

119 FERC ¶ 61,050
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 101 and 141

(Docket No. RM07-2-000; Order No. 694)

Accounting and Reporting Requirements for
Nonoperating Public Utilities and Licensees

(Issued April 19, 2007)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: In this Final Rule, the Federal Energy Regulatory Commission (Commission) is amending its accounting and reporting regulations to require public utilities and licensees to continue to follow the Commission's Uniform System of Accounts (USofA) and to file annual and quarterly financial reports when they have ceased making jurisdictional sales of electric energy, or providing jurisdictional transmission service, but continue collecting amounts pursuant to a Commission-accepted tariff or rate schedule, or a Commission order. The Final Rule will close a gap in the Commission's regulations which apply now only to operating public utilities and licensees, and which provide information necessary to the Commission's regulatory responsibilities.

EFFECTIVE DATE: The rule will become effective [insert date 30 days after publication in the **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Accounting and Reporting Requirements
For Nonoperating Public Utilities and Licensees

Docket No. RM07-2-000

ORDER NO. 694

FINAL RULE

(Issued April 19, 2007)

I. Introduction

1. On December 21, 2006, the Commission issued a Notice of Proposed Rulemaking (NOPR) that proposed to amend its accounting and reporting regulations, in Parts 101 and 141, to require public utilities and licensees to continue to follow the Commission's Uniform System of Accounts (USofA) and to file annual and quarterly financial reports when they have ceased making jurisdictional sales of electric energy, or providing jurisdictional transmission service, but continue collecting amounts pursuant to a Commission-accepted tariff or rate schedule, or a Commission order.¹ The NOPR also sought comments regarding the applicability of Part 125, Preservation of Records of Public Utilities and Licensees, to public utilities or licensees which have ceased

¹ Accounting and Reporting Requirements For Nonoperating Public Utilities and Licensees, 72 FR 922 (Jan. 9, 2007), FERC Stats. & Regs. ¶ 32,610 (2006).

operations, but continue to collect amounts pursuant to a Commission-approved tariff or rate schedule, or a Commission order.

2. The Final Rule adopts the proposed revisions to Parts 101 and 141 contained in the NOPR. The Final Rule requires that companies who cease operating but continue collecting amounts pursuant to a Commission-accepted tariff or rate schedule, or a Commission order, continue to comply with Parts 101 and 141. The Final Rule finds that there is no need to adopt changes to Part 125 of the Commission's regulations.

II. Discussion

3. Parts 101 and 141 of the Commission's regulations require public utilities and licensees whose sales or transmission service exceed certain prescribed levels to follow the USofA and to file annual and quarterly financial reports, Forms No. 1, 1-F, and 3-Q, respectively. Under the Commission's existing regulations, public utilities and licensees are relieved of these accounting and reporting requirements when they cease making sales for resale or providing transmission. This is true even when these nonoperating entities continue to collect amounts pursuant to a Commission-approved tariff or rate schedule, or a Commission order. Therefore, the Commission cannot oversee, monitor, or audit costs that provide information necessary to the Commission's oversight responsibilities and the protection of the public interest under the existing regulations.

4. As discussed in the NOPR,² in recent years, this accounting and reporting gap has been highlighted when, for example, nuclear generating plants shut down but continue to

² NOPR at P 5.

collect decommissioning and other administrative costs under a Commission-accepted tariff or rate schedule, or a Commission order.³ The amounts collected by these companies are material and may span a decade or longer.⁴ The occurrence of these and the potential occurrence of similar circumstances impede the Commission's ability to collect information, monitor, or audit the underlying costs when accounting and reporting requirements no longer apply. The Commission has a continuing need to have access to books and records and to receive periodic financial reports for any jurisdictional entity, even when that entity has ceased operations but continues to collect amounts pursuant to a Commission-accepted tariff or rate schedule, or a Commission order. Without Commission oversight, customers and ratepayers cannot be assured that these billings are just and reasonable. For these reasons, we find that, nonoperating entities' compliance with Part 101 and reporting information in these financial reports is necessary to enable the Commission to fulfill its statutory responsibilities under the Federal Power Act (FPA).⁵ In addition, the information, because it is publicly available, will allow customers, state commissions, and others to evaluate the amounts charged.

III. The Final Rule

6. The Final Rule adopts the proposed changes outlined in the NOPR. A new category, designated nonoperating, is added to the General Instructions of Part 101, to the

³ See, e.g., Connecticut Yankee Atomic Power Company, 92 FERC ¶ 61,005 (2000) (approving decommissioning cost collections.)

⁴ For example, Connecticut Yankee collected \$16.7 million per year in decommissioning funds from 2000 to 2004 and \$93 million in 2005 and 2006. Id.

⁵ 16 U.S.C. 824 et seq.

classification of utilities subject to compliance with the USofA. Sections 141.1, 141.2, and 141.400 of the Commission's regulations are revised to require nonoperating public utilities and licensees whose operations have ceased but who continue to collect amounts pursuant to a Commission tariff or rate schedule, or a Commission order, to continue to comply with the Commission's reporting requirements.

7. The NOPR also sought comments on the continued applicability of Part 125 of the Commission's regulations, which sets forth record retention requirements for public utilities and licensees. The NOPR stated that a reasonable interpretation of Part 125 is that the requirements of that part continue to apply to nonoperating public utilities and licensees who continue to collect amounts pursuant to a Commission-approved tariff or rate schedule, or Commission order.⁶ The Final Rule similarly adopts this reading of Part 125, and it is unnecessary to makes changes to Part 125.

III. Comments

8. Comments on the NOPR were filed jointly by Yankee Atomic Electric Company, Connecticut Yankee Atomic Power Company, and Maine Yankee Atomic Power Company (jointly, Yankee Companies), and by the Connecticut Department of Public Utility Control, The Maine Public Utilities Commission and The Maine Office of Public Advocate (jointly, New England Parties). Neither the Yankee Companies nor the New England Parties object to the proposed regulations, but both parties express concern regarding additional costs that might be incurred and the effect on consumers who will

⁶ See NOPR at P 7.

ultimately pay the costs. The New England Parties state that the NOPR “may provide needed insight into the expenditures of non-operating plants” but state that it might increase the companies’ operating costs. The New England Parties request that the Commission exempt the Yankee Companies from the instant accounting requirements.

9. The Yankee Companies also state that they concur with the Commission’s interpretation of Part 125 and its conclusion that no revisions to that part are necessary. The Yankee Companies state that they will continue to abide by Part 125 as they have done since ceasing operations.

10. Where a company ceases operations but continues to collect costs pursuant to a Commission-approved tariff or rate schedule, or a Commission order, it is only proper that the affected company be obligated to continue maintaining their accounts pursuant to the USofA, and continue filing quarterly and annual financial reports with the Commission.⁷ At this time, however, any costs associated with meeting such requirements are unknown; thus, only a potential impact on rates exists.⁸ Moreover, any company affected by this Final Rule would, at the time it ceases operations, already be in compliance with the USofA and the Commission’s financial reporting requirements.

⁷ Yankee Companies have agreed to file FERC Form No. 1 as part of a settlement recently approved by the Commission. See Connecticut Yankee Atomic Power Co., 117 FERC ¶ 61,192 (2006).

⁸ See Virginia State Corp. Comm’n v. FERC, 468 F.3d 845, 847 (D.C. Cir. 2006) (“Petitioners’ claim of a rate effect is belied by the proposition that ‘[a]ccounting practices are not controlling for rate making purposes,’” (citing Consolidated Gas Supply Corp., 14 FERC ¶ 61,029 at 61,054 (1981) and Williston Basin Interstate Pipeline Co., 56 FERC ¶ 61,104 at 61,370-71 (1991))).

Thus, any burden imposed by this Final Rule is likely to be comparatively minimal.⁹

Finally, given the Commission's regulatory responsibilities, the benefits of closing this regulatory gap far outweigh the comparatively minimal costs that are likely to arise from compliance.

IV. Information Collection Statement

11. The collections of information referenced in this Final Rule have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995.¹⁰ OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.¹¹ Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this Final Rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number or the Commission had provided a justification as to why the control number should be displayed.

12. Persons wishing to comment on the collection of information may do so by contacting the Office of Management and Budget, Office of Information and Regulatory

⁹ Even the Yankee Companies, who would be most affected because they have not been operating for some time, offer an estimated cost of only "at least \$30,000 annually" for each Yankee company. Comparatively speaking, this is not a large sum. In fact, moreover, they also state that what they currently report to the Commission does "not differ substantially" from what they will now be required to submit to the Commission. See Yankee Companies' comments at 2-3.

¹⁰ See 44 U.S.C. 3507(d).

¹¹ 5 CFR 1320.11.

Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Energy Regulatory Commission; phone: 202-395-4650, fax: 202-395-7285.

Title: FERC Form No. 1, “Annual report of Major electric utilities, licensees, and others”; FERC Form No. 1-F, “Annual report for Nonmajor public utilities and licensees”; FERC Form No. 3-Q, “Quarterly financial report of electric utilities, licensees, and natural gas companies”; and FERC-555, “Preservation of Records of Public Utilities and Licensees, Natural Gas Companies, and Oil Pipeline Companies”.

Action: Proposed information collections.

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

Respondents: Business or others for profit.

Frequency of responses: Annually and quarterly.

Necessity of the Information: This Final Rule amends the Commission’s accounting and reporting regulations, in Parts 101 and 141, to require public utilities and licensees to continue to follow the Commission’s USofA and to file annual and quarterly financial reports when they have ceased making jurisdictional sales of electric energy, or providing jurisdictional transmission service, but continue to collect amounts pursuant to a Commission-accepted tariff or rate schedule, or Commission order. The Final Rule closes a gap in the Commission’s regulations which apply now only to operating public utilities and licensees. Without the changes made in the Final Rule, the Commission cannot oversee, monitor, or audit costs that provide information necessary to the Commission’s oversight responsibilities and the protection of the public interest.

V. Environmental Analysis

13. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.¹² No environmental consideration is necessary for the promulgation of a rule that addresses information gathering, analysis, and dissemination,¹³ and, also, that addresses accounting.¹⁴ This Final Rule addresses information gathering, analysis, and accounting requirements. Therefore, the 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. Regulatory Flexibility Act

14. The Regulatory Flexibility Act of 1980 (RFA)¹⁵ generally requires a description and analysis of the effect that a Final Rule will have on small entities or a certification that a rule will not have a significant economic impact on a substantial number of small entities.

15. The Commission concludes that this Final Rule will not have such an impact on a substantial number of small entities. Because most public utilities and licensees do not

¹² See Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987) FERC Stats. & Regs. ¶ 30,783 (1987).

¹³ See 18 CFR 380.4(a)(5).

¹⁴ See 18 CFR 380.4(c)(16).

¹⁵ See 5 U.S.C. 601-12.

fall within the definition of “small entity,” the Commission certifies that this Final Rule will not have a significant impact on a substantial number of small entities.

VII. Document Availability

16. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission’s Home Page (<http://www.ferc.gov>) and in the Commission’s Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, D.C., 20426.

17. From the Commission’s Home Page on the Internet, this document is available in the Commission’s document management system, e-Library. The full text of this document is available on e-Library in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in e-Library, type the docket number excluding the last three digits of this document in the docket number field.

18. User assistance is available for e-Library and the Commission’s website during normal business hours. For assistance, please contact FERC Online Support at 1-866-208-3676 (toll free) or 202-502-6652 (e-mail at FERCOn-lineSupport@ferc.gov) or the Public Reference Room at 202-502-8371, TTY 202-502-8659 (e-mail at public.reference@ferc.gov).

VIII. Effective Date and Congressional Notification

19. This Final Rule will take effect [insert date that is 30 days after date of publication in the **FEDERAL REGISTER**].

20. The Commission has determined with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB Final Rule is not a major rule within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.¹⁶ The Commission will submit the Final Rule to both houses of Congress and the General Accounting Office.

List of Subjects

18 CFR Part 101

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

18 CFR Part 141

Electric power, Reporting and recordkeeping requirements.

By the Commission.

(S E A L)

Philis J. Posey,
Deputy Secretary.

¹⁶ 5 U.S.C. 801.

In consideration of the foregoing, the Commission amends parts 101 and 141 of Title 18 of the Code of Federal Regulations, as set forth below:

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

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

Authority: 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352, 7651-7615o.

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

General Instructions

Classification of Utilities

A. * * *

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

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

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PART 141 – STATEMENTS AND REPORTS (SCHEDULES)

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

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

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

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

* * * * *

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

* * * * *

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

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

* * * * *

(b) Filing Requirements—(1) Who Must File—(i) Generally. Each Nonmajor and each Nonoperating (formerly designated as Nonmajor) public utility and licensee as defined by the Federal Power Act, which is considered Nonmajor as defined in Part 101 of this chapter, shall prepare and file with the Commission an original and conformed copies of FERC Form No. 1-F pursuant to the General Instructions set out in that form.

* * * * *

6. In § 141.400, revise paragraphs (b)(1)(i), (b)(2) introductory text, and (b)(3) introductory text to read as follows:

* * * * *

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

* * * * *

(b) Filing Requirements—(1) Who must file—(i) Generally. Each electric utility and each Nonoperating (formerly designated as Major or Nonmajor) electric utility (as defined in part 101 of subchapter C of this chapter) and other entity, i.e., each corporation, person, or licensee as defined in section 3 of the Federal Power Act (16 U.S.C. 792 et seq.), including any agency or instrumentality engaged in generation, transmission, distribution, or sale of electric energy, however produced, throughout the

United States and its possessions, having sales or transmission service, whether or not the jurisdiction of the Commission is otherwise involved, must prepare and file with the Commission FERC Form No. 3-Q pursuant to the General Instructions set out in that form.

* * * * *

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

* * * * *

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

* * * * *