

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 101 and 141

(Docket No. RM07-2-000)

Accounting and Reporting Requirements for Nonoperating Public Utilities and Licensees

(Issued December 21, 2006)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its accounting and reporting regulations, in Parts 101 and 141, to require public utilities and licensees to continue to follow the Commission's Uniform System of Accounts (USofA) and to file annual and quarterly financial reports when they have ceased making jurisdictional sales of electric energy, or providing jurisdictional transmission service, but continue collecting amounts pursuant to a Commission-accepted tariff or rate schedule, or a Commission order. The proposed rulemaking is intended to close a gap in the Commission's regulations which apply now only to operating public utilities and licensees. Under the existing regulations, the Commission cannot oversee, monitor, or audit costs that provide information necessary to the Commission's oversight responsibilities and the protection of the public interest.

The Commission also is seeking comments regarding the applicability of Part 125, Preservation of Records of Public Utilities and Licensees, to public utilities or licensees which have ceased operations, as described above, but continue to collect amounts

pursuant to a Commission-approved tariff or rate schedule, or a Commission order. This notice of proposed rulemaking reasonably interprets the current language of Part 125 to require the continued application of Part 125 to nonoperating public utilities and licensees, but seeks comments as to whether revisions to Part 125 may be necessary.

DATES: Comments are due [**30 days after publication in the FEDERAL REGISTER**].

ADDRESS: You may submit comments identified by Docket No. RM07-2-000 by one of the following methods:

- Agency Web Site: <http://www.ferc.gov>. Follow the instructions found in the Comment Procedures Section of the preamble for submitting comments via the eFiling link.
- Mail: Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, N.E., Washington, D.C. 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Accounting and Reporting Requirements
for Nonoperating Public Utilities and
Licensees

Docket No. RM07-2-000

NOTICE OF PROPOSED RULEMAKING

(Issued December 21, 2006)

I. Introduction

1. The Federal Energy Regulatory Commission (Commission) is proposing to amend the accounting and reporting requirements in Parts 101 and 141 of its regulations to require public utilities and licensees to continue to follow the Commission's Uniform System of Accounts (USofA)¹ and to file quarterly and annual financial reports² when they have ceased to make jurisdictional sales of electric energy or to provide jurisdictional transmission service but continue to collect amounts pursuant to a Commission-accepted tariff or rate schedule, or a Commission order. These proposed regulations are intended to close a gap in current accounting and reporting requirements that no longer apply when the operations of a public utility or licensee are discontinued. The resulting gap leaves unreported information and data which are important to the Commission's administration of its jurisdictional responsibilities under the Federal Power

¹ 18 CFR Part 101.

² 18 CFR Part 141.

Act (FPA).³ Specifically, these changes are intended to address a situation, for example, in which a nuclear generating plant may shut down its operations but continue to collect decommissioning and other administrative costs pursuant to a Commission order. For this purpose, the Commission proposes additions and revisions to Parts 101 and 141 of the Commission's regulations, as follows: (1) add a new category, designated "nonoperating" to the classification of utilities subject to compliance with the USofA in the General Instructions of Part 101; and (2) revise §§ 141.1, 141.2 and 141.400 of Part 141 to require nonoperating public utilities and licensees whose operations have ceased but who continue to collect amounts pursuant to a Commission tariff or rate schedule, or a Commission order, to continue to comply with the Commission's reporting requirements.

2. The Commission is also seeking comments on the applicability of Part 125, which sets forth record retention requirements for public utilities and licensees. This notice of proposed rulemaking reasonably interprets the current language of Part 125 to provide that the requirements of Part 125 continue to apply to nonoperating entities who continue to collect amounts pursuant to a Commission-approved tariff or rate schedule, or a Commission order. The Commission seeks comments, however, as to whether Part 125 may require particular revisions.

II. Background

3. The Commission's regulations in Parts 101 and 141 require public utilities and licensees whose sales or transmission service exceed certain prescribed levels to follow

³ 16 U.S.C. 824 et seq.

the USofA and to file annual and quarterly financial reports, Forms No. 1, 1-F, and 3-Q, respectively. This information is necessary to enable the Commission to fulfill its statutory responsibilities under the FPA and is essential to the Commission's decisionmaking process. The information, which is publicly available, also allows customers, state commissions, and others to evaluate the rates charged for sales of electric energy and transmission of electric energy.

4. Under the Commission's existing regulations, public utilities and licensees are relieved of these accounting and reporting requirements when they cease making sales or providing transmission. This is true even when these nonoperating public utilities and licensees continue to collect amounts pursuant to a Commission-approved tariff or rate schedule, or a Commission order.

III. Discussion

5. In recent years, this accounting and reporting gap has been highlighted when, for example, nuclear generating plants shut down but continue to collect decommissioning and other administrative costs under a Commission-accepted tariff or rate schedule, or a Commission order.⁴ The amounts collected by these companies are material and may span a decade or longer.⁵ The occurrence of these and the potential occurrence of similar circumstances impede the Commission's ability to collect information, monitor, or audit the underlying costs when accounting and reporting requirements no longer apply. The

⁴ See, e.g., Connecticut Yankee Atomic Power Company, 92 FERC ¶ 61,005 (2000) (approving decommissioning cost collections.)

⁵ For example, Connecticut Yankee collected \$16.7 million per year in decommissioning funds from 2000 to 2004 and \$93 million in 2005 and 2006. Id.

Commission has a continuing need to have access to books and records and to receive periodic financial reports for any jurisdictional entity, even when that entity has ceased operations but continues to collect amounts pursuant to a Commission-accepted tariff or rate schedule, or a Commission order. Without Commission oversight, customers and ratepayers cannot be assured that these billings are just and reasonable.

6. To remedy this gap in the regulations and to ensure that the Commission has all necessary information to perform its oversight duties, this rulemaking proposes to add a new classification in Part 101, General Instructions, Classification of utilities, which will apply the USofA to nonoperating Major and Nonmajor public utilities and licensees. Additionally, the Commission proposes revisions to the reporting requirements contained in Part 141 of its regulations to require that nonoperating public utilities and licensees that have ceased operation, but continue to collect amounts pursuant to a Commission-accepted tariff or rate schedule, or a Commission order, continue to file annual and quarterly reports pursuant to these regulations.

7. At this time the Commission is not proposing any additions or revisions to Part 125, which requires public utilities and licensees to retain records for designated periods of time. This proposed rulemaking is based on a reasonable reading of the current language in Part 125, that the requirements of Part 125 continue to apply to nonoperating public utilities and licensees even when their respective operations cease but they continue to collect amounts under a Commission-accepted tariff or rate schedule or a Commission order. We seek comments, however, as to whether revisions to Part 125 may be necessary.

8. At this time, it is anticipated that the proposed regulations will affect only a few entities, and that reporting and compliance requirements will not be burdensome.

9. Finally, the Commission proposes that these accounting and reporting requirements become effective 30 days after publication of the Final Rule in the Federal Register.

IV. Information Collection Statement

The following collections of information contained in this proposed rule are being submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995.⁶ OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.⁷

Comments are solicited on the need for this information, whether the information will have practical utility, the accuracy of the provided burden estimated, ways to enhance the quality, utility, clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The Commission expects that only a very small number of public utilities and licensees would be affected by the proposed rule. The Commission also anticipates there will be a minimal impact, if any, on these entities.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. The Commission anticipates that there will be minimal impact relative to the costs of compliance.

⁶ 44 U.S.C. 3507(d).

⁷ See 5 CFR 1320.11.

Title: FERC Form No. 1, “Annual report of Major electric utilities, licensees, and others”; FERC Form No. 1-F; “Annual report for Nonmajor public utilities and licensees”; FERC Form No. 3-Q, “Quarterly financial report of electric utilities, licensees, and natural gas companies”; and FERC-555.

Action: Proposed information collections.

OMB Control Nos.: 1902-0021; 1902-0029; 1902-0205, and 1902-0098.

Respondents: Businesses or other for profit.

Frequency of responses: Annually and quarterly.

Necessity of the Information: The information maintained and collected under the requirements of Parts 101 and 141 is essential to the Commission’s oversight duties. Under the existing regulations, nonoperating public utilities and licensees are not required to follow the USofA, or submit financial reports when sales of electric energy or transmission of electric energy cease, even when they continue to bill amounts pursuant to a Commission-accepted tariff or rate schedule, or a Commission order. Without access to accounting books and records and periodic financial reports, the Commission cannot conduct rate reviews, audits and other oversight activities with respect to these public utilities and licensees.

Internal Review: The Commission has reviewed the requirements pertaining to the USofA and to its financial reports and has determined that the proposed changes are necessary. These requirements conform to the Commission’s plan for efficient

information collection, communication, and management within the public industry. The Commission has assured itself, by means of internal review, that there is specific, objective support associated with the information requirements.

10. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 [Attention: Michael Miller, Office of the Chief Information Officer, phone (202) 502-8415, fax: (202) 273-0873, e-mail: michael.miller@ferc.gov]

11. To submit comments concerning the collection of information and the associated burden estimates, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission] Phone: (202) 395-4650, fax: (202) 395-7285.

V. Environmental Statement

12. 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.⁸ The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are actions that involve accounting and financial reporting.⁹ The rules proposed here address the need for nonoperating utilities and licensees to

⁸ Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

⁹ 18 CFR 380.4(a)(5), (16); see also 18 CFR 380.4(a)(3).

continue compliance with the USofA and to meet the reporting requirements of part 141 for so long as they continue to collect amounts pursuant to a Commission-approved tariff or rate schedule, or a Commission order. Therefore, this notice of proposed rulemaking falls within the categorical exemptions provided in the Commission's regulations, and, as a result neither an environmental impact statement nor an environmental assessment is required.

VI. Regulatory Flexibility Act Certification

13. The Regulatory Flexibility Act of 1980¹⁰ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect. Because most public utilities and licensees do not fall within the definition of "small entity,"¹¹ the Commission certifies that this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities.

VII. Comment Procedures

14. The Commission invites comments on the matters and proposals in this notice, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due [**30 days from the date of publication in the FEDERAL REGISTER**]. Reply comments will be due 30 days thereafter. Comments must refer to Docket No. RM07-2-000, and must include the commenter's name, the organization they

¹⁰ 5 U.S.C. 601-12.

¹¹ See 5 U.S.C. 601(3).

represent, if applicable, and their address in their comments. Comments may be filed either in electronic or paper format.

15. 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 other 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, Secretary of the Commission, 888 First Street N.E., Washington, DC 20426.

16. 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 proposal are not required to serve copies of their comments on other commenters.

VIII. Document Availability

17. 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 the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington D.C. 20426.

18. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

19. User assistance is available for eLibrary and the Commission's website during normal business hours from our Help Line at (202) 502-8222 or the Public Reference Room at (202) 502-8371 Press 0, TTY (202) 502-8659. E-Mail the Public Reference Room at public.referenceroom@ferc.gov.

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.

By direction of the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 101 and 141, Chapter I, Title 18, 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, 7651-7615o.

2. Revise Part 101, **General Instructions**, 1. Classification of utilities, to add a new paragraph (A)(3) and to revise the first sentence in paragraph (B) to read as follows:

General Instructions

Classification of Utilities

A. * * *

(3) Nonoperating. Utilities and licensees formerly designated as Major or Nonmajor that have ceased operation but continue to collect amounts pursuant to a Commission-accepted tariff or rate schedule, or a Commission order.

B. This system applies to Major, Nonmajor, and Nonoperating utilities and licensees. * * *

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PART 141 – STATEMENTS AND REPORTS (SCHEDULES)

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

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.. Revise §141.1(b)(1)(i) to read as follows:

§ 141.1 FERC Form No. 1, Annual report of Major electric utilities, licensees and others.

* * * * *

(b) Filing requirements—(1) Who must file—(i) Generally. Each Major and each Nonoperating (formerly designated as Major) electric utility (as defined in part 101 of Subchapter C of this chapter) and other entity, i.e., each corporation, person or licensee as defined in section 3 of the Federal Power Act (16 U.S.C. 792 et seq.), including any agency, authority, or other legal entity or instrumentality engaged in generation, transmission, distribution, or sale of electric energy, however produced, throughout the United States and its possessions, having sales or transmission service equal to Major or Nonoperating (formerly designated as Major) as defined above, whether or not the jurisdiction of the Commission is otherwise involved, shall prepare and file electronically with the Commission the FERC Form No. 1 pursuant to the General Instructions set out in that form.

* * * * *

5. Revise §141.2(b)(1)(i) to read as follows:

§ 141.2 FERC Form No. 1-F, Annual report for Nonmajor public utilities and licensees.

* * * * *

(b) Filing Requirements—(1) Who Must File—(i) Generally. Each Nonmajor and each Nonoperating (formerly designated as Nonmajor) public utility and licensee as

defined by the Federal Power Act, which is considered Nonmajor as defined in Part 101 of this chapter, shall prepare and file with the Commission an original and conformed copies of FERC Form No. 1-F pursuant to the General Instructions set out in that form.

* * * * *

6. Revise §141.400, paragraphs (b), (b)(2), introductory text and (b)(3) introductory text, to read as follows:

* * * * *

§ 141.400 FERC Form No. 3-Q, Quarterly financial report of electric utilities, licensees, and natural gas companies.

* * * * *

(b) Filing Requirements—(1) Who must file--(i). Generally. Each electric utility and each Nonoperating (formerly designated as Major or Nonmajor) electric utility (as defined in part 101 of subchapter C of this chapter) and other entity, i.e., each corporation, person, or licensee as defined in section 3 of the Federal Power Act (16 U.S.C. 792 et seq.), including any agency or instrumentality engaged in generation, transmission, distribution, or sale of electric energy, however produced, throughout the United States and its possessions, having sales or transmission service, whether or not the jurisdiction of the Commission is otherwise involved, must prepare and file with the Commission FERC Form No. 3-Q pursuant to the General Instructions set out in that form.

* * * * *

(2) Each Major and Nonoperating (formerly designated as Major) (as defined in Part 101 of subchapter C of this chapter) public utility and licensee must file the quarterly financial report form as follows:

* * * * *

(3) Nonmajor and Nonoperating (formerly designated as Nonmajor) public utilities and licensees must file the quarterly financial report form as follows:

* * * * *