UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Revisions of Parts 45 and 46 of the Commission's Regulation	))))	**Docket No. RM18-15-000**

COMMENTS OF JUST ENERGY (U.S.) CORP.

Just Energy (U.S.) Corp. submits its comments on behalf of itself and its affiliated power marketers (together "Just Energy") in the above-captioned rulemaking in which the Federal Energy Regulatory Commission ("Commission") is seeking comments on proposals to modify Parts 45 and 46 of its rules governing approvals for officer and director appointments and reporting rules related to the same (the "Rulemaking").[1] Just Energy supports the proposed rule amendments, with some modifications, and seeks clarification of the rules governing affiliate appointments.

I. INTRODUCTION

Just Energy (U.S.) Corp. ("JEUS") is a competitive retail supplier active in the U.S. wholesale energy markets. It has market-based rate authority from the Commission[2] and is

[1] *Revisions to Parts 45 and 46 of the Commission's Regulations*, 164 FERC ¶ 61,032 (2018) ("Rulemaking"). See Federal Register Notice setting comment date of October 1, 2018: https://www.gpo.gov/fdsys/pkg/FR-2018-08-01/pdf/2018-16463.pdf. As the Commission explained in the Rulemaking, Congress enacted Section 305(b) of the Federal Power Act ("FPA") in 1935 to "prevent certain perceived abuses with holding companies." Rulemaking at 1. These include: "(1) excessive charges to subsidiary public utility companies resulting from the lack of arm's length 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." *Id*.

[2] The Commission granted JEUS market-based rate authority in 2010. *See Just Energy (U.S.) Corp.*, Docket No. ER10-379, Letter Order (Mar. 3, 2010) (unpublished) (granting market-based rate authority to JEUS). No Just Energy company has a franchise service territory, a rate base or guaranteed rate of return. The business of the Just Energy companies is competitive and market-based.

thus a public utility whose officers and directors are subject to Parts 45 and 46 of the Commission's rules. JEUS is affiliated with several other retail electric providers with market-based rate authority whose officers and directors also are subject to Parts 45 and 46.[3]

Just Energy is grateful that the Commission has undertaken an effort to streamline the regulations applicable to interlocking positions among affiliates. The changes to the rules are warranted because the energy industry has evolved since Congress passed Section 305(b) and the "perceived abuses" are less likely to arise or be detrimental. For example, the concerns the Commission references in the Rulemaking have been abated by factors such as an increase in competition, greater regulator and consumer access to information, improved accounting practices, informed shareholders, codes of conduct, and more opportunities for all market participants, market operators and consumers to shape or shine a spotlight on regulatory policies through the legislative process, rulemakings, rate cases and other proceedings.

[3] *See Hudson Energy Services, LLC*, Docket No. ER17-2427, Letter Order (Oct. 20, 2017) (unpublished) (granting market-based rate authority to Hudson Energy Services, LLC); *Just Energy Illinois Corp.*, Docket No. ER13-1104, Letter Order (Apr. 18, 2013) (unpublished) (granting market-based rate authority to Just Energy Illinois Corp.); *Just Energy New York Corp.*, Docket No. ER13-1081, Letter Order (Apr. 18, 2012) (unpublished) (granting market-based rate authority to Just Energy New York Corp.); *Just Energy Pennsylvania Corp.*, Docket No. ER17-2428, Letter Order (Oct. 20, 2017) (unpublished) (granting market-based rate authority to Just Energy Pennsylvania Corp.); *Just Energy Solutions Inc.*, Docket No. ER17-1378, Letter Order (June 13, 2017) (unpublished) (approving name change for Commerce Energy Corp.); *Commerce Energy Corp.*, Docket No. ER97-4253, Letter Order (Oct. 7, 1997) (unpublished) (granting market-based rate authority to Commerce's predecessor Commonwealth Energy Corp.); *Just Energy Texas I Corp.*, Docket No. ER17-2429, Letter Order (Oct. 20, 2017) (unpublished) (granting market-based rate authority to Just Energy Texas I Corp.).

In addition, it is costly and burdensome for individuals – and in many cases their employers – to comply with the rules as written.[4] For example, Just Energy incurs legal and corporate compliance costs preparing initial and change applications as a courtesy for its many officers and directors notwithstanding the fact that officers and directors of affiliates are able to secure FERC approval by filing an informational report rather than a full application. Just Energy also incurs costs when it helps its officers and directors complete FERC Form 561s showing the positions they held throughout the reporting year. Just Energy's comments thus support efforts to reduce these burdens while allowing the Commission to collect information it needs to regulate the wholesale energy industry.

II. PROPOSED AMENDMENTS

A. Positions Between or Among Affiliates

The Commission proposes to revise its regulations to clarify that officers and directors do not need to file supplemental applications and notices of change "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)."[5] The Commission further explains that "a promotion within a holding company system would not require an interlock holder to file a notice of change."[6] Just Energy supports the direction the Commission is headed with this proposed rule change, but seeks confirmation

[4] In Paragraph 17, the Commission estimates that Informational Filings cost $632.00 each and that Notices of Change cost $19.25. Rulemaking at P 17. Based on Just Energy's experience, the Commission under-estimates the cost – each filing has to be customized to the individual, the officer or director has to verify the reportable positions, a notary may be required for the attestation, a corporate secretary may have to pull information on positions held to verify the submission, corporate structure information may need to be pulled to verify that the ownership chain qualifies for an informational filing, someone reviews the materials, someone makes revisions to the filing, someone collects signatures and someone makes the filing. This is not a complete list of tasks, but illustrates the point that interlock filings are costly to prepare.

[5] Rulemaking at P 10.

[6] *Id*.

on its interpretation of when it would apply to appointments within a holding company and offers suggested amendments to Part 45 in support of the proposals.

The Commission's rules currently allow a person to change or add certain positions for affiliated utilities covered by a prior authorization without filing an informational report.[7] For example, if a person is a vice president of public utility A and public utility B, and gets a promotion to president of utility A, there is no need file an informational report because the appointment "is of the type" "already authorized."[8] Instead, the officer would report the promotion in the applicable FERC Form 561.

The discussion in the Commission's Rulemaking appears to contemplate a different scenario – where an officer or director takes a new position with a new public utility in the same corporate system.[9] Continuing with the example from the prior paragraph, Just Energy believes the Commission is addressing the scenario where the officer of public utilities A and B expects to be appointed as vice president or some other covered position *for the first time* to affiliated public utility C. If the same corporate parent/holding company directly or indirectly owns public utilities A, B and C, Just Energy reads the Commission's Rulemaking to mean that the officer or director would not need to make an informational filing prior to assuming an officer or director position with public utility C. Instead, the officer or director would report the new appointment to public utility C in the applicable FERC Form 561.

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[7] 18 C.F.R. § 45.9(b) (stated that "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.") (emphasis added).

[8] *Id*.

[9] Rulemaking at P 10.

If this reading is correct, Just Energy recommends that the Commission adopt the following changes to Part 45:

New Section 45.4(c) would be further amended to say:

> *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~~ 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 ~~is~~ are holding a different or additional interlocking positions ~~which is identified in~~ that would qualify for automatic authorization pursuant to § 45.9(a).

Section 45.9(a)(3) would be amended to say:

> Officer or director of more than one public utility, if such officer or director is already authorized under this part to hold ~~different~~ positions as officer or director of those or any other public utilities where the interlock involves affiliated public utilities.

Amended Section 45.9(b) would be further amended to say:

> *Conditions of authorization*. As a condition of authorization, any person ~~authorized~~ 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 (1) is already authorized to hold interlocking positions of the type governed by this section or (2) is exempt from filing an informational report pursuant to Section 45.4. The Commission will consider failures to timely file the informational report on a case-by-case basis.

Just Energy believes that the Commission could go a step further and grant blanket authority for interlocks involving all public utilities that are not franchised utilities and are not affiliated with a franchise utility. This would include interlocks among affiliates that are currently subject to informational filings and automatic authorization. The officer or director would have no obligation to seek prior authorization. Instead, officers and

directors of unfranchised public utilities and their affiliates would disclose all appointments and changes on their FERC Form 561s.

Finally, Just Energy would appreciate it if the Commission would streamline its regulations to minimize the burdens associated with administrative, ministerial or temporary appointments. It is not uncommon for market participants to have to appoint, remove or reappoint personnel to officer positions to accommodate routine business needs. For example, a company may need to make a person an officer in order to have signature authority for a transaction, tax forms or employment documents. These duties can be recurring for some personnel (*i.e.*, the primary person responsible for signing documents) or can arise when someone is on vacation, medical leave, family leave, mandatory out-of-office leave or garden leave. The latter are not always foreseeable or permanent. These administrative, ministerial or temporary appointments should not require any Commission approval or reporting as they do not pose the kinds of threats that Congress contemplated when it adopted Section 305(b) and are burdensome to the Commission and energy companies alike.

B. Changes and Resignations

The Commission clarifies that officers and directors only need to file material change notices when they leave all affiliated interlocking positions.[10] Officers and directors do not need to file a notice of change when they leave some but not other positions within a corporate family.[11] Instead, an officer or director would report interlock

[10] Rulemaking at P 10 (clarifying that "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] *Id*.

changes among affiliates in the applicable FERC Form 561. Just Energy supports this proposal and recommends the following additional amendments to amended Section 45.5(b):

> (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 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~~ 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 ~~which is identified in~~ that would qualify for automatic authorization pursuant to § 45.9(a).

The additional proposed amendments address the Commission's clarification regarding partial resignations and harmonizes Section 45.5 with the proposed amendments regarding appointments with affiliated entities.

C. Late-Filed Applications

The Commission proposes to amend its rules regarding the treatment of late-filed applications.[12] Historically, the Commission would deny such applications.[13] FERC proposes to strike the referenced language on late filings and instead say that it will

[12] Rulemaking at P 8.

[13] *Id*.

consider whether and how to address late filings on a case-by-case basis.[14] Just Energy supports the proposed rule change for the reasons stated by the Commission.[15]

D. Amendment to Add Statutory Banking Carve Outs to FERC Rules

The Commission proposes to add a new subsection (d) to Section 45.2 to clarify that Commission authorization is not required for interlocking positions 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," that fit the exceptions set out in (1)-(4) of the proposed rule.[16] Just Energy supports this amendment as it incorporates what has been governing law since 1999 when Congress amended Section 305(b) by the Gramm-Leach-Bliley Act.[17]

III. CONCLUSION

For the reasons stated herein, Just Energy asks the Commission to modify its interlocking officer and director rules in a manner that is consistent with these comments.

Respectfully submitted,

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[14] Amended Sections 45.3(a) and 45.9(b).

[15] Rulemaking at P 8 (noting that late applications typically do not impede the Commission's decision-making on the applicable interlock and 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.").

[16] Rulemaking at P 6.

[17] Pub. L. 106–102, title VII, § 737, Nov. 12, 1999, 113 Stat. 1479.