

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 45, 46, and 131

(Docket No. RM05-13-000)

Electronic Filing of Interlocking Positions and
Twenty Largest Purchasers Information

(May 27, 2005)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to revise its regulations for filings by persons holding interlocking positions and for utilities listing their twenty largest purchasers of electricity. The proposed revisions provides for electronic filing. The modifications in this Proposed Rule are the result of a review conducted by the Commission's Information Assessment Team (FIAT), identifying the Commission's current information collections, evaluating their original purposes and current uses, and proposing ways to reduce the reporting burden on industry through the elimination, reduction, streamlining or reformatting of current collections.

DATES: Comments are due on this Notice of Proposed Rulemaking [Insert date 60 days after publication in the FEDERAL REGISTER].

ADDRESSES: Comments on this Notice of Proposed Rulemaking may be filed electronically via the eFiling link on the Commission's website at <http://www.ferc.gov>. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary,

888 First Street N.E., Washington, DC, 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

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NOTICE OF PROPOSED RULEMAKING

(May 27, 2005)

I. INTRODUCTION

1. The Commission proposes modifying its regulations to modernize the filing method and standardize the filing format to ensure easier filing and use of the Application for Authority to Hold Interlocking Directorate Positions (FERC 520), the Annual Report of Interlocking Positions (FERC Form 561), and the Annual Report of a Utility's Twenty Largest Purchasers (FERC 566).

2. In this Notice of Proposed Rulemaking, the Commission is proposing to allow for electronic filing (eFiling) of FERC 520, FERC Form 561, and FERC 566. As described more fully below, we propose to implement software changes to the Commission's website (www.ferc.gov) that will allow filers to electronically submit interlocking position information and related information, as well as to submit amended filings.

3. The requirements for these information collections and descriptions of the contents of the filings are found in the Commission regulations at 18 CFR Parts 45, 46 and 131.

II. DISCUSSION

4. Section 305(b) of the Federal Power Act¹ (FPA) prohibits individuals from holding positions as an officer or director of more than one public utility, to hold the positions of officer or director of a public utility and of an entity authorized by law to underwrite or participate in the marketing of public utility securities; or to hold the positions of officer or director of a public utility and of an entity supplying electrical equipment to that particular public utility, unless the Commission has granted prior authorization to hold the positions upon a finding that neither public nor private interests will be adversely affected. The Commission implements this statutory mandate using FERC 520.

5. Once the Commission approves the holding of interlocking positions, the officer or director must file a FERC Form 561 annually by April 30th. FERC Form 561 is currently filed in hardcopy format. To assist filers in submitting the information in the prescribed format, however, the Commission, through Order No. 601,² e-mails a spreadsheet to each filer. Each filer must then update the previous year's information on the spreadsheet to reflect that year's positions. The officer or director then prints the spreadsheet out in hard copy, signs it, and mails it to the Commission.

¹ 16 U.S.C. 825d(b).

² *Filing Requirements Under Parts 46 and 131 for Persons Holding Interlocking Directorates*, Order 601, 63 FR 72167 (1998), FERC Stats. & Regs. Regulations Preambles 1996-2000 ¶ 31,069 (1998).

6. In addition, each public utility must file a report, FERC 566, identifying its twenty largest customers annually by January 31st.

7. The Commission proposes to require the electronic filing of FERC 520, FERC Form 561, and FERC 566. The Commission, in recognition of the E-Government Act initiatives,³ has a web-based FERC Online⁴ portal system, which, among other things, allows for electronic filing of certain information. It is through this system that the Commission proposes to accept FERC 520 and FERC 566 filings.

8. While the FERC 520 and FERC 566 will be filed through the eFiling⁵ portal, the FERC Form 561 will be filed through the eForms⁶ application on the Commission's website. The filer will complete the electronic FERC Form 561 using Commission provided software then transmit the completed form to the Commission.

9. Electronic filing of this information will allow for easier storage, access, retrieval, and analysis.

III. REGULATORY FLEXIBILITY ACT STATEMENT

10. The Regulatory Flexibility Act (RFA) requires rulemakings to contain either a description and analysis of the effect that the rule will have on small entities or to contain

³44 U.S.C. 36.

⁴ <http://www.ferc.gov/docs-filing/ferconline.asp>. Further information on FERC Online can be found at <http://www.ferc.gov/docs-filing/egov-act-2004.pdf>.

⁵ <http://www.ferc.gov/docs-filing/efiling.asp>.

⁶ <http://www.ferc.gov/docs-filing/eforms-elec.asp>.

a certification that the rule will not have a significant economic impact on a substantial number of small entities.⁷

11. The Commission concludes that this rule would not have such an impact on small entities. Most public utilities to which the proposed rule would apply do not fall within the RFA's definition of a small entity.⁸ Consequently, the Commission certifies that this Final Rule will not have “a significant economic impact on a substantial number of small entities.”

IV. ENVIRONMENTAL ANALYSIS

12. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.⁹ The Commission has categorically excluded certain actions

⁷ 5 U.S.C. 601-12.

⁸ 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 dominant in its field of operation. In addition, the RFA definition of “small entity” refers to the definition provided in the Small Business Act, which defines a “small business concern” as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632. The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal year did not exceed 4 million MWh. 13 CFR 121.201.

⁹ *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987).

from this requirement as not having a significant effect on the human environment.¹⁰ The actions proposed to be taken here fall within the categorical exclusions in the Commission's regulations for rules that involve information gathering, analysis, and dissemination and that involve interlocking positions.¹¹ Therefore, an environmental assessment is unnecessary and has not been prepared for this rulemaking.

V. INFORMATION COLLECTION STATEMENT

13. The Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.¹²

Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

¹⁰ 18 CFR 380.4(a)(2)(ii).

¹¹ 18 CFR 380.4(a)(5).

¹² 5 CFR 1320.11.

Estimated Annual Burden

14. The current reporting burden is as follows:

<u>Data Collection</u>	<u>Number of Respondents</u>	<u>Number of Hours</u>	<u>Number of Responses</u>	<u>Total Annual Hours</u>
FERC 520	28	51	1	1450
FERC Form 561	1649	.25	1	412
FERC 566	183	6	1	1098
<u>Total</u>				2960

The burden reduction will be twenty percent for each information collection. A total of 592 hours combined will be eliminated, resulting in a total annual burden of 2368 hours.

Title: Application for Authority to Hold Interlocking Positions (FERC 520)

Annual Report of Interlocking Positions (FERC Form 561)

Annual Report of Utility Twenty Largest Purchasers (FERC 566)

Action: Electronic Filing of Information.

OMB Control Nos.: 1902-0083, 1902-0099, and 1902-0114

Respondents: Businesses, other for profit and not-for-profit institutions, and persons

Frequency of Responses: Annual (FERC Form 561 and FERC 566) and Occasional (FERC 520).

Necessity of Information: The proposed regulations will revise the filing methods for the FERC 520 (Application for Authorization to Hold Interlocking Positions), FERC Form 561 (Annual Report of Interlocking Positions), and FERC 520 (Annual Report of Utility's Twenty Largest Purchasers).

The Commission uses the FERC 520, which is filed as necessary in hardcopy, to gather information to act on a filer's request to hold interlocking positions. The FERC 520 is a narrative that details the interlocking positions applied for as well as existing interlocking positions held by the filer. The Commission, in turn, uses the information (in conjunction with the filer's FERC Form 561), to make a determination whether or not the filer should be granted authorization to hold the position.

The FERC Form 561, expressly required by section 305(c) of the Federal Power Act and filed annually, lists the interlocking positions held by the filer and is typically submitted in hardcopy. The Commission uses the FERC Form 561 in conjunction with the FERC 520 to determine if a person is currently holding an interlocking position (as listed in the FERC Form 561) that they did not apply for originally in the FERC 520. In turn, the Commission checks to see if the person was approved to hold an interlocking position (as stated in the FERC 520) but did not list the respective interlocking position in the FERC Form 561. The Commission also uses FERC Form 561 in conjunction with FERC 566 to identify potential conflicts of interest between utilities and other corporate entities.

The FERC 566, expressly required by section 305(c) of the Federal Power Act and filed annually, lists the filing utility's twenty largest purchasers and the amount of electricity sold. As stated previously, the Commission uses the FERC 566 in conjunction with the FERC Form 561 to identify potential conflicts of interest.

The proposed revisions will reduce respondent burden by allowing this information to be submitted electronically. More specifically, respondent burden will be lowered by eliminating or substantially reducing printing and mailing costs thereby lessening the

time to file and/or refile the aforementioned information. The Commission will also benefit through the elimination/reduction of paper processing costs.

Internal Review: The Commission has reviewed the proposed amendment to its regulations modifying the filing methods for interlocking directorates. The filings submitted are required by the Federal Power Act and allow the Commission to ensure that filers are in compliance. The revisions to the filing requirements will provide more effective analysis by reducing data errors and by preserving the integrity of the data. Electronic filing will allow for efficient dissemination of information, allowing the Commission to more effectively analyze the information. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information retention requirements.

Interested persons may obtain information on the filing requirements by contacting the following: Federal Energy Regulatory Commission (FERC), 888 First Street, NE, Washington, DC 20426 [Attention: Michael Miller, Information Clearance Officer, Office of the Executive Director, Phone: (202) 502-8415, Fax: (202) 273-0873, email: michael.miller@ferc.gov]. For submitting comments concerning the collection of information and associated burden estimates, please send your comments to the contact listed above and to: Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), Washington, DC 20503 [Attention: Desk Officer for FERC] Phone: (202) 395-4650, Fax: (202) 395-7285.

VI. COMMENT PROCEDURES

15. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due [insert date 60 days from publication in the **FEDERAL REGISTER**]. Comments must refer to Docket No. RM05-13-000, and must include the commenters name, the organization they represent, if applicable, and their address in their comments.

16. Comments may be filed electronically via the eFiling link on the Commission's website at <http://www.ferc.gov>. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: The Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street N.E., Washington, DC, 20426.

17. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters discussing this proposal are not required to serve copies of their comments on other third parties.

VII. DOCUMENT AVAILABILITY

18. 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, DC 20426. E-mail the Public Reference Room at public.referenceroom@ferc.gov or (202) 502-8371.

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

20. User assistance is available for eLibrary and the Commission's website during our normal business hours. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

List of subjects in 18 CFR Part 45, 46, and 131

Interlocking directorates; public utilities

By direction of the Commission.

Linda Mitry,
Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend Parts 45, 46, and 131, Chapter I, Title 18, Code of Federal Regulations, as follows.

PART 45 – APPLICATION FOR AUTHORITY TO HOLD INTERLOCKING POSITIONS

1. The authority citation for part 45 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 971a-825r (1982); Public Utility Regulatory Policy Act, 16 U.S.C. 2601-2645 (1982).

2. The title and text of section 45.7 is amended to read as follows:

§ 45.7 Form of application

The application, supplemental application, statement of supplemental information, notice of change and report required by this part, shall be filed with the Commission. An original hardcopy of such filing shall be dated, signed by the applicant and verified under oath in accordance with §131.60 of this chapter, and retained at the applicant’s business address. Such filing is an electronic file that is classified as a “qualified document” in accordance with § 385.2003(c)(1) and (2). As a qualified document, no paper copy version of the filing is required unless there is a request for privileged or protected treatment or the document is combined with another document as provided in § 385.2003(c)(3) or (4). Submit each such filing in electronic form in accordance with § 385.2003.

* * * * *

3. Section 46.3 is amended by revising paragraph (a) to read as follows:

§ 46.3 Purchaser list

(a) *Compilation and filing list.* On or before January 31 of each year, each public utility shall compile a list of the purchasers described in paragraph (b) of this section and shall identify each purchaser by name and principal business address. The filing is an electronic file that is classified as a “qualified document” in accordance with § 385.2003(c)(1) and (2). As a qualified document, no paper copy version of the filing is required unless there is a request for privileged or protected treatment or the document is combined with another document as provided in § 385.2003(c)(3) or (4). Submit the filing in electronic form in accordance with § 385.2003. A hardcopy of the list shall be made publicly available through the public utility’s principal business office.

* * * * *

4. Section 46.6 is amended by revising paragraph (d)(1), deleting paragraph (d)(2), renumbering and revising paragraph (d)(3) to become paragraph (d)(2), and adding paragraph (d)(3) to read as follows:

§ 46.6 Contents of the written statement and procedures for filing.

* * * * *

(d)(1) Each person shall file an electronic version of such written statement in accordance with Part 385.2003 with the Office of the Secretary of the Commission on or before April 30 of each year immediately following the calendar year during any portion of which such person held a position described in § 46.4. An original hardcopy of such

statement shall be dated and signed by such person and retained at the person's business address.

(2) Such statement shall be available to the public during regular business hours through the Commission's Public Reference Room and shall be made publicly available through the principal business offices of the public utility and any entity to which it applies on or before April 30 of the year the statement was filed with the Commission.

PART 131 – FORMS

5. The authority for Part 131 continues to read as follows:

Authority: 16 U.S.C. 791a – 825n, 2601 – 2645; 31 U.S.C. 9701; 42 U.S.C. 7101 – 7352.

6. Section 131.31 is revised to read as follows:

(See section 46.4 of this chapter.)

(Submit in electronic format in accordance with § 385.2003).