

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

DOSSIER R-3960-2016

RÉGIE DE L'ÉNERGIE

INVESTISSEMENTS
GRAND-BRÛLÉ-SAINT-SAUVEUR
D'HYDRO-QUÉBEC TRANSÉNERGIE

HYDRO-QUÉBEC
En sa qualité de Transporteur

Demanderesse

-et-

STRATÉGIES ÉNERGÉTIQUES (S.É.)

ASSOCIATION QUÉBÉCOISE DE LUTTE
CONTRE LA POLLUTION ATMOSPHÉRIQUE
(AQLPA)

Intervenantes

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION (FERC)**

Ordonnances 630 (2003 02 21), 630-A (2003 07 23),
643 (2003 07 23), 649 (2004 08 03), 662 (2005 06 21), 683 (2006 09 21) et 702 (2007 10 30)

Synthèse et extraits

Déposé par :
Stratégies Énergétiques (S.É.)
Association québécoise de lutte contre la pollution atmosphérique (AQLPA)

Le 28 avril 2016

*Régie de l'énergie - Dossier R-3960-2016
Investissements Grand-Brûlé-Saint-Sauveur d'Hydro-Québec TransÉnergie*

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION (FERC)**

Ordonnances 630 (2003 02 21), 630-A (2003 07 23),
643 (2003 07 23), 649 (2004 08 03), 662 (2005 06 21), 683 (2006 09 21) et 702 (2007 10 30)

Synthèse et extraits

1 - Le 21 février 2003, la émet sa première ordonnance finale (no. 630) sur l'information relative aux infrastructures énergétiques critiques (*Critical Energy Infrastructure Information* – « *CEII* ») qui ne serait pas déjà accessible en vertu de la législation sur l'accès à l'information. Cette ordonnance constitue une réponse à la menace d'actions malveillantes qui s'est concrétisée le 11 septembre 2001 et persisterait depuis.¹

2 - Dans cette ordonnance, la Commission prévoit un mécanisme par lequel un assujetti peut faire déclarer un de ses documents, en tout ou en partie, a) comme étant non public ou b) comme étant d'accès public mais sans diffusion sur le site Internet de la FERC. (En de tels cas, une procédure permettra aux intéressés légitimes de demander et éventuellement obtenir un accès limité ou assorti de conditions).

Pour ce faire, le document visé ou la partie du document visée doit contenir une information relative aux infrastructures énergétiques critiques (*Critical Energy Infrastructure Information* - *CEII*), ce que la Commission définit comme suit :

¹ **UNITED STATES OF AMERICA, FEDERAL ENERGY REGULATORY COMMISSION (FERC)**, Docket Nos. RM02-4-000, PL02-1-000; Order No. 630. Critical Energy Infrastructure Information, 2003 02 21, <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=9639612> , page 1, parag. 1.

Critical energy infrastructure information means information about proposed or existing critical infrastructure that:

(i) Relates to the production, generation, transportation, transmission, or distribution of energy;

(ii) **Could be useful to a person in planning an attack on critical infrastructure;**

(iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and

(iv) **Does not simply give the location of the critical infrastructure.**

(2) Critical infrastructure means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.²

3 - Dès le début, la Commission a exprimé sa réticence à restreindre l'accès à des renseignements qui seraient déjà obtenables, même par des personnes malveillantes, sur des cartes ou autres documents déjà publics :

29. The Commission has considered the commenters' arguments and suggestions especially with respect to protecting **information that may otherwise be available to the public**. For this purpose, **a check of the Internet revealed that some of the information that had been removed after September 11 is once again available**. For instance, **the International Nuclear Safety Center currently has interactive maps available on its web site**⁷², and the United States Geological Survey lists **a variety of maps for sale, including 7.5 minutes maps**.⁷³ **Although some information, such as the DOT pipeline maps have not been restored to public access, the Commission believes that there are publicly available sources that would enable a terrorist to locate most energy infrastructure. Without further**

² U.S.A. Code of Federal Regulations, chapter I, title 18, Section 388.13, established by : **UNITED STATES OF AMERICA, FEDERAL ENERGY REGULATORY COMMISSION (FERC)**, Docket Nos. RM02-4-000, PL02-1-000; Order No. 630. Critical Energy Infrastructure Information, 2003 02 21, <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=9639612>, page 69. Souligné en caractère gras par nous.

guidance from the Congress or the Administration, the Commission is reluctant to withhold from public access location information that is otherwise available.

72 See http://www.insc.anl.gov/pwrmaps/map/world_map.php.

73 See <http://mapping.usgs.gov/digitalbackyard/topobkyd.html#5>.³

4 - De même, la Commission veut éviter de rendre non publique de l'information dont elle a besoin pour exercer ses juridictions décisionnelles quant à la localisation (« *siting* ») ou l'autorisation (« *licensing* ») de certaines infrastructures gazières ou de production hydroélectrique. Mais la FERC n'a pas besoin de faire preuve de tant d'égards à l'égard de l'accès aux informations sur les infrastructures du réseau de transmission électrique car elle n'exerce aucune juridiction quant à leur localisation (« *siting* ») ou l'autorisation (« *licensing* ») :

34. The electric transmission grid differs from dams and pipelines in that the Commission does not have regulatory responsibilities over the siting or licensing of these facilities. *Therefore, the Commission is not charged with conducting the NEPA reviews on these facilities. For that reason, there is far less need for the public as a whole to have unfettered access to location information submitted to the Commission regarding the electric grid.*⁴

5 - Le 23 juillet 2003, dans son Ordonnance 630A, la Commission réitère que son Ordonnance 630 n'empêche pas la diffusion d'informations, notamment sur le réseau de transmission électrique et les capacités et contraintes de transmission électrique, qui sont autrement possibles ou même requises selon d'autres dispositions, notamment l'affichage sur OASIS :

³ **UNITED STATES OF AMERICA, FEDERAL ENERGY REGULATORY COMMISSION (FERC)**, Docket Nos. RM02-4-000, PL02-1-000; Order No. 630. Critical Energy Infrastructure Information, 2003 02 21, <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=9639612>, page 24-25, parag. 29. Souligné en caractère gras par nous.

⁴ **UNITED STATES OF AMERICA, FEDERAL ENERGY REGULATORY COMMISSION (FERC)**, Docket Nos. RM02-4-000, PL02-1-000; Order No. 630. Critical Energy Infrastructure Information, 2003 02 21, <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=9639612>, page 28, parag. 34. Souligné en caractère gras par nous.

While knowledge of transmission capacity and constraints may better enable intervenors to participate effectively in merger and market rate proceedings, Order No. 630 should not prevent intervenors from getting such information. Form No. 715 is an annual filing that may be obtained through the CEII request procedures by those with a need for the information. **In addition, nothing in Order No. 630 affects the requirement in Part 37 of the Commission's regulations regarding Open Access Same-Time Information Systems (OASIS). Under 18 CFR 37.6, transmission providers are required to post transmission capability, transmission service products and prices, ancillary service offerings and prices, specific transmission and ancillary services requests and responses, transmission service schedules information, and other transmission-related communications. Neither this rule, nor the changes proposed in the NOPR in Docket No. RM03-6-000, affects the obligations of transmission providers to continue to provide this information.** Accordingly, interested parties should have adequate information on hand to respond to filings made pursuant to Sections 203, 205 and 206 of the Federal Power Act, 16 U.S.C. 824b, 824d, and 824e.⁵

6 - Le 23 juillet 2003, dans son Ordonnance 630A également, la Commission réitère que son Ordonnance 630 n'empêche pas la diffusion d'informations sur les mêmes infrastructures qui pourraient être obtenues auprès d'autres entités décisionnelles que la Commission :

TAPS notes that "[r]egional reliability councils, RTOs and OASIS sites have procedures in place today that provide market participants with secure access to CEII," and goes on to state that "[t]he Commission should not interfere with these existing mechanisms – and indeed should build upon them to ensure secure access to CEII. ^{18 (omitted)} **The Commission does not intend to interfere with these mechanisms. Order No. 630 deals exclusively with the way in which information is submitted to and disseminated by the Commission; it is not intended to limit the ability of companies, reliability councils,**

⁵ UNITED STATES OF AMERICA, FEDERAL ENERGY REGULATORY COMMISSION (FERC), Docket Nos. RM02-4-000, PL02-1-000; Order No. 630A, 2003 07 23, <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=9745149> , pages 4-5, parag. 6. Souligné en caractère gras par nous.

RTOs and others to share CEII with those with a need for it. In fact, the Commission recognizes that these entities are often in the best position to judge the legitimacy of such requesters, and the Commission encourages these entities to provide information to legitimate requesters, reducing the number of CEII requests that the Commission itself must process.⁶

7 - L'Ordonnance 643 apporte une précision procédurale majeure : c'est le demandeur de confidentialité (d'une information relative à une infrastructure énergétique critique) **et non la Commission** qui est désormais unilatéralement responsable de classer cette information comme confidentielle. Il n'a qu'à l'indiquer lors du dépôt à la Commission. **La Commission n'évaluera pas de façon systématique la justesse du traitement confidentiel; elle ne fait que s'en réserver la possibilité.** L'information ainsi déposée confidentiellement le demeurera jusqu'à ce qu'une demande d'accès soit logée auprès de la Commission qui, à ce moment seulement, évaluera la justesse de la confidentialité et, le cas échéant, pourra permettre un accès possiblement restreint et conditionnel :

*Order No. 630 adopted a process for submission of CEII to the Commission that largely parallels the process for submission of confidential materials in Section 388.112 of the Commission's regulations. **That section now provides that an entity submitting CEII to the Commission is responsible for identifying and marking CEII** with the legend "Contains Critical Energy Infrastructure Information—Do Not Release." Information identified as CEII is placed in a nonpublic file, **with the Commission retaining the right to make a determination whether CEII treatment has been properly claimed.** The submitter is notified in the event any person or entity requests release of the CEII, and also prior to any release of the information being made. 68 FR at 9870.⁷*

⁶ **UNITED STATES OF AMERICA, FEDERAL ENERGY REGULATORY COMMISSION (FERC)**, Docket Nos. RM02-4-000, PL02-1-000; Order No. 630A, 2003 07 23, <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=9745149> , pages 5-6, parag. 7. Souligné en caractère gras par nous.

⁷ **UNITED STATES OF AMERICA, FEDERAL ENERGY REGULATORY COMMISSION (FERC)**, Docket Nos. RM03-6-000; Order No. 643, 2003 07 23, <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=9745148> , pages 5-6, parag. 7. Souligné en caractère gras par nous. Pages 3-4, parag. 5.

8 - Dans cette Ordonnance 643, la Commission réitère de nouveau que son Ordonnance 830 n'est pas une « ordonnance attrape-tout » (« catch all »). Elle n'empêche pas la diffusion d'informations, même sur les infrastructures critiques, par l'entremise d'autres instances ou processus :

As the Commission stated in the NOPR, neither the revisions proposed there nor in Order No. 630 is intended to require companies to withhold CEII, or to prohibit voluntary arrangements for sharing information. These revisions are intended only to ensure that the Commission's regulations do not require the disclosure of CEII. 68 FR at 18541. **There is nothing in these revisions that affects one entity's ability to reach appropriate arrangements for sharing CEII and the Commission in fact encourages such arrangements.** In many cases, companies and persons that have had dealings with one another in the past will be in a better position than the Commission to judge the security of such an arrangement. There is thus nothing in these revisions that would, for example, prevent a regional council from obtaining data from member companies or from sharing it both with member and non-member companies. Nevertheless, in new §§ 4.32(k)(4), 16.7(d)(4), 141.300(d)(4), and 157.10(d)(4) of the Commission's regulations, the Commission has added language to the revisions to make as clear as possible that its CEII regulations do not prohibit or restrict voluntary disclosures of information pursuant to private arrangements.

17. With respect to the specific concerns raised by these commenters, the Commission does not believe such concerns are justified. Nothing in these revisions, or in Order No. 630 for that matter, addresses OASIS in any way and there should be no impact on it. **The revisions made in this Final Rule apply only to specific sections and do not cover the Commission's regulations generally; the Commission has decided against including a "catch-all" provision, as suggested by one commenter,**^{14 omitted} so as to avoid such unwanted consequences. The Commission also does not believe companies should be disadvantaged in obtaining Form No. 715 data. As Form No. 715 is an annual report, its timing can be anticipated and gaining access to CEII contained in it should be possible in a timely manner.⁸

⁸ UNITED STATES OF AMERICA, FEDERAL ENERGY REGULATORY COMMISSION (FERC),
Docket Nos. RM03-6-000; Order No. 643, 2003 07 23,

9 - C'est dans cette décision 643 toutefois que la Commission commence déjà à s'inquiéter de possibles abus de confidentialité (document erronément déposés confidentiellement à titre de « CEII ») de la part de ses assujettis :

*25. This rule, as well as Order No. 630, represents the Commission's best efforts to achieve a delicate balance between the due process rights of interested persons to participate fully in its proceedings and its responsibility to protect public safety by ensuring that access to CEII does not facilitate acts of terrorism. The Commission believes that it has struck an appropriate balance; however, it intends to monitor the experiences under these two rules to ensure that it has done so.*⁹

The Commission cautions owners of CEII, however, that it will not tolerate abuse of these revisions designed to discriminate against competitors or otherwise adversely affect competition in the energy markets. The revised rules are intended solely to enable owners of CEII to prevent information from getting into a terrorist's hands.¹⁰

10 - Le 3 août 2004, l'Ordonnance 649 réitère que la Commission accorde le statut confidentiel aux documents dès qu'ils sont ainsi désignés unilatéralement par la partie qui les dépose. La Commission ne dispose pas de ressources suffisantes pour vérifier de façon systématique la justesse de cette désignation. Elle ne se prononce que si elle est saisie d'une demande d'accès :

<http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=9745148> , pages 10-12, parag. 16-17.
Souligné en caractère gras par nous.

⁹ UNITED STATES OF AMERICA, FEDERAL ENERGY REGULATORY COMMISSION (FERC), Docket Nos. RM03-6-000; Order No. 643, 2003 07 23, <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=9745148> , pages 16-17, parag. 25.

¹⁰ UNITED STATES OF AMERICA, FEDERAL ENERGY REGULATORY COMMISSION (FERC), Docket Nos. RM03-6-000; Order No. 643, 2003 07 23, <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=9745148> , page 19, parag. 30.
Souligné en caractère gras par nous.

4. Even before CEII existed, the Commission's rule at 18 CFR 388.112 **permitted filers to designate** information for non-public treatment. **Such documents received non-public treatment by default until the Commission or a member of the public (through the filing of a FOIA request) questioned whether or not the information deserved non-public treatment. The Commission never found it necessary to review claims for non-public treatment prior to affording documents such status in order to save a requester the time and expense** of filing a FOIA request for the information. Indeed, the burden on the Commission associated with previewing each such filing would be excessive.

5. **Similarly, the Commission presently does not see a need to review claims for CEII treatment before anyone has indicated an interest in the document by filing a CEII request.**¹¹

11 - Par cette Ordonnance 649, la Commission commence cependant à exprimer son intention de revoir d'office les dépôts confidentiels (à titre de « CEII ») qui lui apparaissent abusifs à leur face même :

Nevertheless, although it is not practical for Commission staff to review all material filed as CEII, staff will continue to take steps to have the status of information promptly changed if they notice information has erroneously been filed as CEII. Those steps include notice and an opportunity for the submitter to defend the CEII designation, and notice to the submitter prior to denying CEII status to the document. (...)The Commission encourages members of the public to bring such matters to the attention of its staff, who are committed to responding timely.^{2 omitted}

6. In addition, **the Commission believes improving instructions to filers and Commission staff regarding which information qualifies for treatment as CEII is an effective way to combat the problem of inconsistency in claims for CEII treatment.** Therefore, the Commission will be providing

¹¹ STATES OF AMERICA, FEDERAL ENERGY REGULATORY COMMISSION (FERC), Docket Nos. RM02-4-002, PL02-1-002, RM03-6-001; Order No. 649, 2004 08 03, <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=10215551> , Page 4, parag. 4-5. Souligné en caractère gras par nous.

additional direction to filers on this subject, and will begin this effort in the area of hydropower information because that appears to be the area of the most uncertainty.¹²

12 - Le 21 juin 2005, la Commission continue d'exprimer sa préoccupation que des dépôts confidentiels à titre de « CEII » puissent être abusifs. La Commission annonce qu'elle commencera à procéder à des vérifications aléatoires des documents qui lui sont déposés comme étant confidentiels même si aucune demande d'accès n'est logée :

In an effort to achieve proper designation of material as CEII while avoiding misuse of the CEII designation, we encourage requesters to make every effort to segregate public information from CEII and to only withhold the CEII from ready public access. To this end, we emphasize that 18 CFR 388.112(b)(1) requires submitters to provide a justification for CEII treatment. The way to properly justify CEII treatment is by describing the information for which CEII treatment is requested and explaining the legal justification for such treatment. The Commission may audit random CEII MBR filings in the future to verify that the CEII label is not being misused.¹³

¹² STATES OF AMERICA, FEDERAL ENERGY REGULATORY COMMISSION (FERC), Docket Nos. RM02-4-002, PL02-1-002, RM03-6-001; Order No. 649, 2004 08 03, <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=10215551> , Page 5, parag. 5-6. Souligné en caractère gras par nous.

¹³ STATES OF AMERICA, FEDERAL ENERGY REGULATORY COMMISSION (FERC), Docket Nos. RM02-4-003, PL02-1-003;; Order No. 662, 2005 06 21, <https://www.fas.org/sgp/othergov/ferc-ceii.pdf> et <http://www.ferc.gov/whats-new/comm-meet/061505/M-1.pdf> , Pages 5-6, parag. 6. Souligné en caractère gras par nous.

13 - Le 21 septembre 2006, l'Ordonnance 683 de la Commission réitère sa préoccupation quant aux abus de dépôts confidentiels. La Commission ressent le besoin de spécifier que l'information n'est protégée à titre de « CEII » que si elle est de nature à aider à la réalisation d'une attaque terroriste contre les installations visées. La Commission spécifie qu'il faut, à cet effet, que l'information déposée révèle « **des détails** » sur ces installations :

The Commission further takes this opportunity to reiterate its requirement that submitters segregate CEII from other information and file as CEII only information which truly warrants being kept from public access.¹⁴

6. The CEII regulations were designed to restrict unfettered general public access to critical energy infrastructure information, but still permit those with a need for the information to obtain it in an efficient manner. In other words, **CEII reflects a delicate balance between the due process rights of interested persons to participate fully in Commission proceedings and the Commission's responsibility to protect public safety by ensuring that access to CEII does not facilitate acts of terrorism. Although CEII was intended only to protect detailed information that would aid a terrorist attack, many submitters over utilize the designation.** Therefore, the Commission is specifically clarifying and refining the definition to better inform companies of what constitutes CEII to limit the amount of material which constitutes CEII. CEII is clarified as specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (1) relates **details** about the production, generation, transportation, transmission, or distribution of energy; (2) **could be useful to a person in planning an attack on critical infrastructure**; (3) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552 (2000); and (4) does not simply give the general location of the critical infrastructure. The particular clarifications consist of adding the words "specific engineering, vulnerability, or detailed design" at the beginning of § 388.113(c)(1) and adding the words "details about" at the beginning of § 388.113(c)(1)(i).¹⁵

¹⁴ STATES OF AMERICA, FEDERAL ENERGY REGULATORY COMMISSION (FERC), Docket Nos. RM06-24-000; Order No. 683, 2006 09 21, <https://www.ferc.gov/whats-new/comm-meet/092106/M-2.pdf>, page 2, parag. 3. Souligné en caractère gras par nous.

¹⁵ STATES OF AMERICA, FEDERAL ENERGY REGULATORY COMMISSION (FERC), Docket Nos. RM06-24-000; Order No. 683, 2006 09 21, <https://www.ferc.gov/whats-new/comm-meet/092106/M-2.pdf>, page 4-5, parag. 6. Souligné en caractère gras par nous.

14 - Dans cette même décision 683, la Commission exprime de nouveau sa préoccupation quant aux abus de dépôts confidentiels à titre de « CEII » :

B. Requirement to segregate and justify CEII

11. *The CEII process was not intended as a mechanism for companies to withhold from public access information that does not pose a risk of attack on the energy infrastructure. Therefore, in an effort to achieve proper designation while avoiding misuse of the CEII designation, the Commission reiterates its requirement that submitters segregate public information from CEII and file as CEII only information which truly warrants being kept from ready public access.*

12. *To this end, the Commission emphasizes that the Commission's regulation at 18 CFR § 388.112(b)(1) requires that submitters provide a justification for CEII treatment. The way to properly justify CEII treatment is by describing the information for which CEII treatment is requested and explaining the legal justification for such treatment.*¹⁶

15 - Dans cette Ordonnance 683, la Commission adopte une nouvelle approche : elle exercera dorénavant des sanctions contre les déposants qualifiant abusivement leurs documents de confidentiels à titre de « CEII » :

C. Enforcement of proper designation and justification

13. **The Commission retains its concern for filing abuses and will take action against applicants or parties who knowingly misfile information as CEII, including rejection of an application where information is mislabeled as CEII or where a legal justification is not provided.** Further, concurrent with this order, the Commission is issuing a notice of proposed rulemaking in Docket No. RM06-23-000 seeking comments on its proposal to, among other

¹⁶ STATES OF AMERICA, FEDERAL ENERGY REGULATORY COMMISSION (FERC), Docket Nos. RM06-24-000; Order No. 683, 2006 09 21, <https://www.ferc.gov/whats-new/comm-meet/092106/M-2.pdf>, page 7, parag. 11-12. Souligné en caractère gras par nous (sauf le titre qui l'était déjà).

things, clarify what specific portions of various forms and reports submitted to the Commission contain CEII.¹⁷

16 - Dans la foulée de cette réflexion, le 30 octobre 2007, la Commission a décidé que **certaines cartes géographiques** (qui étaient parfois publiques mais non diffusées sur le site *Internet* de la Commission, catégorie dite 'NIP') le seraient dorénavant :

25. *The Commission does not agree that NIP should be retained. Much of the information now designated as NIP **is easily available on-line from other sources, such as the United States Geological Survey or commercial mapping firms.** As such, **retaining the NIP designation does not enhance security or safety.** Further, the information is publicly available from the Commission's Public Reference Room. **Withholding this information from the Commission's website may be perceived as a hindrance to individuals seeking to access public information.***¹⁸

17 - La Commission poursuit ses démarches et ses réflexions afin d'éviter les abus de dépôts confidentiels de documents à titre de « CEII » :

35. *In the NOPR, **the Commission stated that it "retains its concern for CEII filing abuses and will take action against applicants or parties who knowingly misfile information as CEII, including rejection of an application where information is mislabeled as CEII."***⁶² *While some commenters welcome the Commission's reminder regarding filing abuses,*⁶³ *several commenters express concern.*⁶⁴ *Dominion requests that the Commission clarify that errors in classification based upon a reasonable, good faith interpretation of the Commission's regulations will not result in a rejection of a filing.*⁶⁵

¹⁷ STATES OF AMERICA, FEDERAL ENERGY REGULATORY COMMISSION (FERC), Docket Nos. RM06-24-000; Order No. 683, 2006 09 21, <https://www.ferc.gov/whats-new/comm-meet/092106/M-2.pdf>, page 8, parag. 13. Souligné en caractère gras par nous (sauf le titre qui l'était déjà).

¹⁸ STATES OF AMERICA, FEDERAL ENERGY REGULATORY COMMISSION (FERC), Docket No. RM06-23-000; Order No. 702, 2007 10 30, <http://www.ferc.gov/EventCalendar/Files/20071030162551-RM06-23-000.pdf>, page 14, parag. 25. Souligné en caractère gras par nous.

Dominion and NHA both recommend that the Commission reject a license application only as a measure of last resort and only for the most egregious of cases.⁶⁶ NHA further recommends continued outreach to the industry to reduce designation errors.⁶⁷ EEI urges the Commission to notify the submitter of the information if the Commission believes that he or she has improperly labeled information as CEII or if the submitter has failed to provide a justification for treating the information as CEII.⁶⁸

36. The Commission has continuously sought to dissuade applicants from carelessly using the CEII designation because such misuse prevents interested parties and other members of the public with a legitimate need from accessing information in a timely manner. The Commission stated as a reminder in the NOPR that applications may be rejected for failing to comply with the Commission's regulations at 18 CFR 388.112(b)(1).⁶⁹ As the Commission explained in the Order No. 683-A, "[i]n instances in which documents are rejected for filing, the rejection is usually without prejudice and no substantive rights are lost. The application must merely be refiled in accordance with the procedural requirements."⁷⁰

37. The Commission agrees that continued outreach will help to diminish designation errors. To this end, the Secretary of the Commission will continue to post filing guidance on the Commission's website.

62 NOPR at P 16.

63 APPA and TAPS at p. 6 and AGA at p. 3.

64 NHA at pp. 1-2, Dominion at pp. 10-12, and EEI at pp. 8-9.

65 Dominion at p. 11.

66 Dominion at p. 12 and NHA at p. 2.

67 *Id.*

68 EEI at p. 9.

69 NOPR at P 16-17.

70 Order No. 683-A, P 12. ¹⁹

¹⁹ STATES OF AMERICA, FEDERAL ENERGY REGULATORY COMMISSION (FERC), Docket No. RM06-23-000; Order No. 702, 2007, 10, 30, <http://www.ferc.gov/EventCalendar/Files/20071030162551-RM06-23-000.pdf>, pages 18-20, parag. 35-37. Souligné en caractère gras par nous.