



Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

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**BILLING CODE**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Guidance Notice Clarifying Procedures for Submitting Non-Public Materials

March 12, 2009.

Take notice that the Commission is hereby clarifying and explaining the importance of the procedures for submitting Non-Public material to the Commission via paper, (DVD/CD), or electronic filing. The procedures are designed to ensure that Non-Public information is properly designated, identified, and processed in order to minimize the risk of Public disclosure of sensitive information. Explained below are the categories of materials that are considered Non-Public and the applicable regulation that can be found in Title 18 of the Code of Federal Regulations.

Non-public materials include:

1. *Privileged Material:* Material for which Privileged Treatment is requested under 18 CFR 388.112 because of the confidential nature of the information.

2. *Critical Energy Infrastructure Information (CEII):* Maps, drawings, and other information for which CEII treatment is requested under 18 CFR 388.112 because the information may be sensitive to the security of the nation's hydroelectric and natural gas pipeline infrastructure.

3. *Protected Material:* Material filed under a Protective Order issued by an FERC Administrative Law Judge or the Commission, or material for which such treatment is requested along with a draft protective order. Protected material

must be filed under seal. The material is indexed in eLibrary; however, the actual Protected material is not added to eLibrary because of the requirement to sign a non-disclosure agreement for access.

Because of the instantaneous nature of the Commission eFiling system, it is essential that every document be processed into eLibrary with the correct security designation. The security process for submissions begins with the filer of non-public materials. It is critical that documents submitted to the Commission be properly identified and patently and conspicuously marked when such documents are non-public materials. This helps ensure that Commission staff identify and correctly process each category of non-public material into eLibrary, and do so accurately and efficiently.

In order to ensure that non-public material is processed into eLibrary correctly, the filer must observe the following procedures for paper filings information submitted via the Commission's electronic filing system and information included on DVD/CD(s).

#### Paper Filings

Paper filings containing non-public material must include a cover letter identifying the filer, all applicable docket or project numbers (unless it's a new application), a description of the filing, and a clear indication on the first page of the cover letter that the filing contains Public, Privileged, CEII, and/or Protected versions, as applicable.

Copies of a cover letter must be attached to each version, with the security designation in bold print in the top right portion of the first page. Use the applicable security designations "PUBLIC VERSION," "PRIVILEGED VERSION," or "CEII MATERIAL." The first page of the underlying material should also contain the same designation. Ensure that Protected Material is filed "under seal," with a copy of the cover letter attached to the sealed enclosure and "PROTECTED MATERIAL" in bold print in the upper right area of the cover letter.

Large filings should be collated according to security. Where multiple binders are involved, the cover letter should list and clearly identify the security of each volume.

Failure to comply with these guidelines may result in a document not being considered "filed" until issues pertaining to document security are resolved with the submitter.

#### eFILING

The Commission's electronic filing system accepts Public, Privileged and CEII material. Protected material may not be efiled at this time. Every electronic submission must have at least one Public file (which may be a redacted version of the filing, or only be a cover letter, depending on the nature of the content of the document).

The security of efiled documents must be clear to everyone involved in document preparation, submission, and processing of the filing. For example, the person submitting an efiled (*e.g.*, a paralegal) is often someone other than the document preparer (*e.g.*, an attorney) and could possibly be unaware of the security designation. Moreover, submissions may include files provided to the document preparer or submitter by other entities. All of these individuals should be aware of what security designation applies to the document that is being efiled. Persons preparing documents with non-public material are advised to organize files in folders by security level and/or with file names beginning with PUBLIC, PRIV, or CEII. This will help to ensure that when efiled the document submitter correctly uploads files under the appropriate security tab on the File Upload screen. Again, the designation of security begins with the filing party.

Failure to comply with these guidelines may result in a document not being considered "filed" until issues pertaining to document security are resolved with the submitter.

#### DVD/CD Submissions

The Commission receives numerous filings containing one or more DVDs or CDs. The Commission, in fact, allows a reduced number of paper copies of large filings to be submitted if the filer includes the entire filing on DVD/CD. In other cases, the information on DVD/CD supplements information in a paper filing, or contains only a portion of the material on paper.

Each paper submission that includes information on DVD/CD must include a cover letter describing the content and security status of each DVD/CD and indicating whether the electronic media contains the entire filing, part of the filing, or is a supplement containing information not submitted on paper.

The security for all files on each DVD/CD must be clear. For all filings, Public, Privileged, and CEII, files should be submitted on separate, clearly-labeled DVD/CDs (*i.e.*, should be labeled PUBLIC, PRIVILEGED, or CEII in bold). Protected material included on electronic media must always be on a