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ENHANCED CONTENT - TABLE OF CONTENTS

Part 45 Application for Authority to Hold Interlocking Positions 45.1 – 45.9

- § 45.1 Applicability; who must file.
- § 45.2 Positions requiring authorization.
- § 45.3 Timing of filing application.
- § 45.4 Supplemental applications.
- § 45.5 Supplemental information.
- § 45.6 Termination of authorization.
- § 45.7 Form of application; filing procedure.
- § 45.8 Contents of application.
- § 45.9 Automatic authorization of certain interlocking positions.

Title 18

PART 45 - APPLICATION FOR AUTHORITY TO HOLD INTERLOCKING POSITIONS

Authority: 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352; 3 CFR 142.

Source: Order 141, 12 FR 8501, Dec. 19, 1947, unless otherwise noted.

Cross References:

For rules of practice and procedure, see part 385 of this chapter. For forms under rules of practice and regulations under the Federal Power Act, see part 131 of this chapter.

§ 45.1 Applicability; who must file.

- (a) This part applies to any person seeking to hold the following interlocking positions:
 - (1) Officer or director of more than one public utility;
 - (2) Officer or director of a public utility and of any bank, trust company, banking association, or firm that is authorized by law to underwrite or participate in the marketing of securities of a public utility; or
 - (3) Officer or director of a public utility and of any company supplying electrical equipment to such public utility.
- (b) Any person seeking to hold any interlocking position described in § 45.2 of this chapter must do the following:
 - (1) Apply for Commission authorization under § 45.8 of this chapter; or
 - (2) If qualified, comply with the requirements for automatic authorization under § 45.9 of this chapter.
- (c) Notwithstanding paragraphs (a) and (b) of this section, any person may temporarily hold an interlocking position described in § 45.2 for no more than 90 days within a twelve-month period without applying for Commission authorization under § 45.8 and without complying with the requirements for authorization under § 45.9.

[Order 446, 51 FR 4904, Feb. 10, 1986, as amended by Order 856, 84 FR 7282, Mar. 4, 2019]

§ 45.2 Positions requiring authorization.

- (a) The positions subject to this part shall include those of any person elected or appointed to perform the duties or functions ordinarily performed by a president, vice president, secretary, treasurer, general manager, comptroller, chief purchasing agent, director or partner, or to perform any other similar executive duties or functions, in any corporation^[1]

within the purview of section 305(b) of the Act. With respect to positions not herein specifically mentioned which applicant holds and which are invested with executive authority, applicant shall state in the application the source of such executive authority, whether by bylaws, action of the board of directors, or otherwise.

- (b) Corporations¹ within the purview of section 305(b) of the Act include:
- (1) Any public utility under the Act, which means any person who owns or operates facilities for the transmission of electric energy in interstate commerce, or any person who owns or operates facilities for the sale at wholesale of electric energy in interstate commerce.
 - (2) Any bank, trust company, banking association, or firm that is authorized by law to underwrite or participate in the marketing of public utility securities; this includes any corporation when so authorized whether or not same may also be a public utility and/or a holding company. (See 12 U.S.C. 378)
 - (3) Any company that supplies electrical equipment to a public utility in which applicant seeks authorization to hold a position, whether the supplying company be a manufacturer, or dealer, or one supplying electrical equipment pursuant to a construction, service, agency, or other contract.
- (c) Regardless of any action which may have been taken by the Commission upon a previous application under section 305(b) of the Act, an application for approval under such section is required with reference to any position or positions not previously authorized which are within the purview of said section.
- (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 paragraph (b)(2) of this section 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.

[Order 141, 12 FR 8501, Dec. 19, 1947, as amended by Order 856, 84 FR 7282, Mar. 4, 2019]

FOOTNOTES - 45.2

^[1]*Corporation* means 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. It shall not include *municipalities* as defined in the Federal Power Act (sec. 3, 49 Stat. 838; 16 U.S.C. 796).

§ 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.
- (b) Absent Commission action within 60 days of a completed application to hold interlocking positions, an application will be deemed granted. Such authorization is subject to revocation by the Commission after due notice to applicant and opportunity for hearing. In any such proceeding, the burden of proof shall be upon the applicant to show that neither public nor private interests will be adversely affected by the holding of such positions.

[Order 664, 70 FR 55723, Sept. 23, 2005, as amended by Order 856, 84 FR 7282, Mar. 4, 2019]

§ 45.4 Supplemental applications.

- (a) **New positions.** In the event of a change or changes in the information set forth in an application, by the applicant's election or appointment to another position or other positions in corporations within the purview of section 305(b) of the Act, the application shall be supplemented by the applicant's setting forth all the data with respect to the new position or positions in accordance with the requirements of this part.
- (b) **Old positions.** After applicant has been authorized to hold a particular position, further application in connection with each successive term so long as he continues in uninterrupted tenure of such position will not be required except as ordered by the Commission. If the term of office or the holding of any position for which authorization has been given shall be interrupted and the applicant shall subsequently be reelected or reappointed thereto, further authorization will be required.
- (c) **Changes in interlocking positions within the scope of § 45.9.** Notwithstanding paragraphs (a) and (b) of this section, in the case of interlocking positions that qualify for automatic authorization pursuant to § 45.9(a), a filing under this section will not be required if the only changes to be reported are holding different or additional interlocking positions that would qualify for automatic authorization pursuant to § 45.9(a).

[Order 141, 12 FR 8501, Dec. 19, 1947, as amended by Order 856, 84 FR 7282, Mar. 4, 2019]

§ 45.5 Supplemental information.

- (a) **Required by Commission.** Applicants under this part shall upon request of the Commission and within such time as may be allowed, supplement any application or any supplemental application with any information required by the Commission.
- (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 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 60 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 qualify for automatic authorization pursuant to § 45.9(a), a notice of change under this section will not be required if the only change to be reported is a resignation or withdrawal from fewer than all positions held between or among affiliated public utilities, a reelection or reappointment to a position that was previously authorized, or holding a different or additional interlocking position that would qualify for automatic authorization pursuant to § 45.9(a).
- (c) **Reports.** All persons holding positions by authorization of the Commission under section 305(b) of the Act may be required to file such periodic or special reports as the Commission may deem necessary.

[Order 141, 12 FR 8501, Dec. 19, 1947, as amended by Order 856, 84 FR 7282, Mar. 4, 2019]

§ 45.6 Termination of authorization.

- (a) **By the Commission.** Orders of authorization under section 305(b) of the Act are subject to revocation by the Commission after due notice to applicant and opportunity for hearing. In any such proceeding the burden of proof shall be upon the applicant to show that neither public nor private interests will be adversely affected by the holding of such positions.
- (b) **Without action of the Commission.** Whenever a person shall cease to hold a position theretofore authorized to be held by the Commission or such position shall cease to be within the purview of section 305(b) of the Federal Power Act, the Commission's authorization to hold such position shall terminate without further action by the Commission. If upon such termination of authorization as aforesaid, such person does not continue to hold at least two positions authorized and then requiring authorization pursuant to said section 305(b) of the Act, all authorization theretofore given by the Commission shall thereupon terminate.

§ 45.7 Form of application; filing procedure.

Applications, supplemental applications, statements of supplemental information, notices of change, and reports should be filed with the Secretary of the Commission in accordance with filing procedures posted on the Commission's Web site at <http://www.ferc.gov>. Each filing must be dated, signed by the applicant, and verified under oath in accordance with § 385.2005(b)

and (c).

[Order 737, 75 FR 43404, July 26, 2010]

§ 45.8 Contents of application.

Each application shall state the following:

- (a) **Identification of applicant.**
 - (1) Full name, business address and state of residence.
 - (2) Major business or professional activity.
 - (3) If former application or applications under section 305(b) of the Act have been made by the applicant, give date and docket number of the last application filed.
- (b) **List of positions within the purview of section 305(b) of the Act for which authorization is sought.** (Indicate by asterisk positions which were the subjects of previous authorizations.)

Position	Name of corporation	Classification: (1) Public utility, (2) authorized by law to underwrite, (3) supplying electrical equipment

- (c) **Data as to positions with each public utility mentioned in paragraph (b) of this section.** (The format should be adapted to the information submitted, in keeping with completeness and conciseness. In the case of public utilities of the same holding company system, brevity will generally be promoted by submitting the information for all of the utilities involved under each subsection progressively in the order of the subsections, utilizing tables when feasible.)
 - (1) Name of utility, unless said utility does not have officers or directors.
 - (2) Date elected or appointed, or anticipated date of election or appointment, to each position not previously authorized.
 - (3) Names of officers and directors; number of vacancies, if any, on Board of Directors.
 - (4) Description of applicant's duties: Approximate amount of time devoted thereto; and, if applicant seeks authorization as a director, the percentage of directors meetings held during the past 12 months that were attended by the applicant.
 - (5) All other professional, contractual, or business relationships of applicant with the public utility, either directly or through other corporations or firms.
 - (6) Extent of applicant's direct or indirect ownership, control of, or beneficial interest in the public utility or the securities thereof. If ownership or interest is held in a name other than that of applicant, state name and address of the holder.
 - (7) Extent of applicant's indebtedness to the public utility, how and when incurred, and consideration therefor.
 - (8) All money or property received by applicant from the public utility or any affiliate
 - (i) during the past 12 months, and expected during the ensuing 12 months, or
 - (ii) during the public utility's most recently ended fiscal year, and expected during the public utility's current fiscal year, or
 - (iii) during the past and current calendar years, whether for services, reimbursement for expenses, or otherwise. Specify in detail the amount thereof and the basis therefor. If applicant's compensation for services to the public utility is not paid directly by the public utility, give name of the corporation that does pay same, the amount allocated or allocable to the public utility or any affiliate, and the basis or reason for such allocation.
 - (9) Whether during the past 5 years the public utility or any affiliate thereof or any security holders of either have commenced any suit against the officers or directors thereof for alleged waste, mismanagement or violation of duty, to which suit applicant was a party defendant. If so, give date of commencement of suit, court in which

commenced, and present status.

- (d) **Data as to positions with each bank, trust company, banking association or firm, mentioned in paragraph (b) of this section, that is authorized by law to underwrite or participate in the marketing of securities of a public utility.** (The applicant shall use a separate sheet for each corporation.)
- (1) Name of corporation and address of principal place of business.
 - (2) Positions which applicant holds or seeks authorization to hold therein and when and by whom elected or appointed to each position.
 - (3) Description of applicant's duties in each position and the approximate amount of time devoted thereto, and, if applicant seeks authorization as director, the percentage of directors meetings held during the past 12 months that were attended by the applicant.
 - (4) Extent of applicant's direct or indirect ownership, or control of, or beneficial interest in, the company or in the securities thereof, including common stock, preferred stock, bonds, or other securities. If such ownership or interest is held in a name other than that of applicant, state name and address of such holder.
 - (5) All money or property received by applicant from the company
 - (i) during the past 12 months, and expected during the ensuing 12 months, or
 - (ii) during the company's most recently ended fiscal year, and expected during the company's current fiscal year, or
 - (iii) during the past and current calendar years, whether for services, reimbursement for expenses, or otherwise. Specify in detail the amount thereof and the basis therefor.
 - (6) Names and titles of directors, officers, or partners.
 - (7) Whether the corporation is now engaged in underwriting or participating in the marketing of the securities of a public utility; if so, to what extent.
 - (8) Whether the corporation, during applicant's connection therewith, has underwritten or participated in the marketing of the security issue of any public utility with which applicant was also connected; if so, the details with respect to every such transaction that occurred during the past 36 months.
 - (9) (If the answer to paragraph (d)(7) of this section is in the negative.) Give excerpts from the charter, declaration of trust, or articles of partnership that authorize the underwriting or participating in the marketing of securities of a public utility.
 - (10) (If the answer to paragraph (d)(7) of this section is in the negative.) Give general requirements of and appropriate reference to, the laws of the State of organization and of States in which corporation is doing business or has qualified to do business, with which it must comply in order to engage in the business of underwriting or participating in the marketing of the securities of a public utility.
 - (11) What steps, if any, have been taken to comply with laws mentioned in paragraph (d)(10) of this section.
 - (12) In lieu of paragraphs (d)(9), (10), and (11) of this section, an opinion by counsel to the same effect and including the information in respect thereto may be filed with the application.
 - (13) Whether the corporation has registered with the Securities and Exchange Commission; if so, when and under what section of what act.
- (e) **Data as to positions with each company, mentioned in paragraph (b) of this section, supplying electrical equipment to a public utility in which applicant holds a position.** (Applicant shall use a separate sheet for each company.)
- (1) Name of company and address of principal place of business.
 - (2) Positions which applicant holds or seeks authorization to hold therein and when and by whom elected or appointed to each position.
 - (3) Description of applicant's duties in each position and approximate amounts of time devoted thereto, and, if applicant seeks authorization as director, the percentage of directors meetings held during the past 12 months that were attended by the applicant.
 - (4) Names and titles of directors or partners.

- (5) Name of each public utility, with which applicant holds or seeks authorization to hold a position, to which the company supplies electrical equipment; the frequency of such transactions; the approximate annual dollar volume of such business; and the type of equipment supplied.
- (6) Nature of relationship between the company supplying electrical equipment and the public utility:
 - (i) Whether company manufactures such electrical equipment or is a dealer therein.
 - (ii) Whether company supplies electrical equipment to the public utility pursuant to construction, service, agency, or other contract with the public utility or an affiliate thereof, and, if so, furnish brief summary of the terms of such contract.
- (7) Extent of applicant's direct or indirect ownership, or control of, or beneficial interest in, the company or in the securities thereof, including common stock, preferred stock, bonds, or other securities. If such ownership or interest is held in a name other than that of applicant, state name and address of such holder.
- (8) All money or property received by applicant from the company
 - (i) during the past 12 months, and expected during the ensuing 12 months, or
 - (ii) during the company's most recently ended fiscal year, and expected during the company's current fiscal year, or
 - (iii) during the past and current calendar years, whether for services, reimbursement for expenses, or otherwise. Specify in detail the amount thereof and the basis therefor.
- (f) **Data as to positions with public utility holding companies.** (Do not include here data as to corporations listed in paragraph (b) of this section which are also holding companies. A *holding company* as herein used means any corporation which directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more, of the outstanding voting securities of a public utility.)
 - (1) Name of holding company and address of principal place of business.
 - (2) Positions which applicant holds therein, when and by whom elected or appointed to each position.
 - (3) Extent of applicant's direct or indirect ownership, or control of, or beneficial interest in, the holding company or in the securities thereof, including common stock, preferred stock, bonds, or other securities. If such ownership or interest is held in a name other than that of applicant, state name and address of such holder.
 - (4) All money or property received by applicant from the holding company
 - (i) during the past 12 months, and expected during the ensuing 12 months, or
 - (ii) during the holding company's most recently ended fiscal year, and expected during the holding company's current fiscal year, or
 - (iii) during the past and current calendar years, whether for services, reimbursement for expenses, or otherwise. Specify in detail the amount thereof and the basis therefor.
- (g) **Positions with all other corporations.** (Do not include here data that have been filed within the past 12 months in FERC-561, pursuant to part 46 of this chapter, or data as to any corporations listed in paragraph (b) or (f) of this section.)
 - (1) All other corporations and positions therein, including briefly the information required in parallel columns as below:

Name of corporation	Address: Kind of business	Position held therein

- (2) Any corporate, contractual, financial, or business relationships between any of the corporations listed in paragraph (g)(1) of this section and any of the public utilities listed in paragraph (b) of this section.
- (h) **Data as to the public utility holding company system.** The names of the public utility holding company systems of which each public utility listed in paragraph (b) of this section is a part, with a chart showing the corporate relationships existing between and among the corporations within the holding company systems.

[Order 246, 27 FR 4912, May 25, 1962, as amended by Order 427, 36 FR 5598, Mar. 25, 1971; Order 374, 49 FR 20479, 20480, May 15, 1984; Order 435, 50 FR 40358, Oct. 3, 1985; Order 737, 75 FR 43404, July 26, 2010; Order 856, 84 FR 7282, Mar. 4, 2019]

Cross Reference:

For rules and regulations of the Securities and Exchange Commission, see 17 CFR, chap. II.

§ 45.9 Automatic authorization of certain interlocking positions.

- (a) **Applicability.** Subject to paragraphs (b) and (c) of this section, the Commission authorizes any officer or director of a public utility to hold the following interlocking positions:
- (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) 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 generating facilities to provide transmission service or electric power for sale to its owners; and
 - (3) Officer or director of more than one public utility, if such officer or director is already authorized under this part to hold positions as officer or director of those or any other public utilities where the interlock involves affiliated public utilities.
- (b) **Conditions of authorization.**
- (1) As a condition of authorization, any person eligible to seek authorization 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:
 - (i) Is already authorized to hold interlocking positions of the type governed by this section;
 - (ii) Is exempt from filing an informational report pursuant to § 45.4; or
 - (iii) Will hold a temporary interlocking position pursuant to § 45.1(c).
 - (2) The Commission will consider failures to timely file the informational report on a case-by-case basis.
- (c) **Informational report.** An informational report required under paragraph (b) of this section must state:
- (1) The full name and business address of the person required to submit this report;
 - (2) The names of all public utilities with which the person holds or will hold the positions of officer or director and a description of those positions;
 - (3) The names of any entity, other than those listed in paragraph (c)(2) of this section, of which the person is an officer or director and a description of those positions; and
 - (4) An explanation of the corporate relationship between or among the public utilities listed in paragraph (c)(2) of this section which qualifies the person for automatic authorization under this section.
 - (5) A statement or an affirmation that the applicant has not yet performed or assumed the duties or responsibilities of the position which necessitated the filing of this informational report.

[Order 446, 51 FR 4905, Feb. 10, 1986, as amended by Order 664, 70 FR 55723, Sept. 23, 2005; Order 856, 84 FR 7282, Mar. 4, 2019]