

134 FERC ¶ 61,183  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Barry Lawson Williams

Docket No. ID-2449-005

ORDER GRANTING CONDITIONAL AUTHORIZATION TO HOLD  
INTERLOCKING POSITIONS

(Issued March 11, 2011)

1. On January 10, 2011, Barry Lawson Williams (Mr. Williams) submitted an application for authorization to hold interlocking positions pursuant to section 305(b) of the Federal Power Act (FPA).<sup>1</sup> In this order, the Commission grants Mr. Williams conditional authorization.

**I. Background**

2. Mr. Williams has served on Pacific Gas and Electric Company's (PG&E) board of directors since 1990 and was elected to Ameron International Corporation's (Ameron) board of directors on March 31, 2010.

3. Mr. Williams states that PG&E is a public utility as defined in the FPA.<sup>2</sup> Mr. Williams states that Ameron manufactures and distributes highly engineered steel, concrete, and fiberglass-composite pipes and poles for the chemical, industrial, energy, transportation, and infrastructure markets. Ameron produces water transmission pipes, fiberglass-composite pipe for transporting oil, chemicals and corrosive fluids and specialized materials. Ameron manufactures concrete and steel pressure pipe, concrete non-pressure pipe, protective linings for pipe, fabricated steel products such as large-diameter vertical steel pipes used as wind towers, concrete poles used as components in street lighting poles, and steel poles and pole arms used as components for traffic, street

---

<sup>1</sup> 16 U.S.C. § 825d(b) (2006).

<sup>2</sup> 16 U.S.C. § 824(e) (2006).

lighting, sports and area lighting and parking lots. Mr. Williams states that Ameron's concrete and steel pipes and poles are sold throughout the United States.

4. Mr. Williams states that PG&E currently does not and, due to various internal controls that have been put in place, cannot purchase any products, directly or indirectly, from Ameron. Mr. Williams also states that Ameron is in the process of putting blocks and protections into place against any direct sales to PG&E as an additional layer of protection. Notwithstanding these protections, Mr. Williams declares that PG&E may wish to purchase products from Ameron in the future but indicates that these safeguards will remain in effect unless and until the Commission grants the requested authorization, in which case any future transactions will be subject to limitations and the Commission's standard annual reporting requirement. Mr. Williams further states that he does not believe that the equipment that PG&E may purchase from Ameron constitutes "electrical equipment" for purposes of section 305(b) of the FPA.<sup>3</sup> Nevertheless, Mr. Williams is filing this application out of an abundance of caution and consents to the Commission's jurisdiction to act on the application.

5. Mr. Williams argues that the authorization requested concerns an interlocking position where future transactions are expected to be minimal, and a commitment to ongoing reporting of any future transactions will ensure that the continued holding of the positions identified will not adversely affect public or private interests. He states that the annual value of the transactions between PG&E and Ameron, for 2010 and thereafter, will not exceed two percent of PG&E's annual expenditures on material and supplies (not including fuel) for the prior fiscal year, nor exceed 4.8 percent of Ameron's total annual

---

<sup>3</sup> Mr. Williams argues that the concrete and steel pipes and poles produced by Ameron are not themselves electrical equipment. He claims that in some circumstances, Ameron's concrete and steel pipes and poles are used as raw material by equipment manufacturers that combine the pipes and poles with material from other vendors to create electrical equipment. Mr. Williams states that, for example, vertical steel pipes manufactured by Ameron are purchased by wind turbine manufacturers. According to Mr. Williams, these wind turbine manufacturers combine the raw materials from Ameron with input material from other companies, together with the turbine manufacturer's design, engineering and fabrication skill, to create wind turbines, which the manufacturer may sell to public utilities. Also, Mr. Williams states that Ameron produces vertical steel pipes and other steel objects as raw material to manufacturers that combine the pipes and poles with input from other companies, together with the turbine manufacturer's design, engineering, and fabrication skill, to create electric power distribution poles and lighting poles, which the manufacturer may sell to public utilities. Mr. Williams states that in no case is the steel and concrete raw material input provided by Ameron directly usable as electrical equipment.

sales revenues for the prior fiscal year.<sup>4</sup> Mr. Williams claims that these percentages were found to be *de minimis* in two letter orders, *Kevin Burke*, 129 FERC ¶ 62,226 (2009) and *Admiral Bruce DeMars*, 81 FERC ¶ 62,174 (1997), both of which granted the requested authorizations pursuant to delegated authority.

6. Mr. Williams adds that he is an outside director for both PG&E and Ameron; his compensation from PG&E is based on standard compensation for outside directors of PG&E and his compensation from Ameron is the standard compensation provided to non-employee directors. He represents that PG&E's purchases of electrical equipment from any supplier are not a factor in his compensation package. Additionally, Mr. Williams represents that he is not expected to be involved in the day-to-day affairs of PG&E or Ameron relating to electrical equipment purchases and sales and that he will not participate in any decision-making involving the purchase of electrical equipment between PG&E and Ameron.

7. Finally, Mr. Williams states that he serves on the boards of directors or trustees (as applicable) of the following for-profit corporations: CH2M Hill Companies, Ltd., SLM Corporation, The Northwestern Mutual Life Insurance Company, and Simpson Manufacturing Company Inc.

## **II. Notice of Filing**

8. Notice of Mr. Williams' filing was published in the *Federal Register*, 76 Fed. Reg. 2902 (2011), with interventions and protests due on or before January 24, 2011. None was filed.

## **III. Discussion**

9. Section 305(b) of the FPA prohibits persons from concurrently holding positions as officer or director of both a public utility and a company supplying electrical equipment to that public utility, unless the Commission authorizes the interlocking directorate upon a finding that neither public nor private interests will be adversely affected.

10. As a threshold matter, the Commission disagrees with Mr. Williams that the pipes and poles are not electrical equipment. Although the term electrical equipment is not

---

<sup>4</sup> However, the Commission notes that the 4.8 percent figure relied upon by Mr. Williams from pages 7 and 20 of the application of Mr. Burke, is in fact, a math error. The \$1.1 million shown in approximate utility payments to the electric equipment supplier is actually about 0.000040 of the supplier's approximate sales revenues of \$22,836 million for the 9 month period, or 0.00408 percent of those revenues.

defined in section 305(b) of the FPA or in Part 45 of the Commission's regulations,<sup>5</sup> we look for guidance on this matter to section 46.2(f) and the footnoted reference to the Uniform System of Accounts in Part 101 of the Commission's regulations.<sup>6</sup> The Commission's Uniform System of Accounts defines what should be included in the plant accounts for electrical equipment. Poles, such as those sold by Ameron for use in street lighting systems, are included in Account 373, Street Lighting and Signal Systems, and thus they should be considered electrical equipment for purposes of our interlocking directorate regulations.<sup>7</sup>

11. Turning to the interlocking position at issue here, the Commission has previously explained that, as a general principle, interlocking directorates between public utilities and electrical equipment suppliers are typically prohibited where the electrical equipment supplier is in a position to furnish "an appreciable amount" of the electrical equipment in any category of electrical equipment to that public utility.<sup>8</sup> If, however, there is only a *de minimis* amount of business between the two (both in terms of the electrical equipment supplier's sales and the public utility's purchases), then the Commission's practice has been to conditionally authorize the interlocking directorate, but typically with an annual informational report of any sales and purchases.

---

<sup>5</sup> 18 C.F.R. Part 45 (2010).

<sup>6</sup> Part 46.2(f) states that, "Electrical equipment means any apparatus, device, integral component, or integral part used in an activity is electrically, electronically, mechanically, or by legal prescription necessary to the process of generation, transmission, or distribution of electric energy." Footnote 1 to this definition states the following: "Guidance in applying the definition of electrical equipment may be obtained by examining the items within the following accounts described in part 101, title 18 of the Code of Federal Regulations:.... Poles, towers and fixtures ([Accounts] 354, 355 and 364); ...[and] Street lighting and signal systems ([Account] 373); ...". 18 C.F.R. § 46.2(f) (2010); *see* 18 C.F.R. Part 101 (2010).

<sup>7</sup> The section 305(b) prohibition against interlocking directorates is "prophylactic in nature; it allows the Commission to prevent, not merely remedy, abuses due to conflicts in interest." *Hatch v. FERC*, 654 F.2d 825, 832 (D.C. Cir. 1981). Specifically, when dealing with an interlock between a public utility and an electrical equipment supplier, the Commission has explained that "any possible benefit to the two companies from having an individual serve both of them" has to be weighed against "the potential disadvantages to the public utility, its customers and others in the markets in which the utility and the supplier operate." *Lelan F. Sillin, Jr.*, 33 FPC 1006, 1007 (1965).

<sup>8</sup> *Dr. Gloria M. Shatto*, 34 FERC ¶ 61,303, at 61,558 (1986).

12. The Commission has not established a bright-line test for distinguishing between those levels of business that are, and those levels of business that are not, *de minimis*. The Commission has, however, approved applications for interlocking positions where levels of business between the companies were greater than zero. For instance, in *Charles T. Fisher, III*, during the years 1975 to 1978, purchases by the public utility from the electrical equipment supplier represented, on average, approximately 0.0009 percent of the public utility's annual electric plant additions.<sup>9</sup> In *Dr. Gloria M. Shatto*, for the year 1984, sales by the electrical equipment supplier to the public utility represented 0.63 percent of the electrical equipment supplier's total sales, and purchases of materials by the public utility from the electrical equipment supplier represented less than 1.7 percent of the public utility's additions to plant materials and supplies for that year. Lastly, in *John E. Bryson* (discussing Walter B. Gerken's application), transactions that occurred for the year 1988 between the electrical equipment supplier and the public utility accounted for 0.00009 percent of the electrical equipment supplier's sales and 0.0004 percent of the public utility's purchases of materials and supplies for that year.<sup>10</sup> In these cases the Commission has found, in evaluating proposed interlocking positions, amounts from less than one up to almost two percent to be *de minimis*.<sup>11</sup>

13. Mr. Williams explains that PG&E does not currently obtain electrical equipment, directly or indirectly, from Ameron, and that internal controls have been (or are being) put in place to prevent any transactions. Mr. Williams also states that he is an outside director of both PG&E and Ameron and is not involved in the day-to-day affairs of either company. Furthermore, Mr. Williams represents that his compensation from both is not based upon, nor contingent on, PG&E's transactions with Ameron.

---

<sup>9</sup> *Charles T. Fisher, III*, 9 FERC ¶ 61,096, at 61,195 (1979) (*Fisher*). In *Fisher*, the Commission stated: "it is the combination of the very small historical sales and the (annual) reporting requirement (of transactions between the interlocked firms) that permit us to find that neither public nor private interests will be adversely affected by our conditional authorization of this interlock."

<sup>10</sup> *John E. Bryson*, 56 FERC ¶ 61,026, at 61,195 (1991).

<sup>11</sup> The Commission has explained previously that actions taken by its staff pursuant to delegated authority, such as those relied upon by Mr. Williams in citing *Kevin Burke*, "do not constitute precedent binding the Commission in future cases," and the "exercise of ...delegated authority cannot serve to supplant the policies [the Commission has] established in [its] decisions and regulations." See *Midwest Generation, LLC*, 95 FERC ¶ 61,231, at ¶ 61,799 (2001). Further, and as noted above, the 4.8 percent figure relied upon by Mr. Williams from pages 7 and 20 of the application of Mr. Burke is, in fact, a math error.

14. In light of the foregoing, we conclude that the holding of the positions identified will not adversely affect public or private interests and will conditionally approve the application. As in prior cases, we note that we must consider not only the magnitude of historical transactions between the parties, but also potential sales in the future. Here, we have no reason to believe that the historical relationship will change materially. However, in order to determine whether the interlock should continue to be held, we shall also condition our approval upon the transactions between the two companies not exceeding *de minimis* levels and the filing of an annual report by Mr. Williams describing the nature and dollar amount of any purchases by PG&E of any electrical equipment supplied or provided by Ameron, whether such transactions are made directly or indirectly through wholesale or retail suppliers or any other intermediary. That annual report shall disclose the annual level of payments by PG&E to Ameron, and shall include the payments as a percentage of PG&E's expenditures for materials and services, excluding fuel and purchase power, and as a percentage of Ameron's annual sales revenues.<sup>12</sup>

The Commission orders:

(A) Barry Lawson Williams' application for authorization to hold the interlocking positions of Director of PG&E and Director of Ameron is hereby conditionally granted, effective from the date of this order.

(B) Mr. Williams is hereby directed, annually on or before April 30, for each year during which the positions authorized herein are held, to submit a report disclosing the nature and dollar amount of any purchases by PG&E of any electrical equipment supplied or provided by Ameron, whether such transactions are made directly or indirectly through wholesale or retail suppliers or any other intermediary. That annual report shall disclose the annual level of payments by PG&E to Ameron, and shall include the payments as a percentage of PG&E's expenditures for materials and services, excluding fuel and purchase power, and as a percentage of Ameron's annual sales revenues. If no purchases were made, Mr. Williams must file a report stating that no such purchases were made. Also, sections 45.7 and 385.2005 of the Commission's regulations requires that the report must be dated and signed by the applicant and verified under oath, which may be satisfied by compliance with 28 U.S.C. § 1746 (2006). Failure

---

<sup>12</sup> In reporting purchases of Ameron electrical equipment, the amounts (and percentages, as discussed in this order) reported by Mr. Williams should include both transactions made directly and transactions made indirectly, i.e., should include any electrical equipment produced by or procured from Ameron that is incorporated into electrical equipment procured by PG&E from a third party supplier.

to comply with these requirements may result in revocation of the applicant's authorization to hold the interlocking positions.

(C) In accordance with section 45.5(b) of the Commission's regulations, 18 C.F.R. § 45.5(b) (2010), if there is any change in the positions Mr. Williams holds with the companies covered by this order, or any other material change occurs with regard to the representations made in his application, he is hereby directed to give notice to the Commission of such change within 30 days. Such a requirement does not replace the annual FERC Form No. 561 that is mandatory under section 305(c)(1) of the FPA, 16 U.S.C. § 825d(c)(1) (2006).

(D) The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by the continued holding of the interlocking positions authorized by this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.