

Commission's Uniform System of Accounts.

52. NRECA asserts that the local and continuous control and oversight of member-owners provides far more effective control over potential abuse of an electric cooperative's cash management programs and practices than the Commission could accomplish. It asks that the Commission give careful consideration to any request for waiver from the final rule.<sup>28</sup>

*Commission Response:*

53. Although a 30 percent proprietary capital threshold was not adopted as a prerequisite for participation in a cash management arrangement, the threshold remains a reasonable and important indicator of a company's financial health and the extent to which a FERC-regulated entity has taken on debt to finance its assets or operations. We considered the application of various proprietary capital percentages. Our analyses indicate that over 90 percent of FERC-regulated entities have at least 30 percent proprietary capital. In addition, the SEC utilizes a 30 percent proprietary capital percentage for its evaluations, albeit for broader purposes than monitoring a specific company's financial health.

54. The Commission agrees that a quarterly reporting requirement of proprietary capital ratios, rather than a monthly one as proposed in the Interim Rule, would be more appropriate since many companies do not currently prepare monthly financial analyses. Adopting a quarterly requirement would also ease the administrative burden of complying with the reporting requirement. Additionally, this will make the reporting requirement more consistent with the quarterly financial reports required by the SEC.

55. The Commission also agrees that it would be more consistent to require notification within 45 days after the end of each calendar quarter that a company's proprietary capital ratio has dropped below or subsequently exceeded 30 percent, rather than allowing only 15 days to make the computation and 5 days to make the filing as proposed in the Interim Rule. Changing the notification requirement to 45 days is more consistent with the SEC's requirement that financial information be disclosed 45 days after the end of each fiscal quarter, as well as with the change in the Final Rule from a monthly to a quarterly monitoring requirement. Lengthening the notification period will also ease the

administrative burden on affected companies.

56. Additionally, the Commission will continue to require transition bonds and other non-recourse debt to be included in the proprietary capital ratio computation. If the proprietary capital ratio drops below 30 percent because of this inclusion, the documentation notifying the Commission may include a description of this fact.

57. The Commission is also revising parts 141.500 B, C and D, 260.400 B, C and D, and 357.5(b), (c) and (d) to apply only to public utilities and licensees, natural gas or oil pipeline companies that are subject to the Commission's Uniform Systems of Accounts. The language is revised to read, "Public utilities and licensees or natural gas or oil pipeline companies subject to the provisions of the Commission's Uniform System of Accounts in part 101 and § 141.1 or § 141.2 or part 201 and § 260.1 or § 260.2, or part 352 and § 357.2 of this title that participate in cash management programs and are not electric cooperatives must determine, on a quarterly basis, the percentage of their capital structures that constitute proprietary capital."

58. Parts 141.500 C, 260.400 C and 357.5(c) are revised to read, "In the event that the proprietary capital ratio is less than 30 percent, public utilities and licensees, natural gas or oil pipeline companies subject to the provisions of the Commission's Uniform System of Accounts in part 101 and § 141.1 or § 141.2, or part 201 and § 260.1 or § 260.2 or part 352 and § 357.2 of this title that participate in cash management programs and are not electric cooperatives must notify the Commission within 45 days after the end of each calendar quarter."

59. Parts 141.500 D, 260.400 D and 357.5(d) are revised to read, "In the event that the proprietary capital ratio subsequently meets or exceeds 30 percent, public utilities and licensees, natural gas or oil pipeline companies subject to the provisions of the Commission's Uniform System of Accounts in part 101 and § 141.1 or § 141.2 or part 201 and § 260.1 or § 260.2 or part 352 and § 357.2 of this title that participate in cash management programs and are not electric cooperatives must notify the Commission within 45 days after the end of each calendar quarter."

60. The Commission recognizes that electric cooperatives 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. It also recognizes that electric cooperatives generally do not accumulate profits for shareholders as in the case of investor owned utilities. After careful consideration of the comments and the structure of electric cooperatives, the Final Rule is revised to exempt electric cooperatives from the requirement to notify the Commission when their proprietary capital ratios drop below 30 percent and when their proprietary capital ratios subsequently return to or exceed 30 percent. However, the Commission is aware that electric cooperatives have themselves established subsidiaries that are engaged in diversified non-electric business activities. Placing cash management agreements in writing contributes to a stable environment in which rates are just and reasonable, and filing those agreements provides needed transparency for the Commission to understand the financial arrangements of the cooperatives it regulates.

61. The final rule applies 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. Electric cooperatives must comply with the Final Rule except for the notification requirements related to the 30 percent proprietary capital ratio.

*F. Public Disclosure of Information*

62. The interim rule explained that all of the information contained in the required filings will be made public to provide for greater transparency of the cash management program activities of FERC-regulated entities.

*Comments Received:*

63. Several commenters<sup>29</sup> object to public disclosure of their cash management agreements. They claim that such agreements may contain competitively sensitive or proprietary information and urge the Commission to protect from disclosure agreements or supporting documents that contain competitively sensitive information. Gulf South argues that making cash management agreements public is anticompetitive because pipelines would be required to disclose their internal costs of capital, and that disclosure of sensitive proprietary information would create an uneven competitive playing field among regulated and unregulated market participants. AOPL, Duke Energy, and Edison suggest that the Commission should grant the agreements confidential treatment under the

<sup>28</sup> Graham County Electric Cooperative requested a waiver from the rule on August 7, 2003. Its request will be addressed in a separate order.

<sup>29</sup> E.g., INGAA, AOPL, Edison, Gulfterra and Duke Energy.