

and licensees,³ natural gas companies,⁴ and oil pipeline companies.⁵ The NOPR proposed to require that, as a prerequisite to a FERC-regulated entity participating in a cash management program, 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. Also, the NOPR proposed new documentation requirements for cash management programs.

10. The Commission issued an interim rule on June 26, 2003, 68 FR 40500 (July 8, 2003), FERC Stats. & Regs. ¶ 31,145 (June 26, 2003), which amended its regulations under 18 CFR parts 101, 201, and 352 of the Commission's Uniform Systems of Accounts for public utilities and licensees, natural gas companies, and oil pipeline companies by implementing the documentation requirements proposed in the NOPR. The interim regulations required that FERC-regulated entities maintain their cash management agreements 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. The regulations became effective August 7, 2003 for all FERC-regulated entities that have not been granted waivers of the Commission's accounting regulations and the FERC Annual Report Forms 1, 1-F, 2, 2-A or 6 filing requirements.

11. The Commission decided not to adopt the financial prerequisites proposed in the NOPR. Instead, the Commission sought comments on new reporting requirements that require FERC-regulated entities participating in cash management programs to file agreements related to such programs with the Commission and to notify the Commission when their proprietary capital ratios drop below 30 percent, and when they subsequently return to or exceed 30 percent. These new reporting requirements were reflected in revisions to parts 141, 260, and 357 of the Commission's regulations. The

Commission also concluded that the information collected through the new reporting requirements would be considered non-confidential in nature and be made available to the general public via FERC's eLibrary (formerly FERRIS) accessed from FERC's Home Page.⁶ The Commission did not implement the new reporting requirements in the Interim Rule, but sought comments on these requirements.

12. Requests for stay of the Interim Rule were denied in an order dated August 21, 2003.⁷

III. Discussion

13. The Commission received twenty-five comments⁸ in response to the new reporting requirements or comments asking clarification of the documentation requirements that became effective August 7, 2003. While commenters generally support the Commission's decision not to impose prerequisites to cash management program participation, some commenters question whether the Commission has authority to require utilities to file agreements associated with cash management programs. Other commenters ask whether the Commission has a statutory basis for cash management oversight of public utility affiliates of registered holding companies and of utilities whose money pools are regulated by state commissions.

14. Several commenters also suggested various changes to make compliance with the proposed regulations easier. The suggested changes principally involve the time period for performing the proprietary capital ratio calculation, the deadline for notifying the Commission when the proprietary capital ratio falls below, or subsequently returns to or exceeds 30 percent, and the requirement to file cash management agreements with the Commission.

15. After careful consideration of the comments received, the Commission is implementing the new reporting requirements with some modifications, as discussed below, and is modifying certain aspects of the documentation requirements that became effective August 7, 2003.

16. Consistent with the discussions below, the Commission also denies all requests for rehearing of the Interim Rule.

A. Statutory Basis for the Rule

17. The Interim Rule did not propose to regulate participation in cash management programs, nor did it establish any prerequisites for participation in cash management programs as the Notice of Proposed Rulemaking had originally proposed. Rather, the Interim Rule merely established documentation requirements and proposed reporting requirements. The Final Rule requires FERC-regulated entities subject to the rule to file their cash management agreements with the Commission, as well as notify the Commission when their proprietary capital ratios drop below 30 percent. The provisions in the Federal Power Act (FPA), Natural Gas Act (NGA), and Interstate Commerce Act (ICA) that authorize the Commission to require reports and documentation to administer these statutes provide ample authority for issuance of the Final Rule.⁹

18. Most commenters do not challenge the Commission's legal authority to set the documentation and reporting requirements of the Interim Rule.¹⁰ A few commenters still raise such challenges, however, and we address their concerns here. EEI, for example, argues that the Commission lacks a legal or factual basis for the reporting requirements.¹¹ Southern California Edison Company (Edison) supports EEI's comments on the Interim Rule. Duke Energy asserts that the Commission lacks the statutory authority to regulate the financial transactions of Duke Energy's FERC-regulated entities, including their participation in cash management programs.

19. The short answer is that the Commission is not "regulating" cash management programs. Rather, the Final Rule implements reporting and documentation requirements, which are

⁹ See 15 U.S.C. 717g (2000); 15 U.S.C. 717i (2000); 16 U.S.C. 825 (2000); 16 U.S.C. 825c (2000); 49 App. U.S.C. 20(1) (1988); 49 App. U.S.C. 20(5) (1988).

¹⁰ For example, the Interstate Natural Gas Association of America (INGAA), which had initially argued that the Commission does not have authority to establish prerequisites for money pool participation, does not argue that the Commission lacks the legal authority to set the Final Rule's reporting requirements. Others such as the American Public Gas Association (APGA) strongly confirm the Commission's legal authority to impose the needed reporting requirements in the Final Rule, consistent with the Commission's mandate to protect customers from unjust and unreasonable rates.

¹¹ The legal basis for the 30 percent proprietary capital reporting obligation and other reporting obligations is discussed here, while the choice of a 30 percent proprietary capital level for initiating the report is discussed *infra*.

³ 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).

⁴ 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).

⁵ Part 352 Uniform System of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act. 18 CFR part 352 (2003).

⁶ <http://www.ferc.gov/>.

⁷ 104 FERC ¶ 61,217 (2003).

⁸ Commenters on the Interim Rule are listed in the appendix to this final rule.