

164 FERC ¶ 61,032  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 45 and 46

[Docket No. RM18-15-000]

Revisions to Parts 45 and 46 of the Commission's Regulations

(Issued July 19, 2018)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission proposes to revise parts 45 and 46 of its regulations related to interlocking officers and directors to clarify and update the requirements for both applicants and holders. In particular, the Commission proposes to update its regulations to reflect statutory changes to the circumstances in which an applicant who would otherwise require Commission authorization to hold an interlocking position need not do so. The Commission also proposes to revise its regulations to clarify its position on late-filed applications and informational reports. The Commission further proposes to revise its regulations to clarify that an interlock holder is not required to file a notice of change when merely changing positions within a holding company. Additionally, the Commission proposes to revise its regulations to state that applicants do not need to list in their applications public utilities that do not have officers or directors. Next, the Commission proposes to revise its regulations with regard to public utilities owned by a natural person. Finally, the Commission proposes to update its regulations to remove a

section containing definitions and phrases now rendered obsolete.

**DATES:** Comments are due **[INSERT DATE 60 days after publication in the FEDERAL REGISTER]**

**ADDRESSES:** Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through <http://www.ferc.gov>. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- Mail/Hand Delivery: Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE, Washington, DC 20426.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Amery Poré (Technical Information)  
Office of Energy Market Regulation  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426  
(202) 502-6372

Mary Ellen Stefanou (Legal Information)  
Office of the General Counsel  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426  
(202) 502-8989

**SUPPLEMENTARY INFORMATION:**

164 FERC ¶ 61,032  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Revisions to Parts 45 and 46 of the Commission's  
Regulations

Docket No. RM18-15-000

NOTICE OF PROPOSED RULEMAKING

(Issued July 19, 2018)

1. Section 305(b) of the Federal Power Act (FPA)<sup>1</sup> prohibits individuals from concurrently holding positions as an officer or director of more than one public utility; or concurrently holding 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;<sup>2</sup> or concurrently holding the positions of officer or director of a public utility and a company supplying electrical equipment to such public utility, unless the holding of such positions has been authorized by the Commission upon a showing that neither public nor private interests will be adversely affected.<sup>3</sup> Congress enacted section 305(b) to prevent certain perceived abuses with holding companies, including (1) excessive charges to subsidiary public utility companies resulting from the lack of arm's length

---

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

<sup>2</sup> However, section 305(b)(2) of the FPA, 16 U.S.C. 825d(b)(2), exempts from this prohibition certain interlocks between public utilities and a financial institution that is authorized to underwrite or participate in the marketing of public utility securities.

<sup>3</sup> 16 U.S.C. 825d(b).

bargaining or the restraint of free and independent competition; (2) allocation of charges for goods and services among subsidiary companies in different States so as to frustrate State regulation; (3) control of subsidiary public utility companies through disproportionately small investment resulting in account practices, and rate, dividend and other policies that complicated and obstructed State regulation; and (4) a general lack of economy of management and operation of public utilities, a lack of efficiency and adequacy of services or a lack of effective public regulation and a lack of economies in raising capital.<sup>4</sup>

2. The Commission implemented Congress' mandate in part 45 of the Commission's regulations.<sup>5</sup> Consistent with the statute, part 45 provides that an application or informational filing be filed, and authorization granted, before a person may hold otherwise proscribed interlocking positions. Part 46 of the Commission's regulations, which implements section 305(c) of the FPA,<sup>6</sup> describes the annual filing requirements for those holding interlocking positions, including the relevant definitions.

3. As described below, we propose revisions to parts 45 and 46 of our regulations.<sup>7</sup>

---

<sup>4</sup> Title I, Sec. 1, of the Public Utility Act of 1935 (49 Stat. 803, 15 U.S.C. 79a). Title I was the Public Utility Holding Company Act of 1935. Title II became Parts II and III of the Federal Power Act, which include section 305(b).

<sup>5</sup> 18 CFR part 45 (2017).

<sup>6</sup> 16 U.S.C. 825d(c).

<sup>7</sup> 18 CFR part 46. Section 305(c) of the FPA, as relevant here, requires that any person holding interlocking positions in both a public utility and any of the entities listed in section 305(c)(2) of the FPA file an annual report listing such interlocking positions.

**I. Discussion**

4. On October 27, 2016, Commission staff issued its 2016 Biennial Staff Memo Concerning Retrospective Analysis of Existing Rules,<sup>8</sup> in which it identified certain Commission regulations as ripe for evaluation, including 18 CFR part 45. The Edison Electric Institute (EEI) submitted comments in support of the Commission's suggested revisions to 18 CFR part 45 and proposed additional revisions.<sup>9</sup>

5. Based on our review of our regulations, as well as our review of the comments submitted by EEI, we propose the following changes to the regulations in part 45, as well as certain revisions to part 46.

6. Section 45.2 of the Commission's regulations describes the types of interlocking positions that require Commission authorization, including those between a public utility and entities authorized by law to underwrite or participate in the marketing of public utility securities.<sup>10</sup> However, in 1999, Congress amended section 305(b)(2) of the FPA to provide that an applicant for certain interlocking positions is no longer required to obtain

---

16 U.S.C. 825d(c). The Commission implements section 305(c) in part 46 of its regulations and through its FERC Form No. 561.

<sup>8</sup> 2016 Biennial Staff Memo Concerning Retrospective Analysis of Existing Rules, Docket No. AD12-6-002 (published Oct. 27, 2016).

<sup>9</sup> See Edison Electric Institute Comments, Docket No. AD12-6-002 (Nov. 28, 2016).

<sup>10</sup> 18 CFR 45.2(b)(2).

Commission authorization to hold such positions.<sup>11</sup> As a result, the Commission proposes to revise § 45.2 of its regulations to add that an applicant for an interlocking position between a public utility and a “bank, trust company, banking association, or firm that is authorized by law to underwrite or participate in the marketing of public utility securities,”<sup>12</sup> does not need Commission authorization when:

- (1) he/she does not participate in any deliberations or decisions of the public utility regarding the selection of the bank, trust company, banking association, or firm to underwrite or participate in the marketing of securities of the public utility, if he/she serves as an officer or director of a bank, trust company, banking association, or firm that is under consideration in the deliberation process;
- (2) the bank, trust company, banking association, or firm of which he/she is an officer or director does not engage in the underwriting of, or participate in the marketing of, securities of the public utility of which he/she holds the position of officer or director;
- (3) the public utility for which he/she serves or proposes to serve as an officer or director selects underwriters by competitive procedures; or

---

<sup>11</sup> See Pub. L. No. 106-102, § 737, 113 Stat. 1338, 1479 (1999).

<sup>12</sup> 18 CFR 45.2(b)(2).

(4) the issuance of securities of the public utility for which he/she serves or proposes to serve as an officer or director has been approved by all Federal and State regulatory agencies having jurisdiction over the issuance.<sup>13</sup>

7. Sections 45.3 and 45.9 of the Commission's regulations require applications and informational filings be filed with the Commission before an applicant holds any interlocking positions within the purview of section 305. The Commission's regulations currently provide in § 45.3(a) that "late-filed applications will be denied" and in § 45.9(b) that "[f]ailure to timely file the informational report will constitute a failure to satisfy this condition and will constitute automatic denial."

8. The Commission expects its regulations to be followed. However, the Commission recognizes that good faith errors and oversights may occasionally result in the inadvertent violation of the timing of section 305(b)'s filing requirements. The Commission believes that it is not in the public interest to deny otherwise-qualified applicants' late-filed applications and informational filings made under these regulations when the late filing is due solely to such good faith errors and oversights alone. Late-filed applications do not impede the Commission's ability to decide the case. The statutory standard for authorization to hold otherwise-proscribed interlocks requires the Commission to determine whether the holding of otherwise-proscribed interlocks adversely affects neither public nor private interests, and that determination typically

---

<sup>13</sup> See also 16 U.S.C. 825d(b)(2).

would not depend solely on the date an applicant happens to file.<sup>14</sup> Nor would applications that are filed late solely due to good faith errors and oversights implicate the abuses that Congress attempted to prevent in promulgating section 305. Further, denying late-filed applications could cause unnecessary inefficiencies for companies. Therefore, the Commission proposes to delete the above-quoted language, and to replace it with language providing for consideration of late-filed applications for interlocking positions on a case-by-case basis.<sup>15</sup>

9. The Commission expects that applicants will be attentive to their obligation to timely file for the required authorizations and make every effort to ensure they act in accordance with the statutory directives in section 305(b). In cases where occasional errors and oversights occur, the Commission expects that those errors and oversights will be expeditiously identified and rectified, and applications to hold interlocking director positions promptly filed. The Commission would look unfavorably on section 305(b) applications where an applicant has not been attentive to his/her obligation to file for the required authorization.

---

<sup>14</sup> 16 U.S.C. 825d(b)(1).

<sup>15</sup> The public utilities whose officers and directors are subject to the statutory directive in section 305(b) to file, as regulated entities themselves subject to and thus sensitive to the requirements of the FPA, would be well-advised to and should make every effort to ensure that their officers and directors, in turn, act in accordance with the statutory directives in section 305(b).



10. The Commission proposes to revise §§ 45.4 and 45.5 of its regulations to clarify that supplemental applications and notices of change need not be filed in the case of a person already authorized to hold interlocks identified in § 45.9(a) who may assume new or different positions that are still among those identified by § 45.9(a).<sup>16</sup> For example, a promotion within a holding company system would not require an interlock holder to file a notice of change. Such changes in positions among related public utilities are already reported in the annual Form No. 561s, and separate filings under § 45.4 or § 45.5 are unnecessary. However, the Commission clarifies that, for such interlocking positions, a holder would still be required to file a notice of change when he/she no longer holds any interlocking positions within the scope of the statute and regulations. No longer holding any interlocking positions would constitute a “material or substantial change.”

11. The Commission proposes to revise § 45.8(c)(1) of its regulations to state that applicants under part 45 do not need to list in their applications those public utilities that do not have officers or directors. The Commission recognizes the growing complexity of corporate structures. Thus, in the interest of reducing regulatory burdens, the Commission proposes to eliminate the requirement that applications under part 45 list those public utilities that do not have officers or directors.

---

<sup>16</sup> If an applicant has a pending application, however, we would expect that the applicant would supplement his/her application should a change occur while the application is pending. In contrast, as noted above, an applicant who has been granted authorization and no longer has a pending application is differently situated, and any change in the positions held can be addressed in the next Form No. 561.

12. The Commission proposes to revise § 45.9 of its regulations to add the word “person” when defining the corporate relationships within the scope of the automatic authorizations addressed in § 45.9. The Commission would thus recognize that public utilities can be owned not just by a corporate entity but by a natural person, and the regulations should reflect this possibility.

13. Finally, the Commission proposes to update its regulations in part 46 to remove § 46.2(b), because the definitions were rendered obsolete as a result of the enactment of the Energy Policy Act of 2005 and the concurrent repeal of the Public Utility Holding Company Act of 1935.<sup>17</sup> The Commission notes that § 46.2(b) currently references the definition of “holding company system” and “registered holding company system” in the Public Utility Holding Company Act (PUHCA) of 1935.<sup>18</sup> However, the Commission recognizes that the Energy Policy Act of 2005 repealed the PUHCA of 1935.<sup>19</sup> Thus, the Commission proposes to remove § 46.2(b). The Commission also proposes to update part 46 to change “Rural Electrification Administration” to “Rural Utilities Service” to reflect the name change of that organization.

---

<sup>17</sup> See Energy Policy Act of 2005, Pub. L. No. 109-58, 1261-77, 119 Stat. 594, 972-78 (2005).

<sup>18</sup> 16 U.S.C. 79a et seq.

<sup>19</sup> EPAAct 2005, Pub. L. No. 109-58, 1263.

## II. Information Collection Statement

14. The Paperwork Reduction Act (PRA)<sup>20</sup> requires each federal agency to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to 10 or more persons or contained in a rule of general applicability. OMB's regulations<sup>21</sup> require approval of certain information collection requirements imposed by agency rules. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of an agency rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

15. The revisions proposed in this NOPR would clarify and update the requirements<sup>22</sup> for those seeking and holding interlocking positions. The Commission anticipates that the revisions, once effective, would reduce regulatory burdens. The Commission will submit the proposed reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act.<sup>23</sup>

---

<sup>20</sup> 44 U.S.C. 3507(d).

<sup>21</sup> 5 CFR 1320.

<sup>22</sup> 18 CFR parts 45, 46.

<sup>23</sup> 44 U.S.C. 3507(d).

16. While the Commission expects that the regulatory revisions proposed herein will reduce the burdens on affected entities, the Commission nonetheless solicits public comments regarding the accuracy of the burden and cost estimates below.

17. Burden Estimate<sup>24</sup>: The estimated burden and cost for the requirements contained in this NOPR follow.

<b>FERC Form No. 520 (Application for Authority to Hold Interlocking Directorate Positions)</b>						
	<b>Number of Respondents (1)</b>	<b>Annual Number of Responses per Respondent (2)</b>	<b>Total Number of Responses (1)*(2)=(3)</b>	<b>Average Burden &amp; Cost Per Response<sup>25</sup> (4)</b>	<b>Total Annual Burden Hours (Total Annual Cost) (3)*(4)=(5)</b>	<b>Cost per Respondent (\$) (5)÷(1)</b>
Full	16	1	16	50 hrs.; \$3,950	800 hrs.; \$63,200	\$3,950
Informational	500	1	500	8 hrs.; \$632	4,000 hrs.; \$316,000	\$632
Notice of Change	100	1	100	0.25 hrs.; \$19.75	25 hrs.; \$1,975	\$19.75
<b>TOTAL</b>					<b>4,825 hrs.;</b> <b>\$381,175</b>	

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

*OMB Control No.:* 1902-0083

*Abstract:* The FPA, as amended, mandates federal oversight and approval of certain electric corporate activities to ensure that neither public nor private interests are adversely

---

<sup>24</sup> “Burden” is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3

<sup>25</sup> The Commission staff thinks that the average respondent for this collection is similarly situated to the Commission, in terms of salary plus benefits. Based upon FERC’s 2018 annual average (for salary plus benefits) of \$164,820, the average hourly cost is \$79/hour.

affected. Accordingly, the Commission's regulations prescribe related information filing requirements to achieve this goal. Such filing requirements are found in 18 CFR parts 45 and 46.

Overview of the Data Collection. FERC-520 provides information related to complex electric corporate activities, in particular, the holding of interlocking positions, and thereby serves to safeguard public and private interests, as the FPA requires.

FERC-520 is divided into two types of applications: full and informational. The full application, as specified in 18 CFR 45.8, implements the FPA requirement under section 305(b) that it is unlawful for any person to concurrently hold the positions of officer or director of more than one public utility; or a public utility and a financial institution that is authorized to underwrite or participate in the marketing of public utility securities; or a public utility and an electrical equipment supplier to such public utility, unless authorized by the Commission. In order to obtain authorization, an applicant must demonstrate that neither public nor private interests will be adversely affected by the holding of the positions. The full application provides the Commission with information about any interlocking position for which the applicant seeks authorization including, but not limited to, a description of duties and the estimated time devoted to the position.

An informational (abbreviated) application, as specified in 18 CFR 45.9, allows an applicant to receive automatic authorization for an interlocked position upon receipt of the filing by the Commission. The informational application applies only to those individuals who seek authorization as: (1) an officer or director of two or more public

utilities where the same holding company owns, directly or indirectly, that percentage of each utility's stock (of whatever class or classes) which is required by each utility's by-laws to elect directors; (2) an officer or director of two public utilities, if one utility is owned, wholly or in part, by the other and, as its primary business, owns or operates transmission or generation facilities to provide transmission service or electric power for sale to its owners; or (3) an officer or director of more than one public utility, if such person is already authorized under part 45 to hold different positions as officer or director of those utilities where the interlock involves affiliated public utilities.

FERC-520 also includes the requirement to file a notice of change if there are new positions or changes to the positions held. The Commission is proposing to revise its requirements and no longer require a notice of change when a person is merely changing positions within a holding company system. This proposal is expected to reduce the number of filed notices of change by 50 percent annually (from 200 filings to 100 filings) and to reduce the corresponding total burden.

**Type of Respondents:** Individuals who plan to concurrently become or concurrently are officers or directors of public utilities and of certain other entities must request authorization to hold such interlocking positions by submitting a FERC-520.

**Internal Review:** The Commission has reviewed the information collection requirements and has determined that certain changes are needed and that the remaining requirements are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry.

The Commission has specific, objective support for the burden estimates associated with

the information collection requirements. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director], e-mail: DataClearance@ferc.gov, Phone: (202) 502-8663, fax: (202) 273-0873. Comments concerning the collection of information and the associated burden estimate(s) may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. Due to security concerns, comments should be sent electronically to the following e-mail address: oira\_submission@omb.eop.gov. Please refer to FERC-520, OMB Control No. 1902-0083 in your submission.

### **III. Environmental Analysis**

18. 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.<sup>26</sup> We conclude that neither an Environmental Assessment nor an Environmental Impact Statement is required for this NOPR under § 380.4(a) of the Commission's regulations, which provides a categorical exemption for

---

<sup>26</sup>*Regulations Implementing the National Environmental Policy Act*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

approval of “action under section[] . . . 305 of the FPA relating to . . . interlocking directorates, . . . .”<sup>27</sup>

#### IV. Regulatory Flexibility Act

19. The Regulatory Flexibility Act of 1980 (RFA)<sup>28</sup> generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The Small Business Administration’s (SBA) Office of Size Standards develops the numerical definition of a small entity.<sup>29</sup> These standards are provided in the SBA regulations at 13 CFR 121.201.<sup>30</sup>

20. This proposed rule, if adopted, would apply to those individuals seeking to hold and those currently holding interlocking positions. In order to obtain authorization, an applicant must demonstrate that neither public nor private interests will be adversely affected by the holding of the interlocking positions.

21. There are an estimated 16 respondents who could file full applications over the course of a year, who would provide one response annually with an estimated time commitment of 50 hours per response, and a resulting estimated cost of \$3,950.00 per

---

<sup>27</sup> 18 CFR 380.4(a)(16).

<sup>28</sup> 5 U.S.C. 601-12.

<sup>29</sup> 13 CFR 121.101.

<sup>30</sup> 13 CFR 121.201. *See also* U.S. Small Business Administration, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (effective Feb. 26, 2016), [https://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table.pdf](https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf).



respondent. There are an estimated 500 respondents who could file informational applications over the course of a year, who would provide one response annually with an estimated time commitment of 8 hours per response, and a resulting estimated cost of \$632.00 per respondent. In addition, there are an estimated 100 respondents who could file a notice of change annually with an estimated time commitment of 0.25 hours, and a resulting cost of \$19.75 per respondent. Therefore the average annual cost for each of the 616 respondents is \$618.79. That cost is not significant. More importantly, this proposed rule reduces industry cost by eliminating the need for the filing of some notices of change.

22. The Commission certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

#### **V. Comment Procedures**

23. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due **[INSERT DATE 60 days after publication in the FEDERAL REGISTER]**. Comments must refer to Docket No. RM18-15-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

24. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not

in a scanned format. Commenters filing electronically do not need to make a paper filing.

25. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

26. 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 on this proposal are not required to serve copies of their comments on other commenters.

#### **VI. Document Availability**

27. 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, NE, Room 2A, Washington DC 20426.

28. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary 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.

29. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202)502-8659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

List of subjects in 18 CFR Part 45:

Electric utilities; Reporting and recordkeeping requirements

List of subjects in 18 CFR Part 46:

Antitrust; Electric utilities; Holding Companies; Reporting and Recordkeeping Requirements

By direction of the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend Parts 45 and 46, 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: 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352; 3 CFR 142.

2. Add paragraph (d) to § 45.2 to read as follows:

**§ 45.2 Positions requiring authorization.**

\* \* \* \* \*

(d) A person that holds or proposes to hold an interlocking position as officer or director of a public utility and of a corporation described by subparagraph (2) of paragraph (b) shall not require authorization to hold such positions in the following circumstances-

(1) the person does not participate in any deliberations or decisions of the public utility regarding the selection of the bank, trust company, banking association, or firm to underwrite or participate in the marketing of securities of the public utility, if the person serves as an officer or director of a bank, trust company, banking association, or firm that is under consideration in the deliberation process;

(2) the bank, trust company, banking association, or firm of which the person is an officer or director does not engage in the underwriting of, or

participate in the marketing of, securities of the public utility of which the person holds the position of officer or director;

(3) the public utility for which the person serves or proposes to serve as an officer or director selects underwriters by competitive procedures; or

(4) the issuance of securities of the public utility for which the person serves or proposes to serve as an officer or director has been approved by all Federal and State regulatory agencies having jurisdiction over the issuance.

3. Revise paragraph (a) of § 45.3 to read as follows:

**§ 45.3 Timing of filing application.**

(a) The holding of positions within the purview of section 305(b) of the Act shall be unlawful unless the holding shall have been authorized by order of the Commission. Nothing in this part shall be construed as authorizing the holding of positions within the purview of section 305(b) of the Act prior to order of the Commission on application therefor. Applications must be filed and authorization must be granted prior to holding any interlocking positions within the purview of section 305(b) of the Act; the Commission will consider late-filed applications on a case-by-case basis. The term “holding,” as used in this part, shall mean acting as, serving as, voting as, or otherwise performing or assuming the duties and responsibilities of officer or director within the purview of section 305(b) of the Act.

\* \* \* \* \*

4. Add paragraph (c) to § 45.4 to read as follows:

**§ 45.4 Supplemental applications.**

\* \* \* \* \*

(c) *Changes in interlocking positions within the scope of § 45.9.*

Notwithstanding paragraphs (a) and (b), in the case of interlocking positions that are identified in § 45.9(a), a filing under this section will not be required if the only change to be reported is holding a different or additional interlocking position which is identified in § 45.9(a).

5. Revise paragraph (b) of § 45.5 to read as follows:

**§ 45.5 Supplemental information.**

\* \* \* \* \*

(b) *Notice of changes.* In the event of the applicant's resignation, withdrawal, or failure of reelection or appointment in respect to any of the interlocking positions for which authorization has been granted by the Commission, or in the event of any other material or substantial change therein, the applicant shall, within 30 days after any such change occurs, give notice thereof to the Commission setting forth the position, corporation, and date of termination therewith, or other material or substantial change. In the case of interlocking positions that are identified in § 45.9(a), a notice of change under this section will not be required if the only

change to be reported is holding a different or additional interlocking position which is identified in § 45.9(a).

\* \* \* \* \*

6. Revise § 45.8(c)(1) to read as follows:

**§ 45.8 Contents of application.**

\* \* \* \* \*

(c) \* \* \*

(1) Name of utility, unless said utility does not have officers or directors.

\* \* \* \* \*

7. Revise § 45.9 to read as follows:

**§ 45.9 Automatic authorization of certain interlocking positions.**

(a) \* \* \*

(1) Officer or director of one or more other public utilities if the same holding company or person owns, directly or indirectly, that percentage of each utility's stock (of whatever class or classes) which is required by each utility's by-laws to elect directors;

(2) \* \* \*

(3) \* \* \*

(b) *Conditions of authorization.* As a condition of authorization, any person

authorized to hold interlocking positions under this section must submit, prior to performing or assuming the duties and responsibilities of the position, an informational report in accordance with paragraph (c) of this section, unless that person is already authorized to hold interlocking positions of the type governed by this section. The Commission will consider failures to timely file the informational report on a case-by-case basis.

\* \* \* \* \*

**PART 46 – PUBLIC UTILITY FILING REQUIREMENTS AND FILING  
REQUIREMENTS FOR PERSONS HOLDING INTERLOCKING POSITIONS**

1. The authority citation for part 46 continues to read as follows:

Authority: 16 U.S.C. 792-828c; 16 U.S.C. 2601-2645; 42 U.S.C. 7101-7352;  
E.O. 12009, 3 CFR 142.

2. Revise § 46.2 to read as follows:

**§ 46.2 Definitions.**

For the purpose of this part:

- (a) *Public utility* has the same meaning as in section 201(e) of the Federal Power Act. Such term does not include any rural electric cooperative which is regulated by the Rural Utilities Service of the Department of Agriculture or any other entities covered in section 201(f) of the Federal Power Act.
- (b) Remove and reserve.
- (c) *Purchaser* means any individual or corporation within the meaning of



section 3 of the Federal Power Act who purchases electric energy from a public utility. Such term does not include the United States or any agency or instrumentality of the United States or any rural electric cooperative which is regulated by the Rural Utilities Service of the Department of Agriculture.

(d) \* \* \*

(e) *Entity* means any firm, company, or organization including any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing. Such term does not include *municipality* as defined in section 3 of the Federal Power Act and does not include any Federal, State, or local government agencies or any rural electric cooperative which is regulated by the Rural Utilities Service of the Department of Agriculture.

\* \* \* \* \*