

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

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Secretary

July 21, 2008

SENT VIA ELECTRONIC FILING
Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 1-A209
Washington, D.C. 20426

Re: Docket No. RM08-8-000 - Ex Parte Contacts and
Separation of Functions

Dear Secretary Bose:

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

Very truly yours,

David G. Drexler
Assistant Counsel

Attachment

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Ex Parte Contacts and Separation) Docket No. RM08-8-000
of Functions)

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

NOTICE OF INTERVENTION

On May 15, 2008, the Federal Energy Regulatory Commission (FERC or Commission) issued a Notice of Proposed Rulemaking (May 15 NOPR), proposing to amend its regulations governing interventions in certain proceedings. The New York State Public Service Commission (NYPSC) hereby submits its Notice of Intervention and Comments in the above-captioned proceeding pursuant to the Commission's May 15 NOPR, published in the Federal Register on May 21, 2008, and Rule 214 of FERC's Rules of Practice and Procedure (Rule 214).

Copies of all correspondence and pleadings should be addressed to:

David Drexler
Assistant Counsel
New York State Department
of Public Service
Three Empire State Plaza
Albany, New York 12223-1350
david_drexler@dps.state.ny.us

William Heinrich
Chief, Policy Coordination
New York State Department
of Public Service
Three Empire State Plaza
Albany, New York 12223-1350
william_heinrich@dps.state.ny.us

INTRODUCTION

The May 15 NOPR seeks comments on the proposal to revise the Commission's Rules of Practice and Procedure related to interventions to specifically state that "intervention is not permitted as a matter of right in enforcement proceedings arising from Part 1b investigations."¹ The Commission explains that "[b]ecause Rule 214, which governs interventions, makes no specific reference to proceedings arising from Part 1b investigations, the current rules may be read to allow intervention in such proceedings on the same basis as any other Commission adjudication."² According to the May 15 NOPR,

[a]n enforcement proceeding necessarily focuses on the conduct and culpability of the subject party and does not directly implicate the rights of third parties in the same manner as, for example, a rate proceeding. Intervention by third parties thus could delay or complicate an enforcement proceeding and sidetrack it from its purpose.³

DISCUSSION

The NYPSC supports the comments filed by the National Association of Regulatory Utility Commissions in opposition to the Commission's proposal, which would eliminate the current

¹ May 15 NOPR at ¶16. Part 1b investigations may relate to any matter subject to FERC's jurisdiction, and "may be formal or preliminary, and public or private." 18 CFR §§1b.3 and 1b.4.

² May 15 NOPR at ¶14.

³ Id.

ability of State Commissions to intervene as a matter of right in proceedings commenced as a result of Part 1b investigations.⁴ State Commissions, such as the NYPSC, have a legitimate and compelling interest in participating in the Commission's enforcement proceedings, since the remedies pursued by the Commission will likely impact the state's ratepayers. Accordingly, the NYPSC should continue to be provided the right to intervene in such proceedings.

Continuing to afford the NYPSC the right to intervene in enforcement proceedings would be unlikely to delay, complicate, or sidetrack the Commission from its purpose, given that the NYPSC and the FERC share the mutual goal of ensuring that rates are just and reasonable.⁵ In adopting the present rules governing interventions, the Commission recognized that state commissions "should receive special consideration in the interest of comity," and struck an appropriate balance by allowing states the right to intervene in any proceeding, as a matter of right, provided a notice of intervention is made on a

⁴ Rule 214(a)(2) specifies that "[a]ny State Commission is a party to any proceeding upon filing a notice of intervention in that proceeding, if the notice is filed within the period established..."

⁵ See, New York State Public Service Law §65 (requiring that all "charges...be just and reasonable"); see also, 16 U.S.C. §824d (mandating that all "rates or charges shall be just and reasonable").

timely basis.⁶ The Commission should continue to recognize the unique interests of state commissions and not undo this carefully crafted balance.

CONCLUSION

The Commission should not adopt the proposal to eliminate the current ability of State Commissions to intervene as a matter of right in enforcement proceedings.

Respectfully submitted,



Peter McGowan
Acting General Counsel
Public Service Commission
of the State of New York

By: David G. Drexler
Assistant Counsel
3 Empire State Plaza
Albany, NY 12223-1305
(518) 473-8178

Dated: July 21, 2008
Albany, New York

⁶ Docket No. RM78-22-000, Revision of Rules of Practice and Procedure To Expedite Trial-Type Hearings, 47 FR 19022, Order No. 225 (issued May 3, 1982).

CERTIFICATE OF SERVICE

I, Ruth Tarrance, do hereby certify that I will serve on July 21, 2008, the foregoing Notice of Intervention and Comments of the New York Public Service Commission upon each of the parties of record indicated on the official service list compiled by the Secretary in this proceeding.


Ruth Tarrance

Dated: July 21, 2008
Albany, New York