

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

**PJM Interconnection, L.L.C.** )  
 ) **Docket Nos. EL05-121-000, et al.**  
 )

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF  
THE PSEG COMPANIES  
IN OPPOSITION TO THE MOTION FOR LATE  
INTERVENTION OF  
THE NEW JERSEY MUNICIPALITIES**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”), 18 C.F.R. §§ 385.212 and 213 (2008), Public Service Electric and Gas Company (“PSE&G”) and PSEG Energy Resources & Trade LLC (“PSEG ER&T”) (collectively the “PSEG Companies”) hereby move for leave to answer, and answer in opposition to the January 18, 2010 Motion for Late Intervention by the New Jersey Municipalities<sup>1</sup> Impacted by the Susquehanna-Roseland Project (“Late Intervention”) in the above captioned matter. In support of the foregoing, the PSEG Companies respectfully state as follows:

**I. MOTION FOR LEAVE TO ANSWER**

The PSEG Companies respectfully request that the Commission grant their motion for leave to answer the Late Intervention. Rule 213(a) (3) of the FERC’s Rules of Practice and Procedure provides that, “An answer may be made to any pleading, if not prohibited under paragraph (a)(2) of this section.”<sup>2</sup> The Commission has permitted

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<sup>1</sup> The municipalities that filed the motion are the Townships of Andover, Byram, East Hanover, Fredon, Hardwick, Montville, and Parsippany, hereinafter “N.J. Municipalities.”

<sup>2</sup> 18 CFR § 385.213 (a)(3).

answers to pleading not expressly authorized by the Commission' when they clarify the record, contribute to an understanding of the issues or assist the decision-making process.<sup>3</sup> The PSEG Companies respectfully submit that acceptance of this answer will assist the Commission in its deliberations, and thus request that the subject answer be considered by the Commission in this proceeding.

## II. ANSWER

### A. The N. J. Municipalities' Intervention Is Late – By Over Four Years.

This proceeding was initiated in the Order Accepting Filing, Requiring Compliance Filing Accepting and Suspending Proposed Tariff Sheets, and Establishing Hearing Procedures, Allegheny Power System Operating Companies, et al., Docket No. ER04-156-006, et al., 111 FERC ¶ 61,308 (May 31, 2005). That order established a public hearing in this docket concerning the justness and reasonableness of modified zonal rates in PJM Interconnection, L.L.C. ("PJM")

Comments were due within 21 days of PJM's submittal of a compliance filing. The Compliance filing was submitted on June 30, 2005. Thus, interventions were due on Thursday, July 21, 2005.

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<sup>3</sup> See, e.g., *Las Vegas Cogeneration Limited Partnership*, 117 FERC ¶ 61,309 at P 20 (2006) (accepted answer of Las Vegas Cogeneration Limited Partnership and subsequent answer of Nevada Power Company "because they [would] lead to a more accurate and complete record" in the proceeding). See also *Virginia Electric and Power Company*, 124 FERC ¶ 61,207 at P 22 (2008) (accepted answer as it aided in the decision-making process); *Pepco Holdings, Inc.* 125 FERC ¶ 61,130 at P 24 (2008) (accepted answer because it provided information to assist in the decision-making process); *Potomac-Appalachian Transmission Highline, LLC*, 122 FERC ¶ 61,188 at P 23 (2008) (accepted answer because assisted in decision-making process); *Southern California Edison Co.*, 122 FERC ¶ 61,187 at P 19 (2008) (answer would assist in decision-making process); *S. Natural Gas Co.*, 121 FERC ¶ 61,118, at P 5 (2007) (answer to protest accepted because it assisted the Commission in understanding the issues and ensured a complete record); *New York Independent System Operator, Inc.*, 121 FERC ¶ 61,112 at P 4 (2007) (answer to protest accepted because it provided information that assisted the Commission in its decision-making process); *PJM Interconnection, L.L.C.*, 116 FERC ¶ 61,179 at P 9 (2006); *Delmarva Power & Light Co.*, 93 FERC ¶ 61,098 at P 11 (2000) (allowing answers to ensure a complete and accurate record).

On July 26, 2005 the Commission issued an order granting 45 interventions. This order was issued over four years and four months ago.

Since the inception of this matter, 590 documents (including the Late Intervention) have been filed in this matter with the FERC. Hearings have occurred before an administrative law judge. Exhaustive briefings, along with exhibits have been submitted. The Commission has issued orders and petitions for review of the orders were submitted at the United States Court of Appeals for the Seventh Circuit. The Court in the Seventh Circuit upheld the Commission's decision on existing facilities but remanded for further explanation the portion of the Commission's decision regarding cost allocation for new transmission facilities at 500 kV and above.<sup>4</sup>

The PSEG Companies note that the Commission already ruled on late filed interventions in this matter. In Opinion No. 494-A – Order on Rehearing and Compliance Filing, PJM Interconnection, L.L.C., Docket Nos. EL05-121-003, 122 FERC ¶ 61,082 (January 31, 2008) (“Opinion No. 494-A”), the Commission denied late-filed interventions of the Kentucky Public Service Commission (“KPSC”), the Office of the Ohio Consumer Council (“OCC”) and the Indiana and Michigan Municipal Distributors Association (“IMMDA”). In so doing, the Commission said:

When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and the burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention. These are requests filed after the issuance of a dispositive order. KPSC, OCC, and IMMDA have not met the higher burden of justifying their late interventions. Accordingly, we deny the motions to intervene, without prejudice to subsequent motions in any sub-docket in this proceeding. (omitting footnote).<sup>5</sup>

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<sup>4</sup> *Illinois Commerce Commission v. FERC*, 576 F3d 470 (7<sup>th</sup> Cir. 2009)

<sup>5</sup> Opinion No. 494-A, P12.

In sum, the Commission has already denied untimely motions to intervene in this matter. There is no reason to grant the N.J. Municipalities' motion filed more than four years late.

**B. The N.J. Municipalities Have Not Established Any “Good Cause” For Granting Intervention at This Late Date, or Satisfied Any of the Other Criteria for Late Intervention Under Rule 214(d)**

The N.J. Municipalities have not proffered any explanation why their extremely late motion should be granted. Notably, their motion fails to satisfy any of the criteria for late intervention under the Commission's Rule 214(d).<sup>6</sup> The N.J. Municipalities have not offered a “good cause” for failing to file a timely motion to intervene.<sup>7</sup> Given the extensive and lengthy history of this matter, such a late intervention is extremely likely to cause disruption, prejudice or burdens on the other parties that have participated in this matter for years.<sup>8</sup> Similarly, N.J. Municipalities fail to establish that they even have a legitimate interest in the subject of this matter (cost allocation for the purpose of setting transmission rates), let alone that they have an interest that is not adequately represented by other parties.<sup>9</sup> Notably, the New Jersey Board of Public Utilities is a party to the instant matter. In this regard, while their motion references a New Jersey Board of Public Utilities matter in which the N.J. Municipalities have intervened,<sup>10</sup> they fail to offer any explanation how their participation in that case supports a four-year late intervention in this unrelated matter.

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<sup>6</sup> 18 C.F.R. § 385.214(d) (2009).

<sup>7</sup> 18 C.F.R. § 385.214(d)(i).

<sup>8</sup> 18 C.F.R. §§ 385.214(d)(ii) and (iv).

<sup>9</sup> See 18 C.F.R. § 385.214(d)(iii).

<sup>10</sup> I/M/O the Petition of Public Service Electric and Gas Company for a Determination Pursuant to the Provisions of N.J.S.A. 40:55D-19 (Susquehanna-Roseland), BPU Docket No. EM 09010335 (PSE&G seeking a determination from the New Jersey Board of Public Utilities that the Susquehanna-Roseland transmission project is “reasonably necessary for the service, convenience or welfare of the public.”

In sum, the N.J. Municipalities have failed to offer any justification for granting their motion to intervene some four and one-half years after the deadline for intervention.

### **III. CONCLUSION**

WHEREFORE, for the reasons set forth herein, the PSEG Companies respectfully requests that the Commission fully consider the answer hereinabove set forth above and reject the N.J. Municipalities' untimely motion to intervene.

Respectfully submitted,

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Dated: January 21, 2010  
Newark, New Jersey

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice.

Dated at Newark, New Jersey this 21<sup>st</sup> day of January 2010.

*James E. Wrynn*

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