

**THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

New Jersey Board of Public Utilities)
)
Petitioner,)
)
 v.)
)
 Federal Energy Regulatory)
 Commission,)
)
Respondent.)

Case No. 20-1079

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

Pursuant to Federal Rule of Appellate Procedure 15(d) and Rule 15(b) of the Circuit Rules of this Court, the New York Independent System Operator, Inc. (the “NYISO”) hereby moves to intervene in the above-captioned proceeding in support of the Federal Energy Regulatory Commission (“FERC” or “Respondent”). In support of this motion, the NYISO states:

1. The NYISO is a New York not-for-profit corporation organized and existing under New York law. The NYISO is the independent body responsible for providing open access transmission service, maintaining reliability, and administering competitive wholesale electricity markets in New York State. The NYISO fulfills these responsibilities pursuant to certain tariffs filed at FERC, and in accordance with orders of the Respondent.

2. In this case, Petitioner seeks review of the following FERC orders:
 - a. *New Jersey Board of Public Utilities v. PJM Interconnection, L.L.C., et al.*, Docket No. EL18-54-000, “Order Denying Complaint,” 163 FERC ¶ 61,139 (May 24, 2018); and
 - b. *New Jersey Board of Public Utilities v. PJM Interconnection, L.L.C., et al.*, Docket No. EL18-54-001, “Order Denying Rehearing,” 170 FERC ¶ 61,180 (March 4, 2020).
3. The FERC orders at issue involve a challenge by Petitioner to the Order No. 1000-mandated allocation of cost responsibility for the Bergen-Linden Corridor (“BLC”) Project, a series of large-scale transmission upgrades constructed in northern New Jersey pursuant to PJM Interconnection, L.L.C.’s (“PJM”) intra-regional planning processes. *See Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).
4. Pursuant to the FERC’s Order No. 1000 rules, cost responsibility for the BLC Project upgrades that were developed in the PJM planning processes and that are located in the PJM region must be allocated solely to PJM’s customers.

Consistent with FERC's Order No. 1000 policies, the NYISO's Open Access Transmission Tariff ("OATT"), which is a FERC-accepted rate schedule under the Federal Power Act, states that the NYISO region shall not be responsible for the costs of transmission facilities developed through other regional planning processes unless the NYISO "expressly assumes" such costs.¹ The NYISO has never agreed to expressly assume BLC Project costs.

5. Petitioner is appealing the FERC's orders rejecting Petitioner's attempts to allocate BLC Project costs to the NYISO's customers in contravention of Order No. 1000's requirements and an established Joint Operating Agreement between the NYISO and PJM that is incorporated into the NYISO's OATT.²

6. The NYISO has a direct and substantial interest in this proceeding that is distinct from those of all other parties and, therefore, cannot be adequately represented by any other party. Specifically, the proceedings directly affect the NYISO because Petitioner is seeking to re-allocate a substantial portion of the

¹ See NYISO's OATT, Section 31.5.2.1 Regional Cost Allocation Principle 4 and Section 31.5.7.5 ("Except as provided herein ... or where cost responsibility is expressly assumed by ISO-NE, the ISO or PJM in other documents, agreements or tariffs on file with FERC, neither the ISO-NE region, the ISO region nor the PJM region shall be responsible for compensating another region or each other for required upgrades or for any other consequences in another planning region associated with regional or interregional transmission facilities...").

² The Joint Operating Agreement between the NYISO and PJM is Section 35 of the NYISO's OATT.

BLC Project's upgrade costs to the NYISO's customers in New York. Doing so would usurp the NYISO's unique role as the transmission planner for its own region. It also would undermine the NYISO's ability to rely on the provisions of the NYISO and PJM tariffs that implement FERC's Order No. 1000 in performing its operations and meeting its obligations. Finally, granting the Petition would increase the potential for the NYISO to be required to routinely participate in inter-regional litigation addressing the proposed re-allocation of the costs of transmission facilities planned and constructed in one region to consumers in other regions. The NYISO was an active participant in the proceedings before FERC in order to protect these interests.

7. For these reasons, the NYISO should be permitted to intervene and participate in this case.

WHEREFORE, the New York Independent System Operator, Inc. respectfully requests that it be permitted to intervene in this proceeding and granted all rights as a party hereto.

Respectfully submitted,

By: /s/ Brian M. Zimmet

Brian M. Zimmet
Hunton Andrews Kurth LLP
2200 Pennsylvania Ave., NW
Washington, DC 20037
(202) 955-1500
bzimmet@huntonak.com

Attorney for Proposed Intervenor

New York Independent System
Operator, Inc.

Dated: April 21, 2020

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New Jersey Board of Public Utilities)	
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<i>Respondent.</i>)	

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Rule 26.1 of the Circuit Rules of this Court, the New York Independent System Operator, Inc. (the “NYISO”) states the following:

The NYISO is a not-for-profit corporation organized and existing under the laws of New York. Although the NYISO does not own or control any electric power generation facilities, it possesses operational control over electric transmission facilities in New York State and issues commitment and dispatch instructions to electric power generation facilities. The NYISO is the independent body responsible for providing open access transmission service, maintaining reliability, and administering competitive wholesale electricity markets in New York State.

The NYISO is not a publicly-held company. It does not have a parent company, and no publicly held company has a 10% or greater ownership in it.

Respectfully submitted,

By: /s/ Brian M. Zimmet

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Hunton Andrews Kurth LLP

2200 Pennsylvania Ave., NW

Washington, DC 20037

(202) 955-1500

bzimmet@huntonak.com

Attorney for Proposed Intervenor

New York Independent System
Operator, Inc.

Dated: April 21, 2020

CERTIFICATE OF SERVICE

Pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure and Circuit Rule 15(b), I hereby certify that I have this day served a copy of the foregoing Motion of New York Independent System Operator, Inc. to Intervene and Corporate Disclosure Statement using the court's CM/ECF system. I have also caused the foregoing document to be served by hand delivery upon the Solicitor at the Federal Energy Regulatory Commission.

Dated at Washington, D.C. this 21st day of April 2020.

Respectfully submitted,

By: /s/ Brian M. Zimmet

Brian M. Zimmet
Hunton Andrews Kurth LLP
2200 Pennsylvania Ave., NW
Washington, DC 20037
(202) 955-1500
bzimmet@huntonak.com

Attorney for Proposed Intervenor

New York Independent System
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