

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Federal Power Act
Section 305(b) Obligations

Docket No. PL04-10-000

ORDER ADVISING PUBLIC UTILITIES AND THEIR OFFICERS AND
DIRECTORS OF FEDERAL POWER ACT SECTION 305(B) OBLIGATIONS

(Issued June 22, 2004)

1. Under section 305(b) of the Federal Power Act (FPA),¹ any person seeking to hold the positions of officer or director of a public utility and officer or director of another public utility, or an electrical equipment supplier, or securities underwriter (with certain statutorily-defined exceptions) must seek prior Commission approval to hold any such positions.
2. The Commission's regulations² require that an application for approval be filed with the Commission within thirty (30) days of election or appointment to a qualifying position.³ If an application is filed after the 30-day period, it is considered late. The

¹ 16 U.S.C. § 825d (2000).

² 18 C.F.R. Part 45 (2003).

³ Certain interlocking positions require only a more limited filing under our regulations. See 18 C.F.R. § 45.9 (2003). Likewise, individuals holding other interlocking positions are permitted to make a more limited filing under our precedent. See, e.g., San Manuel Power Company LLC, 96 FERC ¶ 61,089 at 61,371 and Ordering Paragraph (E) (2001); Bridgeport Energy LLC, 83 FERC ¶ 61,307 at 62,262 and Ordering Paragraph (E) (1998).

Commission is concerned about the timeliness of applications. The Commission has previously stated that it “does not look favorably on untimely applications to hold interlocking positions.”⁴ Furthermore, if individuals or public utilities are confused or unclear about whether positions mandate prior Commission approval under section 305(b), they are strongly encouraged to “[seek] Commission clarification promptly.”⁵

3. While the statute applies to the individual officer or director, the Commission urges public utilities to exercise due diligence when selecting individuals to serve as officers or directors and to ensure that current officers or directors are in compliance with the requirements of section 305(b). Furthermore, the Commission expects that all individuals who seek to serve or are serving as an officer or director of a public utility will be aware of their responsibilities under section 305(b) of the FPA and will comply with all requirements.

4. This order is intended to reiterate these obligations and emphasize the importance the Commission places on compliance with the statute. The Commission will exercise remedial authority, as appropriate, to persons that fail to obtain the prior approval required by FPA section 305(b).

5. The Secretary is directed to publish this order in the Federal Register.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

⁴ Thomas Madison McDaniel, Jr., 24 FERC ¶ 61,026 at 61,107 (1983).

⁵ Walter F. Torrance, Jr., 29 FERC ¶ 61,288 at 61,588 (1984).