

Commission Response

28. While we recognize that some commenters argue that their particular cash management programs have not been reduced to writing, sound business practices dictate, as noted by EEL, that such agreements be in writing. We are not, however, establishing the terms of such agreements. In this interim rule, we require FERC-regulated entities to maintain documentation in support of their cash management programs including the duties and responsibilities of the program administrators and participants, restrictions on borrowings from the cash management programs, interest earnings and expense rates and cost sharing provisions, all as stated in the text of revised Account 146, Accounts receivable from associated companies, for public utilities and licensees, and natural gas companies, and Account 13, Receivables from affiliated companies, for oil pipeline companies.

29. With respect to the form of documentation required in support of cash management programs, the Commission's regulations at parts 125, 225 and 356 prescribe the form of the media to be utilized for maintaining the records including paper, electronic, optical or other new and evolving media, as well as the retention period for such records.⁸

30. The Commission did not propose the filing of any of the documentation that it proposed to be maintained. After review of comments and in recognition of the need for transparency of information on cash management programs, the Commission is now seeking comment on proposed filing requirements for cash management agreements and for notification of changes in the FERC-regulated entity's proprietary capital ratio.

31. Duke Energy's and other commenters' concerns about the Commission's requirements for security for cash management program deposits and borrowings are misplaced. The interim rule does not require security for these arrangements. To clarify, FERC-regulated entities must maintain documentation of security for deposits into and borrowings from these arrangements only when the cash management programs themselves require such security.⁹

32. Duke Energy also argues that the text of Account 146 should be revised to provide that items "not expected to be paid" within 12 months or non-current items should be transferred

either to Account 123, Investment in associated companies, or Account 123.1, Investment in subsidiary companies, rather than requiring the transfer of all non-current items to Account 123 as Account 146 now provides.¹⁰ Duke Energy argues that this clarification will ensure proper classification of items and will "eliminate the need for burdensome daily monitoring for the twelve-month time limit on entries in this account * * *."¹¹

33. While Duke Energy's concern is not entirely clear, it may be related to a misperception of the proposed requirements for documenting security of cash management program transactions. The NOPR proposed no change in how current and non-current transactions are accounted for, and Duke Energy's suggested revision is beyond the scope of this interim rule. As explained above, the interim rule does not mandate that cash management transactions be securitized, but only imposes a documentation requirement for any security that exists. Duke Energy implies it is hard to monitor "undated" paper for purposes of the rule's documentation requirements. However, the possibility of "undated" paper existed prior to the interim rule, and for purposes of proper classification in Account 146, 123, or 123.1, a reasonable date must be imputed. Duke Energy has not clearly articulated any need for changing Account 146 as a consequence of the interim rule. Accordingly, the Commission will not modify Account 146, as requested by Duke Energy.

34. AOPL's proposal that documentation "mirror" GAAP is imprecise and does not identify the specific documentation to be maintained for cash management transactions. The Commission is specifying the documentation that FERC-regulated entities must maintain to meet Commission's oversight needs and to satisfy its regulatory mandate.

35. Finally, FirstEnergy Corp. (FirstEnergy) suggests creating a new account under the Uniform System of Accounts under which all cash management program loans would be recorded. It further requests that the Commission clarify the specific transactions to which the NOPR applies, as Account 146 encompasses all transactions between associated companies.

36. We do not find it necessary at this time to revise the Uniform Systems of Accounts by adding a new account as requested by FirstEnergy. The instructions to Account 146 are

sufficient and can accommodate cash management programs used by FERC-regulated entities.

C. Prohibition on Netting

37. The NOPR proposed that "cash deposits and borrowings may not be netted" in order to provide better transparency of inter-company payables or receivables resulting from cash management agreements.

Comments Received

38. Commenters uniformly object to this proposal or request clarification as to the meaning of this requirement, pointing out that netting is the essence of, and one of the key benefits of, cash management programs.¹² Commenters argued that cash management programs operate, essentially, as ordinary checking accounts and that transactions within an account are netted against each other.¹³

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39. Prior to the issuance of the NOPR, the Commission examined a number of FERC-regulated entities' cash management accounts. That examination revealed numerous instances in which amounts reported in FERC Accounts 146 and 13 had negative balances. The Commission views the reporting of negative balances in these receivables accounts rather than in payable accounts as inappropriate and potentially misleading. The Commission included in the NOPR a ban on netting in an effort to rectify that situation.

40. The Commission agrees with the commenters that cash management programs operate essentially as ordinary checking accounts and that transactions within an account are netted against each other. The Commission is therefore deleting the prohibition on netting from this interim rule. We will require, however, that the balances in the FERC accounts that record cash management activities be properly classified: debit balances must be reported in the appropriate accounts receivable account and credit balances must be reported in the appropriate accounts payable account at the end of each accounting period.

D. Applicability of Rule

41. The NOPR proposed that the requirements of this rule apply to all FERC-regulated entities including registered holding companies that are regulated by the United States Securities and Exchange Commission (SEC).

⁸ 18 CFR parts 125, 225 and 356 (2003).

⁹ EEL made this point in its comments at the September 25, 2002 technical conference.

¹⁰ Duke Energy comments at 26–27.

¹¹ *Id.* at 27.

¹² See, e.g., AOPL, INGAA, and EEL.

¹³ *Id.*