

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

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SOURCE: 45 FR 23418, Apr. 7, 1980, unless otherwise noted.

### **§ 46.1 Purpose.**

The purpose of this part is to implement section 305(c) of the Federal Power Act, as amended by section 211 of the Public Utility Regulatory Policies Act of 1978. [Order 67, 45 FR 3569, Jan. 18, 1980]

### **§ 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 and further includes any company which is part of a holding company system which includes a registered holding company unless no company in such system is an electric utility within the meaning of section 3 of the Federal Power Act. Such term does not include any rural electric cooperative which is regulated by the Rural Electrification Administration of the Department of Agriculture or any other entities covered in section 201(f) of the Federal Power Act.

(b) The following terms have the same meaning as in the Public Utility Holding Company Act of 1935:

(1) Holding company system; and

(2) Registered holding company.

(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 Electrification Administration of the Department of Agriculture.

(d) *Control* and *controlled* mean the possession, directly or indirectly, of the power to direct the management or policies of an entity whether such power is exercised through one or more intermediary companies or pursuant to an agreement, written or oral, and whether such power is established through ownership or voting of securities, or common directors, officers, or stockholders, or voting trusts, holding trusts, or debt holdings, or contract, or any other direct or indirect means. A rebuttable presumption that control exists arises from the ownership or the power to vote, directly or indirectly, ten percent (10%) or more of the voting securities of such entity.

(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 electrification Administration of the Department of Agriculture.

(f) *Electrical equipment* means any apparatus, device, integral component, or integral part used in an activity which is electrically, electronically, mechanically, or by legal prescription necessary to the process of generation, transmission, or distribution of electric energy.

(g) *Produces 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.

(h) *Appointee* means any person appointed on a temporary or permanent basis to perform any duties or functions described in § 46.4(a).

(i) *Representative* means any person empowered, through oral or written agreement, to transact business on behalf of an entity and any person who serves as an advisor regarding policy or management decisions of the entity. The term does not include attorneys, accountants, architects, or any other persons who render a professional service on a fee basis.

### **Federal Energy Regulatory Commission § 46.3**

Guidance in applying the definition of *electrical equipment* may be obtained by examining the items within the following accounts described in part 101, title 18 of the Code of Federal Regulations: Boiler/Reactor plant equipment (Accounts 312 and 322); Engines and engine driven generators (313); Turbogenerator units (314 and 323); Accessory electrical equipment (315, 324, 334 and 345); Miscellaneous power plant equipment (316, 325, 335 and 346); Water wheels, turbines and generators (333); Fuel holders, producers, and accessories (342); Prime movers (343); Generators (344); Station equipment (353 and 362); Poles, towers and fixtures (354, 355 and 364); Overhead conductors and devices (356 and 365); Underground conduit (357 and 366); Underground conductors and devices (358 and 367); Storage battery equipment (363); Line transformers (368); Services (369); Meters (370); Installation on customers' premises (371); Street lighting and signal systems (373); Leased property on customers' premises (372); and Communication equipment (397). Excepted from these accounts, are vehicles, structures, foundations, settings, and services.

### **§ 46.3 Purchaser list.**

(a)(1) *Compilation and filing list.* On or before January 31 of each year, except as provided below, each public utility shall compile a list of the purchasers described in paragraph

(b) of this section, and subject to paragraph (a)(5) of this section, shall identify each purchaser by name and principal business address. The public utility must submit the list to the Secretary of the Commission in accordance with filing procedures posted on the Commission's Web site at <http://www.ferc.gov> and make the list publicly available through its principal business office.

### **§ 46.4 18 CFR Ch. I (4-1-18 Edition)**

(2) Notwithstanding paragraph (a)(1) of this section, public utilities that are defined as Regional Transmission Organizations, as defined in § 35.34(b)(1) of this chapter, and public utilities that are defined as Independent System Operators, as defined in § 35.46(d) of this chapter, are exempt from the requirement to file.

(3) Notwithstanding paragraph (a)(1) of this section, public utilities that meet the criteria for exempt wholesale generators, as defined in § 366.1 of this chapter, and are certified as such pursuant to § 366.7 of this chapter, are exempt from the requirement to file.

(4) Notwithstanding paragraph (a)(1) of this section, public utilities that have either no reportable sales as defined in paragraph (b) or only sales for resale in any of the three preceding years are exempt from the requirement to file.

(5) Notwithstanding paragraph (a)(1) of this section, individual residential customers on the list should be identified as "Residential Customer," and with a zip code in lieu of an address.

(b) *Largest purchasers.* The list required under paragraph (a) of this section shall include each purchaser who, during any of the three (3) preceding calendar years, purchased (for purposes other than resale) from a public utility one of the twenty (20) largest amounts of electric energy measured in kilowatt hours sold (for purposes other than resale) by such utility during such year.

(c) *Special rules.* If data for actual annual sales (for purposes other than resale) are not available in the records of the public utility, the utility may use estimates based on actual data available to it. If one purchaser maintains several billing accounts with the public utility, the kilowatt hours purchased in each account of that purchaser shall be aggregated to arrive at the total for that purchaser.

(d) *Revision of the list.* Each public utility relying upon any estimates for its January 31st filing, shall revise the list compiled under paragraph (b) of this section no later than March 1 of the year in which the list was originally filed to reflect actual data not available to the utility prior to that time. Any revised list shall be filed with the Commission and made publicly available through the utility's principal business office no later than March 1. A utility filing a revised list shall indicate thereon the changes made to the list previously filed under paragraph (b) of this section. On or before the filing and publication of the revised list, the public utility shall notify the newly-listed purchasers and any purchasers whose names were removed from the list.

[Order 67, 45 FR 3569, Jan. 18, 1980; 45 FR 6377, Jan. 28, 1980, as amended by Order 737, 75 FR 43404, July 26, 2010; 80 FR 43624, July 23, 2015]

#### **§ 46.4 General rule.**

A person must file with the Secretary of the Commission a statement in accordance with § 46.6, and in the form specified in § 131.31 of this chapter (except that with respect to calendar year 1980, no filings in the form specified in § 131.31 is required if such person has previously filed the statement required for calendar year 1980 in a different form than specified in § 131.31), if such person:

(a) Serves for a public utility in any of the following positions: A director or a chief executive officer, president, vice president, secretary, treasurer, general manager, comptroller, chief purchasing agent, or any other position in which such person performs similar executive duties or functions for such public utility; and

(b) Serves for any entity described in § 46.5 in any of the positions described in paragraph (a) of this section or is a partner, appointee, or representative of such entity.

[45 FR 23418, Apr. 7, 1980, as amended by Order 140, 46 FR 22181, Apr. 16, 1981; Order 737, 75 FR 43404, July 26, 2010]

#### **§ 46.5 Covered entities.**

Entities to which the general rule in § 46.4(b) applies are the following:

- (a) Any investment bank, bank holding company, foreign bank or subsidiary thereof doing business in the United States, insurance company, or any other organization primarily engaged in the business of providing financial services or credit, a mutual savings bank, or a savings and loan association;
- (b) Any entity which is authorized by law to underwrite or participate. marketing of securities of a public utility;
- (c) Any entity which produces or supplies electrical equipment or coal, natural gas, oil, nuclear fuel, or other fuel, for the use of any public utility;
- (d) Any entity specified in § 46.3;
- (e) Any entity referred to in section 305(b) of the Federal Power Act; and
- (f) Any entity which is controlled by any entity referred to in this section.

#### **§ 46.6 Contents of the statement and procedures for filing.**

Each person required to file a written statement under the general rule in § 46.4 shall comply with the following requirements:

- (a) Each person shall provide the following information: full name and business address; identification of the public utilities and the covered entities in which such person holds executive positions described in § 46.4; and identification of the interlock described in § 46.4;
  - (b) If the interlock is between a public utility and an entity described in § 46.5(c), which produces or supplies electrical equipment for use of such public utility, such person shall provide the following information:
    - (1) The aggregate amount of revenues received by such entity from producing or supplying electrical equipment to such public utility in the calendar year specified in paragraph (d) of this section, rounded up to the nearest \$100,000;and
    - (2) The nature of the business relationship between such public utility and such entity.
  - (c) If the person is authorized by the Commission to hold the positions of officer or director in accordance with part 45, such person shall identify the authorization by docket number and shall give the date of authorization.
  - (d)(1) Each person shall file an original and one copy of such written statement with the Office of 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. The original of such statement shall be dated and signed by such person. The copy shall bear the date that appeared on the original; the signature on the copy may be stamped or typed on the copy.
    - (2) Instead of submitting changes to the Commission on the pre-printed Form No. 561 sent annually by the Commission, a person may choose to make changes to the pre-filled electronic version provided by the Commission. This electronic version, along with the signed original and one copy (as required by Paragraph (d)(c)) shall also be filed with the Commission.
    - (3) Such statement shall be available to the public through the Commission's eLibrary system on <http://www.ferc.gov> 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.
- (Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*))[45 FR 23418, Apr. 7, 1980, as amended by Order 601, 63 FR 72169, Dec. 31, 1998; Order 737,75 FR 43404, July 26, 2010]