

150 FERC ¶ 61,070
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

Richard A. Meserve

Docket No. ID-7563-000

ORDER DISMISSING APPLICATION
TO HOLD INTERLOCKING POSITIONS

(Issued February 2, 2015)

1. On December 18, 2014, Richard A. Meserve submitted an application, pursuant to section 305(b) of the Federal Power Act (FPA),¹ for authorization to hold the interlocking positions of Director of Duke Energy Corporation (Duke) and Director of Pacific Gas & Electric Company (PG&E). As discussed below, the Commission will dismiss Mr. Meserve's application.

I. Background

2. PG&E, the primary operating subsidiary of PG&E Corporation, is a public utility for purposes of FPA section 305(b). Mr. Meserve currently serves as a director of PG&E.

3. Duke is a holding company whose affiliates are involved in the generation, distribution, and transmission of electricity and the transmission and distribution of natural gas. Mr. Meserve seeks authorization to also serve as a director of Duke. Mr. Meserve explains that Duke Energy Partners, Inc. (Duke Energy Partners) and Duke Energy Carolinas, LLC (Duke Energy Carolinas) (collectively, the Duke Affiliates), which are utilities situated within Duke's corporate structure, have in recent years supplied electrical equipment to PG&E. Consequently, Mr. Meserve indicates that the Duke Affiliates may be considered suppliers of electrical equipment to PG&E, and thus the holding of the interlocking positions at issue here would require authorization pursuant to section 305(b).

¹ 16 U.S.C. § 825d(b) (2012).

4. According to Mr. Meserve, the Duke Affiliates made past sales of electrical equipment to PG&E through the RAPID virtual inventory system for spare parts. Mr. Meserve states that, as participants in the RAPID virtual inventory system for spare parts, from time to time Duke Affiliates may supply electrical equipment to PG&E, at PG&E's request.

5. Mr. Meserve explains that the RAPID system is established and maintained by Scientech, Inc., and contains a combined inventory of power plant equipment held by those utilities who participate in the RAPID parts market. Mr. Meserve explains that RAPID enhances participating utilities' ability to locate and obtain parts by allowing participants to (1) upload an on-line inventory of their spare parts, (2) review other participating utilities' on-line inventory of spare parts, and (3) request to buy other participants' spare parts or sell their own spare parts. Mr. Meserve further explains that, if a participating utility needs critical equipment, it can use RAPID to determine whether another participating utility has equipment that may fill that need. Mr. Meserve explains that, by sharing access to this combined inventory, RAPID is designed to help all participating utilities quickly obtain critical equipment that is not in stock and/or has a long lead time for production, or find appropriate substitutions for equipment that now is obsolete.

6. Mr. Meserve states that there have been only four discrete sales of electrical equipment in the past five years by the Duke Affiliates to PG&E through the RAPID system: one in 2009, two in 2013, and one in 2014. Further, according to Mr. Meserve, business transactions between the Duke Affiliates and PG&E amounted to less than \$50,000 of electrical equipment for those years, which he characterizes as *de minimis*. In 2009, Duke Energy Carolinas sold to PG&E a double pipe clamp. The purchase constituted less than 0.00003 percent of PG&E's total 2009 purchases of electrical equipment and non-fuel supplies, and less than 0.0021 percent of Duke Energy Carolina's total 2009 electrical equipment sales. In 2013, Duke Energy Partners sold to PG&E an upper seal housing insert for a reactor coolant pump and three valve actuators. The purchases constituted less than 0.0034 percent of PG&E's total 2013 purchases of electrical equipment and non-fuel supplies, and less than 0.9 percent of Duke Energy Partners' total 2013 electrical equipment sales. In 2014, Duke Energy Partners sold to PG&E a printed circuit board. The purchase constituted less than 0.00043 percent of PG&E's total purchases of electrical equipment and non-fuel supplies from January to October 2014, and less than 0.008 percent of Duke's total electrical equipment sales for that same period.

7. In addition, Mr. Meserve asserts that the value of any transactions between PG&E and the Duke Affiliates are expected to remain *de minimis*.

8. Mr. Meserve adds that he is an outside director of PG&E, and that he similarly will be an outside director of Duke. Mr. Meserve also states that PG&E's purchases of

electrical equipment from any affiliates of Duke, including the Duke Affiliates, will not be a material factor in his compensation package from either PG&E or Duke. In addition, Mr. Meserve states that he is not, and will not be, involved in the daily purchasing decisions of PG&E or Duke.

II. Notice of Filing

9. Notice of Mr. Meserve's filing was published in the *Federal Register*, 79 Fed. Reg. 77,471 (2014), with interventions and protests due on or before January 8, 2015. None was filed.

III. Discussion

10. Among other prohibitions, 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 interlock upon a finding that neither public nor private interests will be adversely affected.²

11. In *Hatch v. FERC*, the Court of Appeals for the District of Columbia Circuit addressed section 305(b) and stated:

It will suffice to note that during the passage of the Public Utility Holding Company Act in 1935, Congress exhibited a relentless interest in, bordering on an obsession with, the evils of concentration of economic power in the hands of a few individuals. It recognized that the conflicts of interest stemming from the presence of the same few persons on boards of companies with intersecting interests generated subtle and difficult-to-prove failures in the arm's length bargaining process. Its overriding concern with eliminating the source of "evils result[ing] from an absence of arm's length bargaining" was expressed in the preamble of the Act which Congress explicitly referenced for guidance in interpreting all other provisions of the Act. The legislative history makes clear too that Congress intended the Commission to have the broadest authority to achieve its objective of ameliorating the perceived evils of interlocking corporate relationships in the utilities field. . . . The Act is prophylactic in nature; it allows the Commission to prevent, not merely remedy, abuses due to conflicts of interest. Thus, the Commission need not approve all

² 16 U.S.C. § 825d(b)(1) (2012).

applications for interlocks simply on the assurance, even if that assurance is backed by favorable history, that no such abuses will occur.³

12. Furthermore, the Commission has previously explained that, among the “evils to be eliminated by the enactment of section 305(b),” are:

(2) the evasion by means of common control of competition resulting in higher costs and poorer services to consumers; (3) the lack of arm’s-length dealings between public utilities and organizations furnishing financial services or electrical equipment; . . . and (5) violations of laws, ethics, and good business practices by those holding such interlocking positions whereby such relationship is employed for their own benefit or profit, or for the benefit or profit of any other person or persons and to the detriment of the companies, their security holders or the public interest.⁴

13. The Commission finds that Mr. Meserve’s holding of the positions at issue should not be considered a jurisdictional interlock within the meaning of section 305(b) of the FPA. The Commission does not view a public utility such as the Duke Affiliates, whose principal business is that of a public utility, but that makes occasional sales of a small quantity of equipment to another public utility, such as PG&E, under the RAPID system, to be an electrical equipment supplier. The RAPID system, with its occasional sales of electrical equipment by one public utility to another through a shared inventory of spare

³ *Hatch v. FERC*, 654 F.2d 825, 831-32 (D.C. Cir. 1981) (footnotes omitted).

⁴ *James S. Pignatelli*, 111 FERC ¶ 61,496, at P 12 (2005) (quoting *John Edward Aldred*, 2 FPC 247, 261 (1940) (*Aldred*)); *Robert G. Schoenberger*, 110 FERC ¶ 61,197, at P 9 (2005) (quoting *Aldred*, 2 FPC at 261). Thus, with respect to the relationship between a public utility and an electrical equipment supplier, the Commission has explained that, as a general principle, the holding of 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. *Dr. Gloria M. Shatto*, 34 FERC ¶ 61,303, at 61,558 (1986). 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. *See, e.g., Charles T. Fisher, III*, 9 FERC ¶ 61,096, at 61,195 (1979); *Dr. Gloria M. Shatto*, 34 FERC ¶ 61,303, at 61,558 (1986); *John E. Bryson*, 56 FERC ¶ 61,026, at 61,100 (1991).

parts available for purchase by participating utilities, does not present the concerns that Congress had in mind in enacting section 305(b).⁵

14. In light of the foregoing, the Commission finds that Mr. Meserve's application for authorization to hold interlocking positions between PG&E and Duke should be dismissed.

The Commission orders:

Mr. Meserve's application for authorization to hold the interlocking positions of Director of PG&E and Director of Duke is hereby dismissed.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁵ We also note that this interlock is not an interlock between two public utilities, but rather between a public utility and a holding company.