

finds that the public interest will be better satisfied by implementing a rule rather than by issuing advisory guidelines.

G. New Reporting Requirements

52. As part of this interim rule, the Commission is seeking comments on new reporting requirements that were not explicitly included in the NOPR that would require FERC-regulated entities to file their cash management agreements with the Commission, and to notify the Commission when their proprietary capital ratios fall below 30 percent and when they subsequently return to or exceed 30 percent.

53. As previously mentioned, large amounts of funds are controlled through cash management programs and in many instances such programs were not formalized in writing or were not adequately documented. In order to monitor these types of programs, the Commission is exercising its authority pursuant to sections 4, 304 and 309 of the Federal Power Act, sections 10(a) and 16 of the Natural Gas Act, and section 20 of the Interstate Commerce Act to require the filing of cash management agreements, and the filing of a notification when a FERC-regulated entity's proprietary capital ratio falls below 30 percent and when it subsequently returns to or exceeds 30 percent.²⁴ Additionally, all of the information collected in these filings will be considered non-confidential in nature and therefore will be made available to the general public for greater transparency. The Commission will not implement any reporting requirements, however, until it has received and analyzed the comments.

1. Submission of Cash Management Agreements

54. The Commission is seeking comments on a new reporting requirement that would require FERC-regulated entities participating in cash management programs to file their cash management agreements, and any subsequent changes within 10 days from the date of the change. The filing of these agreements with the Commission will provide timely information that will lend additional transparency to the cash management program activities between FERC-regulated entities and their affiliates. The public availability of the information will allow the Commission, as well as all users of financial information to make informed decisions based on relevant and accurate information.

2. Notification Requirements

55. The Commission is seeking comments on a new reporting requirement that would require FERC-regulated entities participating in cash management programs to notify the Commission when their proprietary capital ratios fall below 30 percent and when they subsequently return to or exceed 30 percent. In addition, the Commission is seeking comments on what would be an appropriate notification standard to use as a comparable indicator of a change in financial condition for electric cooperatives that file FERC Annual Report Forms 1 or 1-F with the Commission.

56. Although the two financial prerequisites (*i.e.*, the investment grade credit rating and the 30 percent proprietary capital) included in the NOPR were not adopted as part of this interim rule, they are important indicators of a company's financial health and indicate the extent to which a FERC-regulated entity has taken on debt to finance its assets or operations. A highly leveraged company, with the accompanying fixed interest expense and future obligation to repay the principal, may be in a weakened financial position if there is an unfavorable change in the business climate. This event may result in an inadequate flow of cash which may have an adverse impact on the FERC-regulated entity's ability to remain solvent.

57. Therefore, when a FERC-regulated entity's proprietary capital ratio falls below 30 percent (or conversely, its long-term debt ratio rises above 70 percent), the FERC-regulated entity must file a notification with the Commission, detailing its 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 FERC-regulated entity has amounts loaned or money advanced to others within its corporate group through its cash management program(s), and plans, if any, to raise its proprietary capital ratio.

58. NRECA asserts 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. However, NRECA also states that many electric cooperatives have themselves established subsidiaries that are engaged in diversified non-electric business

activities.²⁵ The Commission recognizes that electric cooperatives generally do not accumulate profits for shareholders as is the case of investor owned utilities. Consequently, the proprietary capital ratio may not be an appropriate indicator of a weakened financial condition for a cooperative. The Commission therefore invites comment on what would be an appropriate metric of financial condition to use as a notification trigger for cooperatives that participate in cash management programs with their affiliates.

59. Under the Uniform System of Accounts, FERC-regulated entities are required to keep their books and records on a monthly basis.²⁶ Therefore, within 15 days after the end of the month, FERC-regulated entities subject to this interim rule must compute their proprietary capital ratios. The proprietary capital ratio must be computed as follows. The numerator will be the sum of the balances in the proprietary capital accounts. Public utilities and licensees and natural gas companies will use Account 201, Common stock issued, through Account 219, Accumulated other comprehensive income, and oil pipeline companies will use Account 70, Capital stock, through Account 77, Accumulated other comprehensive income. The denominator will be the sum of the balances in the proprietary capital accounts plus the sum of the balances in the long-term debt accounts. Public utilities and licensees, and natural gas companies will use Account 221, Bonds, through Account 226, Unamortized discount on long-term debt-Debit, and oil pipeline companies will use Account 60, Long term debt-payable after one year, through Account 62, Unamortized discount and interest on long term debt. In the event the proprietary capital ratio falls below 30 percent, the FERC-regulated entity must make its notification filing within 5 days after making the above calculation. Additionally, the FERC-regulated entity will be required to notify the Commission within 5 days after the determination has been made that its proprietary capital ratio has met or exceeded 30 percent.

IV. Regulatory Flexibility Act Statement

60. The Regulatory Flexibility Act (RFA)²⁷ requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have a significant economic impact on

²⁵ NRECA comments at 4.

²⁶ General Instruction 4 in 18 CFR parts 101 and 201, General Instruction 1-3 in 18 CFR part 352.

²⁷ 5 U.S.C. 601-612.

²⁴ See 16 U.S.C. 797, 825c and 825h; 15 U.S.C. 717i(a) and 717o; and 49 App. U.S.C. 1-85.