

152 FERC ¶ 61,067  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Laura H. Wright

Docket No. ID-7103-001

ORDER DISMISSING APPLICATION  
TO HOLD INTERLOCKING POSITIONS

(Issued July 24, 2015)

1. On May 26, 2015, Laura H. Wright submitted an application, pursuant to section 305(b) of the Federal Power Act (FPA),<sup>1</sup> for authorization to hold the interlocking positions of Director of Consumers Energy Company (Consumers Energy) and Director of Daseke, Inc. (Daseke). As discussed below, the Commission will dismiss Ms. Wright's application.

**I. Background**

2. Consumers Energy, the primary subsidiary of CMS Energy Corporation, is a public utility for purposes of FPA section 305(b). Ms. Wright currently serves as Director of Consumers Energy.

3. Daseke is a Texas-based, open-deck/specialty trucking company that provides transportation services throughout North America. Daseke transports, among other things, wind energy production components and wind turbine blades. Ms. Wright seeks authorization to also serve as Director of Daseke.

4. According to Ms. Wright, Daseke may not be considered a supplier of electrical equipment within the meaning of section 305(b). However, in light of her uncertainty regarding the scope of the term "supplying" in the statutory phrase "company supplying electrical equipment," Ms. Wright filed the instant application. Ms. Wright explains that Daseke does not manufacture, construct, sell, or distribute the wind energy production

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<sup>1</sup> 16 U.S.C. § 825d(b) (2012).

components and wind turbine blades, or any other electrical equipment, but merely transports them for third parties. Thus, Ms. Wright asserts that Daseke is not, in the words of section 305(b), a “company supplying electrical equipment.” In addition, Ms. Wright states that there have been no historical transactions between Consumers Energy and Daseke, and that any future purchases of equipment, supplies, or any transportation services that might qualify as “supplying” electrical equipment from Daseke are expected to be *de minimis*. Ms. Wright further adds that Consumer Energy’s purchases of electrical equipment from any supplier are not a factor in her compensation package with Consumers Energy or Daseke. Lastly, Ms. Wright states that she is not, and will not be, involved in the daily purchasing decisions of Consumers Energy and Daseke.

## **II. Notice of Filing**

5. Notice of Ms. Wright’s filing was published in the *Federal Register*, 80 Fed. Reg. 32,107 (2014), with interventions and protests due on or before June 16, 2015. None was filed.

## **III. Discussion**

6. 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.<sup>2</sup>

7. 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

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<sup>2</sup> 16 U.S.C. § 825d(b)(1) (2012).

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

8. 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.<sup>4</sup>

9. The Commission finds that Ms. Wright’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 company such as Daseke, a trucking company whose principal business is delivering third-party supplies, to be an electrical equipment

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

<sup>4</sup> *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; *John E. Bryson*, 56 FERC ¶ 61,026, at 61,100 (1991).

supplier, but rather a service provider. A company such as Daseke does not fall within the category of entities that produces or otherwise supplies such equipment,<sup>5</sup> but rather merely transports them for third-parties. A service provider such as Daseke is not within the scope of section 305(b).

10. In light of the foregoing, the Commission finds that Ms. Wright's application for authorization to hold interlocking positions between Consumers Energy and Daseke should be dismissed.

The Commission orders:

Ms. Wright's application for authorization to hold the interlocking positions of Director of Consumers Energy and Director of Daseke is hereby dismissed.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>5</sup> Section 46.2(g) of the Commission's regulations states that "[P]roduces or supplies means any transaction including a sale, lease, sale-leaseback, consignment, or any other transaction in which an entity provides electrical equipment, coal, natural gas, oil, nuclear fuel, or other fuel to any public utility either directly or through an entity controlled by such entity." 18 C.F.R. § 46.2(g) (2014).