

Title 18: Conservation of Power and Water Resources

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

(a) *Scope.* (1) Any person submitting a document to the Commission may request privileged treatment by claiming that some or all of the information contained in a particular document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552, and should be withheld from public disclosure.

(2) Any person submitting documents containing critical energy infrastructure information (CEII) as defined in §388.113 should follow the procedures specified in this section.

(b) *Procedures.* A person claiming that information warrants special treatment as CEII or privileged must file a 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, in accordance with filing procedures posted on the Commission's Web site at <http://www.ferc.gov>.

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

(i) The Secretary of the Commission will place documents for which privileged or CEII treatment is sought in accordance with paragraph (b) of this section in a nonpublic file while the request for privileged or CEII treatment is pending. By placing the documents in a nonpublic file, the Commission is not making a determination on any claim of privilege or CEII status. The Commission retains the right to make determinations with regard to any claim of privilege or CEII status, 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 or CEII treatment and a copy of the original document without the privileged or CEII information in a public file while the request 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 or CEII status has been claimed, or when the Commission itself is considering release of such information, the Commission official who will decide whether to release the information or any other appropriate Commission official will notify the person who submitted the document and give the person an opportunity (at least five calendar 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, or to make a limited release of CEII, will be given to any person claiming that the information is privileged or CEII no less than 5 calendar days before 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.

[Order 630, 68 FR 9869, Mar. 3, 2003, as amended by Order 630–A, 68 FR 46459, Aug. 6, 2003; 72 FR 63985, Nov. 14, 2007; Order 737, 75 FR 43405, July 26, 2010]