

FERC Form No. 520 (OMB Control No. 1902-0083)
Final Rule (issued 2/21/2019) in Docket No. RM18-15-000
RIN: 1902-AF53
(5/6/2019)

**Supporting Statement for
FERC-520¹ (Application for Authority to Hold Interlocking Directorate Positions),
Revisions Due to Final Rule in Docket No. RM18-15-000**

The Federal Energy Regulatory Commission (FERC or Commission) requests that the Office of Management and Budget (OMB) review and approve the FERC Form No. 520 (Application for Authority to Hold Interlocking Directorate Positions), as revised in the Final Rule (Order No. 856) in Docket No. RM18-15-000.

In this Final Rule, the Commission:

(1) revises 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;

(2) revises its regulations to reflect statutory changes narrowing the circumstances for Commission authorization to hold an interlocking position;

(3) revises its regulations to clarify its position on late-filed applications and informational reports;

(4) revises its regulations to state that applicants do not need to list in their applications public utilities that do not have officers or directors;

(5) revises its regulations with regard to public utilities owned by a natural person;²

(6) revises its regulations to create an exemption for interlocks of 90 days or less; and

(7) revises its regulations to remove section 46.2(b), which contains definitions and phrases now rendered obsolete.

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

The Federal Power Act (FPA) mandates federal oversight and approval of certain electric corporate activities, including oversight and approval of the holding of interlocking positions, and implements related information filing requirements. The FERC Form No. 520, among other forms, ensures that FPA-mandated oversight can occur. Additionally, this collection ensures that neither public nor private interests are adversely affected by the holding of the interlocking positions that the FPA covers. The regulatory requirements for the collection are contained in 18 CFR Parts 45, 46, and 131.31.

¹ Also called FERC Form No. 520.

² “Natural person” is defined as a naturally born, living human being, as opposed to a legal person, which may be a private or public organization.

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2. HOW, BY WHOM, AND FOR WHAT PURPOSE THE INFORMATION IS TO BE USED AND THE CONSEQUENCES OF NOT COLLECTING THE INFORMATION

The FERC Form No. 520 is an application requesting FERC authorization for officers and directors of regulated public utilities to simultaneously hold positions of officers and directors of certain other entities. Under the FPA, the holding of specific interlocking positions is unlawful unless the Commission has authorized the holding of such interlocks upon a determination that neither public nor private interests will be adversely affected.

Before assuming an interlocking position, an applicant thus must demonstrate that neither public nor private interests will be adversely affected by the interlocking position. The FERC Form No. 520 identifies the applicant and provides FERC with information about any interlocking position for which the applicant requests authorization. Additionally, the filing collects information related to the applicant's financial interests, other officers or directors of the firms that are involved, and the nature of the business relationships among firms.

There are two types of FERC Form No. 520 applications to implement FPA requirements: full and informational. The full application is required by 18 CFR 45.8 and involves (1) an officer or director of more than one public utility, (2) an officer or director of a public utility and of a public utility securities underwriter, and (3) an officer or director of a public utility and of an electrical equipment supplier to that utility. The full application provides detailed information about the positions for which authorization is sought, including a description of duties.

The informational applications are required by 18 CFR 45.9 and are intended for automatic authorization. These applications are made by (1) an officer or director of two or more public utilities where the same holding company owns, directly or indirectly, wholly or in part, both public utilities, (2) an officer or director of two public utilities, if one utility is owned, wholly or in part, by the other, and (3) an officer or director of more than one public utility, if such person is already authorized to hold different positions in those same, affiliated public utilities.

FERC currently requires notices of changes, including if the applicant resigns or withdraws from Commission-authorized interlocked positions or if the applicant is not re-elected or reappointed to the interlocked position. Pursuant to 18 CFR 45.5, an applicant

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must file a notice of change within 30 days after any such change. This notice of change includes the position(s) that the applicant held, the corporation of which the position was part of, and the date of termination of the position.

In the Final Rule, among other revisions to its regulations, the Commission is no longer requiring a notice of change in the case of a person already authorized to hold interlocks identified in 18 CFR 45.9(a) who may assume new or different positions that are still among those identified by 18 CFR 45.9(a). This Final Rule is expected to reduce the number of filed notices of change by 50 percent annually and to reduce the corresponding total burden.

In 1999, Congress amended FPA section 305(b)(2) to provide 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” does not need Commission authorization under certain defined circumstances.³ Since that time, the Commission has not required prior authorization for such interlocking positions under these circumstances. The Final Rule codifies the changes made by Congress in 18 CFR 45.2.

3. DESCRIBE ANY CONSIDERATION OF THE USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN AND TECHNICAL OR LEGAL OBSTACLES TO REDUCING BURDEN

The Commission implemented the capability and requirement for filing FERC-520 in various formats including the capability of electronic filing via [eFiling](#) on FERC’s webpage. About 90 percent of the FERC Form No. 520 filings arrive electronically.

4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION AND SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S) DESCRIBED IN INSTRUCTION NO. 2.

Commission filings and data requirements are periodically reviewed in conjunction with OMB clearance expiration dates. This includes a review of the Commission’s regulations and data requirements to identify duplication. No duplication of the FERC- 520 information collection requirements has been found.

5. METHODS USED TO MINIMIZE BURDEN IN COLLECTION OF INFORMATION INVOLVING SMALL ENTITIES

³ See Pub. L. No. 106-102, sec. 737, 113 Stat. 1338, 1479 (1999).

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The data collection imposes the least possible burden on small entities while collecting information necessary to the Commission to fulfill its statutory requirements.

6. CONSEQUENCE TO FEDERAL PROGRAM IF COLLECTION WERE CONDUCTED LESS FREQUENTLY

The Commission collects the FERC Form No. 520 information when individuals seek Commission authority to hold interlocks as well as when circumstances change with respect to an officer's or director's interlocking position with a public utility. There is no cyclical, re-filing of FERC Form No. 520 information. It is filed once and, as long as circumstances do not change, it is not filed again. The only time an applicant is required to file another FERC Form No. 520 (subsequent to the initial filing) would be when the applicant seeks to be an officer or director of a corporation that is not within the same corporate family for which the applicant previously received authorization to serve as officer or director. The Commission adopted this policy in order to make these filings occur in the least frequent and, thus, least burdensome manner possible for applicants.

Collecting the FERC Form No. 520 less frequently than it is currently collected would mean not collecting the information at all and this is not appropriate because Commission oversight of the information is a statutory requirement. Moreover, these data collections serve to safeguard public and private interests by disclosing business relationships to both the public and the Commission for analyses as required by the FPA. Without the data, neither the public nor the Commission would be able to monitor interlocked corporate behavior. As a result, there would be no transparency of the dynamics among the officers and directors of public utilities and their interlocked other public utilities, securities underwriters, and electrical equipment suppliers.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION

The FERC-520 information collection presents no special circumstances.

8. DESCRIBE EFFORTS TO CONSULT OUTSIDE THE AGENCY: SUMMARIZE PUBLIC COMMENTS AND THE AGENCY'S RESPONSE TO THESE COMMENTS

Each FERC rulemaking (both proposed and final rules) is published in the Federal Register thereby providing public utilities and licensees, state commissions, Federal

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agencies, and other interested parties an opportunity to submit data, views, comments or suggestions concerning the collections of data. The NOPR (issued July 19, 2018) was published in the Federal Register on August 1, 2018.⁴ The Commission received several public comments, but only one was specifically related to Paperwork Reduction Act (PRA) issues, summarized below. Many commenters state that the Commission's proposals will reduce administrative burdens. All other comments are summarized and addressed in the Final Rule. The Final Rule (issued 2/21/2019) was published in the Federal Register on 3/4/2019.⁵

COMMENTS:

Just Energy Corp. (Just Energy) filed comments on the cost of informational filings and notices of change. Just Energy states that the Commission estimates that informational filings cost \$632.00 each and that notices of change cost \$19.25 are incorrect. Just Energy believes that the Commission underestimates the cost.

COMMISSION RESPONSE:

The Commission disagrees that it has underestimated the costs of informational filings and notices of change. The Commission notes that the cost estimates stated in the Notice of Proposed Rulemaking and in this Final Rule are estimates of average costs. While the costs of some informational filings and notices of change will be higher than the stated averages, some will also be less than the stated averages. Each FERC rulemaking (both proposed and final rules) is published in the Federal Register thereby providing public utilities and licensees, state commissions, Federal agencies, and other interested parties an opportunity to submit data, views, comments or suggestions concerning the collection of data.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts to respondents associated with the FERC Form No. 520 information collection.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

The Commission does not consider the information collected in filings to be confidential. However, the Commission will consider specific requests for confidential treatment (e.g.

⁴ 83 Fed. Reg. 37,450 (Aug. 1, 2018).

⁵ 84 Fed. Reg. 7,274 (Mar. 4, 2019).

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Critical Energy/Electric Infrastructure Information [CEII] or non-public) to the extent permitted by law.⁶ The Commission will review each request for confidential treatment on a case-by-case basis.

11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE, SUCH AS SEXUAL BEHAVIOR AND ATTITUDES, RELIGIOUS BELIEFS, AND OTHER MATTERS THAT ARE COMMONLY CONSIDERED PRIVATE

There are no questions of a sensitive nature in the reporting or recordkeeping requirements of the FERC Form No. 520 information collection.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

On implementation of the Final Rule in Docket RM18-15, the Commission estimates the public reporting burden and cost for the FERC Form No. 520 information collection as follows:

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	Number of Respondents (1)	Annual Number of Responses per Respondent (2)	Total Number of Responses (1)*(2)=(3)	Average Burden Hrs. & Cost Per Response (\$)⁷ (4)	Total Annual Burden Hours & Total Annual Cost (\$) (3)*(4)=(5)	Cost per Respondent (\$) (5)÷(1)
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

⁶ 18 C.F.R. § 388.112. More information on the CEII definition, program and requirements is posted at <http://www.ferc.gov/legal/ceii-foia/ceii.asp>.

⁷ The Commission staff considers the average respondent for this collection to be 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.

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Notice of Change	100	1	100	0.25 hrs.; \$19.75	25 hrs.; \$1,975	\$19.75
TOTAL			616		4,825 hrs.; \$381,175	

13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There are no start-up or other non-labor costs.

Total Capital and Start-up cost: \$0

Total Operation, Maintenance, and Purchase of Services: \$0

All of the costs in the information collection are associated with burden hours (labor) and discussed in Questions #12 and #15.

14. ESTIMATE OF THE TOTAL ANNUAL COST TO FEDERAL GOVERNMENT

The estimate of the cost for analysis and processing of filings is based on salaries and benefits for professional and clerical support. This estimated cost represents staff analysis, decision-making, and review of any actual filings submitted in response to the information collection.

The PRA Administrative Cost is the average annual FERC cost associated with preparing, issuing, and submitting materials necessary to comply with the PRA for rulemakings, orders, or any other vehicle used to create, modify, extend, or discontinue an information collection. It also includes the cost of publishing the necessary notices in the Federal Register.

	Number of Employees (FTE)	Estimated Annual Federal Cost
Analysis and Processing of filings ⁸	2/3	\$109,880
PRA ⁹ Administrative Cost		\$4,931
FERC Total		\$114,811

⁸ This is based upon FERC's 2018 average annual salary plus benefits of \$164,820.

⁹ PRA, 44 U.S.C. 3507(d).

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15. REASONS FOR CHANGES IN BURDEN INCLUDING THE NEED FOR ANY INCREASE

The Commission is revising its requirements and no longer requiring a notice of change when a person is merely changing positions within a holding company system. This Final Rule is expected to reduce the number of notices of change filed with the Commission by 50 percent annually (to 100 responses, rather than 200) and to reduce the corresponding total burden (by 25 hrs.), as identified in the table below:

FERC Form No. 520	Total Request	Previously Approved	Change due to Adjustment in Estimate	Change Due to Agency Discretion
Annual Number of Responses	616	716		-100
Annual Time Burden (Hr.)	4,825	4,850		-25
Annual Cost Burden (\$)	0	0	0	0

16. TIME SCHEDULE FOR THE PUBLICATION OF DATA

There are no publications of the information.

17. DISPLAY OF EXPIRATION DATE

The clearance information and expiration dates are available at <http://www.ferc.gov/docs-filing/info-collections.asp>

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions.