

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Documentation Requirements for Cash Management Programs – Interim Rule)))))	Docket No. RM02-14-000, Order No. 634
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**COMMENTS OF
THE EDISON ELECTRIC INSTITUTE**

I. INTRODUCTION

The Edison Electric Institute (EEI) is the association of shareholder-owned electric utilities, international affiliates and industry associates worldwide. Our U.S. members serve more than 90 percent of all customers served by the shareholder-owned segment of the industry. They generate almost 70 percent of all electricity generated by electric companies in the country and serve nearly 70 percent of all ultimate customers in the nation.

EEI is submitting these Comments in response to proposed new reporting requirements set out in the interim rule entitled “Documentation Requirements for Cash Management Programs,” issued by the Federal Energy Regulatory Commission (FERC or the Commission) on June 26, 2003 and published in the *Federal Register* at 68 Fed. Reg. 40500 on July 8, 2003. In the interim rule, the Commission has adopted certain record-keeping requirements for jurisdictional entities that participate in cash management programs or money pools, and the

Commission has proposed certain reporting requirements, inviting comments on the latter by August 7, 2003.

II. EEI INCORPORATES ITS JULY 28 REQUEST FOR REHEARING IN THIS DOCKET INTO THESE COMMENTS

On July 28, 2003, EEI filed a Request for Rehearing in this docket regarding the record-keeping features of the interim rule. In that Request, we supported the Commission's decision not to impose certain requirements the Commission had been considering in its original Notice of Proposed Rulemaking (NOPR) in this docket, which was published at 67 Fed. Reg. 51150 on August 7, 2002. In particular, we support the Commission's decision not to impose financial prerequisites on companies participating in cash management programs, and we support the Commission's decision to allow companies to track net transactions within the programs.

On the other hand, in our Request for Rehearing, EEI urged the Commission not to apply the interim rule's requirements to cash management programs already overseen by the Securities and Exchange Commission (SEC) or to public utilities and licensees whose participation in cash management arrangements or whose securities and debt are already regulated by the utility commission of the State in which the utility or licensee is organized. We also encouraged the Commission to reconsider its documentation requirement pertaining to interest rates on each deposit into or withdrawal from a cash management program, and to reconsider its plan to have companies monitor their equity capitalization ratios and do so on a monthly basis.

Rather than repeat the points we covered in our Request for Rehearing, EEI incorporates the Request by reference into these Comments. The points we made in the Request about exempting companies already subject to regulatory requirements set by the SEC or a State utility commission, and relating to the 30% capitalization test, apply in equal measure to the proposed new reporting requirements as to the interim rule's documentation requirements. We encourage the Commission to review the Request for Rehearing together with these Comments and to modify the interim rule accordingly.

III. THE COMMISSION SHOULD NOT REQUIRE FILING OF CASH MANAGEMENT PROGRAM AGREEMENTS, OR SHOULD CLARIFY THE PURPOSE OF FILING THEM AND HANDLE THEM WITH CARE

EEI agrees with the Commission that it is reasonable to expect FERC-jurisdictional entities that participate in cash management programs to have documentation that reflects basic elements of the programs, such as the duties and responsibilities of the program administrator, restrictions on borrowings, the method used to determine interest rates on deposits into the programs and borrowings from the programs, and the method used to allocate interest income and expenses among participants. The Commission has proposed to require documentation of these matters at new Section 146(C) within 18 C.F.R. Part 101, the Uniform System of Accounts used by public utilities and licensees subject to the provisions of the Federal Power Act.

However, EEI questions the need for this written documentation to be submitted to the Commission. The Commission should simply require

companies to maintain the documentation, subject to Commission review, without requiring companies to submit the information to the Commission.

To begin with, the Commission requires companies under the Uniform System of Accounts for utilities and licensees, and under counterpart accounting requirements for interstate natural gas and oil pipeline companies, to maintain a number of other records of their financial activities. Yet, rightly, the Commission does not require companies to submit to FERC most of this other information. Instead, the Commission requires the companies to file only periodic reports summarizing selected information, such as the FERC Form 1 submitted by electric utilities and licensees. Such big-picture reporting reduces the reporting burden the companies otherwise would face, and it reduces the corresponding burden the Commission itself would face if it had to manage the submission of large volumes of detailed information. Furthermore, selective reporting of key information better serves the public by avoiding “information overload” that would accompany broader reporting of information, and it helps the Commission avoid collecting even more information that is commercially sensitive than the Commission already does.

Just so, the Commission should require companies to maintain cash management program governing documents, but should not require companies to file copies of the documents. If the Commission believes that a particular cash management program warrants further investigation, the Commission can ask the company for such information as part of a company-specific audit or review.

To the extent the Commission wants to know about inter-affiliate transactions, current reporting requirements on such transactions provide that information and should suffice. By collecting the program agreements, the Commission could invite further proceedings in response to the information, such as protests or complaints, that the Commission may not have in mind, simply because the Commission has collected the documents. At a minimum, the Commission should clarify that any such information it does collect is purely “informational” and is not subject to such complaints, protests, or further proceedings.

In addition, cash management program governing documents are likely to contain confidential information, and may be contained within other documents that are themselves confidential. By their terms, such documents will govern a company’s management of its operating capital, and they can include proprietary contract information among wholly-owned subsidiaries and potentially sensitive information about a company’s capital structure, information that can be highly sensitive. The Commission needs to approach such information with appropriate care. Yet the Commission proposes to treat the information as non-confidential. Interim rule, 68 Fed. Reg. at 40505, paragraph 53. This is inappropriate.

Instead, the Commission should recognize the potential commercial sensitivity of the cash management program governing documents and, ideally, should simply not collect them to avoid creating a repository of the documents that could be subject to release under the Freedom of Information Act, 5 U.S.C. 551 et seq. (FOIA). At a minimum, if the Commission does collect some or all of

the agreements, the Commission should specify that it will accord the agreements confidential treatment, using the FOIA confidential business information (CBI) exemption, at 5 U.S.C. 552(b)(4), the new Confidential Information Protection and Statistical Efficiency Act (CIPSEA), Public Law 107-347, if applicable, and such other authorities as may apply. The Commission should also review its need for such documentation after a year or so of experience.

EEl also is concerned about the very short deadline the Commission has suggested for companies to file cash management program governing documents and changes to the documents. In proposed 18 C.F.R. Section 141.500, the Commission would require the documents to be filed within 10 days of a company entering a program or within 10 days of a change in the documents. This is simply too little time. If the Commission does impose the filing requirement, EEl recommends either allowing companies simply to provide information relating to the programs once each year, for example when the companies file their FERC Form 1, or allowing at least 30 days from entry into a cash management program or changes in the program documents as a more reasonable time frame.

Also, the Commission has not specified the time frame for submission of documents as to existing cash management programs after the rule first takes effect. Such documentation may have to be gathered from source documents that are in historical archives and could take some time to compile. Again, if the Commission does impose the filing requirement, EEl recommends at least 60 to

90 days after the new reporting requirement takes effect for companies to provide such initial information.

IV. THE COMMISSION SHOULD NOT REQUIRE MONITORING OF OR NOTICES ABOUT EQUITY CAPITALIZATION RATIOS, OR SHOULD ADJUST THE REQUIREMENT TO MAKE IT MORE REASONABLE

The Commission has dropped its NOPR proposal to require a 30% capitalization requirement as a prerequisite to participating in a cash management arrangement. Yet in the interim rule, the Commission proposes to require companies to determine whether they meet a 30% capitalization test and to keep the Commission informed of departures below and returns to the 30% level. EEI has a number of concerns about the proposed capitalization monitoring.

First, we encourage the Commission not to require the monitoring and reporting of equity capitalization ratios against a 30% benchmark, recognizing (1) that equity capitalization is but one indicium of financial integrity which needs to be evaluated in the context of a company's overall financial reports and (2) that there are different ways to measure capitalization, suggesting that no one version should be held out to the public as superior to another, and leading to the possibility of public confusion if the Commission holds out information it gathers on this issue as a measure of financial health.

Second, if the Commission does retain the monitoring requirement with or without the reporting requirement, the Commission should clarify that the requirement applies only to "public utilities and licensees that are subject to the Commission's Uniform System of Accounts as prescribed in Part 101." While

proposed 18 C.F.R. Section 141.500(a) contains this quoted text, proposed Sections 141.500(b)(c) and (d) do not. This could most easily be cured by moving the quoted text to the beginning of Section 141.500 and having it apply to the entire section.

Third, even if the Commission does retain the monitoring requirement, the Commission should consider not adopting the reporting requirement. Again, information on each company's equity capitalization ratio could simply be retained as an element of the company's financial records, along with other information kept in accordance with the Uniform System of Accounts and available for the Commission to review, without the need for an additional reporting burden to the Commission.

Fourth, if the Commission does require companies to monitor their equity ratios with or without the reporting requirement, we encourage the Commission to make the requirement a quarterly or annual requirement, NOT a monthly one, recognizing that companies do not all currently prepare monthly financial analyses. A monthly equity capitalization review would entail a substantial burden because it would require some companies to compile information for this sole purpose that they otherwise are not likely to have readily at hand.

Fifth, EEI is concerned about the deadlines for calculating and reporting on the capitalization ratio. As we mentioned in our Request for Rehearing, companies that file quarterly and annual reports are extremely busy after the close of each reporting period assembling relevant financial information, putting it into proper format, checking for errors, and so forth. Moreover, in response to

the Sarbanes-Oxley Act of 2002, the SEC is shortening the deadlines for the 10-Q and 10-K quarterly and annual financial reports. To add a new capitalization monitoring requirement using information that may not be contained in the same form within the company quarterly and annual financial reports, and to set deadlines that overlap those for the quarterly and annual reports, is very burdensome. Furthermore, if the Commission wants companies to explain causes for and plans to address changes in the ratio when it falls below 30% or to notify the Commission when it returns to 30%, the proposed 5 day reporting period is simply unrealistic.

If the Commission retains the capitalization monitoring requirement with or without the reporting requirement, EEI encourages the Commission to provide more time for companies to undertake the requirement(s). We recommend that the Commission tie the requirement(s) to the availability of the financial reports on which the monitoring will be based. Companies should have at least 60 days after the close of each quarter and 90 days after the end of each year, to check the equity capitalization ratio and, if reporting is required, to report drops below and returns to the 30% benchmark. Also, any such deadline(s) need to be stated carefully to avoid confusion. The current proposed reporting requirement in 18 C.F.R. Section 141.500(c) could be misconstrued to require reporting at any time the ratio drops below or returns to 30%, rather than when detected through the specific monitoring required by the rule.

Sixth, if the Commission does retain the monitoring or reporting requirement, the Commission should not consider non-recourse, rate reduction,

or securitization bonds as company debt for purposes of the capitalization test. Such bonds should not be included in either the numerator or the denominator of the capitalization ratio. For additional discussion of this issue, please see our Request for Rehearing.

Similarly, the Commission should not include in either the numerator or the denominator of the ratio amounts identified by companies under Account 219 of the Uniform System of Accounts related to minimum pension liability adjustments. Such adjustments come about as a result of unusual combinations of economic and market circumstances and would make the ratios artificially lower than without this exclusion. Furthermore, EEI believes that these adjustments should be treated as regulatory assets rather than being included in Account 219 in the first place.

In addition, the Commission should allow companies to petition or request further modifications in the equity capitalization ratio to reflect their individual circumstances.

V. EEI RECOMMENDATIONS, INCLUDING REQUEST FOR STAY

For the foregoing reasons, EEI requests that the Commission: (1) clarify that the cash management rule does not apply to companies whose participation in cash management programs already is overseen by the SEC or to public utilities and licensees whose participation in cash management arrangements or whose securities and debt are already regulated by the utility commission of the State in which the utility or licensee is organized; (2) delete the documentation

requirement relating to the interest rate for each deposit or withdrawal, or specify that the documentation requirements in general apply only “if relevant”; (3) not adopt the proposed requirement for companies to file copies of their cash management program written agreements and changes to the agreements, or if the Commission retains the requirement ensure that the information will be handled as confidential, is for informational purposes only, and can be filed simply once a year when the companies file their FERC Form 1 or at least within the more reasonable time frames discussed in Section III above; (4) not adopt the proposed 30% capitalization monitoring and requirement, or if the Commission retains some or all of the requirement make it a quarterly or annual requirement with clarifications as to applicability, frequency, deadlines, non-recourse debt, and retirement fund liability discussed in Section IV above.

EEl also requests that the Commission stay the effective date of the interim rule until the Commission addresses the issues we have raised in these Comments and our Request for Rehearing, Clarification, and Stay. Already, the Commission has indicated in the interim rule that the rule’s proposed new reporting requirements will not take effect until the Commission has obtained comments on those proposed requirements and decided what action to take in response. Because the documentation and proposed reporting requirements of the rule are so intertwined, it would make sense for the Commission to stay the effective date of the remainder of the interim rule at least until the Commission acts on the various post-rule filings in this docket.

VI. CONTACT INFORMATION

If the Commission needs further information about these Comments, please contact either Henri Bartholomot at 202/ 508-5622 or David Stringfellow at 202/ 508-5494.

Respectfully submitted,

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