

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Report By Transmission Providers on
Vegetation Management Practices Related To
Designated Transmission Facilities

Docket No. EL04-52-000

ORDER WAIVING REGULATIONS

(Issued June 15, 2004)

1. On April 19, 2004, the Commission issued an order directing “[a]ll entities that own, control or operate designated transmission facilities . . . in the lower 48 States [referred to herein as transmission providers] . . . to submit to the Commission, the appropriate State commissions, the North American Electric Reliability Council (NERC) and the relevant reliability coordinators and reliability authorities, by June 17, 2004, a report on vegetation management practices related to such transmission lines” Reporting By Transmission Providers on Vegetation Management Practices Related to Designated Transmission Facilities, 107 FERC ¶ 61,053 at 61,174-75 (2004) (VM Order). In the VM Order, the Commission noted that responses to parts (b) and (c) of the report should be submitted in two parts, a general response, and a detailed response. The VM Order states that the “detailed response may be filed under the protection of Critical Energy Infrastructure Information” (CEII) in accordance with 18 C.F.R. § 388.113(c)(1)(2003). VM Order at P 13. The VM Order also indicated that the Commission will be working closely with state regulators to address and resolve vegetation management issues because of overlapping jurisdiction, responsibilities and impacts relating to vegetation management and electric system reliability. VM Order at P 2.
2. The Commission will work with a group of state commission and National Association of Regulatory Utility Commissioners (NARUC) representatives from the NARUC Critical Infrastructure Protection Committee to examine and analyze the information submitted in response to the VM Order. Thus, it will be necessary for the NARUC representatives to have full access to all of the detailed responses, many of which will be submitted under claims of CEII protection.

3. Requests for access to information treated as CEII generally are made under 18 C.F.R. 388.113(d), and submitters of CEII are given notification of such requests and an opportunity to comment on the request in accordance with 18 C.F.R. § 388.112(d), as well as notice prior to release of such information in accordance with 18 C.F.R. § 388.112(e).¹ For the reasons detailed below, the Commission is waiving the requirements in 18 C.F.R. § 388.112 (d), (e) and 388.113(d) for a group of representatives from the NARUC.

4. Generally, the Commission's regulations at 18 C.F.R. § 113(d) require that each individual requesting CEII file a written request including personal information about themselves and their need for the requested information; this requirement helps the Commission ensure that the individuals requesting CEII have a legitimate need for the information.² In this case, the Commission knows these NARUC representatives have a legitimate need for the vegetation management information; therefore, the Commission finds it would be an unnecessary step to require each representative to file a request for the information. Similarly, the notice and opportunity for comment provisions in 18 C.F.R. 388.112 are intended to give the submitter an opportunity to explain the sensitivity of its information, and to comment on release to the particular requester. To follow the normal notice and comment steps would add an unnecessary delay in getting the information to the NARUC representatives, delaying the review of the vegetation management responses. In this particular situation, the Commission has already acknowledged that the information may warrant protection as CEII, but has made a determination that the NARUC representatives' timely need for the information weighs in favor of providing the information to them without taking the steps in 18 C.F.R. § 388.112(d) and (e). However, the Commission will require that each representative sign an appropriate non-disclosure agreement prior to gaining access to the non-public vegetation management information.

The Commission orders:

(A) The regulations at 18 C.F.R. §§ 388.112(d), (e) and 388.113(d) are waived with respect to selected NARUC representatives who will work with Commission staff to review and analyze the vegetation management information filed in response to the VM Order.

¹ See Critical Energy Infrastructure Information, Order No. 630, 68 Fed. Reg. 9,857 (Mar. 3, 2003), FERC Stats. & Regs. ¶ 31,140 (2003), order on reh'g, Order No. 630-A, 68 Fed. Reg. 46,456 (Aug. 6, 2003), FERC Stats. & Regs. ¶ 31,147 (2003).

² FERC Stats. & Regs. ¶ 31,140 (2003) at P 40.

(B) Each NARUC representative's access to any such CEII will be conditioned upon that representative signing an appropriate non-disclosure agreement.

(C) While this analysis is being conducted, the responses and any CEII therein will remain under the control of this Commission and shall not pass into the possession of the state representatives or their organizations, nor become subject to state information disclosure requirements.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.