

a foreign futures or foreign options customer. Notwithstanding the termination of the agreement referred to in paragraph (a) of this section, service or delivery of any communication issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization, or any foreign futures or foreign options customer pursuant to the agreement shall nonetheless constitute valid and effective service or delivery upon such person with respect to any transaction entered into on or before the date of the termination of the agreement.

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Issued in Washington, DC, on July 1, 2003, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Parts 101, 141, 201, 260, 352, and 357

[Docket No. RM02-14-000; Order No. 634]

#### Documentation Requirements for Cash Management Programs Issued June 26, 2003

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Interim rule.

**SUMMARY:** In order to protect the customers of jurisdictional companies, the Federal Energy Regulatory Commission is amending its regulations to implement documentation requirements for cash management programs. The Commission is also seeking comments on new reporting requirements that require FERC-regulated entities to file their cash management agreements with the Commission, and to notify the Commission when their proprietary capital ratios fall below 30 percent, and when their proprietary capital ratios subsequently return to or exceed 30 percent.

This initiative responds to recent investigations by FERC and others that revealed large amounts of funds in cash management programs (at least \$16 billion) that, in many instances, were not formalized in writing. The interim rule is intended to protect the ratepaying customers of FERC-regulated entities by providing greater transparency concerning cash

management programs. Additionally, it will ensure that the investing community has more and better information to evaluate the condition of these FERC-regulated entities and their financial exposure.

**DATES:** *Effective Date:* This rule is effective August 7, 2003.

*Compliance Date:* The Commission will not implement the reporting requirements in §§ 141.500, 260.400, and 357.5 until it has considered the comments filed on these requirements.

*Comment Date:* Comments on the new reporting requirements in §§ 141.500, 260.400, and 357.5 are due August 7, 2003.

**ADDRESSES:** Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

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#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Introduction
- II. Background
- III. Discussion
  - A. Prerequisites for Participating in Cash Management Programs
  - B. Documentation Requirements
  - C. Prohibition on Netting
  - D. Applicability of Rule
  - E. Legal Authority to Prescribe Prerequisites
  - F. Requests for Policy Statement
  - G. New Reporting Requirements
    - 1. Submission of Cash Management Agreements
    - 2. Notification Requirements
- IV. Regulatory Flexibility Act Statement
- V. Environmental Analysis
- VI. Information Collection Statement
- VII. Comment Procedures
- VIII. Document Availability
- IX. Effective Date and Congressional Notification

Regulatory Text

Appendix A—Commenters in RM02-14-000

## I. Introduction

1. The Federal Energy Regulatory Commission (Commission or FERC) is amending its regulations by implementing documentation requirements for FERC-regulated entities that participate in cash management programs. The documentation requirements are reflected in changes to 18 CFR parts 101, 201, and 352 of the Commission's Uniform Systems of Accounts for public utilities and licensees, natural gas and oil pipeline companies. The Commission, however, is not adopting the two financial prerequisites as proposed in the NOPR that would have limited participation in a cash management program when either of the two prerequisites was not met.

2. Additionally, the Commission is seeking comments on new reporting requirements that require FERC-regulated entities to file the agreements related to their cash management programs with the Commission, and require FERC-regulated entities 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. By making this information available to the public, the investing community will have needed and better information on which to evaluate the financial conditions of FERC-regulated entities. These reporting requirements are reflected in changes to 18 CFR §§ 141.500, 260.400, and 357.5 of the Commission's regulations. The Commission will not implement the reporting requirements in these Sections until it has considered the comments filed on these requirements.

3. Cash management programs are of several different types. Some concentrate and transfer funds from multiple accounts into a single bank account in the parent company's name. Another type is known as "cash pooling" or "money pooling." This system uses a single summary account with interest earned or charged on the net cash balance position. There is no movement of funds between accounts of the entities participating in the pool. All accounts must be in the same bank, but not at the same branch. A third type, known as a "zero balance account," empties or fills the balances in an affiliated company's account at a bank into or out of a parent's account each day. This list is not exhaustive and merely describes generic features of cash management programs.

4. Cash management programs control a large amount of assets. FERC Staff investigators found that in 2001, balances in cash management programs affecting FERC-regulated entities totaled approximately \$16 billion. In addition, other investigations have revealed large transfers of funds (amounting to more than \$1 billion) between regulated pipeline affiliates and non-regulated parents whose financial conditions were precarious. See *In Re Investigation of Certain Financial Data*, "Order to Respond," Docket No. IN02-6-000, 100 FERC ¶ 61,143 (2002). These and other fund transfers and the enormous, mostly unregulated, pools of money in cash management programs may detrimentally affect regulated rates.

5. To date, the scrutiny of cash management programs has been minimal and has been made difficult because many cash management programs have not been formalized in writing, and the impact of these programs on the energy markets and ratepayers is thus obscured. Other means of transferring assets from FERC-regulated entities to unregulated entities, such as loans and dividends, have a degree of transparency not found in cash management programs.

6. To protect the ratepaying customers of FERC-regulated entities by providing greater transparency of cash management programs, the Commission is implementing documentation standards for these activities that will assure appropriate data are maintained. The availability of such information will also allow FERC audit staff ready access to consistent data.

7. The Commission is amending its Uniform Systems of Accounts (18 CFR parts 101, 201, and 352) to provide documentation requirements for cash management programs, to 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.

8. Additionally, to provide greater transparency of FERC-regulated entities' cash management programs, the Commission is seeking comments on a new reporting requirement that requires FERC-regulated entities to file these agreements with the Commission. Any subsequent changes to these agreements must be filed within 10 days from the date of the change.

9. The Commission is also seeking comments on a new reporting requirement that requires a FERC-

regulated entity to notify the Commission within 5 days when its proprietary capital ratio falls below 30 percent. The filing must include the entity's proprietary capital ratio, the significant event(s) or transaction(s) that contributed to the proprietary capital ratio falling below 30 percent, the extent to which the entity has amounts loaned or advanced to others within its corporate group through its cash management program, and plans, if any, to raise its proprietary capital ratio. Finally, the Commission is seeking comments on a new reporting requirement that would require a FERC-regulated entity to notify the Commission within 5 days when its proprietary capital ratio subsequently returns to or exceeds 30 percent.

10. The provisions of this interim rule will apply to all FERC-regulated entities that have not been granted waivers of the Commission's accounting and the FERC Annual Report Forms 1, 1-F, 2, 2-A or 6 filing requirements. The information collected through the new reporting requirements is considered non-confidential in nature and will be made available to the general public via the Federal Energy Regulatory Records Information System (FERRIS) accessed from the FERC's Home Page.

11. The new documentation standards, the filing of the cash management agreements, and the notification requirements, will achieve additional transparency with respect to the financial conditions and financial dealings of FERC-regulated entities and their corporate financial transactions. The public availability of the information will allow all users of financial information to make informed decisions based on relevant and accurate information.

## II. Background

12. In a Notice of Proposed Rulemaking (NOPR) issued on August 1, 2002, 67 FR 51150 (Aug. 7, 2002), IV FERC Stats. & Regs. ¶ 32,561 (Aug. 1, 2002), the Commission proposed to amend its Uniform Systems of Accounts for public utilities and licensees,<sup>1</sup> natural gas companies,<sup>2</sup> and oil pipeline companies,<sup>3</sup> to require that, as a prerequisite to a FERC-regulated entity

<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> Part 352 Uniform Systems of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act. 18 CFR part 352 (2003).

participating in cash management programs, 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. The Commission further proposed that if either of the conditions was not met, the FERC-regulated entity could not participate in the cash management program. Also, the NOPR proposed documentation requirements for cash management programs.

13. The NOPR was published in the **Federal Register** on August 7, 2002, and comments were initially due 15 days thereafter, or August 22, 2002. By notice issued August 16, 2002, the Commission extended the comment deadline to August 28, 2002. A Staff Technical Conference was held on September 25, 2002, to explore the issues raised by the NOPR.<sup>4</sup>

## III. Discussion

14. The Commission received nearly fifty comments concerning various aspects of the proposed rule. Virtually all commenters were generally supportive of the Commission's effort to establish more precise accounting rules with respect to cash management programs between regulated and unregulated entities.

15. On the other hand, most of the commenters objected to the proposed prerequisites to FERC-regulated entities' participation in cash management programs and claimed that there is no statutory basis for these requirements. Other commenters argued that they should be exempt from the requirements of the proposed rule. The Edison Electric Institute (EEI), the Interstate Natural Gas Association of America (INGAA), and the Association of Oil Pipe Lines (AOPL) filed a joint supplement to their initial comments, urging that the Commission adopt guidelines rather than a rule. A complete list of commenters may be found at Appendix A.

### A. Prerequisites for Participating in Cash Management Programs

16. The NOPR proposed two financial prerequisites that must be met for FERC-regulated entities to participate in cash management programs. As discussed below, most commenters objected to the use of these criteria for participation in the programs, and after reviewing the comments, the Commission will not impose the two financial prerequisites as conditions that FERC-regulated

<sup>4</sup> Notice of the Staff Technical Conference was issued September 6, 2002. See 67 FR 57994 (Sept. 13, 2002).

entities must meet to participate in cash management programs.

#### Comments Received

17. Commenters<sup>5</sup> argue that the NOPR fails to explain the basis for choosing a 30 percent proprietary capital requirement as well as how meeting this requirement achieves the stated objectives of the NOPR. They also assert that the proposed requirement would not effectively prevent any "upstream" loans from a regulated entity to its unregulated parent.

18. EEI, INGAA, AOPL and others object that to obtain credit ratings for previously unrated subsidiaries would be costly, and in some cases subsidiaries might not be able to obtain investment grade credit ratings without parental guarantees. Other commenters (e.g., PEPCO Holdings, Inc.) maintain that requiring a regulated entity to maintain a credit rating is unreasonable because not every subsidiary has publicly held debt, as the parent entity most likely does. Public Service Electric and Gas Company, *et al.* (PSEG) is concerned that many of its subsidiaries would be unable to obtain investment grade credit ratings based on its current business structure, which is designed to qualify subsidiaries for exempt wholesale generator status. KeySpan Corporation (KeySpan) expresses doubt that a credit rating for FERC-regulated entities would do much to protect ratepayers.

19. The National Rural Electric Cooperative Association (NRECA) points out that many of its electric cooperative members 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. These electric cooperatives argue that so long as they meet their loan agreements, they should be permitted to participate in cash management programs.

20. Commenters<sup>6</sup> also argue that the investment grade credit rating prerequisite could in fact increase costs to ratepayers where neither the FERC-regulated entity nor its unregulated parent currently holds a credit rating of any kind. The cost burden of obtaining and maintaining investment grade credit

ratings, commenters state, would invariably be passed on to ratepayers. They further argue that any costs associated with a FERC-regulated entity not being able to participate in a cash management program, such as higher costs of borrowing, would also be borne by ratepayers in the form of higher rates.

21. Duke Energy and NiSource fear the rule would effectively become a financial rating trigger and would place added stress on a company's investment grade credit rating. They point out that rating agencies advise companies to avoid such rating triggers in financing agreements because rating agencies view these triggers as creating additional risk. Accordingly, these commenters would eliminate either the investment grade credit rating or the 30 percent proprietary capital requirement, or both.

22. Conversely, Missouri Public Service Commission (MoPSC) suggests that the Commission require all entities that participate in the same cash management program as a regulated entity maintain investment grade credit ratings or maintain the ratings if they participate in different pools with members in common with the regulated entity's pool.

#### Commission Response

23. The Commission recognizes the myriad concerns raised by parties commenting on the NOPR, both in comments on the NOPR and in comments received at the related Staff Technical Conference, particularly with respect to the 30 percent proprietary capital and investment grade credit rating prerequisites. Based upon the additional information obtained from commenters, conditioning participation in a cash management program using an investment grade credit rating and a proprietary capital ratio of 30 percent may be too rigid and inflexible.

24. Although over 90 percent of FERC-regulated entities have at least 30 percent proprietary capital, many do not have credit ratings and would thus fail the investment grade prerequisite. The prerequisites, particularly the requirement for an investment grade credit rating, would create uncertainty as to the ability of FERC-regulated entities to participate in new or existing cash management programs. The Commission therefore is not adopting the proposed prerequisites.<sup>7</sup>

<sup>7</sup> The Commission will not adopt the NOPR's proposed revision to paragraph B of Accounts 146, Accounts receivable from associated companies and paragraph (b) of Account 13, Receivables from affiliated companies, which prescribed the prerequisites for participation in cash management programs.

#### B. Documentation Requirements

25. The NOPR proposed that FERC-regulated entities would be required to maintain documentation of all deposits into and borrowings from cash management programs, as well as documentation of security, if any, provided for repayment of deposits or in support of borrowings, and daily balances for each individual deposit or borrowing as well as documentation on the organization and operation of the cash management program.

#### Comments Received

26. Virtually all commenters supported the NOPR's proposed requirement to put all agreements in writing, specifying the duties of the participants as well as the duties of the administrators. EEI asserts that, as a general matter, the proposed documentation requirements as to the structure and operation of the cash management programs appear reasonable and would formalize documentation practices that should already be in place for such programs. AOPL argues that while companies could document the establishment of cash management programs and all transactions, individual agreements are rarely, if ever, put into writing. While agreeing that putting agreements into written documents would be helpful, Duke Energy urges the Commission not to dictate the terms of the agreements.

27. While commenters support the documentation requirements, many, including EEI, Allegheny Energy, Inc. (Allegheny), AOPL, Cinergy Corp. (Cinergy), Gulf South Pipeline Company LP (Gulf South), KeySpan and NiSource, request clarification on whether they must securitize cash management transactions. They also request clarification that securitization is not required for participation in a cash management program, but that the Commission intends that any security provided be documented. AOPL, Gulf South, and National Fuel Gas Supply Corporation (National Fuel) also request clarification of the level of detail required for the documentation, whether the documentation may be maintained electronically, and whether companies must submit the documentation on any regular basis or whether maintaining the documentation is sufficient. AOPL suggests that the documentation requirements should be simplified to more closely mirror Generally Accepted Accounting Principles (GAAP), arguing that tracking every transaction is unreasonable and unwarranted.

<sup>5</sup> E.g., NiSource Inc. (Nisource), Chevron Pipeline Company, *et al.* (Chevron), El Paso Energy Partners, L.P. (El Paso).

<sup>6</sup> Among them are AOPL, Chevron, INGAA, National Grid USA (National Grid), Duke Energy Corporation (Duke Energy), SCANA Corporation (SCANA) and Ameren Corporation (Ameren) (also arguing that cutting off access to capital could be detrimental to customers because utilities might then avoid maintenance and improvements to their systems).

*Commission Response*

28. While we recognize that some commenters argue that their particular cash management programs have not been reduced to writing, sound business practices dictate, as noted by EEL, that such agreements be in writing. We are not, however, establishing the terms of such agreements. In this interim rule, we require FERC-regulated entities to maintain documentation in support of their cash management programs including the duties and responsibilities of the program administrators and participants, restrictions on borrowings from the cash management programs, interest earnings and expense rates and cost sharing provisions, all as stated in the text of revised Account 146, Accounts receivable from associated companies, for public utilities and licensees, and natural gas companies, and Account 13, Receivables from affiliated companies, for oil pipeline companies.

29. With respect to the form of documentation required in support of cash management programs, the Commission's regulations at parts 125, 225 and 356 prescribe the form of the media to be utilized for maintaining the records including paper, electronic, optical or other new and evolving media, as well as the retention period for such records.<sup>8</sup>

30. The Commission did not propose the filing of any of the documentation that it proposed to be maintained. After review of comments and in recognition of the need for transparency of information on cash management programs, the Commission is now seeking comment on proposed filing requirements for cash management agreements and for notification of changes in the FERC-regulated entity's proprietary capital ratio.

31. Duke Energy's and other commenters' concerns about the Commission's requirements for security for cash management program deposits and borrowings are misplaced. The interim rule does not require security for these arrangements. To clarify, FERC-regulated entities must maintain documentation of security for deposits into and borrowings from these arrangements only when the cash management programs themselves require such security.<sup>9</sup>

32. Duke Energy also argues that the text of Account 146 should be revised to provide that items "not expected to be paid" within 12 months or non-current items should be transferred

either to Account 123, Investment in associated companies, or Account 123.1, Investment in subsidiary companies, rather than requiring the transfer of all non-current items to Account 123 as Account 146 now provides.<sup>10</sup> Duke Energy argues that this clarification will ensure proper classification of items and will "eliminate the need for burdensome daily monitoring for the twelve-month time limit on entries in this account \* \* \*."<sup>11</sup>

33. While Duke Energy's concern is not entirely clear, it may be related to a misperception of the proposed requirements for documenting security of cash management program transactions. The NOPR proposed no change in how current and non-current transactions are accounted for, and Duke Energy's suggested revision is beyond the scope of this interim rule. As explained above, the interim rule does not mandate that cash management transactions be securitized, but only imposes a documentation requirement for any security that exists. Duke Energy implies it is hard to monitor "undated" paper for purposes of the rule's documentation requirements. However, the possibility of "undated" paper existed prior to the interim rule, and for purposes of proper classification in Account 146, 123, or 123.1, a reasonable date must be imputed. Duke Energy has not clearly articulated any need for changing Account 146 as a consequence of the interim rule. Accordingly, the Commission will not modify Account 146, as requested by Duke Energy.

34. AOPL's proposal that documentation "mirror" GAAP is imprecise and does not identify the specific documentation to be maintained for cash management transactions. The Commission is specifying the documentation that FERC-regulated entities must maintain to meet Commission's oversight needs and to satisfy its regulatory mandate.

35. Finally, FirstEnergy Corp. (FirstEnergy) suggests creating a new account under the Uniform System of Accounts under which all cash management program loans would be recorded. It further requests that the Commission clarify the specific transactions to which the NOPR applies, as Account 146 encompasses all transactions between associated companies.

36. We do not find it necessary at this time to revise the Uniform Systems of Accounts by adding a new account as requested by FirstEnergy. The instructions to Account 146 are

sufficient and can accommodate cash management programs used by FERC-regulated entities.

*C. Prohibition on Netting*

37. The NOPR proposed that "cash deposits and borrowings may not be netted" in order to provide better transparency of inter-company payables or receivables resulting from cash management agreements.

*Comments Received*

38. Commenters uniformly object to this proposal or request clarification as to the meaning of this requirement, pointing out that netting is the essence of, and one of the key benefits of, cash management programs.<sup>12</sup> Commenters argued that cash management programs operate, essentially, as ordinary checking accounts and that transactions within an account are netted against each other.<sup>13</sup>

*Commission Response*

39. Prior to the issuance of the NOPR, the Commission examined a number of FERC-regulated entities' cash management accounts. That examination revealed numerous instances in which amounts reported in FERC Accounts 146 and 13 had negative balances. The Commission views the reporting of negative balances in these receivables accounts rather than in payable accounts as inappropriate and potentially misleading. The Commission included in the NOPR a ban on netting in an effort to rectify that situation.

40. The Commission agrees with the commenters that cash management programs operate essentially as ordinary checking accounts and that transactions within an account are netted against each other. The Commission is therefore deleting the prohibition on netting from this interim rule. We will require, however, that the balances in the FERC accounts that record cash management activities be properly classified: debit balances must be reported in the appropriate accounts receivable account and credit balances must be reported in the appropriate accounts payable account at the end of each accounting period.

*D. Applicability of Rule*

41. The NOPR proposed that the requirements of this rule apply to all FERC-regulated entities including registered holding companies that are regulated by the United States Securities and Exchange Commission (SEC).

<sup>8</sup> 18 CFR parts 125, 225 and 356 (2003).

<sup>9</sup> EEL made this point in its comments at the September 25, 2002 technical conference.

<sup>10</sup> Duke Energy comments at 26–27.

<sup>11</sup> *Id.* at 27.

<sup>12</sup> See, e.g., AOPL, INGAA, and EEL.

<sup>13</sup> *Id.*

*Comments Received*

42. Registered holding company commenters uniformly argue that registered holding companies, regulated by the SEC under the Public Utility Holding Company Act of 1935 (PUHCA), should be exempted from the proposed rule.<sup>14</sup> They argue that their cash management activities are already regulated by the SEC, that efforts by FERC to regulate the same would be burdensome and duplicative, that the PUHCA itself protects against cash management abuse, and that Section 318 of the Federal Power Act (FPA) deprives FERC of the authority to regulate their cash management practices.<sup>15</sup> Ameren suggests that the Commission deem registered holding companies in compliance with the proposed rule so long as the companies comply with all applicable PUHCA rules and SEC orders. Furthermore, several commenters, including Cinergy, point out that the regulation of cash management programs falls squarely within the technical expertise of the SEC.

43. Similarly, USG Pipelines,<sup>16</sup> Cinergy and others argue that the rule should not apply to small regulated entities and urge the Commission expressly to exempt these entities. The NRECA asks that the rule not be applied to cash management programs maintained by FERC-regulated electric cooperatives.

44. Energy marketers and traders argue that ratepayers would not be adversely affected by mismanagement of their cash management programs, and, therefore, they should be exempted from the proposed rule.<sup>17</sup> PSEG suggests expanding the exemption from the Uniform System of Accounts to include generators and suggests that energy marketers, traders and generators be allowed to apply for waivers by demonstrating that they are not subject to the Commission's cost-based rate regulation, similar to the Commission's

<sup>14</sup> Registered holding company commenters included: American Electric Power Company, Inc. (AEP), Allegheny, Ameren, Cinergy, FirstEnergy, KeySpan, National Fuel, National Grid, NiSource, Northeast Utilities (NU), SCANA, and WGL Holdings, Inc. (WGL Holdings).

<sup>15</sup> 16 U.S.C. 792.

<sup>16</sup> USG Pipeline Co., B-R Pipeline Co. and United States Gypsum Co. (collectively USG Pipelines).

<sup>17</sup> Ontario Energy Trading International, Electric Power Supply Association, Edison Mission Energy, and Edison Mission Marketing and Trading, Inc. The concern is that entities with market-based rate authority may lose their exemption from the requirements of the Uniform System of Accounts, at which time they would become subject to the Commission's cash management requirements.

waiver of its part 35 cost of service filing requirements.

*Commission Response*

45. The Commission agrees with comments submitted by registered holding companies and their affiliates asserting that the SEC regulates their cash management activities. The Commission is not, in this interim rule, prescribing any limitations on the entry into and participation in cash management programs. The Commission is, however, prescribing documentation requirements that will apply to FERC-regulated entities that are subject to the SEC's oversight. In carrying out its oversight, the SEC has not promulgated regulations governing the documentation to be maintained for cash management activities. The SEC's case-by-case documentation requirements do not provide assurance that documentation adequate for this Commission's regulatory oversight will be maintained. Therefore, we shall require that FERC-regulated entities that are also subject to the PUHCA follow the documentation requirements that we are adopting in our Uniform Systems of Accounts. Section 318 of the FPA does not prohibit the imposition of these requirements because there is no conflict between the documentation requirements the Commission is adopting here and those used by the SEC.

46. The eligibility concerns of NRECA and others representing "small regulated entities" are moot since the Commission is not adopting the proposed prerequisites for participation in cash management programs. Small regulated entities and NRECA members are subject to our Uniform Systems of Accounts and thus will be subject to the documentation requirements that we are adopting in this interim rule.

47. Energy marketers, traders, generators and other FERC-regulated entities that have been granted waivers of our accounting and the FERC Annual Report Forms 1, 1-F, 2, 2-A or 6 reporting requirements will not be subject to the documentation requirements included in this interim rule.

*E. Legal Authority to Prescribe Prerequisites*

48. Several commenters<sup>18</sup> argue that FERC lacks the authority under the

<sup>18</sup> Among the commenters are Duke Energy, INGAA (comments supported by El Paso, National Fuel, and Williston Basin Interstate Pipeline Co.), EEI (comments supported by AEP), AOPL (comments supported by Chevron), and the Kinder Morgan Pipelines (Kinder Morgan).

Natural Gas Act (NGA),<sup>19</sup> the FPA, as well as the Interstate Commerce Act (ICA)<sup>20</sup> to impose any prerequisites for the use of cash management accounts. Other commenters argue that the regulation of cash management participation is beyond the jurisdiction of the Commission. Others state that the proper way to protect customers and redress cash management issues is through rate cases.<sup>21</sup> Duke Energy in particular argues that the Commission's authority under its ratemaking powers and its related investigatory powers offers ample protection to ratepayers without the need for the more restrictive measures proposed in the NOPR.

49. These commenters' arguments about our authority to prescribe prerequisites to cash management programs are made moot by the Commission's decision in this interim rule to forego such prerequisites. The interim rule revises the Uniform Systems of Accounts for public utilities and licensees, natural gas companies, and oil pipeline companies pursuant to the authority granted the Commission under the FPA, the NGA, and the ICA to prescribe uniform accounting requirements for entities subject to the Commission's jurisdiction.<sup>22</sup>

*F. Requests for Policy Statement*

50. EEI, INGAA, AOPL and other commenters<sup>23</sup> suggest that the Commission issue a policy statement concerning cash management programs rather than a rule.

51. Because a policy statement does not have the force of law, a policy statement in lieu of a rule would not provide the assurance or transparency of a rule on documentation requirements and, therefore, would not adequately protect ratepayers. The Commission

<sup>19</sup> 15 U.S.C. 717.

<sup>20</sup> 49 App. U.S.C. 1-85 (1988).

<sup>21</sup> E.g., Kinder Morgan, NiSource. These commenters argue that the Commission can prevent harm to consumers by disallowing the passthrough of costs related to improper cash management practices to customers, when the regulated entity files a rate case to recover such costs. However, the Commission observes that rate cases are infrequent for many FERC-regulated entities, and the harm done by improper cash management practices may occur long before a rate case is filed.

<sup>22</sup> Section 301(a) of the Federal Power Act (FPA), 16 U.S.C. 825(a), section 8 of the Natural Gas Act (NGA), 15 U.S.C. 717g and section 20 of the Interstate Commerce Act (ICA), 49 App. U.S.C. 20 (1988), authorize the Commission to prescribe rules and regulations concerning accounts, records and memoranda as necessary or appropriate for the purpose of administering the FPA, NGA, and the ICA. The Commission may prescribe a system of accounts for FERC-regulated companies and, after notice and opportunity for hearing, may determine the accounts in which particular outlays and receipts will be entered, charged or credited.

<sup>23</sup> See e.g. Gulf South, Duke Energy, and Kinder Morgan.

finds that the public interest will be better satisfied by implementing a rule rather than by issuing advisory guidelines.

#### G. New Reporting Requirements

52. As part of this interim rule, the Commission is seeking comments on new reporting requirements that were not explicitly included in the NOPR that would require FERC-regulated entities to file their cash management agreements with the Commission, and to notify the Commission when their proprietary capital ratios fall below 30 percent and when they subsequently return to or exceed 30 percent.

53. As previously mentioned, large amounts of funds are controlled through cash management programs and in many instances such programs were not formalized in writing or were not adequately documented. In order to monitor these types of programs, the Commission is exercising its authority pursuant to sections 4, 304 and 309 of the Federal Power Act, sections 10(a) and 16 of the Natural Gas Act, and section 20 of the Interstate Commerce Act to require the filing of cash management agreements, and the filing of a notification when a FERC-regulated entity's proprietary capital ratio falls below 30 percent and when it subsequently returns to or exceeds 30 percent.<sup>24</sup> Additionally, all of the information collected in these filings will be considered non-confidential in nature and therefore will be made available to the general public for greater transparency. The Commission will not implement any reporting requirements, however, until it has received and analyzed the comments.

#### 1. Submission of Cash Management Agreements

54. The Commission is seeking comments on a new reporting requirement that would require FERC-regulated entities participating in cash management programs to file their cash management agreements, and any subsequent changes within 10 days from the date of the change. The filing of these agreements with the Commission will provide timely information that will lend additional transparency to the cash management program activities between FERC-regulated entities and their affiliates. The public availability of the information will allow the Commission, as well as all users of financial information to make informed decisions based on relevant and accurate information.

<sup>24</sup> See 16 U.S.C. 797, 825c and 825h; 15 U.S.C. 7171(a) and 7170; and 49 App. U.S.C. 1-85.

#### 2. Notification Requirements

55. The Commission is seeking comments on a new reporting requirement that would require FERC-regulated entities participating in cash management programs to notify the Commission when their proprietary capital ratios fall below 30 percent and when they subsequently return to or exceed 30 percent. In addition, the Commission is seeking comments on what would be an appropriate notification standard to use as a comparable indicator of a change in financial condition for electric cooperatives that file FERC Annual Report Forms 1 or 1-F with the Commission.

56. Although the two financial prerequisites (*i.e.*, the investment grade credit rating and the 30 percent proprietary capital) included in the NOPR were not adopted as part of this interim rule, they are important indicators of a company's financial health and indicate the extent to which a FERC-regulated entity has taken on debt to finance its assets or operations. A highly leveraged company, with the accompanying fixed interest expense and future obligation to repay the principal, may be in a weakened financial position if there is an unfavorable change in the business climate. This event may result in an inadequate flow of cash which may have an adverse impact on the FERC-regulated entity's ability to remain solvent.

57. Therefore, when a FERC-regulated entity's proprietary capital ratio falls below 30 percent (or conversely, its long-term debt ratio rises above 70 percent), the FERC-regulated entity must file a notification with the Commission, detailing its proprietary capital ratio, the significant event(s) or transaction(s) that contributed to the proprietary capital ratio falling below 30 percent, the extent to which the FERC-regulated entity has amounts loaned or money advanced to others within its corporate group through its cash management program(s), and plans, if any, to raise its proprietary capital ratio.

58. NRECA asserts that many of its electric cooperative members 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. However, NRECA also states that many electric cooperatives have themselves established subsidiaries that are engaged in diversified non-electric business

activities.<sup>25</sup> The Commission recognizes that electric cooperatives generally do not accumulate profits for shareholders as is the case of investor owned utilities. Consequently, the proprietary capital ratio may not be an appropriate indicator of a weakened financial condition for a cooperative. The Commission therefore invites comment on what would be an appropriate metric of financial condition to use as a notification trigger for cooperatives that participate in cash management programs with their affiliates.

59. Under the Uniform System of Accounts, FERC-regulated entities are required to keep their books and records on a monthly basis.<sup>26</sup> Therefore, within 15 days after the end of the month, FERC-regulated entities subject to this interim rule must compute their proprietary capital ratios. The proprietary capital ratio must be computed as follows. The numerator will be the sum of the balances in the proprietary capital accounts. Public utilities and licensees and natural gas companies will use Account 201, Common stock issued, through Account 219, Accumulated other comprehensive income, and oil pipeline companies will use Account 70, Capital stock, through Account 77, Accumulated other comprehensive income. The denominator will be the sum of the balances in the proprietary capital accounts plus the sum of the balances in the long-term debt accounts. Public utilities and licensees, and natural gas companies will use Account 221, Bonds, through Account 226, Unamortized discount on long-term debt-Debit, and oil pipeline companies will use Account 60, Long term debt-payable after one year, through Account 62, Unamortized discount and interest on long term debt. In the event the proprietary capital ratio falls below 30 percent, the FERC-regulated entity must make its notification filing within 5 days after making the above calculation. Additionally, the FERC-regulated entity will be required to notify the Commission within 5 days after the determination has been made that its proprietary capital ratio has met or exceeded 30 percent.

#### IV. Regulatory Flexibility Act Statement

60. The Regulatory Flexibility Act (RFA)<sup>27</sup> requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have a significant economic impact on

<sup>25</sup> NRECA comments at 4.

<sup>26</sup> General Instruction 4 in 18 CFR parts 101 and 201, General Instruction 1-3 in 18 CFR part 352.

<sup>27</sup> 5 U.S.C. 601-612.

substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect.

61. The Commission concludes that this interim rule would not have such an impact on small entities. Most filing companies regulated by the Commission do not fall within the RFA's definition of a small entity, and the data required by this rule are already being captured by their accounting systems. However, if the recordkeeping requirements represent an undue burden on small businesses, the entity affected may seek a waiver of the requirements from the Commission.

62. AOPL argues that the NOPR's estimate of the impact of this rule for the purposes of the Regulatory Flexibility Act of 1980 was too low. AOPL bases its estimate largely on the costs that previously unrated subsidiaries would incur to obtain credit ratings.<sup>28</sup> The interim rule, however, eliminates the proposed prerequisites for participation in cash management programs thus making concerns over obtaining credit ratings moot.

#### V. Environmental Analysis

63. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.<sup>29</sup> The Commission excludes certain actions not having a significant effect on the human environment from the requirement to prepare an environmental impact statement.<sup>30</sup> No environmental consideration is raised by the promulgation of a rule that is procedural or does not substantially change the effect of legislation or regulations being amended.<sup>31</sup> This rule updates parts 101, 141, 201, 260, 352 and 357 of the Commission's regulations and does not substantially change the effect of the underlying legislation or the regulations being revised or eliminated. Accordingly, no environmental consideration is necessary.

#### VI. Information Collection Statement

64. The Office of Management and Budget's (OMB) regulations at 5 CFR 1320.11 require that it approve certain

reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the information collection requirements of this interim rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

65. In accordance with section 3507(d) of the Paperwork Reduction Act of 1995,<sup>32</sup> the information collection requirements in the subject rulemaking were submitted to OMB for review.

66. *Public Reporting Burden:* In the NOPR the Commission provided burden estimates based on an estimate of the number of FERC-regulated entities currently filing FERC Forms 1, 2 and 6, who are members of consolidated groups and participate in their consolidated groups' cash management programs. The NOPR estimated that 448 FERC-regulated entities would need to convert verbal cash management agreements into writing to comply with this interim rule. For each entity, the NOPR estimated it would require an average of two hours to make the conversion for a total of burden estimate of 896 hours.<sup>33</sup> In addition, FERC-regulated entities must maintain documentation on their cash management programs. Also, the Commission is seeking comments on new reporting requirements that would require FERC-regulated entities to file their cash management agreements and notify the Commission when their proprietary capital ratios fall below 30 percent and when their proprietary capital ratios subsequently return to or exceed 30 percent. These requirements will be part of a new reporting requirement, FERC-604. The burden estimates below reflect both the documentation and the reporting requirements.

67. The Commission received 48 comments on the proposed cash management prerequisites and documentation requirements. Of the 48 commenters, EEI and AOPL challenged the Commission's estimates for reporting burden as too low. EEI asserts

a company of any size with multiple cash management agreements is likely to spend more than two hours per year maintaining written cash management agreements and the non-netted transactional records. EEI further asserts that the rule's FERC Form 1 reporting requirements would likely take 10 or more hours by themselves. EEI suggests that a more realistic estimate of burden imposed by the rule would be at least 30 hours or more per company per year. AOPL states that while the FERC Form 6 reporting is unlikely to increase significantly, other requirements within the proposed rule would have a significant impact on the cost and burden of this rule. AOPL estimates the cost of complying with the investment grade rating requirement could range from \$100,000 to \$300,000 for each previously unrated subsidiary. Six other commenters argued that the proposed prerequisite would impose significant costs and burdens upon them.

68. In this interim rule, the Commission has eliminated the prerequisites for participation in cash management programs and the no-netting requirement for cash management transactions. Therefore, issues raised by EEI, AOPL and others about costs and burdens of complying with these aspects of the proposed rule are moot. The Commission concludes that EEI's comment that the rule imposes ten or more hours of additional burden on FERC Form 1 reporting requirements is unsupported and misplaced. Similarly, the Commission concludes that EEI has not provided any support regarding its assertion that burden imposed by this rule is 30 or more hours. The Commission finds the burden associated with converting documents to comply with this interim rule is minimal and that its previous estimate was a reasonable one. While FERC-regulated entities will now be required to reduce their cash management agreements to writing, the Commission finds that this is simply sound business practice and, as the Commission is not dictating the terms of these agreements, the burden should be small.

#### 69. Recordkeeping (Documentation) Requirements

requirement and requires all cash management agreements to be in writing, the associated burden is correctly assigned to FERC-555 "Records Retention Requirements." The reporting requirements that are also the subject of this interim rule will be identified by a new information collection requirement.

<sup>28</sup> AOPL Comments at 12.

<sup>29</sup> Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶30,783 (1987).

<sup>30</sup> 18 CFR 380.4.

<sup>31</sup> 18 CFR 380.4(a)(2)(ii).

<sup>32</sup> 44 U.S.C. 3507(d).

<sup>33</sup> In the NOPR, the burden estimate was improperly identified as applying to the FERC Form 1, FERC Form 2 and FERC Form 6 data collections. Since the interim rule imposes a recordkeeping

Data Collection	Number of Respondents	Number of Responses Per Respondent	Hours Per Respondent	Total Annual Hours
FERC-555 .....	448	1	2	896
Totals .....				896

The total annual hours for documentation requirements = 896 hours.

#### 70. Reporting Requirements:

Data Collection	Number of Respondents	Number of Responses Per Respondent	Hours Per Response	Total Annual Hours
FERC-604 (new) (cash management agreement) .....	602*	1	1.5	903
(Notification) .....	34	2	.75	51
Totals .....				954

\*(The number of respondents as identified in the NOPR that will be subject to submitting documents describing their cash management agreements.)

The total annual hours for reporting requirements is 954.

71. *Information Collection Costs:* The Commission estimates the costs associated with converting verbal cash management agreements into writing to comply with the requirements of this interim rule to be \$50,418.<sup>34</sup> The Commission estimates the costs associated with submitting cash management program documents and notifying the Commission when a FERC-regulated entity's proprietary capital ratio falls below 30 percent and when its proprietary capital ratio subsequently returns to or exceeds 30 percent to be \$53,681.<sup>35</sup>

72. The Commission has assured itself, by means of its internal review that there is specific, objective support for the burden estimates associated with the information requirements.

*Title:* FERC-555 "Records Retention Requirements"; FERC-604 "Cash Management Programs and Financial Reporting Requirements".

*Action:* Proposed information collection requirements.

*OMB Control No.:* 1902-0098 and to be determined.

*Respondents:* Public utilities and licensees; natural gas companies; oil pipeline companies (Business or other for profit, including small businesses.)

*Frequency of the information:* On occasion.

*Necessity of the information:* The interim rule amends the Commission's regulations to revise parts 101, 141, 201, 260, and 352, the Commission's Uniform Systems of Accounts, to provide information collection requirements for cash management

activities and to require that cash management agreements be in writing.

73. The implementation of these requirements will help the Commission carry out its responsibilities under the FPA, the NGA and the ICA to protect ratepaying customers of FERC-regulated entities by providing greater transparency of cash management activities.

74. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, ED-30, (202) 502-8415, or [michael.miller@ferc.gov](mailto:michael.miller@ferc.gov)] or by sending comments on the collections of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Energy Regulatory Commission, 725 17th Street, NW., Washington, DC 20503. The Desk Officer can also be reached by phone at (202) 395-7856, or fax: (202) 395-7285.

#### VII. Comment Procedures

75. The Commission invites all interested persons to submit comments on the new reporting requirements included in this interim rule, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due August 7, 2003. Comments must refer to Docket No. RM02-14-000, and must include the commenter's name, the organization he or she represents, if applicable, and the commenter's address in the comments. Comments may be filed either in electronic or paper format.

76. Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington DC 20426.

77. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability Section below. Commenters on this rule are not required to serve copies of their comments on other commenters.

#### VIII. Document Availability

78. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

79. From FERC's Home page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or

<sup>34</sup> (896 hours for collection+2,080 hours) × \$117,041 = \$50,418.

<sup>35</sup> (954 hours for collection+2,080 hours) × \$117,041 = \$53,681.

downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

80. User assistance is available for FERRIS and the FERC's Web site during normal business hours by contacting FERC Online Support by telephone at (866) 208-3676 (toll free) or for TTY, (202) 502-8659, or by e-mail at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov).

**IX. Effective Date and Congressional Notification**

81. These regulations are effective August 7, 2003. The Commission, however, will not implement the new reporting requirements until it has had an opportunity to consider the comments filed on these requirements. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this interim rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>36</sup> The Commission will submit the interim rule to both houses of Congress and the General Accounting Office.<sup>37</sup>

**List of Subjects**

*18 CFR Part 101*

Electric power, Electric utilities, Reporting and recordkeeping requirements, Uniform System of Accounts.

*18 CFR Part 141*

Electric power, Reporting and recordkeeping requirements.

*18 CFR Part 201*

Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

*18 CFR Part 260*

Natural gas, Reporting and recordkeeping requirements.

*18 CFR Part 352*

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

*18 CFR Part 357*

Pipelines, Reporting and recordkeeping requirements.

By the Commission.

**Magalie R. Salas,**  
*Secretary.*

■ In consideration of the foregoing, the Commission is amending parts 101, 141, 201, 260, 352, and 357 in Title 18 of the Code of Federal Regulations, as follows:

**PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT**

■ 1. The authority citation for part 101 continues to read as follows:

**Authority:** 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352, 7651–7651o.

■ 2. In part 101, Balance Sheet Accounts, the existing paragraph in account 146 is designated as paragraph A, and paragraphs B and C are added to read as follows:

**Balance Sheet Accounts**

\* \* \* \* \*

*146 Accounts receivable from associated companies.*

A. \* \* \*

B. A public utility or licensee participating in a cash management program must maintain supporting documentation for all deposits into, borrowings from, interest income from, and interest expense to such program. Cash management programs include all agreements in which funds in excess of the daily needs of the public utility or licensee along with the excess funds of the public utility's or licensee's parent, affiliated and subsidiary companies are concentrated, consolidated, or otherwise made available for use by other entities within the corporate group. The written documentation must include the following information:

(1) For each deposit with and each withdrawal from the cash management program: the date of the deposit or withdrawal, the amount of the deposit or withdrawal, the maturity date, if any, of the deposit, and the interest earning rate on the deposit;

(2) For each borrowing from a cash management program: the date of the borrowing, the amount of the borrowing, the maturity date, if any, of the borrowing, and the interest rate on the borrowing;

(3) The security, if any, provided by the cash management program for repayment of deposits into the cash management program and the security required, if any, by the cash management program in support of borrowings from the program; and

(4) The daily balance of the cash management program.

C. The public utility or licensee must maintain current and up-to-date copies of the documents authorizing the establishment of the cash management program including the following:

(1) The duties and responsibilities of the administrator and the other

participants in the cash management program;

(2) The restrictions on deposits or borrowings by participants in the cash management program;

(3) The method used to determine the interest earning rates and interest borrowing rates for deposits into and borrowings from the program; and

(4) The method used to allocate interest income and expenses among participants in the program.

\* \* \* \* \*

**PART 141—STATEMENTS AND REPORTS (SCHEDULES)**

■ 3. The authority citation for part 141 continues to read:

**Authority:** 15 U.S.C. 79, 16 U.S.C. 791a–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 4. Section 141.500 is added to read as follows:

**§ 141.500 Cash management programs and financial condition reports.**

(a) Public utilities and licensees subject to the provisions of the Commission's Uniform System of Accounts Prescribed in part 101 of this title that participate in cash management programs must file these agreements with the Commission. The documentation establishing the cash management program and entry into the program must be filed within 10 days of entry into the program. Subsequent changes to the cash management agreement must be filed with the Commission within 10 days of the change.

(b) Public utilities and licensees must determine, on a monthly basis within 15 days after the end of each month, the percentage of their capital structure that constitutes proprietary capital. The proprietary capital ratio must be computed using a formula in which the total of the balances in the Proprietary Capital Accounts; Account 201, Common stock issued, through Account 219, Accumulated other comprehensive income, in part 101 of this title is the numerator and the total proprietary capital plus the total of the Long-Term Debt Accounts; Account 221, Bonds, through Account 226, Unamortized discount on long-term debt—Debit, in part 101 of this title, is the denominator.

(c) In the event that the proprietary capital ratio is less than 30 percent, the public utility or licensee must notify the Commission within 5 days of the determination of that fact and must describe the significant event(s) or transaction(s) causing its proprietary capital ratio to be less than 30 percent including the extent to which the public

<sup>36</sup> 5 U.S.C. 804(2) (2002).

<sup>37</sup> 5 U.S.C. 801(a)(1)(A) (2002).

utility or licensee has amounts loaned or money advanced to its parent, subsidiary, or affiliate companies through its cash management program(s), along with plans, if any, to regain at least a 30 percent proprietary capital ratio.

(d) In the event that the proprietary capital ratio subsequently meets or exceeds 30 percent, the public utility or licensee must notify the Commission within 5 days of the determination of that fact.

**PART 201—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT**

■ 5. The authority citation for part 201 continues to read as follows:

**Authority:** 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352, 7651–7651o.

■ 6. In part 201, Balance Sheet Accounts, the existing paragraph in account 146 is designated as paragraph A, and paragraphs B and C are added to read as follows:

**Balance Sheet Accounts**

\* \* \* \* \*

146 *Accounts receivable from associated companies.*

A. \* \* \*

B. A natural gas company participating in a cash management program must maintain supporting documentation for all deposits into, borrowings from, interest income from, and interest expense to such program. Cash management programs include all agreements in which funds in excess of the daily needs of the natural gas company along with the excess funds of the natural gas company's parent, affiliated and subsidiary companies are concentrated, consolidated, or otherwise made available for use by other entities within the corporate group. The written documentation must include the following information:

(1) For each deposit with and each withdrawal from the cash management program: The date of the deposit or withdrawal, the amount of the deposit or withdrawal, the maturity date, if any, of the deposit, and the interest earning rate on the deposit;

(2) For each borrowing from a cash management program: The date of the borrowing, the amount of the borrowing, the maturity date, if any, of the borrowing, and the interest rate on the borrowing;

(3) The security, if any, provided by the cash management program for repayment of deposits into the cash management program and the security

required, if any, by the cash management program in support of borrowings from the program; and

(4) The daily balance of the cash management program.

C. The natural gas company must maintain current and up-to-date copies of the documents authorizing the establishment of the cash management program including the following:

(1) The duties and responsibilities of the administrator and the other participants in the cash management program;

(2) The restrictions on deposits or borrowings by participants in the cash management program;

(3) The method used to determine the interest earning rates and interest borrowing rates for deposits into and borrowings from the program; and

(4) The method used to allocate interest income and expenses among participants in the program.

\* \* \* \* \*

**PART 260—STATEMENTS AND REPORTS (SCHEDULES)**

■ 7. The authority citation for part 260 continues to read:

**Authority:** 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

■ 8. Section 260.400 is added to read as follows:

**§ 260.400 Cash management programs and financial condition reports.**

(a) Natural gas companies subject to the provisions of the Commission's Uniform System of Accounts in part 201 of this title that participate in cash management programs must file these agreements with the Commission. The documentation establishing the cash management program and entry into the program must be filed within 10 days of entry into the program. Subsequent changes to the cash management agreement must be filed with the Commission within 10 days of the change.

(b) Natural gas companies must determine, on a monthly basis within 15 days after the end of each month, the percentage of their capital structure that constitutes proprietary capital. The proprietary capital ratio must be computed using a formula in which the total of the balances in the Proprietary Capital Accounts; Account 201, Common stock issued, through Account 219, Accumulated other comprehensive income, in part 201 of this title is the numerator and the total proprietary capital plus the total of the Long-Term Debt Accounts; Account 221, Bonds, through Account 226, Unamortized

discount on long-term debt—Debit, in part 201 of this title, is the denominator.

(c) In the event that the proprietary capital ratio is less than 30 percent, the natural gas company must notify the Commission within 5 days of the determination of that fact and must describe the event(s) or transaction(s) causing its proprietary capital ratio to be less than 30 percent including the extent to which the natural gas company has amounts loaned or money advanced to its parent, subsidiary, or affiliate companies through its cash management program(s), along with plans, if any, to regain at least a 30 percent proprietary capital ratio.

(d) In the event that the proprietary capital ratio subsequently meets or exceeds 30 percent, the company must notify the Commission within 5 days of the determination of that fact.

**PART 352—UNIFORM SYSTEMS OF ACCOUNTS PRESCRIBED FOR OIL PIPELINE COMPANIES SUBJECT TO THE PROVISIONS OF THE INTERSTATE COMMERCE ACT**

■ 9. The authority citation for part 352 continues to read as follows:

**Authority:** 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

■ 10. In Part 352, Balance Sheet Accounts, the existing paragraph of account 13 is designated as paragraph (a) and paragraphs (b) and (c) are added to read as follows:

**Balance Sheet Accounts**

\* \* \* \* \*

13 *Receivables from affiliated companies.*

(a) \* \* \*

(b) An oil pipeline company participating in a cash management program must maintain supporting documentation for all deposits into, borrowings from, interest income from, and interest expense to such program. Cash management programs include all agreements in which funds in excess of the daily needs of the carrier along with the excess funds of the carrier's parent, affiliated and subsidiary companies are concentrated, consolidated, or otherwise made available for use by other entities within the corporate group. The written documentation must include the following information:

(1) For each deposit with and each withdrawal from the cash management program: the date of the deposit or withdrawal, the amount of the deposit or withdrawal, the maturity date, if any, of the deposit, and the interest earning rate on the deposit;

(2) For each borrowing from a cash management program: the date of the

borrowing, the amount of the borrowing, the maturity date, if any, of the borrowing, and the interest rate on the borrowing;

(3) The security, if any, provided by the cash management program for repayment of deposits into the cash management program and the security required, if any, by the cash management program in support of borrowings from the program; and

(4) The daily balance of the cash management program.

(c) The oil pipeline company must maintain current and up-to-date copies of the documents authorizing the establishment of the cash management program including the following:

(1) The duties and responsibilities of the administrator and the other participants in the cash management program;

(2) The restrictions on deposits or borrowings by participants in the cash management program;

(3) The method used to determine the interest earning rates and interest borrowing rates for deposits into and borrowings from the program; and

(4) The method used to allocate interest income and expenses among the participants in the program.

\* \* \* \* \*

#### **PART 357—ANNUAL SPECIAL OR PERIODIC REPORTS: CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT**

■ 11. The authority citation for part 357 continues to read:

**Authority:** 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1998).

■ 12. Section 357.5 is added to read as follows:

#### **§ 357.5 Cash management programs and financial condition reports.**

(a) Oil pipeline companies subject to the provisions of the Commission's Uniform System of Accounts in part 352 of this title that participate in cash management programs must file these agreements with the Commission. The documentation establishing the cash management program and entry into the program must be filed within 10 days of entry into the program. Subsequent changes to the cash management agreement must be filed with the Commission within 10 days of the change.

(b) Oil pipeline companies must determine, on a monthly basis within 15 days after the end of each month, the percentage of their capital structures that constitute proprietary capital. The proprietary capital ratio must be computed using a formula in which the

total of the balances in the Proprietary Capital Accounts; Account 70, Capital stock, through Account 77, Accumulated other comprehensive income, in part 352 of this title, is the numerator and the total proprietary capital plus the total of the Long-Term Debt Accounts; Account 60, Long-term debt payable after one year, through Account 62, Unamortized discount and interest on long-term debt, in part 352 of this title, is the denominator.

(c) In the event that the proprietary capital ratio is less than 30 percent, the oil pipeline company must notify the Commission within 5 working days of the determination of that fact and must describe the significant event(s) or transaction(s) causing its proprietary capital ratio to be less than 30 percent including the extent to which the oil pipeline company has amounts loaned or money advanced to its parent, subsidiary, or affiliate companies through its cash management program(s), along with plans, if any, to regain at least a 30 percent proprietary capital ratio.

(d) In the event that the proprietary capital ratio subsequently meets or exceeds 30 percent, the carrier must notify the Commission within 5 days of the determination of that fact.

**Note:** This Appendix will not be published in the *Code of Federal Regulations*.

#### **Appendix A—Commenters in RM02–14–000**

Air Conditioning Contractors of America, *et al.* (late-filed).  
 Allegheny Energy, Inc., *et al.*  
 Ameren Corporation.  
 American Electric Power Company, Inc., *et al.*  
 American Public Gas Association.  
 Association of Oil Pipelines.  
 Avista Corporation.  
 California Public Utilities Commission (late-filed).  
 Chevron Pipeline Company, *et al.*  
 Cinergy Corp.  
 Dominion Resources, Inc.  
 Duke Energy Corporation.  
 Edison Electric Institute.  
 Edison Mission Energy and Edison Mission Marketing and Trading, Inc.  
 Electric Power Supply Association.  
 El Paso Energy Partners, L.P.  
 Entergy Services, Inc.  
 Exelon Corporation.  
 Fairfax Financial Holdings, Ltd. (late-filed).  
 FirstEnergy Corp.  
 Gulf South Pipeline Company, LP.  
 Interstate Natural Gas Association of America.  
 Kansas State Corporation Commission.  
 KeySpan Corporation.  
 The KM Pipelines.  
 Marathon Ashland Pipeline LLC.  
 Midwestern Gas Transmission Company.  
 Missouri Public Service Commission (late-filed).

National Fuel Gas Supply Corporation.  
 National Grid USA.  
 National Rural Electric Cooperative Association.  
 NiSource Inc.  
 Northeast Utilities.  
 Northern Natural Gas Company.  
 Ontario Energy Trading International.  
 PEPCO Holdings, Inc.  
 PG&E Corporation.  
 Philadelphia Gas Works.  
 Pinnacle West Companies.  
 Plains All American Pipeline, L.P.  
 Public Service Electric and Gas Company, *et al.*  
 SCANA Corporation.  
 TECO Power Services Corporation.  
 USG Pipeline Co., B–R Pipeline Co., and United States Gypsum Co.  
 Washington Utilities and Transportation Commission (late-filed).  
 WGL Holdings, Inc., Hampshire Gas Co., and Washington Gas Light Co.  
 Williston Basin Interstate Pipeline Company.  
 WPS Resources Corporation.  
 [FR Doc. 03–16819 Filed 7–7–03; 8:45 am]

**BILLING CODE 6717–01–P**

## **DEPARTMENT OF TREASURY**

### **Internal Revenue Service**

#### **26 CFR Part 1**

[TD 9072]

RIN 1545–BA24

#### **Catch-Up Contributions for Individuals Age 50 or Older**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations that provide guidance concerning the requirements for retirement plans providing catch-up contributions to individuals age 50 or older pursuant to the provisions of section 414(v). These final regulations affect section 401(k) plans, section 408(p) SIMPLE IRA plans, section 408(k) simplified employee pensions, section 403(b) tax-sheltered annuity contracts, and section 457 eligible governmental plans, and affect participants eligible to make elective deferrals under these plans or contracts.

**DATES:** Effective Date: These final regulations are effective on July 8, 2003.

**Applicability Date:** These final regulations are applicable to contributions in taxable years beginning on or after January 1, 2004.

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**SUPPLEMENTARY INFORMATION:**