

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
 Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 14-1482, 14-1502

Caption [use short title]

Motion for: Leave to file an amicus-curiae brief in support
of neither party or, in the alternative, to intervene

In Re: People of the State of New York and NYPSC
 (Docket No. 14-1482)

In Re: Central Hudson Gas & Electric Corporation
 (Docket No. 14-1502)

Set forth below precise, complete statement of relief sought:

Permission to file an amicus-curiae brief in
support of neither party or, in the alternative,
to intervene

MOVING PARTY: New York Independent System Operator

☐ Plaintiff

☐ Defendant

☐ Appellant/Petitioner

☐ Appellee/Respondent

OPPOSING PARTY: People of the State of New York, NYPSC, Central Hudson and FERC

MOVING ATTORNEY: Joseph J. Saltarelli

OPPOSING ATTORNEY: _____

[name of attorney, with firm, address, phone number and e-mail]

Hunton & Williams LLP

200 Park Avenue

New York, New York 10166

Court-Judge/Agency appealed from: Federal Energy Regulatory Commission

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):



Yes



No (explain): _____

Opposing counsel's position on motion:



Unopposed



Opposed



Don't Know

Does opposing counsel intend to file a response:



Yes



No



Don't Know

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND
 INJUNCTIONS PENDING APPEAL:**

Has request for relief been made below?



Yes



No

Has this relief been previously sought in this Court?



Yes



No

Requested return date and explanation of emergency: _____

Is oral argument on motion requested?



Yes



No

(requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?



Yes



No

If yes, enter date: June 3, 2014 (Emergency relief motions and mandamus petitions)

Signature of Moving Attorney:

Joseph J. Saltarelli

Date:

5/27/14

Service by:



CM/ECF



Other [Attach proof of service]

Nos. 14-1482, 14-1502

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

People of the State of New York and Public Service
Commission of the State of New York,

Petitioners,

v.

14-1482

Federal Energy Regulatory Commission,

Respondent.

Central Hudson Gas & Electric Corporation,

Petitioner,

v.

14-1502

Federal Energy Regulatory Commission,

Respondent.

**MOTION OF NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF IN SUPPORT
OF NEITHER PARTY OR, IN THE ALTERNATIVE, TO INTERVENE**

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System Operator, Inc.*

May 27, 2014

Pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure (“FRAP”), New York Independent System Operator, Inc. (the “NYISO”), respectfully requests leave to file the attached *Amicus Curiae* Brief in support of neither party, or alternatively, to be allowed to intervene in this mandamus proceeding, pursuant to FRAP 15(d) and 27, and to have its Brief deemed a response to the petitions.

In support of its motion, the NYISO states:

Petitioners People of the State of New York and Public Service Commission of the State of New York (collectively, “PSC”) and Central Hudson Gas & Electric Corporation (“Central Hudson”) (PSC and Central Hudson referred to collectively as “Petitioners”) have asked this Court to issue a writ of mandamus directing the Federal Energy Regulatory Commission (“FERC”) to rule, within 45 days, on pending requests for rehearing of two FERC orders (“FERC Orders”), and to stay their effectiveness pending further proceedings. The FERC Orders are:

1. *New York Independent System Operator, Inc.*, Order Accepting Proposed Tariff Revisions and Establishing a Technical Conference, FERC Docket No. ER13-1380, 144 FERC ¶ 61,126 (Aug. 13, 2013);
2. *New York Independent System Operator, Inc.*, Order Accepting Tariff Filing Subject to Conditions and Denying Waiver, FERC Docket No. ER14-500, 146 FERC ¶ 61,043 (Jan. 28, 2014).

The NYISO is a party to the FERC proceedings, has sought reconsideration and rehearing of relevant portions of the FERC Orders, and will be immediately

and directly affected by any order issued by this Court staying the effect of the FERC Orders.

The NYISO is a New York not-for-profit corporation that, pursuant to FERC-filed tariffs, operates New York's bulk electricity transmission system and administers the State's competitive, wholesale markets for electric power.

As the administrator of New York's competitive, wholesale electric power markets, the NYISO conducts auctions matching retail electric service companies seeking to purchase power with suppliers offering to sell it. The NYISO conducts the Capacity auctions that are the subject of the challenged FERC Orders and the petitions for relief, and has been conducting such auctions in compliance with the FERC Orders whose effectiveness Petitioners are now asking this Court to stay. As such, the NYISO is the party that would be most directly impacted if this Court were to grant Petitioners' requests for relief, and stay the FERC Orders.

Through its *Amicus Curiae* Brief, the NYISO seeks only to advise the Court of certain technical issues, involving the sophisticated and highly complex software systems used to conduct the Capacity auctions, that will arise if the Court stays the effectiveness of the FERC Orders pursuant to which the NYISO has been conducting the auctions. For that reason, the NYISO respectfully submits that its Brief presents information that is relevant to this proceeding and will aid the Court in its disposition of Petitioners' requests for relief.

The NYISO has received the consent of Petitioners and Respondent to its filing of the attached *Amicus Curiae* Brief.

CONCLUSION

For the foregoing reasons, the NYISO respectfully requests leave to file the attached *Amicus Curiae* Brief in support of neither party, pursuant to FRAP 29(a), or alternatively, to be allowed to intervene in this mandamus proceeding, pursuant to FRAP 15(d) and 27, and to have its Brief deemed a response to the petitions.

Dated: New York, New York
May 27, 2014

Respectfully Submitted,

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EXHIBIT

14-1482/1502

IN THE
United States Court of Appeals

FOR THE SECOND CIRCUIT

People of the State of New York and Public Service
Commission of the State of New York,

Petitioners,

14-1482

v.

Federal Energy Regulatory Commission,

Respondent.

Central Hudson Gas & Electric Corporation,

Petitioner,

14-1502

v.

Federal Energy Regulatory Commission,

Respondent.

**AMICUS CURIAE BRIEF OF NEW YORK INDEPENDENT
SYSTEM OPERATOR, INC. IN SUPPORT OF NEITHER PARTY**

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Nos. 14-1482, 14-1502

IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

People of the State of New York and Public Service
Commission of the State of New York,

Petitioners,

14-1482

v.

Federal Energy Regulatory Commission,

Respondent.

Central Hudson Gas & Electric Corporation,

Petitioner,

14-1502

v.

Federal Energy Regulatory Commission,

Respondent.

CORPORATE DISCLOSURE STATEMENT OF NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *Amicus Curiae* New York Independent System Operator, Inc. hereby discloses that it is a New York not-for-profit corporation, that it does not have any corporate parents, and that there are no publicly held companies that owns 10% or more of its stock.

Dated: New York, New York
May 27, 2014


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***AMICUS CURIAE* BRIEF OF
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
PRELIMINARY STATEMENT**

Petitioners People of the State of New York and Public Service Commission of the State of New York (collectively, “PSC”) and Central Hudson Gas & Electric Corporation (“Central Hudson”) (PSC and Central Hudson referred to collectively as “Petitioners”) have asked this Court to issue a writ of mandamus directing Respondent, Federal Energy Regulatory Commission (“FERC”), to rule, within 45 days, on pending requests for rehearing of two FERC Orders (the “FERC Orders”), and to stay their effectiveness pending further proceedings. The FERC Orders are:

1. *New York Independent System Operator, Inc.*, Order Accepting Proposed Tariff Revisions and Establishing a Technical Conference, FERC Docket No. ER13-1380, 144 FERC ¶ 61,126 (Aug. 13, 2013);
2. *New York Independent System Operator, Inc.*, Order Accepting Tariff Filing Subject to Conditions and Denying Waiver, FERC Docket No. ER14-500, 146 FERC ¶ 61,043 (Jan. 28, 2014).

Amicus Curiae New York Independent System Operator, Inc. (the “NYISO”) is a party to the FERC proceedings below, has sought reconsideration and rehearing of relevant portions of the FERC Orders, and will be immediately and directly affected by any stay of the FERC Orders. The NYISO submits this Brief neither in support of, nor in opposition to, the parties to this mandamus proceeding. Its views are intended only to aid the Court in its determination of Petitioners’ requests.

**IDENTITY OF INTEREST AND SOURCE
OF AUTHORITY TO FILE AS *AMICUS CURIAE***

The NYISO is a New York not-for-profit corporation that, pursuant to FERC-filed tariffs, operates New York’s bulk electricity transmission system and administers the State’s competitive, wholesale markets for electric power.

As the administrator of New York’s competitive, wholesale electric power markets, the NYISO conducts the Capacity auctions that are the subject of the challenged FERC Orders and the petitions for relief, and has been conducting such auctions in compliance with the FERC Orders whose effectiveness Petitioners are now asking this Court to stay. As such, the NYISO is the party that would be most directly impacted if this Court were to grant Petitioners’ requests for relief, and stay the FERC Orders.

The NYISO files this Brief as *Amicus Curiae* with leave of Court and the consent of Petitioners and FERC, pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure.¹

BACKGROUND

The NYISO is a not-for-profit “public utility” regulated by FERC under the Federal Power Act. As “Independent System Operator” for the New York Control

¹ Pursuant to Rule 29(c)(5) of the Federal Rules of Appellate Procedure, the NYISO states that its counsel authored this Brief in its entirety, and no party or party’s counsel or other person contributed money that was intended to fund preparation or submission of this Brief.

Area (“NYCA,” generally, New York State), the NYISO is responsible for the reliable operation of the NYCA’s bulk electric transmission facilities and the administration of its competitive wholesale electricity markets, including the Capacity market and Capacity auctions at issue in this proceeding.

Capacity, or *Installed Capacity*, is one of a number of electricity products that are bought by “Load Serving Entities” or “LSEs” (typically traditional electric utilities) and sold (typically by private owners of electric generation facilities) through NYISO-administered auctions. The overarching purpose of the zonal Installed Capacity markets is to provide price signals necessary to attract new investment in electric generation and to retain existing electric generation necessary to maintain system reliability in accordance with mandatory national, regional, and local reliability rules enforced by several reliability “councils.”²

The NYISO is independent of participants in these markets and has no direct or indirect commercial stake in any market outcome. The NYISO is, however, the entity that would be responsible for implementing changes to the Capacity auctions for the “new capacity zone”³ that would be required if the Court stays the FERC Orders. The FERC Orders approved the tariff provisions by which NYISO legally

² The NYISO is subject to oversight by the North American Electric Reliability Corporation, Northeast Power Coordinating Council, and New York State Reliability Council.

³ The new capacity zone is defined in NYISO’s tariffs as the “G-J Locality.”

became required to implement the new capacity zone and conduct the related auctions for that zone and other Capacity zones in New York State.

Under the NYISO's tariffs, Capacity auctions are conducted during regular six-month intervals known as Capability Periods, which begin on May 1 and November 1 of each year. The auctions include "Capability Period Auctions," in which Capacity is bought and sold for an entire six-month Capability Period, "Monthly Auctions," and "Spot Market Auctions" which also occur monthly. The 2014 Summer Capability Period commenced May 1, 2014 and will conclude on October 31, 2014. The 2014-2015 Winter Capability Period commences November 1, 2014 and will conclude on April 30, 2015. As Petitioners note, the NYISO has already completed four auctions pertaining to the 2014 Summer Capability Period. The next scheduled Capacity auctions, which are the immediate subject of Petitioners' request for emergency relief, are scheduled to begin on June 9, 2014.

DISCUSSION

Through this Brief the NYISO only seeks to advise the Court about NYISO's ability to implement the changes Petitioners seek in the manner and time frame they have requested. As explained below, if the Court stays the effectiveness of the FERC Orders, the NYISO would have to modify the complex software it uses to conduct the auctions affecting the new capacity zone. NYISO

believes it could, within a relatively short period of time, achieve a reasonable *approximation* of the price outcomes Petitioners seek (*i.e.*, the lower prices that would have occurred if the new capacity zone had not been implemented).

However, implementing the remedy Petitioners seek *in the manner they have requested* (*i.e.*, by eliminating the new capacity zone for future auctions) would require additional time for the NYISO to make the necessary software changes.

A stay of the FERC Orders would require the NYISO to conduct future Capacity auctions in the manner they were previously conducted, *i.e.*, (1) without requiring LSEs in the new capacity zone to purchase a specific amount of Capacity from resources in that zone, and (2) without calculating a separate market clearing price for the new capacity zone in those auctions. The result would be that LSEs in the new capacity zone could generally purchase Capacity from other areas in the NYCA, as they had in the past, rather than solely in the new capacity zone. In turn, their cost would be determined by the lower NYCA clearing price.

The NYISO conducts the Capacity auctions using sophisticated software that is part of a larger and highly complex framework of market and operations-related computer systems. If the Court stays the FERC Orders, compliance with the stay would require the NYISO to modify the auction software and certain of its parameters in order to conduct the auctions in the same way it conducted them

prior to the FERC Orders. How the NYISO would implement these changes will depend on the effective date of any stay issued by the Court.

After careful consideration, the NYISO has concluded that it could implement certain changes for the remaining months of the 2014 Summer Capability Period that would yield market results reasonably consistent with Petitioners' request for relief. Due to software limitations, however, the changes would only have the going-forward effect of *approximating* the market outcomes that would have occurred without the new capacity zone. This solution would not remove the new capacity zone from the auction software. It would instead alter certain parameters in the software to achieve market outcomes—including clearing price—similar to what would occur if the FERC Orders were not in effect and the new capacity zone did not exist.

This approach for remaining months of the 2014 Summer Capability Period would be necessary because the NYISO's Capacity auction software is not designed to add or remove capacity zones during a Capability Period once it has already commenced. Similar software limitations may also require changes to the Capacity auctions scheduled for the remainder of the Summer Capability Period, including the potential cancellation of some Monthly Auctions.

As Petitioners have recognized,⁴ several auctions in the 2014 Summer Capability Period have already occurred and certain market participants have already engaged in transactions for all months of the 2014 Summer Capability Period. Thus, the NYISO will need to take action to attempt to reconcile, and ameliorate the impact of, market activity that occurred prior to any stay related to future periods, with the auction results and requirements that occur after the stay.

The NYISO believes it could implement software changes that eliminate the new capacity zone from future auctions, as Petitioners request, in time for the start of the Winter 2014-2015 Capability Period on November 1, 2014. The NYISO's auction software is sufficiently flexible to accommodate the addition and elimination of capacity zones *at the outset of* the six-month Capability Periods, *i.e.*, May 1 or November 1. If a stay is granted and made effective beginning with the start of the 2014-2015 Winter Capability Period on November 1, 2014, the NYISO would use the functionality already built into its auction software to remove the new capacity zone for auctions for obligation periods after that date. Other software and process refinements may also be necessary, but the NYISO

⁴ See Central Hudson, *Emergency Motion for Limited Stay of Federal Energy Regulatory Commission Orders Authorizing Electric Capacity Auctions Pending Action on Rehearing and, if Necessary, on Judicial Review, and Alternative Petition for a Writ of Mandamus, and Memorandum in Support Thereof* at 17 (May 12, 2014) and PSC, *Petition for Writ of Mandamus and Emergency Motion for Stay* at 3 (May 12, 2014).

anticipates that they could be completed to allow implementation for obligation periods beginning November 1, 2014.

In the event the Court stays the FERC Orders, it is imperative that the NYISO have sufficient time to properly develop, test, and implement applicable software changes because of the potential harm to market participants and other adverse consequences if they do not function properly. For these reasons, if the Court stays the FERC Orders, the NYISO should be granted a reasonable period of time to fully implement all necessary software changes and take other actions described above.

Finally, the modifications to the Capacity auction software and related processes discussed above are not currently authorized under the NYISO's tariffs. Accordingly, in the event of a stay, the NYISO believes it will be required to seek expedited tariff waivers from FERC before implementing such changes.

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CONCLUSION

If the Court grants the relief requested by Petitioners, the NYISO respectfully asks the Court to consider the foregoing in determining the nature, scope, and timing of any stay of the FERC Orders.

Dated: New York, New York
May 27, 2014

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE WITH FRAP RULE 32 AND RULE 29

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements and Type Style Requirements

1. This brief complies with the type-volume limitation of FRAP 32(a)(7)(B) and FRAP 29(d) because this brief contains 782 words, excluding the parts of the brief exempted by FRAP 32(a)(7)(B)(iii).
2. This brief complies with the typeface requirements of FRAP 32(a)(5) and the type style requirements of the FRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007 in size 14 font in Times New Roman.

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