

amply justified by the enormous amount of assets of regulated entities in cash management programs. In 2002, the Commission found at least \$16 billion of regulated entities' assets in such accounts and that amount has increased in 2003 to approximately \$25 billion. This is an enormous, mostly unregulated, pool of money in cash management programs that may detrimentally affect regulated rates. The Final Rule properly requires that FERC-regulated entities document and report information to aid the Commission in monitoring cash management programs, but is not in the nature of a regulation governing participation in cash management programs. The reporting requirements allow the Commission to protect ratepaying customers of regulated entities by providing greater transparency of cash management activities.

20. AOPL and Chevron Pipeline Company, *et al.*, in their comments on the Interim Rule question the Commission's statutory authority for the record-keeping requirements, insofar as the Final Rule may intend to require such records of non-FERC-regulated entities. Shell Pipeline Company LP shares these concerns. The Final Rule does not require recordkeeping or reports from non-jurisdictional entities. Accordingly, the recordkeeping and reporting requirements of the NGA, FPA, and ICA provide express statutory authority for the reporting requirements of the Final Rule, which are imposed solely on FERC-regulated entities.

21. Specifically, NGA Section 8 provides that "[e]very natural-gas company shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this Act * * *,"¹² and NGA Section 10 provides that "[e]very natural-gas company shall file with the Commission such annual and other periodic or special reports as the Commission may by rules and regulations or order prescribe as necessary or appropriate to assist the Commission in the proper administration of this act."¹³ FPA Section 301 provides that "[e]very licensee and public utility shall make, keep and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other

records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this Act * * *,"¹⁴ and FPA Section 304 provides that "[e]very licensee and every public utility shall file with the Commission such annual and other periodic or special reports as the Commission may by rules and regulations or order prescribe as necessary or appropriate to assist the Commission in the proper administration of this Act."¹⁵ Section 20(1) of the ICA provides that "[t]he Commission is authorized to require annual, periodical, or special reports from [oil pipeline] carriers * * * and full, true, and correct answers to all questions upon which the Commission may deem information to be necessary * * *,"¹⁶ and Section 20(5) of the ICA authorizes the Commission "in its discretion, [to] prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers and their lessors, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys. * * *,"¹⁷

22. In sum, the Commission is entrusted with the responsibility to ensure that rates are just and reasonable and that FERC-regulated entities provide the services to which they have committed.¹⁸ The transparency-enhancing reporting requirements adopted in the Final Rule for cash management programs—in which over \$25 billion of regulated entities' funds are deposited (and accessible to others in their corporate family)—will help ensure that both goals are achieved.

23. Requiring that FERC-regulated entities that participate in money pools file reports and maintain documents does not impermissibly extend the Commission's jurisdiction to unregulated parent companies (or other unregulated affiliates). The Commission is requiring jurisdictional entities to document cash management transactions and file cash management agreements to which the jurisdictional entities are parties. This is squarely within the ambit of the Commission's statutory authority.

B. Applicability of the Rule to Registered Holding Companies

24. The Interim Rule applied the documentation requirements to 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. This includes subsidiaries of registered holding companies that are regulated by the SEC pursuant to Public Utility Holding Company Act (PUHCA).¹⁹

25. In the Interim Rule, the Commission found that to protect ratepayers, the Commission needed to better understand the financial condition of the companies it regulates, including their cash management practices. And while the Commission agreed with many commenters that the SEC regulates some aspects of a registered holding company's cash management programs, the SEC's case-by-case analysis of these programs did not provide assurance that documentation adequate for this Commission's regulatory oversight would be maintained.

26. Therefore, the Interim Rule required that FERC-regulated entities that are also subject to PUHCA follow the documentation requirements adopted in the Commission's Uniform Systems of Accounts and proposed that FERC-regulated holding company subsidiaries follow the same reporting requirements as all other FERC-regulated entities subject to this rule.

Comments Received:

27. EEI requested rehearing and clarification of the applicability of the rule to subsidiaries of registered holding companies, asserting that regulation by the Commission is unnecessary and barred by Section 318 of the FPA.²⁰ While acknowledging that "the documentation requirements the FERC is imposing differ somewhat from the SEC's requirements," EEI goes on to assert that any regulated holding company's cash management program "already satisfies documentation requirements comparable to those that would be imposed in the interim rule."

¹⁹ 15 U.S.C. 79a *et seq.* (2000).

²⁰ Section 318 of the Federal Power Act provides as follows:

If, with respect to the issue, sale, or guaranty of a security, or assumption of obligation or liability in respect of a security, the method of keeping accounts, the filing of reports, or the acquisition or disposition of any security, capital assets, facilities, or any other subject matter, such person is subject both to a requirement of [PUHCA] or of a rule, regulation or order thereunder and to a requirement of [the FPA], or of any rule, regulation, or order thereunder, the requirement of [PUHCA] shall apply to such person, and such person shall not be subject to the requirement of [the FPA] or of any rule, regulation, or order thereunder, with respect to the same subject matter, unless the Securities and Exchange Commission has exempted such person from such requirement of [PUHCA], in which case the requirements of [the Federal Power Act] shall apply to such person.

¹² 15 U.S.C. 717g (2000).

¹³ 15 U.S.C. 717i (2000).

¹⁴ 16 U.S.C. 825 (2000).

¹⁵ 16 U.S.C. 825c (2000).

¹⁶ 49 App. U.S.C. 20(1) (1988).

¹⁷ 49 App. U.S.C. 20(5) (1988).

¹⁸ See FPA Sections 205 and 206, NGA Sections 4 and 5, and ICA Title 49 App. Sections 1(5) and 15(1).