

Commission reiterates the need for this information in carrying out its statutory obligations to customers. The burden imposed on regulated entities by the Final Rule is extremely low while the benefits to the Commission and the public of documenting over \$25 billion worth of regulated assets is high. The Commission would be remiss in its obligation to ensure just and reasonable rates if it were to ignore the effects on its jurisdictional entities of having these large sums in cash management programs.

D. Submission of Cash Management Agreements

39. The interim rule proposed requiring FERC-regulated entities subject to the rule to file their cash management agreements with the Commission, and to file any subsequent changes within 10 days from the date of change. The Commission is adopting this requirement in the Final Rule.

Comments Received:

40. Several commenters²³ argue that FERC-regulated entities should not be required to file cash management agreements with the Commission. A few commenters argue that doing so is unnecessary. For example, INGAA, Duke Energy and FirstEnergy assert that because the Interim Rule requires FERC-regulated entities to maintain documentation supporting their cash management agreements which are subject to audit, there is no compelling reason to have the agreements filed with the Commission. Duke Energy adds that the Commission's own annual reporting requirements require FERC-regulated entities to provide the Commission with a description of material terms of their agreements in footnotes to their annual reports.

41. Other commenters²⁴ suggest that the Commission should merely require companies to maintain documentation, subject to Commission review, without requiring companies to submit the information. EEI expresses the concern that filing cash management agreements would invite proceedings unintended by the Commission, and requests that the Commission clarify that the documents are for informational purposes only, and not subject to complaints or protests. Commenters²⁵ also argue that the new reporting requirement is excessively burdensome.

42. Additionally, Cinergy asks that the Commission clarify that the initial submission of the agreements for

programs established prior to the effective date of the rule shall be within 10 days of the effective date of this rule.

Commission Response:

43. The underlying premise of this reporting requirement is that additional transparency of cash management activities between FERC-regulated entities and their affiliates will allow the Commission and other users of financial information to make decisions based on relevant and accurate information. The only way to achieve this transparency is to require FERC-regulated entities to file their cash management documents with the Commission, which will consequently make them available to the public. In addition, the requirement that any subsequent changes to an existing agreement be filed within 10 days of the date of the change is necessary to provide users of financial information with knowledge of when such decisions are being made. Since cash management agreements are altered infrequently and only after considerable planning, the 10 day notification deadline is reasonable.

44. Any cash management agreements established prior to the effective date of the rule must be filed within 10 days of the effective date of the rule.

45. With regard to the concern that the filing of cash management agreements will generate protests and complaints, these filings are for informational purposes and the Commission will not entertain public comments on them.

E. Notification Requirements

46. The Interim Rule proposed that FERC-regulated entities participating in cash management programs notify the Commission when their proprietary capital ratios fall below 30 percent and when they subsequently return to or exceed 30 percent. The Interim Rule also required that FERC-regulated entities compute their proprietary capital ratios within 15 days after the end of each month and notify the commission within 5 days after making the calculation. In the Final Rule, the Commission is adopting the notification requirement, but is allowing FERC-regulated entities to compute their proprietary capital ratios quarterly and to notify the Commission within 45 days after the end of each calendar quarter if their proprietary capital ratios fall below 30 percent and when they subsequently return to or exceed 30 percent.

Comments Received:

47. Virtually all commenters expressed concerns about the Interim Rule's proposal that FERC-regulated entities notify the Commission when

their proprietary capital ratios fall below 30 percent. Several commenters²⁶ argue that the choice of 30 percent seemed arbitrary, and that the 30 percent threshold was not necessarily an accurate indication of a company's health. Rather, the commenters argue, the 30 percent threshold has been overemphasized in the Interim Rule, since it is only one of many possible gauges of the financial health of a FERC-regulated entity. Gulf South adds that establishing a minimum equity threshold is inconsistent with the NGA since pipelines are not required to maintain any minimum capitalization level.

48. Cinergy, Duke Energy, Gulfterra and PacifiCorp expressed concerns about the requirement that the ratio be computed within 15 days after the end of the monitoring period. For example, Duke Energy argues that 15 days is insufficient to compute the proprietary capital ratio. Cinergy suggests that the Commission revise the date by which the ratio must be determined to the 15th business day rather than the 15th calendar day. Also, Gulfterra and PacifiCorp suggest extending the time period to 45 days.

49. Numerous commenters²⁷ object to the monthly monitoring requirement, stating that complying with the requirement would be unworkable or burdensome, and that calculations completed in such a short timeframe may be unreliable. PSEG Companies and FirstEnergy note that their capitalization reviews are not prepared on a monthly basis. FirstEnergy explains that while books are maintained on a monthly basis, utilities do not and are not required to close their books at the end of the month in a manner that would enable them to calculate their proprietary capital ratios.

50. EEI and Exelon ask that the Commission allow utilities to calculate the 30 percent equity ratio with transition bonds and other non-recourse debt eliminated from the calculation. They argue that these bonds were issued pursuant to state enabling legislation that allows the bonds to be repaid through a specifically authorized retail rate and, as such, the bonds are not the obligation of the utility or parent company but instead are non-recourse.

51. Also, EEI, Sierra Southwest Cooperative Services, Inc. and the PSEG Companies ask that the Commission clarify that 18 CFR part 141.500 B, C and D applies only to public utilities and licensees that are subject to the

²³ E.g., INGAA, Duke Energy, and FirstEnergy.

²⁴ E.g., EEI, PSEG Companies, and Edison.

²⁵ E.g., Graham County Electric Cooperative and PSEG Companies.

²⁶ E.g., Duke Energy, Exelon, AOPL.

²⁷ E.g., Alliance, Duke Energy, EEI, Gulf South, WPC.