

entities must meet to participate in cash management programs.

Comments Received

17. Commenters⁵ argue that the NOPR fails to explain the basis for choosing a 30 percent proprietary capital requirement as well as how meeting this requirement achieves the stated objectives of the NOPR. They also assert that the proposed requirement would not effectively prevent any "upstream" loans from a regulated entity to its unregulated parent.

18. EEI, INGAA, AOPL and others object that to obtain credit ratings for previously unrated subsidiaries would be costly, and in some cases subsidiaries might not be able to obtain investment grade credit ratings without parental guarantees. Other commenters (e.g., PEPCO Holdings, Inc.) maintain that requiring a regulated entity to maintain a credit rating is unreasonable because not every subsidiary has publicly held debt, as the parent entity most likely does. Public Service Electric and Gas Company, *et al.* (PSEG) is concerned that many of its subsidiaries would be unable to obtain investment grade credit ratings based on its current business structure, which is designed to qualify subsidiaries for exempt wholesale generator status. KeySpan Corporation (KeySpan) expresses doubt that a credit rating for FERC-regulated entities would do much to protect ratepayers.

19. The National Rural Electric Cooperative Association (NRECA) points out that many of its electric cooperative members operate as not-for-profit organizations collecting only enough revenues in excess of operating expenses to meet mortgage requirements and would, therefore, not be able to meet the 30 percent proprietary capital requirement. These electric cooperatives argue that so long as they meet their loan agreements, they should be permitted to participate in cash management programs.

20. Commenters⁶ also argue that the investment grade credit rating prerequisite could in fact increase costs to ratepayers where neither the FERC-regulated entity nor its unregulated parent currently holds a credit rating of any kind. The cost burden of obtaining and maintaining investment grade credit

ratings, commenters state, would invariably be passed on to ratepayers. They further argue that any costs associated with a FERC-regulated entity not being able to participate in a cash management program, such as higher costs of borrowing, would also be borne by ratepayers in the form of higher rates.

21. Duke Energy and NiSource fear the rule would effectively become a financial rating trigger and would place added stress on a company's investment grade credit rating. They point out that rating agencies advise companies to avoid such rating triggers in financing agreements because rating agencies view these triggers as creating additional risk. Accordingly, these commenters would eliminate either the investment grade credit rating or the 30 percent proprietary capital requirement, or both.

22. Conversely, Missouri Public Service Commission (MoPSC) suggests that the Commission require all entities that participate in the same cash management program as a regulated entity maintain investment grade credit ratings or maintain the ratings if they participate in different pools with members in common with the regulated entity's pool.

Commission Response

23. The Commission recognizes the myriad concerns raised by parties commenting on the NOPR, both in comments on the NOPR and in comments received at the related Staff Technical Conference, particularly with respect to the 30 percent proprietary capital and investment grade credit rating prerequisites. Based upon the additional information obtained from commenters, conditioning participation in a cash management program using an investment grade credit rating and a proprietary capital ratio of 30 percent may be too rigid and inflexible.

24. Although over 90 percent of FERC-regulated entities have at least 30 percent proprietary capital, many do not have credit ratings and would thus fail the investment grade prerequisite. The prerequisites, particularly the requirement for an investment grade credit rating, would create uncertainty as to the ability of FERC-regulated entities to participate in new or existing cash management programs. The Commission therefore is not adopting the proposed prerequisites.⁷

B. Documentation Requirements

25. The NOPR proposed that FERC-regulated entities would be required to maintain documentation of all deposits into and borrowings from cash management programs, as well as documentation of security, if any, provided for repayment of deposits or in support of borrowings, and daily balances for each individual deposit or borrowing as well as documentation on the organization and operation of the cash management program.

Comments Received

26. Virtually all commenters supported the NOPR's proposed requirement to put all agreements in writing, specifying the duties of the participants as well as the duties of the administrators. EEI asserts that, as a general matter, the proposed documentation requirements as to the structure and operation of the cash management programs appear reasonable and would formalize documentation practices that should already be in place for such programs. AOPL argues that while companies could document the establishment of cash management programs and all transactions, individual agreements are rarely, if ever, put into writing. While agreeing that putting agreements into written documents would be helpful, Duke Energy urges the Commission not to dictate the terms of the agreements.

27. While commenters support the documentation requirements, many, including EEI, Allegheny Energy, Inc. (Allegheny), AOPL, Cinergy Corp. (Cinergy), Gulf South Pipeline Company LP (Gulf South), KeySpan and NiSource, request clarification on whether they must securitize cash management transactions. They also request clarification that securitization is not required for participation in a cash management program, but that the Commission intends that any security provided be documented. AOPL, Gulf South, and National Fuel Gas Supply Corporation (National Fuel) also request clarification of the level of detail required for the documentation, whether the documentation may be maintained electronically, and whether companies must submit the documentation on any regular basis or whether maintaining the documentation is sufficient. AOPL suggests that the documentation requirements should be simplified to more closely mirror Generally Accepted Accounting Principles (GAAP), arguing that tracking every transaction is unreasonable and unwarranted.

⁵ E.g., NiSource Inc. (Nisource), Chevron Pipeline Company, *et al.* (Chevron), El Paso Energy Partners, L.P. (El Paso).

⁶ Among them are AOPL, Chevron, INGAA, National Grid USA (National Grid), Duke Energy Corporation (Duke Energy), SCANA Corporation (SCANA) and Ameren Corporation (Ameren) (also arguing that cutting off access to capital could be detrimental to customers because utilities might then avoid maintenance and improvements to their systems).

⁷ The Commission will not adopt the NOPR's proposed revision to paragraph B of Accounts 146, Accounts receivable from associated companies and paragraph (b) of Account 13, Receivables from affiliated companies, which prescribed the prerequisites for participation in cash management programs.