

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Critical Energy Infrastructure Information	Docket No. RM06-23
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**REQUEST FOR REHEARING AND CLARIFICATION
OF THE EDISON ELECTRIC INSTITUTE**

I. Introduction

The Edison Electric Institute (“EEI”) submits this request for rehearing and clarification in response to Order No. 702, the final rule issued by the Federal Energy Regulatory Commission (“FERC” or “the Commission”) in this docket on October 30, 2007, and published in the *Federal Register* at 72 Fed. Reg. 63980 on November 14, 2007 (“Order 702”). In Order 702, the Commission has adopted amendments to its regulations governing access to critical energy infrastructure information (“CEII”), some of which is submitted to the Commission by EEI members.

II. Statement of Issues

EEI requests that the Commission provide submitters of CEII adequate time to respond to requests for release of their CEII, in particular before the Commission releases the information. We also request that the Commission provide submitters of CEII an opportunity for administrative review before the Commission releases the information, either on rehearing by the Commission or via review by the FERC General Counsel or General Counsel’s designee using procedures comparable to those set out in 18 C.F.R.

section 388.110. We also request that the Commission stay release of the information pending such appeal and pending judicial appeal of a decision to release.

III. Discussion

EEI submitted initial and reply comments to the Commission last November in response to the Commission's underlying notice of proposed rulemaking in this docket. In our initial comments, we encouraged the Commission to ensure that companies and individuals that submit information they designate as CEII will have a fair opportunity to seek administrative reconsideration of a staff or Commission decision authorizing release of the information before the information is released. We also asked the Commission to give submitters additional time to respond when first notified about a request to release the information and when later notified about a decision to release the information. Under the current regulations at 18 C.F.R. §§ 388.112(d) and (e), these timeframes can be as little as five calendar days, potentially giving submitters too little time to respond. Though the preamble to the proposed rule indicated that if release is opposed, Commission staff will issue a revised notice, the preamble did not indicate whether this notice will provide additional time or stay release of the information, and the regulatory text of the proposed rule did not refer to the revised notice. See EEI initial comments, at pp. 5-8.

In the final rule, the Commission has not addressed the response time issue. Moreover, in response to our request for CEII submitters to have an opportunity for administrative review of a decision authorizing release of CEII, the Commission has said "we take this opportunity to clarify and reiterate that a CEII Coordinator's decision *denying access* to CEII may be appealed by a *requester* to the General Counsel as a FOIA

appeal pursuant to section 388.110.” Final rule, at page 9 (*italics added*). But this does not respond to the need for the *submitter* to have a counterpart right of review before CEII is *released*.

Therefore, EEI requests that the Commission clarify on rehearing that submitters whose CEII the Commission or staff is inclined to release will have at least the same opportunity as requesters whose requests the Commission or staff is inclined to deny – namely, to appeal the decision to the General Counsel or General Counsel’s designee under procedures comparable to those set out at 18 C.F.R. § 388.110 – or alternatively to seek rehearing of the decision by the Commission. Further, we request that the Commission either increase the current five-calendar-day minimum time frame following notice to submitters under 18 C.F.R. §§ 388.112(d) and (e) to ten work days (i.e. two calendar weeks), or at a minimum allow a submitter to request additional time to respond and automatically grant ten work days under each of those paragraphs if requested. Also, if a submitter does file an administrative appeal or judicial appeal of a Commission or staff decision to release CEII, we request that the Commission stay release of the information pending the outcome of those appeals.

We are requesting these modifications to the final rule for a number of reasons. First and foremost, it is important when dealing with information such as CEII that can affect the security of critical infrastructure facilities – such as electricity generation, transmission, and related facilities – to ensure that appropriate decisions are made as to whether to release the information. Once information identified as CEII is released, the damage of the decision to release is potentially irreversible, making it especially important to ensure that decisions to release are well-considered and well-founded.

Providing adequate time and a means for submitters of CEII to seek review of a Commission decision to release the information – prior to its release – will help to ensure that the decisions meet these criteria. In addition, though the Commission’s regulations provide a means for requesters of CEII to appeal decisions not to release the information, the regulations do not provide a counterpart mechanism for submitters of the information to appeal decisions to release the information. As a matter of equity, fairness, and reasonable due process, it is important that the Commission provide such a mechanism.

IV. Contact Information

If the Commission or its staff have any questions about this request for rehearing and clarification, please contact me at 202/ 508-5615 or Henri Bartholomot at 202/ 508-5622.

Respectfully submitted,

- signature -

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November 29, 2007

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