

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

OFFICE OF THE GENERAL COUNSEL

JUN 10 2003

Associate General Counsel, General Law  
Department of Homeland Security  
Washington, DC 20528

Dear Sir or Madam:


I am writing in response to the April 15, 2003 Department of Homeland Security (DHS) Notice of Proposed Rulemaking on Procedures for Handling Critical Infrastructure Information (NOPR). It appears that the proposed rule would have little application to regulatory agencies such as the Federal Energy Regulatory Commission (the Commission). The NOPR limits protected critical infrastructure information to that information that is "voluntarily submitted to DHS." The NOPR specifies that "information or statements submitted or relied upon as a basis for making licensing or permitting determinations, or during regulatory proceedings" do not qualify as voluntarily submitted information. The NOPR further specifies that the procedures in the NOPR do "not apply to or affect any requirement pertaining to information that must be submitted to a Federal agency" and do not apply to "information that is submitted to a Federal agency pursuant to any legal requirement." Given that the majority of the information submitted to the Commission is submitted pursuant to a legal requirement and that much of it relates to licensing and permitting determinations and other regulatory proceedings, little information routinely collected by this agency would qualify for protection under the NOPR. The most likely way in which the Commission could be affected would be if someone "voluntarily" submitted information to the Commission with instructions that it be forwarded to DHS consistent with proposed section 29.5(b).

As you may be aware, the Commission recently passed its own regulations regarding protection of critical energy infrastructure information (CEII). I have enclosed a copy of the Commission's final rule. Without specific statutory authority to protect CEII, the Commission's regulations rely on aggressive application of existing Freedom of Information exemptions. Under the Commission's new regulations, information that is exempt from disclosure under the Freedom of Information Act is available through the CEII process to those with a legitimate need for the information. Under the alternative process, requesters usually must agree to abide by a non-disclosure agreement as a

condition of gaining access to CEII. I was pleased to note that the DHS NOPR does not affect the Commission's ability to protect CEII under its new regulations.

If you have any questions about the Commission's CEII regulations, you may contact the General and Administrative Law section of my staff at 202-502-6457.

Sincerely,

A handwritten signature in cursive script that reads "Cynthia A. Marlette".

Cynthia A. Marlette  
General Counsel

Enclosure