA) requires rulemakings to contain either a description and analysis of the effect that the rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities.² Most companies to which the rules proposed herein would apply, if finalized, would not fall within the RFA's definition of small entity.³

² 5 U.S.C. 603 (2000).

³ 5 U.S.C. 601(3)(2000), citing to section 3 of the Small Business Act, 15 U.S.C. 632 (2000). Section 3 of the Small Business Act defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632 (2000). The Small Business Size Standards component of the North American Industry Classification System (NAICS) defines, for example, a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output
(continued...)

Consequently, the rules proposed herein, if finalized, will not have a “significant economic impact on a substantial number of small entities.”

Public Comments

37. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due on or before [insert date that is 30 days after date of publication in the **FEDERAL REGISTER**]. Comments must refer to Docket No. RM06-23-000, and must include the commenter’s name, the organization he or she represents, if applicable, and his or her address.

38. Comments may be filed electronically via the eFiling link on the Commission's website at <http://www.ferc.gov>. The Commission accepts most standard word processing formats, and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters who are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, N.E., Washington, D.C. 20426.

for the preceding fiscal year did not exceed four million MWh. NAICS defines a natural gas pipeline company as one that transports natural gas and whose annual receipts (total income plus cost of goods sold) did not exceed \$6.5 million dollars for the preceding year. 13 CFR 121.201.

39. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this notice of proposed rulemaking are not required to serve copies of their comments on other commenters.

Document Availability

40. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington D.C. 20426.

41. From FERC's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

42. User assistance is available for eLibrary and the FERC's website during normal business hours. For assistance, please contact FERC Online Support at 1-866-208-3676 (toll free) or 202-502-6652 (e-mail at FERCOnlineSupport@FERC.gov), or the Public Reference Room at 202-502-8371, TTY 202-502-8659 (e-mail at public.referenceroom@ferc.gov).

List of subjects in 18 CFR Part 388

Confidential business information; Freedom of information.

By direction of the Commission.

Magalie R. Salas,
Secretary.

In consideration of the foregoing, the Commission amends Part 388, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 388 – INFORMATION AND REQUESTS

1. The authority citation for part 388 continues to read as follows:

Authority: 5 U.S.C. 301-305, 551, 552 (as amended), 553-557; 42 U.S.C. 7101-7352.

2. Amend § 388.109(b) to read as follows:

§ 388.109 Fees for record requests.

* * * * *

(b) Fees for records not available through the Public Reference Room (FOIA or CEII requests). The cost of duplication of records not available in the Public Reference Room will depend on the number of documents requested, the time necessary to locate the documents requested, and the category of the persons requesting the records. The procedures for appeal of requests for fee waiver or reduction are provided in § 388.110.

3. In § 388.112, paragraph (a)(3) is to be deleted and paragraph (b) is revised to read as follows:

§ 388.112 Requests for special treatment of documents submitted to the Commission.

* * * * *

(b) Procedures. A person claiming that information warrants special treatment as CEII or privileged must file:

(1) A written statement requesting CEII or privileged treatment for some or all of the information in a document, and the justification for special treatment of the information; and

(2) The following, as applicable:

(i) An original plus the requisite number of copies of the public volume filed and marked in accordance with instructions issued by the Secretary;

(ii) An original plus two copies of the CEII volume, if any, filed and marked in accordance with instructions issued by the Secretary; and

(iii) An original only of the privileged volume, if any, filed and marked in accordance with instructions issued by the Secretary.

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4. Amend § 388.113 redesignating paragraph (d)(3) as paragraph (d)(4), by adding new paragraph (d)(3), revising redesignated paragraph (d)(4), redesignating paragraph (d)(4)(iii) as paragraph (d)(4)(iv), and adding new paragraphs (d)(4)(iii) and (e) to read as follows:

§ 388.113 Accessing critical energy infrastructure information.

* * * * *

(d) * * *

(3) A landowner whose property is crossed by or in the vicinity of a project may received detailed alignment sheets containing CEII directly from the CEII Coordinator without submitting a non-disclosure agreement as outlined in paragraph (d)(4) of this section. A landowner must provide the CEII Coordinator with proof of his or her property interest in the vicinity of a project.

(d) ***

(4) * * *

(i) File a signed, written request with the Commission's CEII Coordinator. The request must contain the following: requester's name (including any other name(s) which the requester has used and the dates the requester used such name(s)), date and place of birth, title, address, and telephone number; the name, address, and telephone number 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. Unless otherwise provided in § 388.113(d)(3), a requester must also file an executed non-disclosure agreement. A requester is also requested to include his or her social security number for identification purposes. A requester who seeks the information on behalf of all employees of an organization should clearly state that the information is sought for the organization, that the requester is authorized to seek the information on behalf of the organization, and that the requester agrees to be bound by a non-disclosure agreement which will be applied to all individuals who access to the CEII.

(ii) Once the request is received, the CEII Coordinator will determine if the information is CEII, and, if it is, whether to release the CEII to the requester. The CEII Coordinator will balance the requester's need for the information against the sensitivity of the information. If the requester is determined to be eligible to receive the information requested, the CEII Coordinator will determine what conditions, if any, to place on release of the information.

(iii) Once a CEII requester has been verified by Commission staff as a legitimate requester who does not pose a security risk, his or her verification will be valid for the

remainder of that calendar year. Such a requester is not required to provide detailed information about himself with subsequent requests during the calendar year. The requester also is not required to file an NDA with subsequent requests during the calendar year.

(e) Fees for processing CEII requests will be determined in accordance with § 388.109.

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