

Federal Energy Regulatory Commission

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(16) Reports, decisions, maps, and other information on electric power and natural gas industries;

(17) Subject index of major Commission actions;

(18) Annual report to Congress in which the Commission's operations during a past fiscal year are described; and

(19) Statements of policy and interpretations which have been adopted by the Commission and are not published in the FEDERAL REGISTER;

(20) Administrative staff manuals and instructions to staff that affect a member of the public;

(21)(i) Copies of all records released under § 388.108, which, because of their nature and subject, the Director of the Office of External Affairs has determined are likely to be requested again, and

(ii) An index of the records so designated;

(22) Reference materials and guides for requesting Commission records as required by 5 U.S.C. § 552(g), as amended; and

(23) Commission correspondence relating to the foregoing.

(c) For purposes of this section,

(1) *Commission correspondence* includes written communications and enclosures, in hard copy or electronic format, received from others outside the staff and intended for the Commission or sent to others outside the staff and signed by the Chairman, a Commissioner, the Secretary, the Executive Director, or other authorized official, except those which are personal.

(2) *Formal record* includes:

(i) Filings and submittals in a matter or proceeding,

(ii) Any notice or Commission order initiating the matter or proceeding, and

(iii) If a hearing is held, the designation of the presiding officer, transcript of hearing, exhibits received in evidence, exhibits offered but not received in evidence, offers of proof, motions, stipulations, subpoenas, proofs or service, references to the Commission, and determinations made by the Commission thereon, certifications to the Commission, and anything else upon which action of the presiding officer or the Commission may be based.

The *formal record* does not include proposed testimony or exhibits not offered or received in evidence.

(3) *Matter or proceeding* means the Commission's elucidation of the relevant facts and applicable law, consideration thereof, and action thereupon with respect to a particular subject within the Commission's jurisdiction, initiated by a filing or submittal or a Commission notice or order.

[Order 488, 53 FR 1473, Jan. 20, 1988, as amended by Order 597, 63 FR 5453, Feb. 3, 1998]

§ 388.107 Commission records exempt from public disclosure.

The following records are exempt from disclosure.

(a)(1) Records specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and

(2) Those records are in fact properly classified pursuant to such Executive order;

(b) Records related solely to the internal personnel rules and practices of an agency;

(c) Records specifically exempted from disclosure by statute, provided that such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Interagency or intraagency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

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(1) Could reasonably be expected to interfere with enforcement proceedings,

(2) Would deprive a person of a right to a fair trial or an impartial adjudication,

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(4) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(6) Could reasonably be expected to endanger the life or physical safety of any individual;

(h) Geological and geophysical information and data, including maps, concerning wells.

[Order 488, 53 FR 1473, Jan. 20, 1988, as amended by Order 597, 63 FR 5453, Feb. 3, 1998]

§ 388.108 Requests for Commission records not available through the Public Reference Room (FOIA requests).

(a)(1) Except as provided in paragraph (a)(2) of this section, a person may request access to Commission records, including records maintained in electronic format, that are not available through the Public Reference Room, by using the following procedures:

(i) The request must be in writing, addressed to the Director, Office of External Affairs, and clearly marked "Freedom of Information Act Request."

(ii) The request must include:

(A) A statement by the requester of a willingness to pay a reasonable fee or fees not to exceed a specific amount, or

(B) A request for waiver or reduction or fees.

(iii) The request must identify the fee category of the request, consistent with the provisions of § 388.109(b) (1) and (2).

(2) A request that fails to provide the identification required in paragraph (a)(1)(iii) of this section will not be processed until the Director, Office of External Affairs, can ascertain the requester's fee category.

(3) A request for records received by the Commission not addressed and marked as indicated in paragraph (a)(1)(i) of this section will be so addressed and marked by Commission personnel as soon as it is properly identified, and forwarded immediately to the Director, Office of External Affairs.

(4) Requests made pursuant to this section will be considered to be received upon actual receipt by the Director, Office of External Affairs, unless otherwise indicated in paragraph (a)(5) of this section.

(5) Except for the purpose of making a determination regarding expedited processing under paragraph (d)(3) of this section, no request will be deemed received while there is an unresolved fee waiver issue under § 388.109(b)(6), unless the requester has provided a written statement agreeing to pay some or all fees pending the outcome of the waiver question.

(b)(1) Multitrack processing. Upon receipt of a request, the Director, Office of External Affairs, will place the request in one of three tracks for processing:

(i) Track One—records that are readily identifiable and were previously cleared for release (including those subject to multiple requests and placed in the Public Reference Room);

(ii) Track Two—records that are readily identifiable, and require limited review; and

(iii) Track Three—complex and/or voluminous records requiring a significant search and/or review.

(2) Each track specified in paragraph (b)(1) of this section will be processed on a first in, first out basis, where practicable. A requester may modify a