

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

PSEG Energy Resources & Trade)
PSEG Fossil LLC)
Cross Hudson LLC)

Docket No. EL08-35-000

**NEW JERSEY DIVISION OF RATE COUNSEL
MOTION TO INTERVENE AND PROTEST**

Pursuant to the Rules 211, 212 and 214 of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §385.211, 212 and 214 (2007), the New Jersey Department of the Public Advocate, Division of the Rate Counsel (“NJ Rate Counsel”, formerly the New Jersey Division of the Ratepayer Advocate), respectfully submits this Motion to Intervene and Protest in the above-captioned proceeding. In support hereof, the NJ Rate Counsel states as follows:

1. The NJ Rate Counsel is the administrative agency charged under New Jersey Law with the general protection of the interests of utility ratepayers. *N.J.S.A. 52:27E-50 et seq.*

2. On January 17, 2008, PSEG Energy Resources & Trade, PSEG Fossil LLC and Cross Hudson LLC (“Companies” or “Petitioners”) filed a

Petition for Declaratory Order in Docket No. EL08-35-000 requesting the Commission to make certain declarations by March 17, 2008 to allow the Companies to construct what they claim is a generator lead line (or “GLF”) connection from their New Jersey generating plant with Con Edison’s West 49th Street, New York City substation (the “Project”). This filing will impact New Jersey electric utility ratepayers.

3. As the regulatory agency charged with protecting the utility ratepayers in the State of New Jersey, the NJ Rate Counsel’s participation is unique and in the public interest. Pursuant to C.F.R. §385.214(b) (2), the NJ Rate Counsel is an “entity” within the meaning of Rule 214(b) (2). The NJ Rate Counsel will not be adequately represented by any other party to this proceeding. As the filing and consolidation will ultimately impact New Jersey ratepayers, the NJ Rate Counsel seeks intervention to more carefully examine the record and would expect to participate in the proceedings and any subsequent settlement negotiations. Accordingly, this Motion to Intervene is being forwarded for filing.
4. All communications with respect to this matter should be addressed as follows:

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PROTEST

5. NJ Rate Counsel protests this Petition on the basis that all studies of the reliability of PJM transmission and local distribution systems in New Jersey must be completed and the impact of any upgrades on the ratepayers be determined before this Project can proceed. While the Petitioners may tout the benefits for New York City, removal of electricity supplied by a northern New Jersey generator will result in higher prices to replace that power; and in turn, higher rates for New Jersey electric ratepayers. The relatively lower electric prices paid by New Jersey electric ratepayers is the end result of many years of careful supply planning on the part of PJM and the New Jersey Board of Public Utilities. New York, for a myriad of reasons, has higher electric rates. Not having contributed to PJM, New York should not now be allowed to partake of the benefits of careful long-term planning by NJ and PJM. Even if PSEG replaces this capacity at shareholder expense, the issues of reliability and economic impact raise genuine issues of material fact which can only be resolved through evidentiary hearings on this matter. Indeed, even PJM has

indicated the need to study the reliability issue.¹ The following paragraphs also raise specific points which must be addressed in this proceeding.

6. Severing the connection between Bergen 2 and PJM directly harms New Jersey ratepayers and is not in the public interest. The Petitioners include entities directly affiliated with PSE&G, a regulated utility providing transmission service for New Jersey customers. Severing the link between the Bergen 2 generating station and the PJM transmission grid directly harms these customers by removing from the grid a source of power that has historically been available to these customers, and whose supply of energy and capacity helps to reduce their overall electricity costs. Severing this link would lead to increased costs associated with the loss of a supply resource, and could possibly lead to reduced reliability for the northern New Jersey region. Contrary to petitioners' claims, no showing of net public benefit has been provided. Without allowing the proposed 345 kV cable to serve as an open access transmission facility, significant benefits that might otherwise accrue to the region through increased inter-RTO transfer capability are foregone. The claimed limited incremental benefit to the New York grid associated with severing the Bergen 2 connection to the PJM grid will be more than fully offset by economic harm to New Jersey, all of whose load is made subject to higher prices due to the proposal to sever the link.

¹ PJM lists Bergen 2 on a schedule of "Future Deactivations (as of February 15, 2008)" and that there are "Reliability Issues Identified". Available with a Posting Date of 02.15.2008 on the "Pending Deactivation Requests" portion of the "Generation Retirements" section of the PJM website: <http://www.pjm.com/planning/project-queues/gen-retire.html>.

7. The proposed transmission cable should not escape Commission regulatory oversight under Orders 888 and 889, issued in 1996 with the stated purpose of “Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities”.² Any proposed transmission cable between the high-priced New York and northern New Jersey regions has the potential to produce considerable benefit to the one region, even if that benefit ultimately comes at a cost to the other region. However, it is disingenuous to assert that such transmission should escape the fundamental regulatory oversight of the Commission under Orders 888 and 889. The proposed 345 kV facility spans two large states, two major RTO control areas, and two major economic electricity market areas. To avoid regulation by claiming that the proposed facility is a generator lead line is disingenuous and not supported by the facts.
8. The proposed transmission cable is not a generator lead facility. The proposed project is a new 8-mile 345 kV cable capable of carrying 600 MW of power, and spanning the operating territories of two regional RTOs. It would interconnect a new 345 kV Bergen 2 transmission substation connected to the Bergen 2 generating station with Con Edison’s existing 345 kV transmission substation in New York City. However, Bergen 2 is also an existing 230 kV transmission substation woven into the PJM interconnected transmission grid. The proponents plan to sever this connection. The proposed GLF artificially takes the long-running Bergen 2 unit out of the PJM

² *Order No. 888, 61 FR 21540, 21541 (1996).*

footprint and effectively places it in the NYISO, outside the PJM control area. The actual Bergen 2 “generator leads” are those cables, transformers, circuit breakers and related equipment which in total allow for the generation output to connect to the high voltage grid and do not include the proposed cable (as is clearly evidenced by the fact that the existing Bergen 2 generating station is already connected to the grid without the proposed “generator lead lines”). The proposed 345 kV cable is not a generator lead but rather a proposed merchant transmission cable enabling the transfer of power from one RTO region to another.

9. The proposed 345 kV cable has all the attributes of a merchant transmission facility, not a generator lead line, and should not be exempted from the Commission’s Open Access Transmission Tariff requirements. Linking two RTO regions with a 345 kV high-voltage transmission cable for the purposes of exploiting the regional energy market price differences is a merchant transmission endeavor, in a similar manner as other regional merchant facilities such as the Neptune project (New Jersey to New York) and the Cross Sound Cable (Connecticut to New York). The proposed project should be treated as such.
10. An exemption from Orders 888 and 889 under the *Black Creek Hydro* precedent (*Pet.* at p. 7) is not supported. The *Black Creek Hydro* precedent involves the extent to which a petitioner is a small transmission owner, with “limited and discrete” transmission assets that do not form an integrated grid and are not likely to entertain requests for transmission service from other

entities. The proposed 345 kV transmission cable would emanate from the service territory of a very large transmission provider, PSE&G, into one of the highest-priced electricity markets in the nation. It would be expected that many requests for transmission service would be made across a new open access transmission cable into the New York City area. The Petitioners are directly affiliated with a very large transmission service provider, one whose service throughput is far in excess of the 4 million MWh per year considered by the Commission as a metric denoting a small transmission grid owner.

11. Petitioners admit that additional generation owned by the Petitioners may seek use of the proposed line and they also seek to prevent others from accessing the proposed line, contrary to the non-discrimination precepts of Orders 888 and 889 (*Pet.* at pp. 15-18). When it issued those rules, the Commission made it clear the rules were “designed to remove impediments to competition in the wholesale bulk power marketplace and to bring more efficient, lower cost power to the Nation’s electricity consumers.”³ Contrary to the *Black Creek Hydro* intent, Petitioners admit that additional generation may be loaded onto the proposed 345 kV cable. Petitioners also seek to prevent any other potential users of the cable from having access to the transmission line, in violation of the precepts of Commission Orders 888 and 889. Petitioners specifically state that: “[i]n addition, any excess output not needed to satisfy the PPA with NYPA would be sold into the NYISO market over the GLF. Accordingly, Petitioners request that the Commission declare that PSEG

³ *Ibid.*

ER&T's and PSEG Fossil's firm use of the GLF's total capacity would not be displaced by requests from third parties for Firm Point-to-Point Transmission Service under the OATT". (*Pet.* at p. 17).

12. The comparison of the proposed 345 kV cable to the *Termoelectrica* case (*Pet.* at p. 11) is invalid. The *Termoelectrica* case involved a generation facility not connected to any other grid.⁴ In this case, Bergen 2 is already connected to the PJM grid and has been a PJM resource over its entire life. The *Termoelectrica* case asserted: "The Interconnection Line is a 9-mile line that runs from the Mexicali Generation Facility to SDG&E's Imperial Valley Substation. *There is no electrical break anywhere in the line between these two points.*"⁵ (emphasis supplied). In this case, however, an explicit electrical break is proposed between Bergen 2 and the PJM grid. All of the foregoing points raise issues which must be addressed by the Commission and which NJ Rate Counsel respectively submits support denial of the relief requested by the Petitioners.

⁴ "Termoelectrica states that Termoelectrica Mex will construct, own and operate a 650-MW merchant generating facility to be located in the State of Baja California, Mexico...." 105 FERC ¶61,087, 61,453 (2003).

⁵ *Id.* at 61,455.

CONCLUSION

WHEREFORE, for all the foregoing reasons, the New Jersey Division of Rate Counsel respectfully requests permission to Intervene in this proceeding and further requests that the Commission deny the Petition and decline to make the requested declarations or, alternatively, to schedule this matter for evidentiary hearings.

Respectfully submitted,

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Dated: February 19, 2008