

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

<b>Rockland Electric Company and PJM Interconnection, L.L.C.</b>	) )	<b>Docket No. EC02-7-000 and ER02-109-000</b>
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**REQUEST FOR LEAVE TO SUBMIT JOINDER OUT-OF-TIME  
AND JOINDER OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure,<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO”) hereby respectfully requests leave to submit out-of-time, and submits, its joinder in the above-captioned proceeding. Although the NYISO does not object to the Rockland Electric Company’s (“Rockland”) proposal to transfer operational control over certain of its jurisdictional facilities from the NYISO to the PJM Interconnection, L.L.C. (“PJM”) it believes that there may be legal uncertainty regarding the current version of Rockland’s and PJM’s “Joint Application”<sup>2</sup> because the NYISO is not included as a co-applicant. The NYISO is therefore filing this joinder to eliminate any possible uncertainty concerning the Joint Application’s status under Section 203 of the Federal Power Act and to permit the Commission to act on the proposed transfer without delay.

The NYISO respectfully asks that the Commission accept this joinder out-of-time. The NYISO did not recognize the existence of a Section 203 issue associated with the Joint Application when it first discussed the proposed transfer with Rockland or at the time that it filed

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<sup>1</sup> 18 C.F.R. § 385.212 (2001).

<sup>2</sup> *See Joint Application for Approval of Transfer of Operational Control Over Jurisdictional Facilities and Acceptance for Filing of Tariff Revisions, Executed Signature*  
(continued...)

its intervention in this proceeding. It likewise did not ask to be included in the Joint Application before it was filed. Once the NYISO identified the Section 203 issue it needed time to determine whether the issue was important enough to warrant a filing and to consider how it might proceed without delaying the transfer. The NYISO therefore requests leave to submit this joinder out-of-time.

Commission precedent clearly establishes that public utilities must make Section 203 filings before transferring ownership or operational control over jurisdictional facilities to another entity.<sup>3</sup> ISOs are “public utilities” for purposes of the Federal Power Act<sup>4</sup> and the Commission has repeatedly held that the transfer of operational control over jurisdictional facilities to an ISO can only be accomplished pursuant to a Section 203 filing.<sup>5</sup> Indeed, the Commission previously approved Rockland’s parent’s transfer of operational control over the

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*Pages, and Membership Agreement Under Sections 203 and 205 of the Federal Power Act*, Docket Nos. EC02-7-000 and ER02-109-000 (October 17, 2001).

<sup>3</sup> See, e.g., *Enova Corporation and Pacific Enterprises*, 79 FERC ¶ 61,107 (1997).

<sup>4</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, *FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996* ¶ 31,036 at 31,730 (1996), *order on reh'g*, *Order No. 888-A, FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000* ¶ 31,048 (1997), *order on reh'g*, *Order No. 888-B*, 81 FERC ¶ 61,248 (1997), *order on reh'g*, *Order No. 888-C*, 82 FERC ¶ 61,046 (1998), *aff'd in part sub nom.*, *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *cert. granted in part*, 69 U.S.L.W. 3574 (U.S. February 26, 2001).

<sup>5</sup> See, e.g., *Midwest Independent Transmission System Operator, Inc., et. al.*, 84 FERC ¶ 61,231 at 62,141 (“The transfer of operational control of the jurisdictional transmission facilities of public utilities to the ISO is a disposition of jurisdictional facilities requiring prior Commission authorization under Section 203.”) (1998); *Pennsylvania-New Jersey-Maryland Interconnection, et. al.*, 92 FERC ¶ 61,282 at 61,959 (“[A]ny withdrawal from an ISO Agreement by a TO after the ISO begins operation will require a Section 203 filing to transfer control over the jurisdictional facilities under control of the ISO back to the TO.”) (2000).

transmission facilities at issue here to the NYISO pursuant to Section 203.<sup>6</sup> Given this precedent, the NYISO could not transfer its operational control over Rockland's facilities to another entity without making a Section 203 filing. Given that same precedent, it follows that Rockland cannot transfer operational control over its transmission facilities from the NYISO to another entity without the NYISO being included as a co-applicant to its Section 203 filing.

The NYISO does not wish to impede the proposed transfer. In order to avoid delaying Commission action the NYISO is respectfully submitting this joinder so that it may be deemed to be a co-applicant. Considering the *de minimus* nature of the assets involved, and consistent with the Joint Application's request for waivers of various Section 33 filing requirements,<sup>7</sup> it is appropriate for the Commission to waive its usual filing requirements in this instance.

Respectfully submitted,

NEW YORK INDEPENDENT  
SYSTEM OPERATOR, INC.

By \_\_\_\_\_  
Counsel

Arnold H. Quint  
Ted J. Murphy  
Hunton & Williams  
1900 K Street, N.W.  
Suite 1200  
Washington, DC 20006-1109  
Of Counsel

November 29, 2001

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<sup>6</sup> See *Central Hudson Gas & Electric Corp., et. al.*, 87 FERC ¶ 61,135 (1999) (approving Section 203 filing by New York State's Commission-jurisdictional transmission-owning public utilities of operational control over their transmission facilities to the NYISO).

<sup>7</sup> 18 C.F.R. § 33 (2001).

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,  
Room 9E-01, Tel. (202) 208-2097  
Michael A. Bardee, Lead Counsel for Markets, Tariffs and Rates, Room 101-09,  
Tel. (202) 208-2068  
Stanley P. Wolf, Office of the General Counsel, Room 101-03,  
Tel. (202) 208-0891

## **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 this proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2001).

Dated at Washington, DC this 29th day of November, 2001.

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Ted J. Murphy  
Hunton & Williams  
1900 K Street, N.W.  
Washington, DC 20006-1109  
(202) 955-1500