

# STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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## PUBLIC SERVICE COMMISSION

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*Secretary*

March 25, 2002

Honorable Magalie R. Salas,  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Room 1-A209  
Washington, D.C. 20426

Re: Docket No. RM02-4-000 - Rule Regarding  
Critical Energy Infrastructure Information;  
Docket No. PL02-1-000 - Policy Statement on  
the Treatment of Previously Public Documents

Dear Secretary Salas:

For filing please find the Notice of Intervention and Comments of the New York State Public Service Commission in the above-entitled proceedings. Should you have any questions, please feel free to contact me at (518) 473-8178.

Very truly yours,

David G. Drexler  
Assistant Counsel

Enclosures

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

Rule Regarding Critical Energy Infrastructure Information	)	) Docket No. RM02-4-000
	)	)
Policy Statement on the Treatment of Previously Public Documents	)	) Docket No. PL02-1-000
	)	)

**NOTICE OF INTERVENTION AND COMMENTS OF THE  
PUBLIC SERVICE COMMISSION OF THE  
STATE OF NEW YORK**

Pursuant to the Notice of Inquiry and Guidance for Filings in the Interim (NOI) dated January 16, 2002, the Notice of Extension of Time issued March 6, 2002, and Rule 214 of the Federal Energy Regulatory Commission's (FERC's or Commission's) Rules of Practice and Procedure, the Public Service Commission of the State of New York (NYPSC) hereby submits its Notice of Intervention and Comments.

Copies of all correspondence and pleadings should be addressed to:

Lawrence G. Malone, Esq. David G. Drexler, Esq. Public Service Commission of the State of New York 3 Empire State Plaza Albany, NY 12223 david_drexler@dps.state.ny.us	Ronald Liberty Director Fed. En. Interv. Public Service Commission of the State of New York 3 Empire State Plaza Albany, NY 12223 ronald_liberty@dps.state.ny.us
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In response to the September 11, 2001, terrorist attacks, the Commission issued its NOI to explore the appropriate treatment for documents containing critical energy

infrastructure information (CEII) that might be used illegally. The Commission explained that its intention is to address how the public with a need for certain documents, such as state public service commissions, obtains access to those documents.

We support FERC's efforts to balance the public's need for information against the need to protect the public from potentially dangerous activity. Additionally, the Commission currently receives information that is used to assess reliability and safe operation of the system. Such assessments sometimes highlight weaknesses in the system that could be exploited by those desiring to bring it down. Therefore, the underlying information and the detailed results from those studies should not be made available to the general public.

As the NOPR suggests, public service commissions who use the information to meet their state statutory responsibilities, and are able to protect it, should be given ready access to CEII with appropriate protections.<sup>1</sup> When the NYPSC receives CEII, reasonable safeguards are in place to prevent its dissemination. For example, New York's Freedom of Information Law protects CEII from public disclosure.<sup>2</sup> Moreover, employees of the NYPSC are

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<sup>1</sup> The NYPSC is required under New York Public Service Law (PSL) §65 to ensure safe and adequate gas and electric service.

<sup>2</sup> New York State agencies "may deny access to records or portions thereof that:...if disclosed would endanger the life or safety of any person." New York Public Officers Law § 87(2)(f).

prohibited from divulging any such information.<sup>3</sup> The Commission should move quickly to develop procedures to designate CEII and provide for the release of that information with adequate protection.

Respectfully submitted,

Lawrence G. Malone  
General Counsel  
By: David G. Drexler  
Assistant Counsel  
Public Service Commission  
of the State of New York  
3 Empire State Plaza  
Albany, NY 12223-1305  
(518) 473-8178

Dated: March 25, 2002  
Albany, New York

<sup>3</sup> "Any employee or agent of the [Department of Public Service] who divulges any confidential information which may come to his knowledge during the course of any inspection or examination of the property, accounts, records or memoranda of any person, corporation or municipality subject to the jurisdiction of the [NYPSC], except insofar as he may be directed by the [NYPSC], or by a court or judge, or authorized by law, shall be guilty of a misdemeanor." PSL §15. We have conferred with the New York State Energy Research and Development Authority, which also performs electric and gas studies that could require the use of CEII, and they concur with us in this filing.

CERTIFICATE OF SERVICE

I, Naomi Tague, do hereby certify that I will serve on March 25, 2002, the foregoing Notice of Intervention and Comments of the Public Service Commission of the State of New York by depositing a copy thereof, first class postage prepaid, in the United States mail, properly addressed to each of the parties of record, indicated on the official service list compiled by the Secretary in this proceeding.

Date: March 25, 2002  
Albany, New York

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Naomi Tague