

200201095029 Received FERC OSEC 01/09/2002 03:43:00 PM in Docket#: EL01-118-000

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

Investigation of Terms and Conditions)	
of Public Utility Market-Based Rate)	Docket No. EL01-118-000
Authorizations)	

**MOTION FOR LEAVE TO INTERVENE OUT OF TIME OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 212 and 214 of the Commission’s Rules of Practice and Procedure,¹ the Order Establishing Refund Effective Date and Proposing to Revise Market-Based Rate Tariffs and Authorizations (“Refund Order”),² and the Notice of Extension of Time, dated November 30, 2001, the New York Independent System Operator, Inc. (“NYISO”) hereby requests leave to intervene out of time in the above-captioned proceeding.

I. Copies of Correspondence

Communications regarding this proceeding should be addressed to:

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¹ 18 C.F.R. §§ 385.212 and 214 (2001).

² 97 FERC ¶ 61,220 (November 20, 2001).

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II. Motion to Intervene

The NYISO is the independent body responsible for administering competitive wholesale electric markets, providing open-access transmission service, and maintaining operational reliability in New York State. As a part of its responsibility for administering the New York wholesale electric markets, the NYISO is charged with monitoring and reporting on anti-competitive behavior and abuses of market power in the markets it administers.

In the Refund Order, the Commission initiated a proceeding under Section 206 of the Federal Power Act to revise all market-based tariffs to ensure that rates do not become unjust or unreasonable as a result of anticompetitive behavior or abuses of market power. The Commission's proposed tariff revision would subject sellers' market-based rate authority to refunds or other appropriate remedies in the event of anticompetitive behavior or the exercise of market power. The Refund Order indicates that "other appropriate remedies" could include further conditions or restrictions on a seller's market-based rate authority and the potential loss of market-based rate authority.

The Commission's proposed tariff revision would directly and substantially affect the NYISO's market monitoring responsibilities and the remedies available to address anticompetitive conduct and the exercise of market power in the NYISO-administered markets. Consequently, the NYISO has a direct and substantial interest in this proceeding that cannot adequately be represented by any other party, and should be permitted to intervene herein.³

³ The NYISO filed comments in this docket on January 7, 2002, but did not file an intervention at that time. The NYISO is making this filing now in order to clarify its status as a party, and permit it to fully represent its interests, in this proceeding.

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Given the early stage of this proceeding, granting the NYISO's Motion for Leave to Intervene Out of Time will not cause disruption and will not prejudice any party.

III. Conclusion

The NYISO respectfully requests that the Commission grant its motion to intervene in this proceeding.

Respectfully submitted,

NEW YORK INDEPENDENT
SYSTEM OPERATOR, INC.

By

Counsel

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Of Counsel

January 9, 2002

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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. EL01-118-000, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18. C.F.R. 385.2010 (2001).

Dated at Washington, D.C. this 9th day of January.

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