

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

COMMISSION INFORMATION COLLECTION ACTIVITIES, PROPOSED COLLECTIONS; COMMENT REQUEST; EXTENSION	DOCKET NOS. IC11-520-000 IC11-561-000, AND IC11-566-000
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**COMMENTS OF THE
EDISON ELECTRIC INSTITUTE**

I. INTRODUCTION

The Edison Electric Institute (EEI) is submitting these comments in response to the Notice of Proposed Information Collections and Request for Comments (Notice) issued by the Federal Energy Regulatory Commission (FERC or the Commission) in the above-referenced dockets on February 24, 2011 and published at 76 Fed. Reg. 12091 on March 4, 2011. The Notice solicits public comment on the Commission's proposal to continue collecting information required to be reported in FERC-520, Form 561, and FERC-566. These information collections implement the Commission's authorization regulations and reporting obligations for the holding of certain interlocking directorate positions.

Specifically, the Commission has requested comments on (1) whether the collection of this information is necessary for the proper performance of the functions of the Commission, (2) the accuracy of the Commission's estimate of the burden of the collection of the information, (3) ways to enhance the quality, utility and clarity of the

information to be collected, and (4) ways to minimize the burden of collecting information on those who are to respond.

II. EEI INTEREST IN THIS PROCEEDING

EEI is the association of the nation's shareholder-owned electric utilities, international affiliates, and industry associates worldwide. Our members represent approximately 70 percent of the U.S. electric power industry and serve 95 percent of the ultimate customers in the shareholder-owned segment of the industry. EEI member companies and their officers and directors include the vast majority of respondents who file information required by the FERC-520, Form 561, and FERC-566. Therefore, EEI and its members have a direct interest in this proceeding.

III. THE COMMISSION SHOULD BROADEN THE AUTOMATIC AUTHORIZATIONS UNDER FERC-520

In the interest of reducing burden without interfering with effectiveness of the FERC-520 information collection, EEI encourages the Commission to modify section 45.9 of its regulations, 18 CFR §45.9, to expand the scope of automatic authorizations. The Commission should permit automatic authorization of (i) all interlocks between affiliated companies within a holding company system that includes a public utility under section 305(b) of the Federal Power Act; (ii) all interlocks between public utilities that do not have captive customers or own or operate transmission facilities and unaffiliated companies; and (iii) all interlocks between franchised public utilities and unaffiliated companies that agree to adopt the Commission's restrictions on non-power goods and services transactions. The basis for EEI's proposals is set out below.

A. The Commission Permits Automatic Authorizations for Affiliated and Subsidiary Public Utilities.

FERC-520 implements Federal Power Act (FPA) section 305(b), which makes the holding of certain defined interlocking corporate positions unlawful without prior Commission authorization. FERC-520 allows for a “full” application under 18 C.F.R. §45.8 and an “informational” application for automatic authorizations under 18 C.F.R. §45.9. Pursuant to §45.9, upon receipt of a FERC-520 informational application, the Commission automatically authorizes the holding of interlocking positions by (1) an officer or director of more than one public utility if the same holding company owns, directly or indirectly, wholly or in part, the other public utility; (2) an officer or director of two public utilities if one of the utilities 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 where the interlock involves affiliated public utilities.

The Commission adopted the automatic authorization regulations for affiliated public utilities because it determined that the public interest would not be adversely affected by the automatic authorizations. The Commission stated that “because a holding company controls the voting stock of the public utilities within its system, it, in fact, controls all of its affiliated public utilities. It is not important whether the holding company controls its public utilities by assigning different individuals to each public utility.”¹ The Commission also concluded that the holding of interlocking positions within a holding company no longer leads to the problems that caused the enactment of

¹ Electric Utilities: Automated Authorization for Holding Certain Positions that Require Commission Approval under Section 305(b) of the Federal Power Act, FERC Stats. and Regs., Regulations Preambles 1986-1990 ¶ 30,686, p. 30,130 (1986).

section 305(b); that allowing interlocks within a holding company may result in more efficient and economical operations; that full public disclosure of the interlocks can be assured as a result of the reports required by FPA section 305(c); and that the abuses that section 305(b) were designed to prevent never occur from interlocks within a holding company structure.²

B. The Commission Should Expand the Automatic Authorization to Include All Interlocks between Affiliated Companies.

The Commission should expand the scope of its automatic authorization regulations to include all interlocks between public utilities and their affiliated companies that are subject to FPA section 305(b). The same considerations that formed the basis for the Commission's establishment of the automatic authorization process for affiliated public utilities apply to the jurisdictional interlocks between public utilities and affiliated companies that are not public utilities. For instance, an interlock between a public utility and an affiliated electrical equipment supplier currently requires a "full" application under 18 C.F.R. § 45.8. However, as is the case with interlocks between affiliated public utilities, the holding company will control the affiliate regardless of whether an interlock exists. Therefore, there is nothing to be gained by the extra scrutiny that a "full" application entails. Also, permitting such interlocks will result in more efficient and economical operation, and the reporting requirements of FPA section 305(c) will ensure public disclosure of the interlocks.

In addition, after the Commission adopted the automatic authorization regulations, it adopted additional protections against affiliate abuse that make it even less likely that interlocks between public utilities and their affiliates will harm the public

² *Id.*

interest. The Commission's Cross-Subsidization Restrictions, 18 C.F.R. § 35.44(b) (Cross-Subsidization Restrictions), provide that "sales of any non-power goods and services by a franchised public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities. . . to a market-regulated power sales affiliate *or non-utility affiliate* must be at the higher of cost or market price." (Emphasis added.) This regulation also provides that "a franchised public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, may not purchase or receive non-power goods and services from a market-regulated power sales affiliate *or a non-utility affiliate* at a price above market." (Emphasis added.) Therefore, an interlock between a public utility that has captive customers or that owns transmission facilities and, for instance, an affiliated company will not result in affiliate abuse due to the requirements of the Cross-Subsidization Restrictions. This is true regardless of whether the Commission requires a "full" application or automatically authorizes an interlock following the filing of an informational application. Consequently, the Commission should expand the automatic authorization provisions of 18 C.F.R. §45.9 to include all interlocks between a public utility and its affiliates that are covered by FPA section 305(b).

C. The Commission Should Permit Automatic Authorizations of Interlocks between Market-Regulated Public Utilities and Non-Affiliated Companies.

The Commission should also permit the automatic authorization through an informational application of any interlocks between public utilities and unaffiliated companies if the public utilities do not have captive customers and do not own or operate transmission facilities. The principal abuse that section 305(b) was intended to prevent was harm to purchasers of power or transmission service resulting from less than arms-

length transactions between interlocked companies. However, if an entity is not a franchised public utility that has captive customers or that owns or operates transmission facilities, the public interest will not be harmed even if the utility engages in less than arms-length transactions. The Commission recognized this fact in adopting its prohibitions against cross-subsidization, since those regulations only apply to franchised public utilities with captive customers or transmission facilities.³ For instance, the public interest is not protected by requiring a “full” application for an interlock between (a) one of a company’s power marketing affiliates that has no captive customers, owns no transmission facilities, and sells all of its power at wholesale to an RTO, and (b) a non-affiliated company supplying electrical equipment to a public utility. As is the case for the automatic authorizations that the Commission currently permits, the public disclosure of such interlocks through an informational filing under 18 C.F.R. §45.9 and the annual report required by FPA section 305(c) will provide public disclosure of the interlocks.

D. The Commission Should Permit Automatic Authorization of Interlocks between Franchised Public Utilities and Companies that Adopt the Commission’s Restrictions on Non-Power Goods and Services Transactions.

The Commission also should permit applications under 18 C.F.R. §45.9 for interlocks between franchised public utilities that have captive customers or that own or operate transmission and unaffiliated entities that are included in FPA section 305(b), provided that such franchised public utility adopts restrictions that are similar to the restrictions applicable to transactions between franchised public utilities and their affiliates. As noted above, the Commission prohibits such franchised public utilities from purchasing non-power goods and services from their affiliates above the market price,

³ 18 C.F.R. §§35.39 and 35.44.

and requires that public utilities' sales of non-power goods and services to those affiliates be at the higher of cost or market. If such franchised public utilities were to adopt similar restrictions for any unaffiliated companies for which an automatic authorization of an interlock is sought, those restrictions would adequately protect the public interest against abuse resulting from the interlock.

E. Expanding the Scope of Automatic Authorizations Will Result in More Efficient and Economical Utility and Commission Operations.

The burden associated with the full application under §45.8 is significantly higher than that associated with the informational application for automatic authorization under §45.9. It can take several days of work by company personnel and counsel to prepare an application under 18 C.F.R. §45.8. The Commission recognized this in its request for comments in this docket, which estimated that each “full” application takes 51.8 hours to prepare. In contrast, preparing an application under 18 C.F.R. §45.9 can take as little as a few hours. The Commission also must spend significant resources evaluating and writing orders on “full” applications, and spends relatively little time evaluating informational filings for “automatic” authorizations. The Commission can simultaneously preserve the interests that the authorization requirements are intended to protect and ease both the public reporting burden and the Commission’s administrative burden by expanding the scope of the “automatic” authorization regulations as suggested above.

IV. THE COMMISSION’S BURDEN ESTIMATE FOR THE FERC-566 IS SOMEWHAT LOW AND CONTAINS A CALCULATION ERROR

In the Notice to which we are responding, at 76 Fed. Reg. 12093, the Commission estimates the cost of preparing the FERC-566 as \$68 per respondent per year, based on an estimated 6 hours per response, 434 respondents filing once per year, and an average

annual staff salary of \$142,372.⁴ However, using the stated information, the average cost per response would be \$411 (i.e., 6 hours per response / 2080 hours per year x \$142,372 average salary). Further, one EEI member has noted that it takes them 8 hours per response, which would raise this average cost per response to \$548 (i.e. 8 hours / 6 hours x \$411).

V. CONCLUSION

Consistent with the comments set forth above, EEI respectfully requests that the Commission broaden its automatic authorizations under FERC-520 and correct its burden estimate for the FERC-566. If the Commission has any questions about these comments or needs additional information, please contact me at hbartholomot@eei.org or (202) 508-5622.

Respectfully submitted,



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⁴ In the FERC-566 burden paragraph, the Notice says the average salary is \$178,239. But in the FERC-520 and Form 561 burden paragraphs, the Notice says the average salary is \$142,372, and the latter appears to be what the Commission used in fact to determine the estimated total cost for FERC-566 as \$178,239.