

Freedom of Information Act's confidential business information exemption.

64. The commenters also object to public notification when their proprietary capital ratios fall below 30 percent. Gulfterra and INGAA argue that such notifications should also be kept confidential to avoid stock volatility.

*Commission Response:*

65. As noted in the Interim Rule, the Commission considers the information to be collected to be non-confidential in nature and therefore it will be made available to the public. The Commission has determined that release of the information is "necessary to carry out its jurisdictional responsibilities." See 18 CFR 388.112(c)(2003). The information will provide the Commission with relevant and accurate information on which to make decisions.

66. Allowing only the Commission and not the public to review the cash management agreements would not meet the goal of providing greater transparency for the protection of ratepaying customers. This transparency, in turn, will lessen the chance of an acute financial reversal that would harm utility ratepaying customers and energy markets. Entities that believe the information they submit should be withheld from public view on account of unique circumstances may still request confidential treatment pursuant to § 388.112 of our regulations, stating the rationale for their requests. However, general, unsubstantiated assertions that future harm will occur if information contained in cash management agreements is released will be insufficient for a specific company to acquire confidential status.

*G. Clarification of Documentation Requirements*

67. In the interim rule, the Commission implemented documentation requirements for cash management programs that became effective August 7, 2003. The regulations require that cash management agreements be 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 also require FERC-regulated entities to maintain documentation of all deposits into and borrowings from cash management programs, including the amount of the deposit or borrowing, the maturity date, if any, of the deposit

or borrowing, and the interest earning rate on the deposit or borrowing, and the daily balance of the cash management program.

*Comments Received:*

68. Generally, commenters support the requirement to put all cash management agreements in writing. Exelon asserts that it continues to support the Commission's desires to protect customers of FERC-jurisdictional utilities from misuse of cash management accounts. INGAA agrees that cash management agreements should be documented and that FERC-regulated entities should maintain documentation as specified by the regulatory text of Account 146.

69. On the other hand, many commenters, including AOPL, EEI, INGAA and PacifiCorp seek clarification of the documentation requirements. Specifically, AOPL, INGAA, El Paso and PacifiCorp seek clarification of the requirements to document the duties and responsibilities of the administrator and the non-FERC-regulated participants in the program.

70. AOPL and El Paso argue that the regulated entity cannot be called upon to maintain documentation on third party participants. AOPL asserts that the terms of the cash management agreement between the administrator and individual participants can vary and are kept confidential. Cash management programs in which AOPL's member companies participate can have more than a thousand participants and that maintaining this information would prohibit some regulated entities from participating in a cash management program. INGAA also asserts that the regulated entity will not necessarily know the restrictions on deposits or borrowings by each of the other participants in the cash management agreement. PacifiCorp is unclear whether the Commission is also creating a requirement for regulated utilities to amend their existing cash management agreements.

71. Gulf South asks that the Commission clarify that the documentation requirement only applies to monies contributed into the cash management program by the pipeline and not by other participants. It argues that to require pipelines to maintain records on the activities of all cash management participants is not only burdensome, but requires pipelines to be more involved in its affiliates' daily businesses than traditionally has either been required or desired by the Commission.

72. AOPL and EEI urge the Commission to reconsider the requirement to document the interest

rates on each deposit into or withdrawal from a cash management program. Both commenters assert that interest earnings on deposits or charges on borrowings typically cannot be determined for an individual deposit or borrowing; rather, interest rates fluctuate based on the average balance for the month or other relevant time period. AOPL also argues that the interest earned on a deposit or charged on a borrowing is both documented in the cash management agreement and reported on a monthly basis in the current statements.

73. Gulf South asks for clarification of what documentation would be required when a program is based solely upon bilateral loan agreements. It asserts that this arrangement is not a traditional money pooling or cash management arrangement and does not have an administrator, but appears to be subject to the requirements of the Final Rule.

*Commission Response:*

74. The Commission agrees that documentation related to the other participants might be unduly burdensome for FERC-regulated entities to maintain. Therefore, the Commission is requiring that FERC-regulated entities only maintain documentation related to the administrator and the FERC-regulated entity. To reflect this change, the Commission is revising the language in 18 CFR parts 101 and 201, Account 146 C and part 352, Account 13(c) to read, "the public utilities or licensee, natural gas or oil pipeline company must maintain documents authorizing the establishment of cash management programs including the duties and responsibilities of the administrator and the public utility or licensee, natural gas or oil pipeline company in the cash management program."

75. The Commission agrees that it may be difficult for some FERC-regulated entities to maintain documentation that includes the interest rate on each deposit, withdrawal and borrowing from the cash management program and to maintain records showing the daily balance of the cash management program. Therefore, the Commission is requiring that the documentation authorizing the cash management program include the interest rate but that the documentation supporting deposits, withdrawals and borrowings from the cash management program need not show the interest rate for each transaction. The Commission is modifying the daily balance documentation requirement of the Interim Rule. Rather than require daily balance documentation, the Final Rule is requiring FERC-regulated entities subject to the rule to maintain monthly