

July 24, 2018

## FERC Proposes Changes to Interlock Reporting Requirements

On July 19, the Federal Energy Regulatory Commission (FERC) issued proposed rule changes to clarify and update its advance approval and reporting requirements for officers and directors who hold positions simultaneously with more than one public utility or with a public utility and certain other specified companies. Regulators refer to these simultaneous positions as "interlocking positions" or "interlocks." Under Section 305 of the Federal Power Act, it is unlawful, absent FERC approval, for a person to hold such interlocks. The FERC has regulations that identify the requirements for obtaining approval for interlocks (Part 45) and for reporting those interlocks (Part 46). In its July 19 Notice of Proposed Rulemaking, the FERC proposed, among other changes:

- Changes to permit the FERC to consider late-filed applications on a case-by-case basis (rather than automatically deny them). The FERC makes clear that continued attentiveness to the obligation to timely file will be expected and that it will look unfavorably upon a failure to do so.
- Clarification that an interlock holder need not file a notice of change if she or he changes positions *within* a holding company, though a holder would still be required to file a notice of change if she or he stops holding *any* interlocking positions.
- Identification of circumstances where FERC authorization is not required for an interlock between a public utility and an entity authorized by law to underwrite or participate in the marketing of public utility securities.
- Elimination of the requirement to list in Part 45 reporting public utilities that do not have officers or directors.

Comments on the proposed rule changes are due 60 days after their publication in the *Federal Register*. Following an opportunity to fully consider any comments filed, the FERC will take final action on the proposed rule changes.

The FERC notice should serve as a reminder to energy companies subject to FERC regulations of the need to remain vigilant in ensuring compliance with FERC regulations generally, including the interlock requirements. An effective compliance program helps provide that assurance and reduces the risk of violations. An effective compliance program also can mitigate penalties if violations do occur. If needed, Day Pitney's compliance team can bring to bear for its clients its experiences designing "best practices" compliance programs and procedures and providing compliance assessment, audit and legal services. If you have questions concerning these latest proposed changes in the FERC's rules or energy compliance issues more generally, please contact any of the attorneys listed in the sidebar of this alert.

## Authors



**David T. Doot**  
**Of Counsel**

Hartford, CT | (860) 275-0102  
[dt\\_doot@daypitney.com](mailto:dt_doot@daypitney.com)



**Evan C. Reese III**  
**Partner**

Washington, D.C. | (202) 218-3917  
[ereese@daypitney.com](mailto:ereese@daypitney.com)



**Joseph H. Fagan**  
**Partner**

Washington, D.C. | (202) 218-3901  
[jfagan@daypitney.com](mailto:jfagan@daypitney.com)



**Patrick M. Gerity**  
**Counsel**

Hartford, CT | (860) 275-0533  
[pmgerity@daypitney.com](mailto:pmgerity@daypitney.com)