

interest. The Commission will determine the fact of independence by considering all the relevant circumstances including evidence bearing on the relationships between the accountant and that person or any affiliate thereof.

[Order 462, 37 FR 26006, Dec. 7, 1972]

PART 45—APPLICATION FOR AUTHORITY TO HOLD INTERLOCKING POSITIONS

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AUTHORITY: Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a-825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601-2645 (1982).

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 a 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.

[Order 446, 51 FR 4904, Feb. 10, 1986]

§ 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 corporation¹ 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,

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).

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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.

§ 45.3 Time of filing application.

(a) *Anticipatory application.* An application may be made in anticipation of election or appointment to a position or positions within the purview of section 305(b) of the Act.

(b) *Application after election or appointment.* Section 305(b) of the Act provides that the holding of positions within the purview of that section 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 prior to the order of the Commission on application therefor. Applications shall be filed within 30 days after election or appointment to any positions within the purview of section 305(b) of the Act.

§ 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.

§ 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 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.

(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.

§ 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