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# FERC Proposes to Streamline Interlocking Application Process

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On July 19, 2018, the Federal Energy Regulatory Commission ("FERC") issued a Notice of Proposed Rulemaking ("NOPR") addressing potential revisions to its regulations for interlocking officers and directors.

For reference and review, the NOPR document is accessible here on the FERC website.

The existing regulations implement Section 305(b) of the Federal Power Act ("FPA"), under which FERC has the purview to ensure that individuals who hold certain interlocking positions — typically officer or director positions at a public utility and an officer or director position at another public utility, a financial institution or an equipment provider — do not pursue conflicts of interest. The NOPR aims to update and streamline the authorization process for interlocking applications, as well as grant further consideration to applications and informational reports filed to FERC in an untimely manner.

Principally, the NOPR proposes to extend automatic authorizations to interlocking applications for positions between a public utility and a number of financial institutions (such as a bank, banking association, trust company, or firm authorized to market public utility securities) where specific protections against conflicts of interest are in place. These automatically-approved interlocks were codified by a statutory amendment to Section 305(b) of the FPA (passed in 1999).

In the NOPR, FERC delineates four scenarios whereupon authorization will no longer be required relating to interlocking directorates involving a financial institution: 1) when the officer or director does not participate in the deliberation process, conducted by the public utility, in evaluating or selecting a financial institution; 2) when the financial institution does not engage in the underwriting, or marketing of, securities of the public utility where the person holds an officer or director position; 3) when the public utility utilizes competitive procedures to select underwriters; and 4) when the issuance of securities of the public utility has been approved by all state and federal agencies with regulatory jurisdiction over the issuance. These largely track the amendment to Section 305(b) of the FPA passed in 1999. However, FERC has not yet formally implemented this language into its regulations.

Further, the NOPR includes a revision that would eliminate the need for supplemental applications and notices of change to be filed to FERC. As long as the individual is authorized to hold interlocking positions, any promotions or new titles at the same company will not trigger a separate reporting burden. FERC does, however, state that supplemental filings would still be required for when individuals step down from or no longer occupy interlocking positions.

The other key aspect of the NOPR addresses the timeliness of interlocking applications submitted to FERC. In the past, any applications that have been filed past the deadline have been summarily rejected. However, the NOPR seeks to temper that blanket approach, emphasizing the role of FERC in assessing if the interlocking positions adversely affect public or private interests — a judgment not reliant on the date of filing. Therefore, the NOPR

proposes to remove language in FERC regulations that “late-filed applications will be denied” and untimely applications receive “automatic denial.” Without that rigid language, FERC will be able to appraise virtually all interlocking applications on their merits rather than dismissing those filed late, particularly when the applicant may have had competing priorities or extenuating circumstances.

Industry stakeholders and other interested parties may submit comments to FERC on the proposed revisions furnished in the NOPR for a period of 60 days following publication in the Federal Register. (At the time of this publication, the NOPR had not yet been published). As the NOPR does not substantively alter FERC policy nor attempt to intervene in markets, it seems unlikely to engender strong opposition. Public utility executives will regard it favorably, as less reporting burdens should lead to more time and resources to allocate elsewhere.

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