

next year. This order is intended to facilitate that review.

Experience To Date

8. Since Order No. 630 became effective on April 2, 2003, the Commission has received many filings where the submitters have requested non-public treatment of documents because they contained CEII. In addition, Commission staff has designated certain internally-generated documents as CEII as well. Despite the amount of information that has been designated as CEII, the Commission has received relatively few complaints that the rules have impaired requesters' ability to participate meaningfully in Commission proceedings. As discussed below, the Commission has taken steps to minimize the harm to requesters in such cases. The Commission has not received any requests for rehearings of CEII Coordinator decisions to date.⁶

9. Once a CEII request is received, the appropriate staff members locate the document requested and provide the document to legal staff with a recommendation regarding whether or not the information qualifies as CEII. In cases where the requested document was submitted to the Commission with a request for CEII treatment, the Associate General Counsel for General Law notifies the submitter of the request and gives the submitter a period of at least five days in which to comment on both release to the particular requester and the non-public nature of the document itself, including FOIA exemptions applicable to the document. Each time a document is requested, the submitter receives a notice and opportunity to comment on release to that particular requester. Commission staff reviews each requested document to determine whether it qualifies as CEII, verifies the requester's identity and need for the information requested, and seeks to obtain an appropriate non-disclosure agreement from the requester. Where the submitter of the document provides information regarding the request or requester, the staff factors such information into its recommendation to the CEII Coordinator. When the request involves a Commission-generated document, the CEII Coordinator releases the document to the requester with the order granting the request. In cases where the document has been submitted to the Commission, the CEII Coordinator issues a decision on release, but release

of the document is delayed by at least five days to give the submitter notice prior to release of the document. Because of the required notice and comment period and the notice prior to release, it usually takes staff more time to process requests for documents submitted to the Commission than those that are internally generated.

10. The Commission has been largely successful in its goal of processing CEII requests expeditiously. However, as discussed below, there have been some instances where the sensitivity of certain requested documents required additional research, and in one instance warranted a vote of the Commission to establish the appropriate standard for release of those documents.⁷ In those instances involving the Weaver's Cove application to construct a liquefied natural gas facility in CP04-36-000, the process took longer than usual. Some of those requests were denied for failure to agree to the terms of a non-disclosure agreement specified by the CEII Coordinator.⁸ In other instances, portions of one document were not released because the harm from release outweighed the requesters' need for the information.⁹ In order to minimize harm to requesters receiving CEII in the Weaver's Cove proceeding, the Secretary issued a notice giving such requesters additional time in which to file comments on the draft environmental impact statement.¹⁰ The Commission believes the steps it has taken have protected the due process rights of those involved in the proceeding.

11. The Commission received 79 requests for CEII in FY 2003, 304 CEII requests in FY 2004, and as of February 18, 2005, has received 162 CEII requests for FY 2005. As of February 18, 2005, there were 109 CEII requests pending. The vast majority of those pending were either filed after January 1, 2005 or are awaiting information from the requester, such as the non-disclosure agreement. The majority of the requests that have been denied were denied for failure to agree to the terms of a non-disclosure agreement. The other denials were either because of the extreme sensitivity of the information (in the case of one Weaver's Cove document), or because the information was subject to the attorney-client, attorney work product, or deliberative process privileges, or protected by statute (*e.g.*, cultural resource locations). The Commission

generally does not intend to release privileged information, regardless of whether or not it falls within the definition of CEII. In addition to formal requests for CEII under 18 CFR 388.113, Commission staff also received numerous direct requests from owners or operators of facilities and their authorized agents for documents containing CEII relating to their own facilities. Staff generally satisfies those owner/operator requests within a few days of receipt.

12. As noted in Order No. 649, the Commission remains committed to examining the effectiveness of its CEII rules, and therefore seeks public comments regarding its CEII process. This notice invites the public to comment on its experience under the CEII procedures and to suggest ways to improve the process. While the public is free to provide comments on any aspect of the Commission's CEII rules, the Commission specifically invites comments on the following issues:

- i. Is the CEII designation being misused or claimed for information that does not meet the definition?
- ii. Is there a need for the non-Internet public designation? Is it currently too broad? Are there location maps that should be available on the Internet?
- iii. Does it make sense for the Commission to protect (either as CEII or NIP) information that is readily publicly available, for instance in USGS maps?
- iv. Are there classes of information that are not appropriate for release even when a legitimate requester agrees to the terms of an appropriate non-disclosure agreement?

The Commission orders:

Comments regarding the Commission's CEII process should be filed with the Office of the Secretary within 30 days of the issuance of this order.

By direction of the Commission.

Linda Mitry,

Deputy Secretary.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11872-001]

Gentry Resources Corporation; Notice of Surrender of Preliminary Permit

March 10, 2005.

Take notice that Gentry Resources Corporation, permittee for the proposed Lake Pleasant Pumped Storage Project,

⁷ Alfred Lima, 110 FERC ¶ 61,002 (Jan. 5, 2005).

⁸ Edward M. Lambert, Jr., *et al.*, 110 FERC ¶ 62,050 (Jan. 21, 2005).

⁹ *See, e.g.*, Lima, 110 FERC ¶ 61,002 (Jan. 5, 2005).

¹⁰ *Weaver's Cove Energy, L.L.C.*, 70 FR 4838 (Jan. 31, 2005).

⁶ Commission action on CEII requests is delegated to the CEII Coordinator, whose decisions are subject to rehearing. No requester has pursued a request for rehearing of any of the CEII decisions rendered to date.

has requested that its preliminary permit be terminated. The permit was issued on January 21, 2004, and would have expired on December 31, 2006.¹ The project would have been located on the Aqua Fria River in Maricopa and Yavapai Counties, Arizona.

The permittee filed the request on February 17, 2005, and the preliminary permit for Project No. 11872 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, part-day holiday that affects the Commission, or legal holiday as described in section 18 CFR 385.2007, in which case the effective date is the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-7884-6]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree, to address a lawsuit filed by the American Lung Association of Metropolitan Chicago, Citizens Against Ruining the Environment, the Environmental Law & Policy Center, the Illinois Public Interest Research Group, the Lake County Conservation Alliance, the Little Village Environmental Justice Organization and the Sierra Club (collectively "Plaintiffs"): *American Lung Association of Metropolitan Chicago, et al. v. Johnson*, No. 04-C-5966 (N.D. Ill.), consolidated with *Lake County Conservation Alliance v. Leavitt*, No. 04-5967 and *Citizens Against Ruining the Environment v. Leavitt*, No. 04-5968. On or about September 13, 2004, Plaintiffs filed deadline suits to compel the Administrator to respond to petitions seeking EPA's objection to Title V operating permits issued by the Illinois Environmental Protection Agency for five electrical generating

stations of the Midwest Generation Company known as the Fisk Generating Station, the Crawford Generating Station, the Joliet Generating Station, the Will County Generating Station, and the Waukegan Generating Station in the State of Illinois. Under the terms of the proposed consent decree, three deadlines are established for responding to Title V veto petitions ranging from March 25, 2005 to September 23, 2005.

DATES: Written comments on the proposed consent decree must be received by April 15, 2005.

ADDRESSES: Submit your comments, identified by docket ID number OGC-2005-0003, online at <http://www.epa.gov/edocket> (EPA's preferred method); by e-mail to oei.docket@epa.gov; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Padmini Singh, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. telephone: (202) 564-5641.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

Plaintiffs submitted administrative petitions to the Administrator of the Environmental Protection Agency requesting that he object to Title V operating permits issued by the Illinois Environmental Protection Agency for five electrical generating stations in the State of Illinois. The Consent Decree establishes three deadlines for responding to the petitions. The Decree, which is subject to CAA section 113(g), provides the following schedule for EPA's responses to the five title V petitions. EPA must sign an order responding to each petition no later than the dates listed: March 25, 2005 for Fisk Generating Station and Crawford Generating Station; by June 24, 2005 for Will County Generating Station and Joliet Generating Station; and by September 23, 2005 for Waukegan Generating Station. If EPA fulfills its

obligations as described in the decree, the Consent Decree shall terminate and the case shall be dismissed with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

EPA has established an official public docket for this action under Docket ID No. OGC-2005-0003 which contains a copy of the consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or

¹ 106 FERC ¶ 62,042.