

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Regulations Implementing FAST Act Section 61003-)
Critical Electric Infrastructure Security and Amending)
Critical Energy Infrastructure Information) Docket No. RM16-15-000

COMMENTS OF THE INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA

Pursuant to the Notice of Proposed Rulemaking (NOPR) issued June 16, 2016 by the Federal Energy Regulatory Commission (Commission) in the above-referenced proceeding,¹ the Interstate Natural Gas Association of America (INGAA) respectfully submits these comments. The NOPR proposes to augment the Commission’s current critical energy infrastructure information designation process to comply with revised Federal Power Act (FPA) section 215A(d) and Congress’ requirements in the Fixing America’s Surface Transportation (FAST) Act. INGAA supports the Commission’s efforts to protect critical energy/electric infrastructure information (CEII) through the NOPR, subject to the comments below. INGAA supports the Commission’s proposal to strengthen its CEII regulations and agrees with the Commission’s imperative to “limit the distribution of sensitive infrastructure information to those individuals with a need to know in order to avoid having sensitive information fall into the hands of those who may use it to attack the nation’s infrastructure.”²

INGAA is a trade organization that advocates regulatory and legislative positions of importance to the natural gas pipeline industry in North America. INGAA’s 24 members

¹ *Regulations Implementing FAST Act Section 61003 – Critical Electric Infrastructure Security and Amending Critical Energy Infrastructure Information*, 155 FERC ¶ 61,278 (2016).

² NOPR at Par. 9.

represent the majority of the interstate natural gas transmission pipeline companies in the United States. Its United States members are regulated by the Commission pursuant to the Natural Gas Act (NGA), 15 U.S.C. §§ 717-717w. INGAA's members, which operate approximately 200,000 miles of pipelines, serve as an indispensable link between natural gas producers and consumers.

I. Specific Comments on the NOPR

Consistent with section 215A(d)(9) of the FPA, the Commission proposes to revise section 388.113(e) of its regulations³ to limit a CEII designation to no longer than five years. Recognizing the short duration of the CEII designation, the Commission further proposes a process to implement the duration of designation provision. Specifically:

The Commission does not plan to move designated information from its non-public files to its public files after the designation period has passed (i.e., up to five years from date of designation), unless the Commission determines in a particular instance that it is appropriate to do so. The passing of the CEII designation period would not necessarily render designated information suitable for inclusion in the Commission's public files. The Commission plans to determine whether information should be re-designated or alternatively placed in the Commission's public files when an entity requests the information, when staff determines a need to remove the designation, or when a submitter requests that information no longer be treated as CEII.⁴

INGAA agrees with the Commission that "the FAST Act contemplates that there may be information that warrants continued protection after the initial designation period."⁵ Pipeline CEII is such information. As the Commission is aware, interstate pipeline assets are permanent long-life assets that physically do not move. Pipeline CEII -- such as flow diagram data (Exhibits G, G-1 and G-II),⁶ compressor station and meter station plot plans provided with

³ Proposed 18 C.F.R. § 388.113(e).

⁴ NOPR at Par. 24.

⁵ *Id.* at Par. 25.

⁶ 18 C.F.R. § 157.14(a)(9)

pipeline certificate applications,⁷ and system flow diagrams (provided by Form 567)⁸-- does not become stale or outdated with the passage of time. Similarly, plot plans, piping and instrument diagrams, hazard detection analyses and drawings, which are filed as part of LNG facility applications, contain CEII, and should not be released to the public files after the proposed five-year designation period. In fact, LNG facilities may take five years to construct and place in-service after Commission approval, effectively exceeding the five-year designation of CEII. Therefore, while INGAA supports the Commission's assertion that it does not plan to move designated information from its non-public files to its public files without first re-evaluating the designation after the initial designation period has passed, the Commission should also never unilaterally "determine in a particular instance that it is appropriate to ...[remove the designation]"⁹ as long as the facility is in operation, at least in the case of natural gas pipeline facilities, which are not subject to 215A(d)(9) of the FPA. It is as important to limit the distribution of sensitive infrastructure information to those individuals with a need to know during the time a facility is being planned and built as it is during a facility's operational life. Accordingly, with regard to the pipeline CEII information identified above, the Commission staff should never "determine[] a need to remove the designation" on its own initiative.

INGAA also offers comments on the following three issues:

First, the Commission proposes that when a CEII requester seeks CEII information, or when the Commission is considering release of such information, the Commission official will notify the party that submitted the information (in this case the pipeline) and give the party at

⁷ See e.g., 18 C.F.R. § 380.12(c)(4).

⁸ FERC Form 567, 18 C.F.R. § 260.8.

⁹ NOPR at Par. 24.

least five calendar days to comment in writing on the request.¹⁰ INGAA requests that the Commission change the notice and response period from five calendar days to five business days to reflect current practice and to avoid weekend or holiday responses. *See* existing 18 C.F.R. § 388.113(d)(3)(vi).

Second, INGAA requests that the Commission modify proposed section 388.113(g)(5)(ix), to provide that “Nothing in this section shall be construed as requiring the release of proprietary information, . . . cultural resource information, **information about rare species of plants and animals** and other comparable data protected by statute or any privileged information . . .” (bold language added) INGAA asserts that similar to cultural resource information, information about rare species of plants and animals, once entered into the record as Privileged Information, should be excluded from being provided under a request for information marked CEII since, if made public, they too could be targeted and destroyed by those wishing to cause harm.

Finally, as discussed above, INGAA members strongly support the Commission’s CEII protection system. In fact, some INGAA members have found positive results from working directly with CEII requesters. Specifically, when CEII requesters execute nondisclosure agreements with INGAA members, the members are then able to provide the requested information directly to the requester quickly, completely, and efficiently. To promote these benefits, INGAA requests that the Commission acknowledge that this direct process option exists and is acceptable FERC practice.

¹⁰ Proposed § 388.113(d)(1)(vi).

WHEREFORE, INGAA respectfully submits these comments and requests that the Commission modify its regulations consistent with the clarifications and revisions described above.

A handwritten signature in cursive script that reads "Joan Dreskin".

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