

## FERC Issues Final Rule Amending Regulations for Processing Critical Energy Infrastructure Information

On October 30, the Federal Energy Regulatory Commission (Commission) issued a Final Rule (Order No. 702) amending its regulations for processing critical energy infrastructure information (CEII).

The Final Rule: modifies non-disclosure agreements; modifies the Commission's process to allow the CEII Coordinator to respond to CEII requests by letter; provides landowners access to alignment sheets for the routes across or in the vicinity of their properties; includes a fee provision; limits the portions of forms and reports the Commission defines as containing CEII; eliminates as a category of documents the Non-Internet Public designation; provides that the Commission will seek a requester's date and place of birth on a case-by-case basis rather than require that information with every request for CEII; and eliminates the request for social security numbers. The Final rule will become effective 30 days after publication in the *Federal Register*.

### CEII AND KEY ISSUES IN THE FINAL RULE

The CEII regulations are designed to restrict general public access to critical energy infrastructure information, but still permit those with a need for the information to obtain it.

CEII is defined as specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure (physical or electronic) that relates details about the production, generation, transmission, or distribution of energy. It is exempt from mandatory disclosure under the Freedom of Information Act, gives strategic information beyond the location of the critical infrastructure, and could be useful to a person planning an attack on critical infrastructure.

Under current procedures, anyone who requests access to information filed under a request for CEII treatment must file a written request providing the CEII Coordinator information about the requester's identity and explain the need for obtaining the information, along with an executed non-disclosure agreement. (Sample non-disclosure forms are posted on the Commission's website.)

Commission staff uses this information to determine whether to release the CEII to the requester. The current process requires that Commission staff verify each requester when each request is made.

The Final Rule makes a number of changes to these procedures following comments on a notice of proposed rulemaking (NOPR) issued on September 21, 2006. Key provisions of the Final Rule include the following.

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### *Annual certification*

The Final Rule creates an annual certification for repeat requesters so they will not be required to file a new non-disclosure agreement with each subsequent request.

### *Fee provision*

The fee schedule that applies to requests under the Freedom of Information Act is extended to include requests for CEII.

### *Landowner access to alignment sheets*

Landowners will have access to alignment sheets containing CEII for the limited portion of a project that would affect their land and the adjacent parcels on each side without going through the CEII process. Thus, landowners are not required to sign non-disclosure agreements.

### *Guidelines limiting portions of forms and reports labeled CEII*

The NOPR preceding the Final Rule explained that in the Commission's experience, certain forms and reports contain CEII, public information, and in some cases privileged information as well. Emphasizing the importance of filing information with the proper designation, the NOPR set out specific guidelines for designating information in Resource Report 13, natural gas pipeline flow diagrams, documents pertaining to the Commission's Division of Dam Safety and Inspections, documents pertaining to the Commission's Division of Hydropower Licensing, and FERC Form 715, Annual Transmission Planning and Evaluation Report. Order No. 702 issuing the Final Rule adopts by reference the guidelines in the NOPR, with the addition of Exhibit G-II as a document that may contain CEII.

### *The Non-Internet Public (NIP) designation*

The NIP designation is eliminated from the regulations. Previous submitters of NIP have 60 days to identify to FERC any documents they believe should still qualify for protection under the remaining CEII designation. After the 60 days, those documents not identified will be made publicly available by the Commission.

#### **FOR ADDITIONAL INFORMATION**

Van Ness Feldman regularly counsels clients on issues related to natural gas regulation and FERC rulemakings. If you are interested in additional information on this rule, assistance in evaluating the implications for your organization, or any other energy-related federal activity, please contact Curt Moffatt, Bob Christin, John Burnes, Mike Swiger or any member of the firm's Natural Gas or Hydroelectric practice groups.

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