

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

David Sholk

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Docket No. ER02-1725-000

**MOTION TO INTERVENE AND PROTEST OF THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 212 and 214 of the Commission’s Rules of Practice and Procedure,¹ and the Commission’s Notice of Filing of May 9, 2002, the New York Independent System Operator, Inc. (“NYISO”) hereby moves to intervene in the above-captioned proceeding and protests the April 26, 2002 *Petition for Blanket Authority to Purchase and Resell Electricity at Market-Based Rates* (“Petition”) submitted by Mr. David Sholk.

I. Correspondence

Communications regarding this proceeding should be addressed to:

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II. Motion To Intervene

The NYISO is the independent entity responsible for providing open-access transmission service, maintaining reliability, and administering competitive wholesale electricity markets,

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including the “virtual bidding” components of those markets, in New York State. As the administrator of these markets the NYISO has a direct and substantial interest in virtual bidding activities and the jurisdictional rules applicable to them. These interests cannot be adequately represented by any other party. Consequently, the NYISO should be permitted to intervene herein.

III. Protest

The Petition is unclear regarding the activities Mr. Sholk is proposing to engage in. For example, although the Petition makes no mention of it, Mr. Sholk has previously indicated that he plans to bid into the NYISO’s Locational-Based Marginal Pricing markets and to purchase Installed Capacity in NYISO auctions.² Therefore, at a minimum, Mr. Sholk should be required to submit a revised petition that more clearly describes what the Commission is being asked to authorize.

Moreover, the NYISO protests the Petition’s suggestion that Mr. Sholk need not file a rate schedule, or comply with the Commission’s reporting requirements, on the theory that participation in the NYISO’s “virtual electric market” may constitute “nonjurisdictional activity.” Virtual bidding is an integral part of the NYISO-administered day-ahead and real-time energy markets. It is accomplished by submitting day-ahead bids into the NYISO market and is not part of a separate “virtual electric market.” Virtual bidding was introduced pursuant to a Commission order for the purpose of increasing the efficiency of the NYISO-administered markets, broadening participation in them and lowering prices for consumers.³ It is governed by Commission-accepted rules that are part of the NYISO’s Commission-jurisdictional tariffs.⁴ Virtual bids are evaluated in the NYISO’s Security Constrained Unit Commitment process in the same manner as any other bid. Virtual bidding activity is also subject to review and mitigation

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by the NYISO's market monitoring unit.⁵ In short, virtual bidding is a Commission jurisdictional activity.

Mr. Sholk should therefore only be permitted to engage in virtual bidding if he complies with all of the Commission's requirements for obtaining market-based rate authority, including filing a rate schedule and all required reports . If Mr. Sholk submits a revised petition and is granted market-based rate authority, he would be free to participate in the NYISO markets, including submitting virtual bids, assuming that he satisfies applicable NYISO creditworthiness requirements.

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WHEREFORE, for the foregoing reasons the NYISO respectfully requests that the Commission grant its request to intervene and reject Mr. Sholk's petition without prejudice.

Respectfully submitted,
NEW YORK INDEPENDENT
SYSTEM OPERATOR, INC.

By _____
Counsel

Arnold H. Quint
Ted J. Murphy
Gloria J. Halstead
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1900 K Street, N.W.
Washington, D.C. 20006-1109
Of Counsel
May 24, 2002

cc: Daniel L. Larcamp, Director Office of Markets, Tariffs and Rates, Room 8A-01,
Tel. (202) 208-2088
Alice M. Fernandez, Director Office of Markets, Tariffs and Rates -- East
Division, Room 71-31, Tel. (202) 208-0089
Andrea C. Wolfman, Lead Counsel for Market Oversight and Enforcement,
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Michael A. Bardee, Lead Counsel for Markets, Tariffs and Rates, Room 101-09,
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Stanley P. Wolf, Office of the General Counsel, Room 101-03,
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each party designated on the official service list compiled by the Secretary in Docket No. ER02-1725-000, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2001).

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Dated at Washington, DC this 24th day of May, 2002.

Gloria J. Halstead
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ATTACHMENT

18 C.F.R. §§ 385.212 and 385.214 (2001).

¹ See Attachment (Excerpt from Mr. Sholk’s “registration packet.”)

² *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 (2000).

³ *New York Independent System Operator, Inc., et al.*, 97 FERC ¶ 61,091 (2001); *order on reh’g*; 97 FERC ¶ 61,077 (2002); *order on reh’g*, 98 FERC ¶ 61,282 (2002).

⁴ *Id.*