

Central Hudson Gas & Electric Corporation, *et al.*

Petitioners,

v.

Federal Energy Regulatory Commission,

Respondent.

Case No. 21-1256

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 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 open access transmission service provided by the NYISO includes the interconnection of generators with the high-voltage transmission system operated by the NYISO. The NYISO fulfills these responsibilities pursuant to certain tariffs

filed at the Federal Energy Regulatory Commission (“FERC” or “Respondent”), and in accordance with orders of the Respondent.

2. In this case, Petitioners seek review of the following FERC order: *New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation*, Docket No. ER21-1647-001, “Order Rejecting a Rate Filing,” 176 FERC ¶ 61,143 (Sept. 3, 2021) (“September 3 Order”).

3. Petitioners timely sought rehearing of the September 3 Order under Section 313(a) of the Federal Power Act (“FPA”), 16 U.S.C. § 8251(a). FERC issued a Notice of Denial of Rehearing by Operation of Law on November 4, 2021. *New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison of New York, Inc., Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation*, Docket No. ER21-1647-002, “Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration,” 177 FERC ¶ 62,068 (Nov. 4, 2021) (“Notice of Denial of Rehearing”). Citing to FPA Section 313(a), 18 C.F.R. § 385.713, and *Allegheny Def. Project v. FERC*, 964 F.3d 1 (D.C. Cir. 2020) (en banc), the Notice of Denial

of Rehearing stated that “[i]n the absence of Commission action on the requests for rehearing within 30 days from the date the requests were filed, the requests for rehearing (and any timely requests for rehearing filed subsequently) may be deemed denied.” Notice of Denial of Rehearing at 1. On December 8, 2021, Petitioners filed their Petition for Review of the September 3 Order.

4. Petitioners have proposed to amend the NYISO Open Access Transmission Tariff (“OATT”) to revise its existing funding methodology applicable to System Upgrade Facilities and System Deliverability Upgrades. Specifically, Petitioners filed,¹ pursuant to FPA section 205, 16 U.S.C. § 825d, a proposed amendment to the existing funding approach in section 25.5.4 of the NYISO OATT. The proposed amendment would give transmission owners the option to elect to fund the costs of System Upgrades caused by generator interconnections and earn a reasonable return for those assets used to provide jurisdictional service. Under the proposal, generators would remain responsible for the costs of System Upgrades, but if a transmission owner elects to fund a System Upgrade, it will be able recover from the interconnection customer both those costs and an approximate rate of return. Petitioners assert that Section 3.10(a) of the Agreement between NYISO and Transmission Owners (“NYISO-

¹ The NYISO submitted the filing on the Petitioners’ behalf in its role as the OATT administrator.

TO Agreement”) gives them the unilateral right to make such a filing under FPA section 205.

5. In the proceedings before FERC, the NYISO was an intervenor, and filed comments. FERC found that “NYTOs’ FPA section 205 filing rights under section 3.10(a) of the NYISO-TO Agreement do not afford the NYTOs the right to make an FPA section 205 filing in this instance” and rejected it on procedural grounds. September 3 Order at 10.

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. The NYISO is responsible for administering generator interconnections to the high-voltage transmission system in New York State in accordance with its OATT and is a party to the NYISO-TO Agreement. The NYISO will be directly impacted by the outcome of this appeal. The NYISO has been an active participant in the underlying FERC proceedings 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: January 7, 2022

Central Hudson Gas & Electric
Corporation, *et al.*

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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

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: January 7, 2022

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 7th day of January, 2022.

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.