

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Entergy Nuclear Indian Point 2, LLC  
Entergy Nuclear Indian Point 3, LLC  
Entergy Nuclear Generation Company  
Entergy Nuclear FitzPatrick, LLC  
Entergy Nuclear Vermont Yankee, LLC  
Entergy Nuclear Power Marketing, LLC

Docket No. EC06-89-001

ORDER DENYING MOTION TO INTERVENE OUT OF TIME, DISMISSING  
REQUEST FOR REHEARING, AND DENYING MOTION FOR CLARIFICATION

(Issued August 29, 2006)

1. On April 12, 2006, the Commission issued an order<sup>1</sup> (April 12 Order) authorizing Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, and Entergy Nuclear FitzPatrick, LLC (Entergy Companies) to transfer their power purchase and sale agreements to Entergy Nuclear Power Marketing, LLC (Entergy Marketer).
2. On May 12, 2006, New York Power Authority (NYPA) filed a motion to intervene out of time, request for rehearing, and motion for clarification of the April 12 Order. On May 30, 2006, Entergy Companies submitted a request for leave to respond and response to NYPA's motion to intervene, request for rehearing and motion for clarification. On June 5, 2006, NYPA submitted a request for leave to answer and answer to Entergy Companies' May 30, 2006 pleading.
3. Because NYPA provided no good cause to accept its motion to intervene filed after issuance of the final order in this proceeding, the Commission is denying the motion to intervene out of time, dismissing the request for rehearing, and denying the motion for

---

<sup>1</sup> *Entergy Nuclear Indian Point 2, LLC, et. al.*, 115 FERC ¶ 62,056 (2006).

clarification. Also, we dismiss the answers filed by Entergy Companies and NYPA as moot.<sup>2</sup>

4. In support of its motion to intervene, NYPA states that it was not aware of the proceeding leading to the April 12 Order until after the order was issued. Further, NYPA states that no other party has or can represent adequately NYPA's interests and that its intervention will not disrupt the proceeding or prejudice the existing parties.

5. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and 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.<sup>3</sup> Even though NYPA claims that it was not aware of this proceeding prior to the issuance of the April 12 Order, NYPA admits that in March 2006 it was notified by Entergy Companies that they intended to transfer the contracts to Entergy Marketer.<sup>4</sup> Also, the Commission properly noticed Entergy Companies' application under section 203 of the Federal Power Act (FPA)<sup>5</sup> in this docket on March 8, 2006. Accordingly, NYPA has failed to meet this higher burden to justify the granting of its motion to intervene out of time in this proceeding. The Commission denies NYPA's motion to intervene out of time. The Commission also dismisses NYPA's request for rehearing and denies its motion for clarification because, under the FPA and Rule 713(b) of the Commission's regulations,<sup>6</sup> only a party to a proceeding is entitled to request rehearing or clarification of a Commission decision.

The Commission orders:

(A) NYPA's motions to intervene out of time and for clarification are denied.

---

<sup>2</sup> Moreover, pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2006), answers to requests for rehearing are not permitted, and therefore the Commission would have rejected the answers filed by Entergy Companies and NYPA.

<sup>3</sup> See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,250 at P 7 (2003).

<sup>4</sup> New York Power Authority May 12, 2006 Filing at n.15.

<sup>5</sup> 16 U.S.C. § 824(b) (2000).

<sup>6</sup> 16 U.S.C. § 825(a) (2000); 18 C.F.R. § 713(b) (2006).

(B) NYPA's request for rehearing is dismissed.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.