§ 713. Protection of critical infrastructure including energy generating and transmission facilities. 1. Notwithstanding any other provision of law, the commissioner of the division of homeland security and emergency services shall conduct a review and analysis of measures being taken by the public service commission and any other agency or authority of the state or any political subdivision thereof and, to the extent practicable, of any federal entity, to protect the security, and cyber security, of critical infrastructure related to energy generation and transmission located within the state. The commissioner of the division of homeland security and emergency services shall have the authority to review any audits or reports related to the security of such critical infrastructure, including audits or reports conducted at the request of the public service commission or any other agency or authority of the state or any political subdivision thereof or, to the extent practicable, of any federal entity. The owners and operators of such energy generating or transmission facilities shall, in compliance with any federal and state requirements regarding the dissemination of such information, provide access to the commissioner of the division of homeland security and emergency services to such audits or reports regarding such critical infrastructure provided, however, that exclusive custody and control of such audits and reports shall remain solely with the owners and operators of such energy generating or transmission facilities. For the purposes of this article, the term "critical infrastructure" has the meaning ascribed to that term in subdivision five of section eighty-six of the public officers law.

2. (a) On or before December thirty-first, two thousand four, and not later than three years after such date, and every five years thereafter, the commissioner of the division of homeland security and emergency services shall report to the governor, the temporary president of the senate, the speaker of the assembly, the chairperson of the public service commission and the chief executive of any such affected generating or transmission company or his or her designee. Such report shall review the security measures being taken regarding critical infrastructure related to energy generating and transmission facilities, assess the effectiveness thereof, and include recommendations to the legislature or the public service commission if the commissioner of the

division of homeland security and emergency services determines that additional measures are required to be implemented, considering, among other factors, the unique characteristics of each energy generating or transmission facility.

(b) Before the receipt of such report identified in paragraph (a) of this subdivision, each recipient of such report shall develop confidentiality protocols, which shall be binding upon the recipient who issues the protocols and anyone to whom the recipient shows a copy of the report, in consultation with the commissioner of the division of homeland security and emergency services for the maintenance and use of such report so as to ensure the confidentiality of the report and all information contained therein, provided, however, that such protocols shall not be binding upon a person who is provided access to such report or any information contained therein pursuant to section eighty-nine of the public officers law after a final determination that access to such report or any information contained therein could not be denied pursuant to subdivision two of section eighty-seven of the public officers law. The commissioner of the division of homeland security and emergency services shall also develop protocols for his or her office related to the maintenance and use of such report so as to ensure the confidentiality of the report and all information contained therein. On each report, the commissioner of the division of homeland security and emergency services shall prominently display the following statement: "this report may contain information that if disclosed could endanger the life or safety of the public, and therefore, pursuant to section seven hundred eleven of the executive law, this report is to be maintained and used in a manner consistent with protocols established to preserve the confidentiality of the information contained herein in a manner consistent with law".

(c) Except in the case of federally licensed electric generating facilities, the public service commission shall have the discretion to require that the recommendations of the commissioner of the division of homeland security and emergency services be implemented by any owner or operator of an energy generating or transmission facility. Recommendations regarding federally licensed electric generating facilities shall instead only be made available by the commissioner of the division of homeland security and emergency services to the

appropriate federal agency in compliance with any federal and state requirements regarding the dissemination of such information.

3. Any reports prepared pursuant to this article shall not be subject to disclosure pursuant to section eighty-eight of the public officers law.