

4. Cash management programs control a large amount of assets. FERC Staff investigators found that in 2001, balances in cash management programs affecting FERC-regulated entities totaled approximately \$16 billion. In addition, other investigations have revealed large transfers of funds (amounting to more than \$1 billion) between regulated pipeline affiliates and non-regulated parents whose financial conditions were precarious. See *In Re Investigation of Certain Financial Data*, "Order to Respond," Docket No. IN02-6-000, 100 FERC ¶ 61,143 (2002). These and other fund transfers and the enormous, mostly unregulated, pools of money in cash management programs may detrimentally affect regulated rates.

5. To date, the scrutiny of cash management programs has been minimal and has been made difficult because many cash management programs have not been formalized in writing, and the impact of these programs on the energy markets and ratepayers is thus obscured. Other means of transferring assets from FERC-regulated entities to unregulated entities, such as loans and dividends, have a degree of transparency not found in cash management programs.

6. To protect the ratepaying customers of FERC-regulated entities by providing greater transparency of cash management programs, the Commission is implementing documentation standards for these activities that will assure appropriate data are maintained. The availability of such information will also allow FERC audit staff ready access to consistent data.

7. The Commission is amending its Uniform Systems of Accounts (18 CFR parts 101, 201, and 352) to provide documentation requirements for cash management programs, to require that cash management agreements be in writing, that the agreements specify the duties and responsibilities of cash management program participants and administrators, specify the methods for calculating interest and for allocating interest income and expenses, and specify any restrictions on deposits or borrowings by participants.

8. Additionally, to provide greater transparency of FERC-regulated entities' cash management programs, the Commission is seeking comments on a new reporting requirement that requires FERC-regulated entities to file these agreements with the Commission. Any subsequent changes to these agreements must be filed within 10 days from the date of the change.

9. The Commission is also seeking comments on a new reporting requirement that requires a FERC-

regulated entity to notify the Commission within 5 days when its proprietary capital ratio falls below 30 percent. The filing must include the entity's proprietary capital ratio, the significant event(s) or transaction(s) that contributed to the proprietary capital ratio falling below 30 percent, the extent to which the entity has amounts loaned or advanced to others within its corporate group through its cash management program, and plans, if any, to raise its proprietary capital ratio. Finally, the Commission is seeking comments on a new reporting requirement that would require a FERC-regulated entity to notify the Commission within 5 days when its proprietary capital ratio subsequently returns to or exceeds 30 percent.

10. The provisions of this interim rule will apply to all FERC-regulated entities that have not been granted waivers of the Commission's accounting and the FERC Annual Report Forms 1, 1-F, 2, 2-A or 6 filing requirements. The information collected through the new reporting requirements is considered non-confidential in nature and will be made available to the general public via the Federal Energy Regulatory Records Information System (FERRIS) accessed from the FERC's Home Page.

11. The new documentation standards, the filing of the cash management agreements, and the notification requirements, will achieve additional transparency with respect to the financial conditions and financial dealings of FERC-regulated entities and their corporate financial transactions. The public availability of the information will allow all users of financial information to make informed decisions based on relevant and accurate information.

II. Background

12. In a Notice of Proposed Rulemaking (NOPR) issued on August 1, 2002, 67 FR 51150 (Aug. 7, 2002), IV FERC Stats. & Regs. ¶ 32,561 (Aug. 1, 2002), the Commission proposed to amend its Uniform Systems of Accounts for public utilities and licensees,¹ natural gas companies,² and oil pipeline companies,³ to require that, as a prerequisite to a FERC-regulated entity

¹ Part 101 Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act. 18 CFR part 101 (2003).

² Part 201 Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act. 18 CFR part 201 (2003).

³ Part 352 Uniform Systems of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act. 18 CFR part 352 (2003).

participating in cash management programs, the FERC-regulated entity shall maintain a minimum proprietary capital ratio of at least 30 percent and the FERC-regulated entity and its parent shall maintain investment grade credit ratings. The Commission further proposed that if either of the conditions was not met, the FERC-regulated entity could not participate in the cash management program. Also, the NOPR proposed documentation requirements for cash management programs.

13. The NOPR was published in the **Federal Register** on August 7, 2002, and comments were initially due 15 days thereafter, or August 22, 2002. By notice issued August 16, 2002, the Commission extended the comment deadline to August 28, 2002. A Staff Technical Conference was held on September 25, 2002, to explore the issues raised by the NOPR.⁴

III. Discussion

14. The Commission received nearly fifty comments concerning various aspects of the proposed rule. Virtually all commenters were generally supportive of the Commission's effort to establish more precise accounting rules with respect to cash management programs between regulated and unregulated entities.

15. On the other hand, most of the commenters objected to the proposed prerequisites to FERC-regulated entities' participation in cash management programs and claimed that there is no statutory basis for these requirements. Other commenters argued that they should be exempt from the requirements of the proposed rule. The Edison Electric Institute (EEI), the Interstate Natural Gas Association of America (INGAA), and the Association of Oil Pipe Lines (AOPL) filed a joint supplement to their initial comments, urging that the Commission adopt guidelines rather than a rule. A complete list of commenters may be found at Appendix A.

A. Prerequisites for Participating in Cash Management Programs

16. The NOPR proposed two financial prerequisites that must be met for FERC-regulated entities to participate in cash management programs. As discussed below, most commenters objected to the use of these criteria for participation in the programs, and after reviewing the comments, the Commission will not impose the two financial prerequisites as conditions that FERC-regulated

⁴ Notice of the Staff Technical Conference was issued September 6, 2002. See 67 FR 57994 (Sept. 13, 2002).