UNITED STATES OF AMERICA 101 FERC ¶ 61,032
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 101, 201 and 352

(Docket No. RM02-3-000; Order No. 627)

Accounting and Reporting of Financial Instruments,
Comprehensive Income, Derivatives and Hedging Activities

(Issued October 10, 2002)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations to update the accounting and financial reporting requirements under its Uniform Systems of Accounts for jurisdictional public utilities and licensees, natural gas companies and oil pipeline companies. The Commission is establishing uniform accounting requirements and related accounts for the recognition of changes in the fair value of certain security investments, items of other comprehensive income, derivative instruments, and hedging activities. The Commission is adding new balance sheet accounts to the Uniform Systems of Accounts to record items of other comprehensive income and derivative instruments. The Commission is also adding new general instructions and revising certain account instructions to incorporate the above changes in the existing Uniform Systems of Accounts. And, the Commission is revising the following Annual Reports:

FERC Form Nos. 1, 1-F, 2, 2-A and 6 to include the new accounts and a new schedule contained in the Final Rule.

The Commission is severing from this rulemaking proceeding the inquiry on whether independent and affiliated power marketers, and power producers should continue to be eligible, on a case by case basis, for waiver of the Commission's Uniform Systems of Accounts and blanket approval under Part 34 of the Commission's regulations for the issuance of securities and the assumptions of liabilities. The Commission will consider separately the issue of accounting and reporting requirements by gas marketers, independent and affiliated power marketers, and power producers .

An important objective of the rule is to provide sound and uniform accounting and financial reporting for the above types of transactions and events. The new accounts and reporting schedule will add visibility, completeness and consistency of accounting and reporting changes in the fair value of certain financial instruments, items of other comprehensive income, derivative instruments and hedging activities, in the above mentioned FERC Forms.

<u>EFFECTIVE DATE</u>: The rule will become effective **[insert date 60 days after publication in the FEDERAL REGISTER]**.

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SUPPLEMENTARY INFORMATION:

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities — Docket No. RM02-3-000

FINAL RULE

ORDER NO. 627

(Issued October 10, 2002)

I. **INTRODUCTION**

1. The Federal Energy Regulatory Commission (Commission) is amending its accounting and financial reporting regulations. In a Notice of Proposed Rulemaking issued on December 20, 2001, the Commission proposed to amend its Uniform Systems

of Accounts [1] for public utilities and licensees[2], natural gas companies[3] and oil pipeline companies[4] by establishing uniform accounting requirements for the recognition of changes in the fair value of certain security investments, items of other comprehensive income, derivative instruments, and hedging activities. The Commission is adding new balance sheet accounts to the Uniform Systems of Accounts to record items of other comprehensive income and changes in the fair value of derivative instruments. The Commission is also adding new general instructions for the accounting of derivative instruments and hedging activities along with new instructions for the accounting of items of other comprehensive income. Revisions to existing investment asset accounts and general instructions will incorporate fair value accounting for trading and available-for-sale type security investments.

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[1]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 purposes of administering the FPA, NGA and the ICA. The Commission may prescribe a system of accounts for jurisdictional companies and, after notice and opportunity for hearing, may determine the accounts in which particular outlays and receipts will be entered, charged or credited.

[2]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 (2002).

[3]Part 201 Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act. 18 CFR Part 201 (2002).

[4]Part 352 Uniform System of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act. 18 CFR Part 352 (2002).

2. Additionally, the Commission is revising the following Annual Reports: FERC Form No. 1, Annual Report of Major Public Utilities, Licensees and Others (Form 1); FERC Form No. 1-F, Annual Report of Nonmajor Public Utilities and Licensees (Form 1-F); FERC Form No. 2, Annual Report of Major Natural Gas Companies (Form 2); FERC Form No. 2-A, Annual Report of Nonmajor Natural Gas Companies (Form 2-A); and Form No. 6, Annual Report of Oil Pipeline Companies (Form 6) to include the new accounts and a new schedule.[5]

3. These revisions are being made to improve the usefulness of financial information provided to the Commission and other users of the FERC Forms by establishing uniform accounting and reporting requirements for items of other comprehensive income, changes in the fair value of investment securities, derivatives, and hedging activities. An important objective of the rule is to provide sound and uniform accounting and financial reporting for the above types of transactions and events. The Commission is of the view that such requirements are needed because these types of transactions and events are not specifically addressed in the existing Uniform Systems of Accounts or in FERC Forms 1, 1-F, 2, 2-A, and 6. This Final Rule is part of the Commission's ongoing effort to address

[5]The FERC Annual Reports bear the following OMB approvals: Form No. 1 has OMB approval number 1902-0021; Form No. 1-F has OMB approval number 1902-0029; Form No. 2 has OMB approval number 1902-0028; Form No. 2-A has OMB approval number 1902-0030; and Form No. 6 has OMB approval number 1902-0022.

emerging financial and accounting developments within the context of the Uniform Systems of Accounts.

II. BACKGROUND

4. In recent years, fair value measurements have become useful in assisting investors, creditors and other users of the financial data in making rational investment, credit and similar decisions. The use of fair value as a measurement attribute for financial reporting has grown in importance and relevance. Despite this fact, the companies that this Commission regulates traditionally have had only a relatively small number of transactions for which fair value measurements would be appropriate. This however is changing. As the regulated industries restructure and a greater percentage of sales are based on other than cost-of-service, fair value will increasingly provide a relevant measure of economic effects for a growing number of transactions and events. The usefulness of fair value information has resulted in the Financial Accounting Standards Board (FASB) issuing new accounting pronouncements affecting the manner in which certain types of financial instruments, derivatives and hedging activities are measured and reported in the financial statements applicable to entities in general.[6]

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[6]The accounting pronouncements issued by FASB were Financial Accounting Standards (FAS) 115, Accounting for Certain Investments in Debt and Equity Securities, 130, Reporting Comprehensive Income, and 133, Accounting for Derivative Instruments and Hedging Activities, as amended by 138, Accounting for Certain Derivative Instruments and Certain Hedging Activities. These accounting pronouncements may be obtained from FASB at (http://accounting.rutgers.edu/raw/fasb/).

5. The Commission considers the requirements contained in Financial Accounting Standards (FAS) 115, 130 and 133 to be an improvement in financial accounting and reporting practices if properly implemented and interpreted for filings made with this agency. While some companies have implemented certain aspects of these pronouncements, the implementation has not been uniform concerning the accounting and reporting to the Commission in the FERC Forms 1, 1-F, 2, 2-A, and 6.

6. On August 10, 2001, the Commission's Chief Accountant issued interim accounting guidance on the proper accounting and reporting requirements for financial instruments, comprehensive income, derivatives and hedging activities.[7] This interim accounting guidance was subsequently followed by a Notice of Proposed Rulemaking (NOPR) issued on December 20, 2001, in which the Commission proposed changes to its accounting and financial reporting requirements to establish uniform accounting and reporting of the above mentioned items.[8]

7. The Commission received numerous comments from interested parties on its proposed changes to the accounting and financial reporting requirements. As more fully discussed below, the Commission is issuing this final rule to provide guidance on the

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[7] See, All Jurisdictional Public Utilities and Licensees, Natural Gas Companies, and Oil Pipeline Companies, 96FERC ¶ 62,147 (2001).

[8] See 97FERC ¶ 61,321 (2001).

proper interpretation and implementation of the principles and concepts set forth in FAS 115, 130 and 133 for accounting and financial reporting to the FERC.

III. DISCUSSION

A. General

8. As discussed in the NOPR, the current accounting and financial reporting standards for certain investment securities, derivative instruments, and hedging activities were developed when companies that this Commission regulates had only a relatively small number of transactions for which fair value measurements would be appropriate. As a result of the increased usage of derivative instruments to manage risk along with recent developments in the accounting profession, the Commission proposed revisions to its accounting and financial reporting requirements to provide greater visibility and transparency of these transactions and to help minimize inconsistent accounting and reporting of the above mentioned items.

9. The Commission received 36 comments concerning various aspects of the proposed rule.[9] The majority of commenters were supportive of the Commission's effort to provide interpretative guidance on the application of generally accepted accounting principles to jurisdictional entities that presently file financial information to the

[9] See Appendix A for Listing of Commenters.

Commission in Annual Report Forms 1, 1-F, 2, 2-A, and 6.[10] Additionally, some commenters did not find the new standards as reflected in the proposed regulations unduly burdensome and have already implemented the principles and concepts contained in FAS 115, 130 and 133.[11]

10. The addition of new accounts and related general instructions is intended to improve the visibility, completeness and consistency of accounting and reporting of changes in the fair value of certain investment securities, items of other comprehensive income, derivatives and hedging activities. The addition of new accounts will enhance the Commission's understanding of the nature and extent to which derivatives and hedging activities are used by regulated entities and the impact these transactions and events have on their financial condition. With a greater understanding of the financial impact that derivative instruments have on regulated entities the Commission will be in a better position to make more informed decisions that affect the industries it regulates.

11. Also, the addition of the new reporting requirements to the FERC Forms 1, 1-F, 2, 2-A and 6 will reduce regulatory uncertainty as to the proper accounting and reporting for these items, and minimize regulatory burden by reducing the potential differences in

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[10] See for example APGA at p. 1, EEI at p. 3, Dominion at p. 5, Pinnacle West at p. 3, Sempra at p. 1, Portland General at p. 3, NRECA at p. 6, Ohio PUC at p. 2, NYPUC at p. 2, and Williams at p. 2.

[11] See for example Williams at p. 4.

the manner in which these amounts are reported to shareholders and to the Commission.

B. Inquiry Concerning Waivers Given to Marketers and Others

12. There are a number of public utilities with market-based rates that have received waivers from the Commission's Uniform System of Accounts, and thus would not be subject to the rule, for as long as the Commission continues the waivers. For instance, Parts 41, 101, and 141 of the Commission's regulations prescribe certain informational requirements that focus on the physical assets that a public utility owns. For market-based rate applications by public utilities, the Commission has taken the position that since a marketer does not own any electric power generation or transmission facilities, its jurisdictional facilities would be only corporate and documentary, its costs would be determined by utilities that sell power to it, and its earnings would not be defined and regulated in terms of an authorized return on invested capital, and that, accordingly, it would grant waivers to marketers of the requirements of these Parts. The Commission has also granted power marketers and others their requests for blanket approval under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability, assuming that no party objects to such treatment during a notice period which the Commission provides.[12] The Commission concluded that since

[12] We note that the Commission's jurisdiction over issuances of securities and assumptions of liabilities under section 204 of the FPA applies only to entities that are (continued...)

marketers do not obligate themselves to serve electric consumers, the requirements are inapplicable.[13]

13. As the development of competitive wholesale power markets continues, however, independent and affiliated power marketers, and power producers are playing more significant roles in the electric power industry. In light of the evolving nature of the electric power industry, the Commission sought comment in the NOPR on the extent to which these entities should be required to follow the Uniform System of Accounts, what financial information, if any, should be reported by these entities, how frequently it should be reported, and, in particular, whether these exempted entities should be subject to reporting the information required in the proposed regulations.

14. Furthermore, the Commission sought comments on whether it should rescind the Part 34 blanket authorizations granted to independent and affiliated power marketers and power producers and require these entities to comply with the filing requirement of Part 34 for all future issuances of securities and assumptions of liabilities. The purpose of

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[12](...continued)
public utilities as defined in the FPA and only where the public utilitity's security issues are not regulated by a State commission (see FPA section 204(f)).

[13]See, e.g., St. Joe Minerals Corp, 21 FERC ¶ 61,323 (1982); Cliffs Electric Service Company, 32 FERC ¶ 61,372 (1985); Citizens Energy Corporation, 35 FERC ¶ 61,198 (1986); Howell Gas Management Company, 40 FERC ¶ 61,336 (1987); Citizens Power & Light Corporation , 48 FERC ¶ 61,210 (1989); National Electric Associates Limited Partnership, 50 FERC ¶ 61,378 (1990); and Nevada Sun-Peak Limited Partnership, 86 FERC ¶ 61,243 (1999).

requiring these marketers and producers to comply with these regulations would not be to ensure their financial viability under Section 204 of the FPA. Rather, it would be to promote transparency and facilitate investor risk analysis which in the long run promotes infrastructure and competition, and makes rates more just and reasonable.

15. Most commenters stated that the Commission should not revoke the existing waivers. They argue that the basis for the Commission initially granting the waivers has not changed. They stated that marketers do not own any electric power generation or transmission facilities; their jurisdictional facilities are only corporate and documentary; their costs are determined by utilities that sell power to it; and their earnings are not defined and regulated in terms of an authorized return on invested capital.[14]

16. They also argue that the marketers would incur substantial costs if required to add new accounting systems at this time to capture data required by the Uniform System of Accounts.[15] Additionally, they assert that providing the data could place the marketers in a competitive disadvantage because the information is proprietary in nature.[16]

17. Furthermore, they argue that the application of the Uniform System of Accounts, and the approval of the issuance of securities does not work well with power marketers and power producers, because these requirements are focused on providing accurate

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[14] See for example, EEI at p. 14, Sempra at p. 1, and APX at p. 8.

[15] See for example, Sempra at p. 12.

[16] See for example, Avista at p. 7, Competitive at p. 16, and NEM at p. 5.

information for the determination of cost-based rates, and the accounting rules are not relevant to entities with market-based rate authority.[17]

18. Regarding the filing requirements of Part 34, some commenters stated that this regulation was intended to prevent the issuance of securities that might impair the company's ability to perform its public utility responsibilities, however independent and affiliated power marketers and power producers are not public utilities with such responsibilities. They state that applying Part 34 to power marketers would be unreasonable because it is unclear how the Commission could determine whether particular issuances are compatible with the public interest and could force power marketers out of business.[18]

19. One commenter stated that there are indications within the NOPR that the Commission does not intend its proposed rule to apply to gas marketers. They requested that the Commission clarify its intent to exempt gas marketers from the Uniform System of Accounts and related annual reporting requirements, and continue to honor the existing waivers previously granted to these entities.[19] Others state that the new rules should not sweep in qualified facilities and other on-site generators that primarily serve

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[17] See for example, EEI at p. 15, Dominion at p. 7.

[18] See for example, EEI at p. 16, Dominion at p. 7, Sempra at p. 13, Avista at p. 7, and Calpine at p. 6.

[19] See Sempra at p. 6 and 7.

host facilities.[20] Finally, some commenters stated that other government agencies such as the U.S. Securities and the Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) are better suited to regulate accounting and the use of financial derivatives.[21]

20. Some commenters however supported extending the accounting and reporting requirements to marketers, power producers, and affiliates with market based rates.[22] They argue that the events of the last few months justify these new requirements. In their view, in light of the public's better understanding of the role derivatives play in energy security, the need for the Commission to obtain such information outweighs the reasons for exempting such entities. They state that the Commission requires a comprehensive picture of the marketplace and that the picture is incomplete if these entities are exempted from reporting requirements.[23] In their view, the requirements would help state regulators in reviewing financial activities that may subject utilities to financial risk. Therefore, they recommend that affiliates of utilities be subject to existing and proposed Uniform System of Accounts requirements insofar as derivative and hedging transactions may impact and affect traditional utilities.

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[20] See American Forest at p. 5.

[21] See Calpine at p. 3.

[22] See NYPSC at p. 2 and 3, Ohio PUC at p. 5, APGA at p. 14, and NRECA at p. 5.

[23] See APGA at p. 15.

21. One commenter suggested the possibility of requiring independent and affiliated power marketers and power producers to maintain a translation matrix, certified by the company's ethics officer, that could quickly convert its current method of maintaining financial records into the Uniform System of Accounts. Thus, information need not be filed but would be available in a consistent and easily understandable format if necessary. [24] Another commenter recommended that the Commission expand its data collection on derivative instruments. The purpose for derivative data collection should be not only to assist the Commission in its monitoring efforts, but also to further the transparency of the energy derivatives markets. The Commission should collect and make summary data available to potential buyers and sellers in the market, and in essence provide market participants with a forward price curve, allowing them to benchmark proposed deals.[25]

22. Finally, some commenters indicated that the Commission needs to reform its data resources with regard to monitoring competitive electric markets and market based sellers. If any changes are to be considered with regard to information review, the Commission should employ a thoughtful stakeholder process, such as a technical conference, to identify its information needs.[26]

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[24] See Ohio PUC at p. 5.

[25] See NRECA at p. 5.

[26] See for example, Congentrix at p. 10, DENA at p. 10, EPSA at p. 3, and J. Aron (continued...)

23. The Commission has decided to sever from this rulemaking proceeding, the inquiry on whether independent and affiliated power marketers, and power producers should continue to be exempt from the Commission's Uniform System of Accounts and other reporting requirements. The Commission thus will consider separately the issue of what information collection and recordkeeping requirements it may impose on gas marketers, independent and affiliated power marketers, and power producers . While the Commission is sensitive to the fact that independent and affiliated power marketers and power producers and their use of derivatives are playing a more significant financial role in this evolving electric power industry, we also recognize the need to reform the approach used to monitor competitive electric markets and market based sellers in the context of a number of current and ongoing Commission initiatives.

24. For example, there are several ongoing investigations that may impact on the direction the Commission may take vis-a-vis power marketers and power producers. In addition, the Commission is currently reviewing its existing reporting requirements to determine what new information needs to be collected to monitor competitive energy markets, the sources for that information, how often that information should be updated, and how the Commission should gain access to specific information as needed in order to

[26](...continued)
at p. 11.

effectively monitor energy markets. The Commission thus will hold technical conferences and outreach meetings on these matters.

C. Accounting for Trading and Available-for-Sale Type Securities

25. In May 1993, the FASB issued Financial Accounting Standard (FAS) 115, Accounting for Certain Investments in Debt and Equity Securities, effective for fiscal years beginning after December 15, 1993. This statement addressed the accounting and reporting for investments in equity securities that have a readily determinable fair value and for all investments in debt securities, and its major provisions were summarized in the NOPR.

26. Under the Commission's Uniform Systems of Accounts for public utilities and licensees, and natural gas companies, all types of securities are recorded at cost and subsequent changes in the fair value of security investments are normally not recognized in the financial statements until realized. The Uniform System of Accounts for oil pipeline companies however, permits the recognition of decreases in the carrying value of investment securities, but currently would not permit the carrying value to be increased.

27. The Commission is of the view that fair value measurement of the trading and available-for-sale type securities presents relevant and useful information to regulators and others. For example, fair value measurements provide useful information to the

Commission concerning the status of certain amounts set aside to fund future obligations such as decommissioning nuclear plants.

28. The Commission therefore proposed to add language to its security investment accounts for public utilities and licensees, natural gas companies, and oil pipeline companies to permit the recognition of changes in the fair value of trading and available-for-sale types of securities due to unrealized holding gains and losses.[27] The Commission also proposed amending its oil pipeline General Instruction 1-15, Accounting for marketable equity securities, and removing oil pipeline Accounts 23, 24, and 75.5 to conform the regulations to the proposed changes.

29. The Commission received no objections concerning its proposal to include unrealized holding gains and losses on certain qualifying securities in the investment asset accounts, or to its proposal to amend its oil pipeline General Instruction 1-15 to conform the regulations to the proposed changes. Therefore the Commission will revise the instructions to its investment accounts and make conforming changes to the applicable oil pipeline General Instruction 1-15, to require the recording of unrealized holding gains and losses on certain eligible investment securities.

[27] The security investment accounts for public utilities and gas pipeline companies are: Account 124, Other investments; Account 125, Sinking funds (Major only); Account 126, Depreciation fund (Major only); Account 127, Amortization fund (Major only); Account 128, Other special funds (Major only); and Account 129, Special funds (Nonmajor only). The security investment asset accounts for oil pipelines are Account 11, Temporary investments; Account 21, Other investments; and Account 22, Sinking and other funds.

30. As part of the accounting for recording unrealized holding gains and losses on certain investment securities, the Commission proposed to include in a separate section of stockholders equity, the corresponding change in value of these securities. Some commenters stated that changes in the carrying value of certain securities that will be ultimately used in the development of future rates, such as nuclear decommissioning trust funds, are better reflected in a regulatory asset or a regulatory liability account rather than in accumulated other comprehensive income when it is probable that the customer, rather than the stockholder, will be affected by changes in the value of these securities. They indicated that it is prevailing practice within the electric industry to record regulatory assets or liabilities when it is probable that such changes in the fair market value will be considered by regulators in the setting of rates in future proceedings.[28] Such prevailing practice according to the commenters is in accordance with the provisions of FAS 71, "Accounting for the Effects of Certain Types of Regulation." In order to implement this change, the commenters recommended that the final rule should include revised account descriptions of Accounts 182.3 and 254 to include certain items of other comprehensive and the new General Instruction for Accounting for Other Comprehensive Income should be revised accordingly.

31. The Commission agrees that under certain circumstances it may be appropriate for rate regulated entities to report unrealized holding gains and losses on certain investment

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[28] See for example, EEI at p. 12, and NRECA at p. 8.

securities as regulatory assets or regulatory liabilities pursuant to Order 552 which adopted the accounting standards set forth in FAS 71.[29] The Commission will revise its proposed General Instruction for Accounting of Other Comprehensive Income and its existing regulatory asset and liability accounts accordingly.

D. Accounting for Other Comprehensive Income

32. In June 1997, the FASB issued FAS 130, Reporting Comprehensive Income. This statement established the standards for reporting comprehensive income in a full set of general-purpose financial statements effective for fiscal years beginning after December 15, 1997. Comprehensive income represents the change in equity of an entity during a period from transactions and other events and circumstances from nonowner sources. Comprehensive income is composed of traditional net income plus items of "other comprehensive income."[30] The major provisions of this statement were summarized in the NOPR.

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[29] See Revisions to Uniform Systems of Accounts to Account for Allowances Under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1-F, 2 and 2-A. Order No. 552, 58 FR17982 (Apr. 7, 1993), FERC Stats & Regs. Regulations Preambles January 1991-June 1996 ¶ 30,967 (Mar. 31, 1993).

[30] Comprehensive income is defined by FASB in Concepts Statement No. 6 as, "the change in equity [net assets] of a business enterprise during a period from transactions and other events and circumstances from nonowner sources. It includes all changes in equity during a period except those resulting from investments by owners and distributions to owners."

33. The Commission proposed to revise the Uniform Systems of Accounts for public utilities and licensees, natural gas companies and oil pipeline companies to provide accounting for items of other comprehensive income, and proposed the creation of two new equity accounts to record the activity related to other comprehensive income. The proposed new accounts would require supporting records be maintained by each category of other comprehensive income for reporting the information in the FERC Forms 1, 1-F, 2, 2-A, and 6.

34. The Commission also proposed instructions to the other comprehensive income accounts for all jurisdictional entities that would require supporting records be maintained by each category of other comprehensive income. This level of record keeping is required so that the entity is able to identify the amounts associated with the item of other comprehensive income when it enters into the determination of net income in subsequent periods.

35. Many commenters questioned the need and the benefit of using two accounts for the recognition of other comprehensive income, along with the requirement to transfer amounts of other comprehensive income from Account 219.1 to Account 219 at the balance sheet date. In their view this was a duplicative requirement and therefore they

recommended the use of only one equity account for the recognition of other comprehensive income.[31]

36. Based upon the comments received the Commission agrees that one equity account can accommodate all of the activity provided that sufficient detailed records are maintained in order to identify and display current years' activity for items of other comprehensive income, in addition to providing a year-to-date summary of the activity. Therefore, the Commission will create only one account for public utilities and licensees, and natural gas companies entitled Account 219, Accumulated other comprehensive income, and one account for oil pipeline companies entitled Account 77, Accumulated other comprehensive income, to record amounts for items of other comprehensive income in stockholders equity. However, the Commission will keep the requirements originally set forth in the NOPR that detailed records be maintained so that the current period activity, year-to-date activity, and reclassification adjustments related to items of other comprehensive income can be readily identified. Maintaining detailed records for items included in accumulated other comprehensive income are necessary so that an entity can readily identify amounts when the item is included in net income in subsequent periods and to periodically report this information in the new reporting schedule entitled Accumulated Other Comprehensive Income and Hedging Activities.

[31] See, for example, EEI at p. 5, AEP at p. 2, Dominion at p. 14, Southern at p. 1, and Pinnacle at p. 3.

37. Finally, the NOPR proposed the need for reclassification adjustments for items of other comprehensive income to avoid double counting an item in net income and other comprehensive income. The proposed instructions would have required that reclassification adjustments be made directly to other comprehensive income. This proposed accounting treatment for reclassification adjustments would minimize the need for creating a new account to capture amounts solely related to reclassification adjustments.

38. No commenters objected to the proposed accounting for reclassification adjustments. The Commission will therefore adopt the proposed accounting for reclassification adjustments.

E. Accounting for Derivatives and Hedging Activities

1. General

39. In June 1998, the FASB issued FAS No. 133, Accounting for Derivative Instruments and Hedging Activities, as amended on June 2000, by FAS 138, Accounting for Certain Derivative Instruments and Certain Hedging Activities. This pronouncement was issued in a response to an increased use of derivatives and to resolve problems with the accounting and reporting practices for derivatives and hedging activities. These problems included incomplete and inconsistent accounting guidance on the effects of derivative transactions and hedging activities. The effects of derivatives were not transparent in the basic financial statements, and many derivative instruments were

carried "off-balance-sheet" regardless of whether they were formally part of a hedging strategy. The NOPR summarized the key points of the pronouncement.

<u>2. General Instructions for Fair Value and Cash Flow Hedges</u>

40. The Commission proposed to add a new general instruction that would require public utilities and licensees, natural gas companies, and oil pipeline companies to record changes in the fair value of the derivative instrument designated as a cash flow hedge to other comprehensive income. The proposed instructions would also require jurisdictional entities to record changes in the fair value of a derivative instrument designated as a fair value hedge in the new derivative asset or liability account with a corresponding adjustment to a subaccount of the asset or liability that carries the item being hedged. The ineffective portion of the cash flow and fair value hedges would be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

41. No commenters objected to the above proposal regarding the use of a subaccount to adjust the carrying amount of the asset or liability being hedged under a fair value hedge, or the proposal to include the ineffective portion of the hedge in the same income

or expense account that will be used when the hedged item enters into the determination of net income.[32] Therefore, the Commission will implement this change as proposed.

3. Changes to General Instruction 21. Allowances

42. The Commission proposed to make technical changes to its existing general instructions concerning the accounting for hedge transactions related to exchange traded allowance future contracts. General Instruction No. 21, Allowances, of Part 101, directs public utilities to defer in Account 186, Miscellaneous deferred debits, or Account 253, Other deferred credits, the costs and benefits from hedging transactions associated with exchange traded allowance future contracts. The Commission proposed to delete paragraph I to be consistent with proposed accounting for derivatives. The accounting framework proposed for derivatives would also include exchange traded future allowances. No commenters objected to the changes proposed to General Instruction 21, Allowances, therefore, the Commission will implement the changes as proposed.

4. Accounting for Derivative Assets and Liabilities

a. Balance Sheet Classification for Derivative Assets and Liabilities

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[32] See FAS 133 as amended by FAS 138 for definition, examples and illustrations of assessing effectiveness and measuring ineffectiveness for fair value and cash flow hedges.

43. The NOPR proposed establishing new balance sheet accounts to record derivative assets and liabilities. Under the proposal, derivative assets and liabilities would be accounted for and reported to the Commission based upon their intended use. Derivatives used for hedging activities would be classified in Accounts 176 and 245 for public utilities and licensees, and natural gas companies, and Accounts 47 and 66 for oil pipeline companies.[33] Derivatives used in non-hedging activities would be classified in Accounts 175 and 244 for public utilities and licensees, and natural gas companies, and Accounts 46 and 65 for oil pipeline companies.

44. The Commission also noted in the NOPR that entities are required to classify derivative assets and liabilities as current or long-term on their financial statements reported to the U.S. Securities and Exchange Commission (SEC) and in Annual Reports to Stockholders. The Commission stated that entities may create current and long-term subaccounts associated with the proposed new derivative balance sheet accounts in order to facilitate reporting derivative assets and liabilities to shareholders in general purpose financial statements.

45. Some commenters responded that the Commission should create current and long-term accounts to record derivative assets and liabilities on the balance sheet.[34] They

[33] See FAS 133 as amended by FAS 138 for discussion and examples of hedging activities.

[34] See for example EEI at p. 8 and 9, AEP at p. 2, and Dominion at p. 13.

stated that the Commission’s Uniform System of Accounts includes separate sections for current and accrued assets and deferred debits, as well as current liabilities and deferred credits, and that FERC requires that other items be reported as current or long-term. They also stated that the establishment of current and long-term accounts would reduce the potential for misclassifications between current and long-term subaccounts of the proposed new accounts.

46. At this time the Commission declines to adopt the commenters' suggestion that derivative assets and liabilities should be reported to the Commission based upon a current or long-term balance sheet distinction. It is important for the Commission to obtain information concerning the nature of the derivative transactions that jurisdictional entities have entered into to manage their financial and other business risks. By reporting to the Commission derivative instruments used to hedge business risks separately from those derivative instruments used for non-hedging activities, the Commission and other regulators will have enhanced information as to the positions regulated entities have at the balance sheet date related to the entities' hedging and non-hedging activities. This important distinction would not be transparent if derivative instruments were displayed in the FERC Forms 1, 1-F, 2, 2-A and 6 based upon a current or long-term balance sheet classification. Additionally, reporting derivative instruments based upon their intended use will assist regulators in assessing the activities of jurisdictional entities related to their traditional utility business as compared to their trading activities.

b. Income Statement Classifications for Changes in the Value of Derivative Instruments

47. The Commission proposed that public utilities and licensees, and natural gas companies would use Account 421, Miscellaneous nonoperating income, and oil pipeline companies would use Account 660, Miscellaneous income charges, to record on the income statement the change in the fair value of the derivative instruments not used in hedging activities.

48. One commenter specifically supported the use of Account 421 to record gains and losses on non-hedge activities.[35] They indicated that using Account 421 to record gains and Account 426.5 to record losses did not provide valuable information and they found it very difficult to separate gains and losses due to the large volumes of derivative transactions from power trading activities. However other commenters asserted that Account 421 is appropriate when there is an increase in the fair value of a derivative instrument, and Account 426.5 is appropriate when there is a decrease in the fair value of the derivative instrument.[36]

49. The Commission concurs with the commenters that a better accounting and financial presentation is not to net gains and losses in one income statement account, but rather to record gains from non-hedging activities in Account 421 and losses in

[35] See Cinergy at p. 4.

[36] See for example Southern Company at p. 3 and EEI at p. 12.

Account 426.5, for electric and natural gas companies. The use of separate income statement accounts to record gains and losses on derivative instruments used in non-hedging activities follows our existing accounting practice for exchange traded emission allowances. Finally, the Commission will also require that oil pipelines record gains in Account 640, Miscellaneous income, and losses in Account 660, Miscellaneous income charges, to better reflect increases and decreases in the fair value of derivative instruments not used in hedging activities on the income statement.

50. This accounting will aid the Commission and other users of the FERC Forms 1, 1-F, 2, 2-A and 6 to see more clearly the extent to which gains or losses have been incurred on non-hedging derivative transactions. And, by separately recording changes in the value of derivative instruments in separate income and expense accounts, any subsequent reclassification of amounts will be better displayed if a regulator chooses to include a portion of the holding gains or losses, or realized gains or losses, in the development of rates.

51. While respondents did not object to the use of below-the-line income statement accounts to record both unrealized and realized gains or losses on derivative instruments used for non-hedging activities, there were many views on what the appropriate accounting should be in instances when a regulator incorporates all or part of the actual gain or loss in the development of rates. The Commission proposed that when a regulator explicitly approves the inclusion of the changes in fair value of derivative

instruments in the development of rates, the company should reclassify those amounts from the below-the-line income statement accounts to the appropriate utility operating revenue or expense account that will be charged with the derivative transaction when it settles.

52. Some commenters indicated that it is inappropriate to record the changes in the fair value of non-hedge type derivative instruments in a below-the-line account prior to settlement, only to reclassify some or all of the amount to the appropriate operating revenue or expense account when the transaction settles.[37] They believe that changes in the fair value that will be included in rates should be initially recorded in the appropriate operating revenue or expense account, so reclassification is not necessary. Others support a position that in situations where it is probable that realized gains and losses would be included in rates, then unrealized changes in fair value of the related derivative instrument should be deferred in an appropriate regulatory asset or regulatory liability account.

53. After reviewing the comments, the Commission is of the view that entities will avail themselves of the special accounting afforded derivative instruments when these instruments are entered into as part of a cash flow or fair value hedge transaction. Under the special accounting afforded qualifying hedges, any unrealized gains and losses effectively remain on the balance sheet and therefore do not enter into the determination

[37] See for example, Cinergy at p. 5, Southern at p. 3, and Pinnacle at p. 4.

of net income until the hedged item enters into the determination of net income. If the derivative instrument is not part of qualifying hedge, entities will record the unrealized, as well as realized, gains or losses in Accounts 421 and 426.5 as appropriate. However, if the derivative instrument does not qualify for hedge accounting, but it is probable under the requirements of Order 552 that changes in the fair value of the derivative instrument will be used in the development of rates, the entity must follow the Commission's existing accounting regulations for the recognition of regulatory assets and regulatory liabilities.

c. Inclusion of the Normal Purchases and Sales Scope Exception

54. The Commission noted in the NOPR that certain types of contracts are exempted from the requirements of FAS 133. For example, normal purchases and normal sales contracts that provided for the purchase or sale of goods that will be delivered in quantities expected to be used or sold by the reporting entity over a reasonable period in the normal course of business are not treated as derivative instruments. This exception is commonly referred to as the normal purchases and normal sales scope exception. The exception would include typical purchases and sales of inventory items, certain insurance contracts, and employee compensation agreements, and certain electric power contracts.

55. Some commenters noted that the normal purchases and sales exception should also be specifically included in the Commission's regulations.[38] They indicate that most forward power and electric option contracts will meet the normal purchase and sales scope exception and therefore changes in the contracts' fair value will not be required to be reflected on the financial statements. The Commission agrees with the commenters that some electric power contracts will meet this exception and therefore changes in the fair value of those contracts will not be reflected in the financial statements.

56. It is the Commission's view that the existing normal purchases and sales accounting exception criteria should also be applied to transactions that jurisdictional entities account and report to the Commission in the FERC Forms 1, 1-F, 2, 2-A, and 6. The Commission will therefore include language in the General Instructions for the Accounting for Derivative Instruments and Hedging Activities that provides for the normal purchases and sales exceptions.[39]

F. Changes to the FERC Annual Report Forms

57. The accounting changes proposed in the NOPR would require one new schedule and changes to existing balance sheet schedules in the FERC Forms 1, 1-F, 2, 2-A, and 6

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[38] For example see Cinergy at p. 3, Wisconsin Electric at p. 6, and EEI at p. 6.

[39] See FAS 133 as amended by FAS 138, Derivatives Implementation Group (DIG) conclusions, and the Emerging Issues Task Force (EITF) pronouncements. These accounting pronouncements may be obtained from FASB at (http://accounting.rutgers.edu/raw/fasb/).

filed with the Commission by public utilities and licensees, natural gas companies, and oil pipeline companies. The proposed new schedule was shown in Appendix A of the NOPR.

58. As stated in the NOPR, in order to provide consistent accounting and reporting of items of other comprehensive income the Commission proposed to add a new schedule with instructions on the proper footnote disclosures for the FERC Forms 1, 1-F, 2, 2-A, and 6. The proposed new schedule would show the components of other comprehensive income and required:

59. - the reporting of categories of other comprehensive income on a net-of-tax basis, where appropriate, along with the reporting of the related tax effects allocated to each component, in a footnote to the schedule.

60. - the reporting of accumulated other comprehensive income balances at year end by category, in a footnote to the schedule.

61. - the reporting of fair value hedge balances at year end by category, in a footnote to the schedule.

62. Some commenters recommended format changes to the proposed new schedule to better display the items of other comprehensive income. A roll-forward format was recommended that would show the current years activity, in addition to the cumulative

balances for items of other comprehensive income.[40] The revised format would display all of the information proposed in the NOPR without the use of reporting accumulated balances for certain items through the use of footnotes.

63. The Commission notes that the roll-forward format recommendation made by the commenters will improve the transparency of the data displayed and reduce the need for certain year end balances to be reported in a footnote. The Commission will adopt the roll-forward format that will display amounts of other comprehensive income during the current period as well as at the balance sheet date. The new schedule for reporting derivative information and other comprehensive income amounts is shown in Appendix B entitled Statement of Accumulated Comprehensive Income and Hedging Activities.

G. Disclosure Requirements

64. For many years financial statements issued to the public have required the inclusion of a disclosure entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" commonly referred to as the MD&A. It requires a discussion of liquidity, capital resources, results of operations and other information necessary to understand the financial condition, changes in financial condition and results of operations of the entity.

[40] See for example, Dominion at p. 14, Southern at p. 2, and EEI's April 1, 2002, supplement to its March 11, 2002 filing.

65. On January 22, 2002, the U.S. Securities and Exchange Commission (SEC) issued a statement entitled Commission Statement About Management's Discussion and Analysis of Financial Condition and Results of Operations.[41] This statement set forth certain views of the SEC regarding disclosure that should be considered by registrants that address matters of liquidity and capital resources including off-balance sheet arrangements; certain trading activities that include non-exchange traded contracts accounted for at fair value; and effects of transactions with related and certain other parties. The SEC's interpretative guidance related to the MD&A did not create new legal requirements, but suggested steps that issuers of financial statements should consider in meeting their current disclosure obligations with respect to the matters described above.

66. In particular the SEC's interpretative guidance recommended certain disclosures about trading activities that include non-exchange traded contracts accounted for at fair value. The recommended disclosures include information concerning realized and unrealized changes in fair value of commodity contracts including derivatives, the source of the fair value price, and the fair value of the contracts at various maturity dates.

67. The Commission recognizes that there have been some concerns raised about how the fair value of derivative instruments have been determined. The information provided by entities in their MD&A will provide additional insight to regulators, investors,

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[41] See SEC release nos. 34-45321;FR-61. This notice may be obtained from the SEC website at(http://www.sec.gov/rules/other/33-8056.htm)

creditors, and other users of the financial statements into the valuation techniques and assumptions used to value the outstanding contracts as of the balance sheet date.

68. The Commission is of the view that the type of information disclosed by jurisdictional entities in their MD&A related to trading activities involving material commodity contracts that are accounted for at fair value is an important part of understanding the financial condition of entities that report financial information to the Commission in FERC Forms 1, 1-F, 2, 2-A, and 6. Therefore to the extent that a jurisdictional entity filing a FERC Form 1, 1-F, 2, 2-A, or 6 includes the above type of information on trading activities in its MD&A as part of its Annual Report to Shareholders and SEC filing, it must report the same information reported to the Commission on the schedule entitled Important Changes During the Year.[42] The instructions on this schedule require important information that appears in their Annual Reports to Shareholders and the SEC to also be included on this schedule. By including the derivative information presented in the MD&A to the FERC, the quality of the information received by this Commission will be no less than that provided by jurisdictional entities to shareholders and other users of the financial data.

69. The Commission notes that power marketers and power producers that file financial information with the SEC will also be subject to its recent interpretative

[42] See FERC Form No. 1 p. 108, FERC Form No. 2 p. 108, and FERC Form No. 6 p. 108.

guidance regarding additional disclosures concerning their trading activities. The SEC's information reporting initiatives may impact the Commission's need to require further reporting from these entities.

H. Miscellaneous Items

70. One commenter recommended that the Commission state it will not incorporate derivative instruments, hedging activities, and other comprehensive income into its ratemaking process for utilities, because the value of these instruments are certain to change over time and the Commission would set rates incorrectly.[43]

71. As stated in the NOPR, the proposed rule was not intended to prescribe the ratemaking treatment for items of other comprehensive income or for derivative instruments and hedging activities. The adoption of any particular rate treatment for these amounts is beyond the scope of this rulemaking. The Commission will decide the appropriate treatment, for these transactions on a case-by-case basis in individual rate proceedings.

72. Some commenters recommended that the Commission delay the effective date of the proposed changes for one year after the rulemaking is approved in order to allow for a complete review of the regulations and their prospective implementation.[44] One commenter indicated that the Commission's consideration of this accounting is premature

[43] See Sempra at p. 6.

[44] See EEI at p. 13, and Dominion at p. 15.

at this time and delay its review and implementation until various regulatory bodies review current accounting procedures or until any reforms are adopted.[45] However, another commenter requested that the Commission make the proposed filing requirements retroactive and effective for 2001 reporting by requiring supplements to the Commission's Annual Report filings with the new schedules required under the proposed rule.[46]

73. The Commission is of the view that jurisdictional entities are already familiar with the accounting pronouncements contained in this final rule and have already implemented these requirements in their Annual Reports to Shareholders and in filings with the SEC. By delaying proper implementation of these new accounting and reporting standards, different and inconsistent sets of financial information would be reported to the Commission, and accounting and reporting guidance would continue to be required on how these transactions should be reported to FERC. Consequently, it is the Commission's view that little, if any, benefit would be gained by delaying the issuance of accounting and reporting guidance on these matters. In order to provide consistent accounting and reporting to the Commission on a timely basis, the Commission declines to postpone implementation for another year. The accounting and

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[45] See Wisconsin Electric at p. 4 and 5.

[46] See APGA at p. 3.

reporting changes will become effective 60 days after date of publication in the Federal Register.

74. The Commission acknowledges that with any new accounting and financial reporting standard, implementation issues may arise. Jurisdictional entities can seek clarification from the Chief Accountant concerning the proper application or implementation of any accounting standard under the Commission's existing regulations.

75. Finally, the Chief Accountant had previously issued guidance concerning the proper accounting for derivative and hedging activities pending further action by the Commission. That guidance letter provided for the recording of derivative assets and liabilities in miscellaneous deferred debit or credit accounts, or in other investment accounts, based upon the jurisdictional entities rationale for entering into the derivative transaction. In order to provide for consistent accounting and reporting treatment for all derivative transactions, the Commission will require that amounts previously accounted for under the Chief Accountant's guidance letter using existing asset, liability and equity accounts, be reclassified to the appropriate new derivative assets, derivative liabilities, and accumulated other comprehensive income account, established under this Final Rule.

IV. REGULATORY FLEXIBILITY ACT CERTIFICATION

76. The Commission finds that most filing entities regulated by the Commission do not fall within the Regulatory Flexibility Act's definition of small entity. [47] This Final Rule will promote consistent reporting practices for all reporting companies and would not be a significant burden to industry since the information is already being captured by their accounting systems and generally being reported to shareholders and others at a company, or at a consolidated business level. However, if the reporting requirements represent an undue burden on small businesses, the entity affected may seek a waiver of the disclosure requirements from the Commission. Accordingly, the Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities.

V. ENVIRONMENTAL IMPACT STATEMENT

77. Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[48] No environmental consideration

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[47] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominate in its field of operation.

[48] Regulations Implementing National Environmental Policy Act, 52 FR 47897

(continued...)

is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or does not substantially change the effect of legislation or regulations being amended[49], and also for information gathering, analysis, and dissemination.[50] The proposed rule updates the Parts 101, 201 and 352 of the Commission's regulations, and does not substantially change the effect of the underlying legislation or the regulations being revised or eliminated. In addition, the Final Rule involves information gathering, analysis and dissemination. Therefore, this Final Rule falls within categorical exemptions provided in the Commission's Regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.

VI. INFORMATION COLLECTION STATEMENT

78. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and record keeping (collections of information) imposed by an agency. The information collection requirements in this Final Rule are contained in the following Annual Reports: FERC Form No. 1, Annual Report of Major Public Utilities, Licensees and Others (Form 1); FERC Form No. 1-F, Annual Report of Nonmajor Public Utilities and Licensees (Form 1-F); FERC Form No. 2, Annual Report of Major Natural Gas Companies (Form 2); FERC Form No. 2-A, Annual Report of Nonmajor Natural

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[48](...continued)
(Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[49] 18 CFR 380.4(a)(2)(ii).

[50] 18 CFR 380.4(a)(5).

Gas Companies (Form 2-A); and Form No. 6, Annual Report of Oil Pipeline Companies (Form 6). Form 1 most recently received OMB approval on March 29, 2002, for the period through March 2005. Form 1-F received OMB approval on April 2, 2002, for the period through April 2005. Form 2 received approval on March 29, 2002, for the period through March 2005. Form 2-A received approval on April 2, 2002, for the period through April 2005. Form 6 was previously approved March 28, 2001 for the period through March 2004. OMB declined to take any action at the NOPR stage instead deciding to make a determination at the final rule stage.

79. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426 (Attention: Michael Miller, Office of the Chief Information Officer, (202) 502-8415) or from the Office of Management and Budget, Room 10202 NEOB, Washington, D.C. 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission, (202) 395-7318, fax: (202) 395-7285).

80. The regulated entity shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

81. **Titles:** FERC Form No. 1, "Annual Report of Major Public Utilities, Licensees and Others"; FERC Form No. 1-F, "Annual Report of Nonmajor Public Utilities and Licensees"; FERC Form No. 2, "Annual Report of Major Natural Gas Companies";

FERC Form No. 2-A, "Annual Report of Nonmajor Natural Gas Companies"; and Form No. 6, "Annual Report of Oil Pipeline Companies."

82. **Action**: Revision of Currently Approved Collections of Information

83. **OMB Control Nos.:**1902-0021; 1902-0029; 1902-0028; 1902-0030; and 1902-0022.

84. **Respondents:** Business or other for profit.

85. **Frequency of Responses***:* Annually.

86. **Reporting Burden:** The Commission estimated that adoption of the reporting requirements as identified in the NOPR, would result in an increase in reporting burden to the information collections identified above. Those increases were the following:

Data Collection	Hours per Respondent	Total Hours for data coll.*	
		NOPR	Final Rule
Form - 1	2	420	432
Form - 1F	2	14	52
Form - 2	2	114	114
Form - 2A	2	114	106
Form - 6	2	318	318
Totals		980	1,022

* The changes in total hours reflect changes in the number of respondents filing the information collections based on the most recent submissions to the Commission. Forms 1 & 1-F had increases in the number of respondents filing while Form 2-A had a

decrease in the number of respondents who filed. The Commission did not receive specific comments concerning its burden estimates and will therefore continue those estimates in the Final Rule. Comments on the substantive issues raised in the NOPR are addressed elsewhere in the Final Rule.

87. Interested persons may obtain information on the reporting requirements by contacting the following:

> 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) 208-2425,
> e-mail: mike.miller@ferc.gov

88. For submitting comments concerning the collections of information and the associated burden estimate(s), please send your comments to the contact listed above or to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW, Washington, D.C. 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202)395-7856, fax: (202)395-7285].

VII. DOCUMENT AVAILABILITY

89. In addition to publishing the full text of this document in the Federal Register, the Commission also 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 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

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

91. User assistance is available for FERRIS and the FERC 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 .

VIII. EFFECTIVE DATE AND CONGRESSIONAL NOTIFICATION

92. This Final Rule will take effect [insert date that is 60 days after date of publication in the FEDERAL REGISTER]. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a "major rule" within the meaning of Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[51] The

[51] 5 U.S.C. 804(2).

Commission will submit the Final Rule to both houses of Congress and the General Accounting Office.[52]

List of Subjects

18 CFR Part 101

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

18 CFR Part 201

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

18 CFR Part 352

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend Parts 101, 201, and 352, Title 18 of the Code of Federal Regulations, as follows:

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[52] 5 U.S.C. 801(a)(1)(A).

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, General Instructions, Section 21. Allowances, paragraph I is removed, and Section 23. Accounting for other comprehensive income, and 24. Accounting for derivative instruments and hedging activities, are added to read as follows:

General Instructions

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23. Accounting for other comprehensive income.

(A) Utilities shall record items of other comprehensive income in account 219, Accumulated other comprehensive income. Amounts included in this account shall be maintained by each category of other comprehensive income. Examples of categories of other comprehensive income include, foreign currency items, minimum pension liability adjustments, unrealized gains and losses on available-for-sale type securities and cash flow hedge amounts. Supporting records shall be maintained for account 219 so that the company can readily identify the cumulative amount of other comprehensive income for each item included in this account.

(B) When an item of other comprehensive income enters into the determination of net income in the current or subsequent periods, a reclassification adjustment shall be recorded in account 219 to avoid double counting of that amount.

(C) When it is probable that an item of other comprehensive income will be included in the development of cost-of-service rates in subsequent periods, that amount of unrealized losses or gains will be recorded in Accounts 182.3 or 254 as appropriate.

24. Accounting for derivative instruments and hedging activities.

A. Utilities shall recognize derivative instruments as either assets or liabilities in the financial statements and measure those instruments at fair value, except those falling within recognized exceptions. Normal purchases or sales are contracts that provide for the purchase or sale of goods that will be delivered in quantities expected to be used or sold by the utility over a reasonable period in the normal course of business. A derivative instrument is a financial instrument or other contract with all of the following characteristics:

(1) It has one or more underlyings and a notional amount or payment provision. Those terms determine the amount of the settlement or settlements, and, in some cases, whether or not a settlement is required.

(2) It requires no initial net investment or an initial net investment that is smaller than would be required for other types of contracts that would be expected to have a similar response to changes in market factors.

(3) Its terms require or permit net settlement, can readily be settled net by a means outside the contract, or provides for delivery of an asset that puts the recipient in a position not substantially different from net settlement.

B. The accounting for the changes in the fair value of derivative instruments depends upon its intended use and designation. Changes in the fair value of derivative instruments not designated as fair value or cash flow hedges shall be recorded in account 175, Derivative instrument assets, or account 244, Derivative instrument liabilities, as appropriate, with the gains recorded in account 421, Miscellaneous nonoperating income, and losses recorded in account 426.5, Other deductions.

C. A derivative instrument may be specifically designated as a fair value or cash flow hedge. A hedge is used to manage risk to price, interest rates, or foreign currency transactions. A company shall maintain documentation of the hedge relationship at the inception of the hedge that details the risk management objective and strategy for undertaking the hedge, the nature of the risk being hedged, and how hedge effectiveness will be determined.

D. If the utility designates the derivative instrument as a fair value hedge against exposure to changes in the fair value of a recognized asset, liability, or a firm commitment, it shall record the change in fair value of the derivative instrument to account 176, Derivative instrument assets-Hedges, or account 245, Derivative instrument liabilities-Hedges, as appropriate, with a corresponding adjustment to the subaccount of the item being hedged. The ineffective portion of the hedge transaction shall be reflected in the same income or expense account that will be used when the hedged item enters into the determination of net income. In the case of a fair value hedge of a firm commitment a new asset or liability is created. As a result of the hedge relationship, the new asset or liability will become part of the carrying amount of the item being hedged.

E. If the utility designates the derivative instrument as a cash flow hedge against exposure to variable cash flows of a probable forecasted transaction, it shall record changes in the fair value of the derivative instrument in account 176, Derivative instrument assets-Hedges, or account 245, Derivative instrument liabilities-Hedges, as appropriate, with a corresponding amount in account 219, Accumulated other comprehensive income, for the effective portion of the hedge. The ineffective portion of the hedge transaction shall be reflected in the same income or expense account that will be used when the hedged item enters into the determination of net income. Amounts recorded in other comprehensive income shall be reclassified into earnings in the same period or periods that the hedged forecasted item enters into the determination of net income.

3. In part 101, Balance Sheet Accounts, accounts 124, paragraph A, 125, 126 and 127 are revised to read as follows:

Balance Sheet Accounts

* * * * *

124 Other investments.

A. This account shall include the book cost of investments in securities issued or assumed by nonassociated companies, investment advances to such companies, and any investments not accounted for elsewhere. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. Include also the offsetting entry to the recording of amortization of discount or premium on interest bearing investments. (See account 419, Interest and dividend income.)

* * * * *

125 Sinking funds (Major only).

This account shall include the amount of cash and book cost of investments held in sinking funds. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. A separate account, with appropriate title, shall be kept for each sinking fund. Transfers from this account to special deposit accounts may be made as necessary for the purpose of paying matured sinking-fund obligations, or obligations called for redemption but not presented, or the interest thereon.

126 Depreciation fund (Major only).

This account shall include the amount of cash and book cost of investments which have been segregated in a special fund for the purpose of identifying such assets with the accumulated provisions for depreciation. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments.

127 Amortization fund–Federal (Major only).

This account shall include the amount of cash and book cost of investments of any investments of any fund maintained pursuant to the requirements of a federal regulatory body, as the cash and investments segregated for the purpose of identifying the specific assets associated with account 215.1, Appropriated retained earnings–Amortization reserve, Federal. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments.

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4. In part 101, Balance Sheet Accounts, account 128, introductory text above the note is revised to read as follows:

Balance Sheet Accounts

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128 Other special funds (Major only).

This account shall include the amount of cash and book cost of investments which have been segregated in special funds for insurance, employee pensions, savings, relief, hospital, and other purposes not provided for elsewhere. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. A separate account with appropriate title, shall be kept for each fund.

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5. In part 101, Balance Sheet Accounts, account 129, introductory text preceding Note A, is revised to read as follows:

Balance Sheet Accounts

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129 Special funds (Nonmajor only).

This account shall include the amount of cash and book cost of investments which have been segregated in special funds for bond retirements, property additions and replacements, insurance, employees' pensions, savings, relief, hospital, and other purposes not provided for elsewhere. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. A separate account, with appropriate title, shall be kept for each fund.

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6. In part 101, Balance Sheet Accounts, accounts 175 and 176 are added to read as follows:

Balance Sheet Accounts

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175 Derivative instrument assets.

This account shall include the amounts paid for derivative instruments, and the change in the fair value of all derivative instrument assets not designated as cash flow or fair value hedges. Account 421, Miscellaneous nonoperating income, shall be credited or debited, as appropriate, with the corresponding amount of the change in the fair value of the derivative instrument.

176 <u>Derivative instrument assets-Hedges</u>.

A. This account shall include the amounts paid for derivative instruments, and the change in the fair value of derivative instrument assets designated by the utility as cash flow or fair value hedges.

B. When a utility designates a derivative instrument asset as a cash flow hedge it will record the change in the fair value of the derivative instrument in this account with a concurrent charge to account 219, Accumulated other comprehensive income, with the effective portion of the gain or loss. The ineffective portion of the cash flow hedge shall be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

C. When a utility designates a derivative instrument as a fair value hedge it shall record the change in the fair value of the derivative instrument in this account with a concurrent charge to a subaccount of the asset or liability that carries the item being hedged. The ineffective portion of the fair value hedge shall be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

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7. In part 101, Balance Sheet Accounts, account 182.3, paragraph B is revised to read as follows:

Balance Sheet Accounts

* * * * *

182.3 Other regulatory assets.

* * * * *

B. The amounts included in this account are to be established by those charges which would have been included in net income, or accumulated other comprehensive income, determinations in the current period under the general requirements of the Uniform System of Accounts but for it being probable that such items will be included in a different period(s) for purposes of developing rates that the utility is authorized to charge for its utility services. When specific identification of the particular source of a regulatory asset cannot be made, such as in plant phase-ins, rate moderation plans, or rate levelization plans, account 407.4, Regulatory credits, shall be credited. The amounts recorded in this account are generally to be charged, concurrently with the recovery of the amounts in rates, to the same account that would have been charged if included in income when incurred, except all regulatory assets established through the use of account

407.4 shall be charged to account 407.3, Regulatory debits, concurrent with the recovery in rates.

* * * * *

8. In part 101, Balance Sheet Accounts, accounts 219, 244 and 245 are added to read as follows:

Balance Sheet Accounts

* * * * *

219 Accumulated other comprehensive income.

A. This account shall include revenues, expenses, gains, and losses that are properly includable in other comprehensive income during the period. Examples of other comprehensive income include foreign currency items, minimum pension liability adjustments, unrealized gains and losses on certain investments in debt and equity securities, and cash flow hedges. Records supporting the entries to this account shall be maintained so that the utility can furnish the amount of other comprehensive income for each item included in this account.

B. This account shall also be debited or credited, as appropriate, with amounts of accumulated other comprehensive income that have been included in the determination of net income during the period and in accumulated other comprehensive income in prior periods. Separate records for each category of items shall be maintained to identify the amount of the reclassification adjustments from accumulated other comprehensive income to earnings made during the period.

*   *   *   *   *

244 <u>Derivative instrument liabilities</u>.

This account shall include the change in the fair value of all derivative instrument liabilities not designated as cash flow or fair value hedges. Account 426, Other deductions, shall be debited or credited as appropriate with the corresponding amount of the change in the fair value of the derivative instrument.

245 <u>Derivative instrument liabilities-Hedges.</u>

A. This account shall include the change in the fair value of derivative instrument liabilities designated by the utility as cash flow or fair value hedges.

B. A utility shall record the change in the fair value of a derivative instrument liability related to a cash flow hedge in this account, with a concurrent charge to account 219, Accumulated other comprehensive income, with the effective portion of the derivative's gain or loss. The ineffective portion of the cash flow hedge shall be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

C. A utility shall record the change in the fair value of a derivative instrument liability related to a fair value hedge in this account, with a concurrent charge to a subaccount of the asset or liability that carries the item being hedged. The ineffective portion of the fair value hedge shall be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

* * * * *

9. In part 101, Balance Sheet Accounts, account 254, paragraph B, is revised to read as follows:

Balance Sheet Accounts

* * * * *

254 Other regulatory liabilities.

* * * * *

B. The amounts included in this account are to be established by those credits which would have been included in net income, or accumulated other comprehensive income, determinations in the current period under the general requirements of the Uniform System of Accounts but for it being probable that: 1) such items will be included in a different period(s) for purposes of developing the rates that the utility is authorized to charge for its utility services; or 2) refunds to customers, not provided for in other accounts, will be required. When specific identification of the particular source of the regulatory liability cannot be made or when the liability arises from revenues collected pursuant to tariffs on file at a regulatory agency, account 407.3, Regulatory debits, shall be debited. The amounts recorded in this account generally are to be credited to the same account that would have been credited if included in income when earned except: 1) all regulatory liabilities established through the use of account 407.3 shall be credited to account 407.4, Regulatory credits; and 2) in the case of refunds, a cash account or other appropriate account should be credited when the obligation is satisfied.

* * * * *

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

10. 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.

11. In part 201, Sections 22. Accounting for other comprehensive income, and 23. Accounting for derivative instruments and hedging activities, are added to read as follows:

General Instructions

* * * * *

22. Accounting for other comprehensive income.

(A) Utilities shall record items of other comprehensive income in account 219, Accumulated other comprehensive income. Amounts included in this account shall be maintained by each category of other comprehensive income. Examples of categories of other comprehensive income include, foreign currency items, minimum pension liability adjustments, unrealized gains and losses on available-for-sale type securities and cash flow hedge amounts. Supporting records shall be maintained for account 219 so that the company can readily identify the cumulative amount of other comprehensive income for each item included in this account.

(B) When an item of other comprehensive income enters into the determination of net income in the current or subsequent periods, a reclassification adjustment shall be recorded in account 219 to avoid double counting of that amount.

(C) When it is probable that an item of other comprehensive income will be included in the development of cost of service rates in subsequent periods, that amount of unrealized losses or gains shall be recorded in Accounts 182.3 or 254 as appropriate.

23. <u>Accounting for derivative instruments and hedging activities</u>.

A. Utilities shall recognize derivative instruments as either assets or liabilities in the financial statements and measure those instruments at fair value, except those falling within recognized exceptions, the most common of which being the normal purchases and sales scope exception. Normal purchases or sales are contracts that provide for the purchase or sale of goods that will be delivered in quantities expected to be used or sold by the utility over a reasonable period in the normal course of business. A derivative instrument is a financial instrument or other contract with all three of the following characteristics:

(1) It has one or more underlyings and a notional amount or payment provision. Those terms determine the amount of the settlement or settlements, and, in some cases, whether or not a settlement is required.

(2) It requires no initial net investment or an initial net investment that is smaller than would be required for other types of contracts that would be expected to have similar response to changes in market factors.

(3) Its terms require or permit net settlement, can readily be settled net by a means outside the contract, or provides for delivery of an asset that puts the recipient in a position not substantially different from net settlement.

B. The accounting for the changes in the fair value of derivative instruments depends upon its intended use and designation. Changes in the fair value of derivative instruments not designated as fair value or cash flow hedges will be recorded in account 175, Derivative instrument assets, or account 244, Derivative instrument liabilities, as appropriate, with the gains recorded in account 421, Miscellaneous nonoperating income, and losses recorded in account 426.4, Other deductions.

C. A derivative instrument may be specifically designated as a fair value or cash flow hedge. A hedge may be used to manage risk to price, interest rates, or foreign currency transactions. Utilities shall maintain documentation of the hedge relationship at the inception of the hedge that details the risk management objective and strategy for undertaking the hedge, the nature of the risk being hedged, and how hedge effectiveness will be determined.

D. If the utility designates the derivative instrument as a fair value hedge against exposure to changes in the fair value of a recognized asset, liability, or a firm commitment, it will record the change in fair value of the derivative instrument to account 176, Derivative instrument assets-Hedges, or account 245, Derivative instrument liabilities-Hedges, as appropriate, with a corresponding adjustment to the subaccount of the item being hedged. The ineffective portion of the hedge transaction shall be reflected in the same income or expense account that will be used when the hedged item enters into the determination of net income. In the case of a fair value hedge of a firm commitment a new asset or liability is created. As a result of the hedge relationship, the new asset or liability will become part of the carrying amount of the item being hedged.

E. If the utility designates the derivative instrument as a cash flow hedge against exposure to variable cash flows of a probable forecasted transaction, it shall record changes in the fair value of the derivative instrument in account 176, Derivative instrument assets-Hedges, or account 245, Derivative instrument liabilities-Hedges, as appropriate, with a corresponding amount in account 219, Accumulated other comprehensive income, for the effective portion of the hedge. The ineffective portion of the hedge transaction shall be reflected in the same income or expense account that will be used when the hedged item enters into the determination of net income. Amounts recorded in other comprehensive income shall be reclassified into earnings in the same period or periods that the hedged forecasted item enters into the determination of net income.

* * * * *

12. In part 201, Balance Sheet Accounts, accounts 124, paragraph A, 125, 126, and 128, introductory text preceding the Note, are revised to read as follows:

Balance Sheet Accounts

* * * * *

124 Other investments.

A. This account shall include the book cost of investments in securities issued or assumed by nonassociated companies, investment advances to such companies, and any investments not accounted for elsewhere. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. Include also the offsetting entry to the recording of amortization of discount or premium on interest bearing investments. (See account 419, interest and dividend income.)

* * * * *

125 Sinking funds.

This account shall include the amount of cash and book cost of investments held in sinking funds. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. A separate account, with appropriate title, shall be kept for each sinking fund. Transfers from this account to special deposit accounts may be made as necessary for the purpose of paying matured sinking-fund obligations, or obligations called for redemption but not presented, or the interest thereon.

126 Depreciation fund.

This account shall include the amount of cash and book cost of investments which have been segregated in a special fund for the purpose of identifying such assets with the accumulated provisions for depreciation. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments.

* * * * *

128 Other special funds.

This account shall include the amount of cash and book cost of investments which have been segregated in special funds for insurance, employee pensions, savings, relief, hospital, and other purposes not provided for elsewhere. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. A separate account with appropriate title, shall be kept for each fund.

* * * * *

13. In part 201, Balance Sheet Accounts, accounts 174 and 175 are added to read as follows:

Balance Sheet Accounts

*   *   *   *   *

175 Derivative instrument assets.

This account shall include the amounts paid for derivative instruments, and the change in the fair value of all derivative instrument assets not designated as cash flow or fair value hedges. Account 421, Miscellaneous nonoperating income, will be credited or debited as appropriate with the corresponding amount of the change in the fair value of the derivative instrument.

176 Derivative instrument assets-Hedges.

A. This account shall include the amounts paid for derivative instruments, and the change in the fair value of derivative instrument assets designated by the utility as cash flow or fair value hedges.

B. When a utility designates a derivative instrument asset as a cash flow hedge it will record the change in the fair value of the derivative instrument in this account with a concurrent charge to account 219, Accumulated other comprehensive income, with the effective portion of the derivative gain or loss. The ineffective portion of the cash flow hedge shall be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

C. When a utility designates a derivative instrument asset as a fair value hedge it shall record the change in the fair value of the derivative instrument in this account with a concurrent charge to a subaccount of the asset or liability that carries the item being hedged. The ineffective portion of the fair value hedge shall be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

* * * * *

14. In part 201, Balance Sheet Accounts, account 182.3, Paragraph B, is revised to read as follows:

Balance Sheet Accounts

* * * * *

182.3 Other regulatory assets.

* * * * *

B. The amounts included in this account are to be established by those charges which would have been included in net income, or accumulated other comprehensive income, determinations in the current period under the general requirements of the Uniform System of Accounts but for it being probable that such items will be included in a different period(s) for purposes of developing rates that the utility is authorized to charge for its utility services. When specific identification of the particular source of a regulatory asset cannot be made, such as in plant phase-ins, rate moderation plans, or rate levelization plans, account 407.4, Regulatory credits, shall be credited. The amounts recorded in this account are generally to be charged, concurrently with the recovery of the amounts in rates, to the same account that would have been charged if included in income when incurred, except all regulatory assets established through the use of account 407.4 shall be charged to account 407.3, Regulatory debits, concurrent with the recovery in rates.

* * * * *

15. In part 201, Balance Sheet Accounts, accounts 219, 244 and 245 are added, to read as follows:

<u>Balance Sheet Accounts</u>

* * * * *

219 <u>Accumulated other comprehensive income.</u>

A. This account shall include revenues, expenses, gains, and losses that are properly includable in other comprehensive income during the period. Examples of other comprehensive income include foreign currency items, minimum pension liability adjustments, unrealized gains and losses on certain investments in debt and equity securities, and cash flow hedges. Records supporting the entries to this account shall be maintained so that the utility can furnish the amount of other comprehensive income for each item included in this account.

B. This account shall also be debited or credited, as appropriate, with amounts of accumulated other comprehensive income that have been included in the determination of net income during the period and in accumulated other comprehensive income in prior periods. Separate records for each category of items will be maintained to identify the amount of the reclassification adjustments from accumulated other comprehensive income to earnings made during the period.

* * * * *

244 Derivative instrument liabilities.

This account shall include the change in the fair value of all derivative instrument liabilities not designated as cash flow or fair value hedges. Account 426.5, Other deductions, shall be debited or credited as appropriate with the corresponding amount of the change in the fair value of the derivative instrument.

245 Derivative instrument liabilities-Hedges.

A. This account shall include the change in the fair value of derivative instrument liabilities designated by the utility as cash flow or fair value hedges.

B. A utility shall record the change in the fair value of a derivative liability related to a cash flow hedge in this account, with a concurrent charge to account 219, Accumulated other comprehensive income, with the effective portion of the derivative gain or loss. The ineffective portion of the cash flow hedge shall be charged to the same income or expense account that will be charged when the hedged item enters into the determination of net income.

C. A utility shall record the change in the fair value of a derivative instrument liability related to a fair value hedge in this account, with a concurrent charge to a subaccount of the asset or liability that carries the item being hedged. The ineffective portion of the fair value hedge shall be charged to the same income or expense account that will be charged when the hedged item enters into the determination of net income.

* * * * *

16. In part 201, Balance Sheet Accounts, accounts 254, Paragraph B is revised, to read as follows:

<u>Balance Sheet Accounts</u>

* * * * *

<u>254 Other regulatory liabilities.</u>

*** * * * ***

B. The amounts included in this account are to be established by those credits which would have been included in net income, or accumulated other comprehensive income, determinations in the current period under the general requirements of the Uniform System of Accounts but for it being probable that: 1) such items will be included in a different period(s) for purposes of developing the rates that the utility is authorized to charge for its utility services; or 2) refunds to customers, not provided for in other accounts, will be required. When specific identification of the particular source of the regulatory liability cannot be made or when the liability arises from revenues collected pursuant to tariffs on file at a regulatory agency, account 407.3, Regulatory debits, shall be debited. The amounts recorded in this account generally are to be credited to the same account that would have been credited if included in income when earned except: 1) all regulatory liabilities established through the use of account 407.3 shall be credited to account 407.4, Regulatory credits; and 2) in the case of refunds, a cash account or other appropriate account should be credited when the obligation is satisfied.

* * * * *

PART 352-- UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR OIL PIPELINE COMPANIES SUBJECT TO THE PROVISIONS OF THE INTERSTATE COMMERCE ACT

17. 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).

18. In part 352, List of Instructions and Accounts, definition, paragraph 35(d) is revised to read as follows:

<u>Definitions.</u>

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35 * * *

(d) Cost, as applied to a marketable equity security, refers to the original cost as adjusted for unrealized holding gains and losses.

* * * * *

19. In part 352, General Instructions, paragraph 1-15(a), (b) and (c) are revised, (d) and (e) are removed, and General Instructions paragraphs 1-17 and 1-18 are added to read as follows:

General Instructions

* * * * *

1-15 Accounting for marketable securities owned. (a) Accounts 11 "Temporary investments," 20 "Investments in affiliated companies," and 21 "Other investments" shall be maintained in such a manner as to reflect the marketable equity portion (see definition 35) and other securities or investments

(b) For the purpose of determining net ledger value, the marketable equity securities in account 11 shall be considered the current portfolio and the marketable equity securities in accounts 20 and 21 (combined) shall be considered the noncurrent portfolio.

(c) Carriers will categorize their security investments as held-to-maturity, trading, or available-for-sale. Unrealized holding gains and losses on trading type investment securities will be recorded in accounts 640, Miscellaneous income, and 660, Miscellaneous income charges, as appropriate. Unrealized holding gains and losses on available-for-sale type investment securities shall be recorded in account 77, Accumulated other comprehensive income.

* * * * *

1-17 Accounting for other comprehensive income.

(a) Carriers shall record items of other comprehensive income in account 77, Accumulated other comprehensive income. Amounts included in this account shall be maintained by each category of other comprehensive income. Examples of categories of other comprehensive income include, foreign currency items, minimum pension liability adjustments, unrealized gains and losses on available-for-sale type securities and cash flow hedge amounts. Supporting records shall be maintained for account 77 so that the company can readily identify the cumulative amount of other comprehensive income for each item included in this account.

(b) When an item of other comprehensive income enters into the determination of net income in the current or subsequent periods, a reclassification adjustment shall be recorded in account 77 to avoid double counting of that amount.

1-18 Accounting for derivative instruments and hedging activities.

(a) A carrier shall recognize derivative instruments as either assets or liabilities in the financial statements and measure those instruments at fair value, except those falling within recognized exceptions, the most common of which being the normal purchases and sales scope exception. Normal purchases or sales are contracts that provide for the purchase or sale of goods that will be delivered in quantities expected to be used or sold by the utility over a reasonable period in the normal course of business. A derivative instrument is a financial instrument or other contract with all three of the following characteristics:

(1) It has one or more underlyings and a notional amount or payment provision. Those terms determine the amount of the settlement or settlements, and, in some cases, whether or not a settlement is required.

(2) It requires no initial net investment or an initial net investment that is smaller than would be required for other types of contracts that would be expected to have similar response to changes in market factors.

(3) Its terms require or permit net settlement, can readily be settled net by a means outside the contract, or provides for delivery of an asset that puts the recipient in a position not substantially different from net settlement.

(b) The accounting for the changes in the fair value of derivative instruments depends upon its intended use and designation. Changes in the fair value of derivative instruments not designated as fair value or cash flow hedges shall be recorded in account 46, Derivative instrument assets, or account 65, derivative instrument liabilities, as appropriate, with the gains recorded in account 640, Miscellaneous income, and losses recorded in account 660, Miscellaneous income charges.

(c) A derivative instrument may be specifically designated as a fair value or cash flow hedge. A hedge may be used to manage risk to price, interest rates, or foreign currency transactions. An entity shall maintain documentation of the hedge relationship at the inception of the hedge that details the risk management objective and strategy for undertaking the hedge, the nature of the risk being hedged, and how hedge effectiveness will be determined.

(d) If the carrier designates the derivative instrument as a fair value hedge against exposure to changes in the fair value of a recognized asset, liability, or a firm commitment, it shall record the change in fair value of the derivative instrument designated as a fair value hedge to account 47, Derivative instrument assets-Hedges, or account 66, Derivative instrument liabilities-Hedges, as appropriate, with a corresponding adjustment to the subaccount of the item being hedged. The ineffective portion of the hedge transaction shall be reflected in the same income or expense account that will be used when the hedged item enters into the determination of net income. In the case of a fair value hedge of a firm commitment, a new asset or liability is created. As a result of the hedge relationship, the new asset or liability will become part of the carrying amount of the item being hedged.

(e) If the carrier designates the derivative instrument as a cash flow hedge against exposure to variable cash flows of a probable forecasted transaction, it shall record changes in the fair value of the derivative instrument in account 47, Derivative instrument assets-Hedges, or account 66, Derivative instrument liabilities-Hedges, as appropriate, with a corresponding amount in account 77, Accumulated other comprehensive income, for the effective portion of the hedge. The ineffective portion of the hedge transaction shall be reflected in the same income or expense account that will be used when the hedged item enters into the determination of net income. Amounts recorded in other comprehensive income shall be reclassified into earnings in the same period or periods that the hedged forecasted item enters into the determination of net income.

* * * * *

20. In part 352, Balance Sheet Accounts, accounts 11, 21, and 22, paragraph (a) are revised to read as follows:

Balance Sheet Accounts

* * * * *

11 Temporary investments.

(a) This account shall include the cost of securities and other collectible obligations acquired for the purpose of temporarily investing cash, such as United States Treasury certificates, marketable securities, time drafts receivable, demand loans, time deposits with banks and trust companies, and other similar investments of a temporary character. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments.

(b) This account shall be subdivided to reflect the marketable equity securities' portion and other temporary investments. (See Instruction 1-15).

* * * * *

21 <u>Other investments</u>.

This account shall include the cost of investments in securities of (other than securities held in special funds) and advances made to other than affiliated companies. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. Separate records shall be maintained to show the securities pledged and the following classes of investments in each nonaffiliated company:

(a) Stocks.

(b) Bonds.

(c) Other secured obligations.

(d) Unsecured notes.

(e) Investment advances.

22 <u>Sinking and other funds</u>.

(a) This account shall include cash and cost of investments in securities and other assets, trusteed or otherwise restricted, that have been segregated in distinct funds for purposes of redeeming outstanding obligations; purchasing or replacing assets; paying pensions, relief, hospitalization, and other similar items. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. The cash value of life insurance policies on the lives of employees and officers to the extent that the carrier is the beneficiary of such policies shall also be included in this account. Separate subsidiary records shall be maintained for each distinct fund.

* * * * *

21. In part 352, Balance Sheet Accounts, accounts 23, 24, and 75.5 are removed.

* * * * *

22. In part 352, Balance Sheet Accounts, accounts 46, 47, 65, 66 and 77 are added to read as follows:

<u>**Balance Sheet Accounts**</u>

* * * * *

46 <u>Derivative instrument assets.</u>

This account shall include the amounts paid for derivative instruments, and the change in the fair value of all derivative instrument assets not designated as cash flow or fair value hedges. Account 640, Miscellaneous income, shall be credited or debited as appropriate with the corresponding amount of the change in the fair value of the derivative instrument.

47 <u>Derivative instrument assets-Hedges</u>.

(a) This account shall include the amounts paid for derivative instruments, and the change in the fair value of derivative instrument assets, designated by the utility as cash flow or fair value hedges.

(b) When a carrier designates a derivative instrument asset as a cash flow hedge, it will record the change in the fair value of the derivative instrument in this account with a concurrent charge to account 77, Accumulated other comprehensive income, with the effective portion of the derivative gain or loss. The ineffective portion of the cash flow hedge shall be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

(c) When a carrier designates a derivative instrument as a fair value hedge, it shall record the change in the fair value of the derivative instrument in this account with a concurrent charge to a subaccount of the asset or liability that carries the item being hedged. The ineffective portion of the fair value hedge shall be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

* * * * *

65 <u>Derivative instrument liabilities.</u>

This account shall include the change in the fair value of all derivative instrument liabilities not designated as cash flow or fair value hedges. Account 660, Miscellaneous income charges, shall be debited or credited as appropriate with the corresponding amount of the change in the fair value of the derivative instrument.

66 Derivative instrument liabilities-Hedges.

(a) This account shall include the change in the fair value of derivative instrument liabilities designated by the carrier as cash flow or fair value hedges.

(b) A carrier shall record the change in the fair value of a derivative instrument liability related to a cash flow hedge in this account, with a concurrent charge to account 77, Accumulated other comprehensive income, with the effective portion of the derivative gain or loss. The ineffective portion of the cash flow hedge shall be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

(c) A carrier shall record the change in the fair of a derivative instrument liability related to a fair value hedge in this account, with a concurrent charge to a subaccount of the asset or liability that carries the item being hedged. The ineffective portion of the fair value hedge shall be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

* * * * *

77 Accumulated other comprehensive income.

(a) This account shall include revenues, expenses, gains, and losses that are properly includable in other comprehensive income during the period. Examples of other comprehensive income include foreign currency items, minimum pension liability adjustments, unrealized gains and losses on certain investments in debt and equity securities, and cash flow hedges. Records supporting the entries to this account shall be maintained so that the utility can furnish the amount of other comprehensive income for each item included in this account.

(b) This account shall also be debited or credited, as appropriate, with amounts of accumulated other comprehensive income that have been included in the determination of net income during the period and in accumulated other comprehensive income in prior periods. Separate records for each category of items shall be maintained to identify the amount of the reclassification adjustments from accumulated other comprehensive income to earnings made during the period.

* * * * *

NOTE: THE FOLLOWING APPENDICES WILL NOT BE PUBLISHED IN THE CODE OF FEDERAL REGULATIONS.

APPENDIX A

LIST OF COMMENTERS

	Respondent	**Abbreviation**
1	American Forest & Paper Association, Process Gas Consumers Group Georgia Industrial Group Industrial Gas Users of Florida Florida Industrial Gas Users	American Forest
2	American Electric Power System	AEP
3	Automated Power Exchange, Inc.	APE
4	American Public Gas Association	APGA
5	Avista Energy, Inc.	Avista
6	California Electric Oversight Board	Electric Board
7	Calpine Corporation	Calpine
8	Cinergy Services Inc.	Cinergy
9	Cogentrix Energy, Inc.	Cogentrix
10	Competitive Supply Commenters	Competitive
11	Dominion Resources, Inc	Dominion
12	Duke Energy North America LLC	Duke Energy
13	Edison Electric Institute	EEI
14	Edison Mission Energy Edison Mission Marketing & Trading, Inc.	Edison Mission
15	Electric Power Supply Association	EPSA

	Respondent	Abbreviation
16	J. Aron & Company Merrill Lynch Capital Services, Inc. Morgan Stanley Capital Group Inc.	J. Aron
17	National Energy Marketers Association	NEM
18	National Rural Electric Cooperative Assn.	NRECA
19	Nicor Gas Company	Nicor
20	Oneok Power Marketing Company	OPMC
21	PanCanadian Energy Services, Inc.	PanCanadian
22	Pinnacle West Capital Corporation	Pinnacle West
23	Portland General Electric Company	Portland General
24	Public Utilities Commission of Ohio	Ohio PUC
25	Public Utilities Commission of the State of California	California PUC
26	Reliant Resources, Inc.	RRI
27	RWE Trading Americas, Inc.	RWE Trading
28	Sempra Energy	Sempra
29	Society for the Preservation of Oil Pipeline Shippers	Oil Pipeline Shippers
30	Southern California Edison	Southern Cal Ed
31	Southern Company	Southern
32	State of New York Department of Public Service	NYPUC
33	TXU Energy Trading Company LP	TXU
34	UBS AG	UBS
35	Williams Companies, Inc	Williams
36	Wisconsin Electric Power Company	Wisconsin Electric

APPENDIX B NOT ON DISKETTE

A COPY CAN BE FOUND IN THE PUBLIC REFERENCE ROOM