

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

PJM Interconnection, L.L.C.

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Docket No. ER06-1474-002

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

Pursuant to Rules 212, 213, and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 213, and 214 (2006), the New York Independent System Operator, Inc. ("NYISO") respectfully moves to intervene out of time in the above captioned proceeding, and seeks leave to answer, and answers, one aspect of the request for rehearing and clarification of the PSEG Companies ("PSEG Request") that was filed on December 21, 2006.

In support thereof, the NYISO states:

**I. Communications and Correspondence**

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## II. Motion to Intervene Out of Time

This proceeding involves PJM Interconnection, L.L.C.'s ("PJM") Regional Transmission Expansion Planning Protocol ("RTEP"). The RTEP sets forth PJM's procedures for determining whether transmission system upgrades are needed in the PJM region, and where the cost responsibility for such upgrades lies.

The NYISO is the independent body responsible for providing open access transmission service, maintaining reliability, and administering competitive wholesale markets for electricity, capacity, and ancillary services in New York State. Pursuant to Attachment Y of its Open Access Transmission Tariff, the NYISO administers a Commission-approved Comprehensive Reliability Planning Process ("CRPP") that determines and analyzes solutions to the reliability needs of the Bulk Power System in the New York Control Area over a ten-year period. Attachment Y also includes principles for the allocation of reliability upgrade costs among the NYISO's customers within the New York Control Area.

In accordance with the requirements of 18 C.F.R. § 385.214(d), the NYISO submits that good cause exists to permit its intervention out of time because it did not have an interest in the case until the PSEG Request was submitted. PJM's initial Section 205 filing did not implicate the NYISO's interests because it addressed proposed RTEP revisions that affected only entities within PJM. The Commission's statement in the November 21 Order<sup>1</sup> that cost allocations to New York entities could be considered in future cases was of interest to the NYISO. Nevertheless, the Order did not give the NYISO any reason to get involved in this proceeding when it was issued because the Commission made it clear that cost allocation to external control areas would be the

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<sup>1</sup> *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,218 at P 57 (2006) ("November 21 Order").

subject of separate proceedings. Now, however, PSEG has asked the Commission to “clarify” that Schedule 6 of the PJM Operating Agreement already includes a mechanism that allows RTEP cost allocations to New York. If this request were granted it would have an immediate and significant impact on the New York CRPP, on New York stakeholders, and on the NYISO by casting doubt on cost allocation questions that are currently the subject of stakeholder discussions. The NYISO therefore has a direct and substantial interest in this case that cannot be adequately represented by any other party.

The NYISO is willing to accept the record as it currently stands. The NYISO’s participation at this stage will not prejudice any parties or otherwise burden this proceeding because it will be limited exclusively to a new issue that has just been injected by PSEG.<sup>2</sup>

### **III. Motion for Leave to Answer**

To the extent that the Commission deems it necessary, the NYISO seeks leave to answer the PSEG Request. The NYISO recognizes that the Commission normally discourages answers to requests for rehearing. The NYISO respectfully suggests that its answer here is permitted because it is directed at one of PSEG’s requests for clarification, not at a rehearing request.<sup>3</sup> Moreover, the answer pertains to an issue that has only just arisen, rather than an issue that was addressed in the underlying order or that the NYISO could have reasonably been expected to respond to earlier. Should the Commission construe PSEG’s clarification request as a motion for rehearing, the Commission should

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<sup>2</sup> It appears that PSEG has been the only party to raise the issue of external cost allocations in this proceeding, and the November 21 Order itself observed that this proceeding does not involve cost allocations.

<sup>3</sup> *High Island Offshore Sys., L.L.C.*, 113 FERC ¶ 61,280 at P 11-12 (2005) (noting that answers to requests for clarification are allowed); *See also*, *Transcontinental Gas Pipe Line Corp.*, 113 FERC ¶ 61,129 at P 11 (2005).

permit the NYISO to answer because it has previously accepted answers to rehearing requests when they assist its decision-making process.<sup>4</sup> The NYISO's answer will assist the Commission because it provides the unique perspective of the entity responsible for administering the transmission and reliability planning processes in New York and will help the Commission to appreciate the unfounded and premature nature of injecting external cost allocation into a proceeding that, until now, has been limited to PJM alone.

#### **IV. Answer**

The PSEG Request notes that if RTEP costs are to be allocated to external parties, such as market participants in New York, then "Schedule 6 of the PJM Operating Agreement must set forth a mechanism for such allocations."<sup>5</sup> PSEG argues that the Commission should either "clarify" that Schedule 6 "currently provides for such a mechanism or require PJM to modify the schedule to create such a mechanism applicable to future economic transmission projects."<sup>6</sup> The NYISO takes no position at this time on the question whether, or how, PJM should be required to modify Schedule 6. The NYISO is objecting only to the suggestion that Schedule 6 might reasonably be interpreted as already providing for external cost allocations.

There is nothing in Schedule 6 or any other filed RTEP document that establishes a mechanism for allocating costs to entities located outside of PJM. Nor is there any reference to such a mechanism. Unsurprisingly, PSEG has offered no explanation of how

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<sup>4</sup> See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,241 at P 14 (2006); *Devon Power LLC*, 117 FERC ¶ 61,133 at P 16 (2006); *ISO New England, Inc.*, 114 FERC ¶ 61,315 at P 4 (2005).

<sup>5</sup> PSEG Request at 17.

<sup>6</sup> *Id.*

Schedule 6 could reasonably be interpreted to include a mechanism that it does not even mention. There is simply no textual basis for the “clarification” that PSEG seeks.

Furthermore, it would be unwise to determine that authorization for inter-regional cost allocation mechanism somehow exists, interstitially, within Schedule 6. As the Commission knows from experience, inter-regional cost allocation arrangements have important economic consequences and can be extremely complex. External cost allocations should not take place absent a carefully structured set of rules that reflect regional differences and the input of all affected stakeholders. No such groundwork has been laid for PJM and NYISO, which have materially different planning processes. Similarly, external cost allocation rules should be reciprocal so that customers in all affected regions are responsible for a share of the costs of projects that confer economic benefits on them despite being located outside of their regions. At this time, the NYISO has no rules governing allocations of costs for New York transmission projects to PJM stakeholders. Such rules could upset the delicate discussions that are currently being held among the stakeholders at the Electric System Planning Working Group in New York to resolve cost allocation and cost recovery methodologies under Attachment Y for regulatory backstop solutions. Moreover, the NYISO would need to rush to develop its own rules for external control area cost allocation if the Commission were to unexpectedly declare that cost allocations to New York from PJM are already authorized under Schedule 6.

In short, the Commission should reject PSEG’s request for clarification. To the extent that the Commission wishes to encourage the establishment of inter-regional cost allocation rules it should allow them to be developed through the NYISO and PJM

stakeholder processes and future Commission proceedings related thereto. It should also allow sufficient time for the extensive deliberations and coordination that such a complex project would require.

**V. Conclusion**

WHEREFORE, the New York Independent System Operator, Inc. respectfully requests that the Commission grant its motion to intervene out of time, and permit this limited answer to PSEG's request for clarification or rehearing on the subject of external cost allocations.

Respectfully submitted,

/s/ Ted J. Murphy

Counsel for

New York Independent System Operator, Inc.

January 8, 2007

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing document on all parties on the official service list compiled by the Secretary in this proceeding in accordance with 18 C.F.R. § 385.2010 (2006).

Dated at Washington, DC this 8<sup>th</sup> day of January 2007.

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