

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

Martha Coakley, Attorney General of the	:	Docket Nos.	EL11-66-001
Commonwealth of Massachusetts, <i>et al.</i> ,	:		EL11-66-004
Complainants,	:		EL11-66-005
	:		
v.	:		
	:		
Bangor Hydro-Electric Company, <i>et al.</i> ,	:		
Respondents.	:		
	:		
	:		
ENE (Environment Northeast), <i>et al.</i> ,	:	Docket Nos.	EL13-33-000
Complainants,	:		EL13-33-002
	:		
v.	:		
	:		
Bangor Hydro-Electric Company, <i>et al.</i> ,	:		
Respondents.	:		
	:		
	:		
Attorney General of the Commonwealth of	:	Docket No.	EL14-86-000
Massachusetts, <i>et al.</i> ,	:		
Complainants,	:		
	:		
v.	:		
	:		
Bangor Hydro-Electric Company, <i>et al.</i> ,	:		
Respondents.	:		
	:		
	:		
Belmont Municipal Light Department, <i>et al.</i> ,	:	Docket No.	EL16-64-000
Complainants,	:		EL16-64-002
	:		
v.	:		
	:		
Bangor Hydro-Electric Company, <i>et al.</i> ,	:		
Respondents.	:		

**MOTION TO INTERVENE OUT-OF-TIME  
OF WIRES**

Pursuant to sections 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”),<sup>1</sup> WIRES, on behalf of its members, respectfully submits this Motion to Intervene Out-of-Time in the above-captioned proceedings.<sup>2</sup> These proceedings arise from multiple complaints and a series of Commission orders regarding the methodology to be used in setting the New England Transmission Owners (“NETOs”)<sup>3</sup> base return on equity (“ROE”) and the establishment of refunds. WIRES’ concern centers on the limited issue regarding refunds.

## **I. MOTION TO INTERVENE**

In accordance with Rule 214, WIRES moves for leave of the Commission to intervene in the above-captioned dockets (“NETOs ROE Dockets”) out-of-time and submits the following in support of this motion. This request for late intervention in these dockets is motivated by WIRES’ concern that the Commission may apply in these dockets the retroactive refund requirement adopted in the October 17, 2024 Order on Remand issued in the Midcontinent Independent System Operator, Inc. (“MISO”) Transmission Owners’ ROE dockets (“MISO TOs ROE Dockets”).<sup>4</sup>

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<sup>1</sup> 18 C.F.R. §§ 385.212 and .214 (2024).

<sup>2</sup> WIRES is a non-profit trade association of investor-, publicly-, and cooperatively-owned transmission providers and developers, transmission customers, regional grid managers, and equipment and service companies. WIRES promotes investment in electric transmission and consumer and environmental benefits through development of electric transmission infrastructure. This filing is supported by the full supporting members of WIRES but does not necessarily reflect the views of the Regional Transmission Organization/Independent System Operator (“RTO/ISO”) members of WIRES. For more information about WIRES, please visit [www.wiresgroup.com](http://www.wiresgroup.com).

<sup>3</sup> The NETOs include: Versant Power f/k/a Emera Maine f/k/a Bangor Hydro-Electric Company, Central Maine Power Company, New England Power Company d/b/a National Grid, New Hampshire Transmission, LLC, Eversource Energy Service Company (on behalf of its operating company affiliates: The Connecticut Light and Power Company, NSTAR Electric Company, and Public Service Company of New Hampshire, each of which is doing business as Eversource Energy), The United Illuminating Company, Unitil Energy Systems, Inc., Fitchburg Gas and Electric Light Company, Vermont Transco, LLC, and The Narragansett Electric Company d/b/a Rhode Island Energy. The NETOs own the vast majority of the electric transmission facilities in New England.

<sup>4</sup> *Ass’n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator*, 189 FERC ¶ 61,036 at PP 33, 42 and Ordering Para. (C) (Oct. 17, 2024) (“October 17 Order on Remand” or “Order on Remand”), filed in FERC Docket Nos. EL14-12-016 and EL15-45-015 (“MISO TOs ROE Dockets”) (setting a *new* ROE and directing the MISO Transmission Owners to issue refunds retroactively from September 28, 2016, to October 17, 2024, the date of the Order on Remand).

More concerning, if the Commission were to apply that retroactive refund requirement in these dockets, decisions in these proceedings may shape Commission policy that would affect transmission owners across the nation, including transmission owners represented by WIRES. As a result, WIRES requests to file this Motion to Intervene Out-of-Time and provides the following in support of this application.

In deciding whether to grant late intervention, the Commission considers whether (i) the movant had good cause for failing to file a motion to intervene within the time prescribed; (ii) any disruption of the proceeding might result from permitting intervention; (iii) the movant's interest is not adequately represented by other parties in the proceeding; and (iv) any prejudice to, or additional burdens upon, the existing parties might result from permitting intervention.<sup>5</sup> As detailed below, WIRES satisfies the criteria for late intervention in these proceedings.

***A. Good Cause Exists for WIRES' Failure to Intervene Within the Prescribed Period***

Good cause exists for WIRES to intervene in these dockets at this juncture. As noted above, the discrete issue of refunds, in particular the Commission's decision in the MISO TOs ROE Dockets to set a *new* rate in its Order on Remand and to backdate the effective date of that rate more than eight years, could not have been known prior to the issuance of the Order on Remand in the MISO TOs ROE Dockets.<sup>6</sup> However, given the way in which the Commission dealt with refunds in the Order on Remand and the Commission's approach of treating these two separate proceedings similarly, WIRES is concerned that the Commission may apply refunds retroactively in these proceedings, the ramifications of which (where the issues date back at least ten years) will be even more impactful to the NETOs.

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<sup>5</sup> 18 C.F.R. §385.214(d)(1).

<sup>6</sup> Order on Remand at PP 33, 42 and Ordering Para. (C).

WIRES recognizes the high burden required to demonstrate that good cause for intervention exists at this late date. Nevertheless, in light of (i) the Commission’s recent ruling in the October 17 Order on Remand directing retroactive refunds back to September 2016; (ii) the Commission’s track record of linking its findings and determinations in these proceedings with the MISO TOs ROE Dockets;<sup>7</sup> and (iii) the Commission’s proposal in its *Coakley* Briefing Order to direct refunds back to 2014,<sup>8</sup> WIRES submits that the facts warrant allowing this late intervention in this instance. In addition, Commission precedent permits late-filed motions to intervene where the Commission has not yet issued a dispositive order on supplemental briefing and the intervenor agreed to accept the record to date in the proceeding.<sup>9</sup> Moreover, if the Commission were to apply the refund requirement set in the Order on Remand in these dockets, the potential impact (and the precedent it would set) would be significant, not only to WIRES members in ISO-NE, but to the industry at large.

Given that the Commission has approached these two dockets similarly, *e.g.*, applying the ROE methodology in this matter with the MISO TOs ROE Dockets, WIRES is concerned that the refund effective date set by the Commission in the MISO TOs ROE Dockets could serve to govern applying refunds retroactively in this matter, as well as future rate matters affecting other transmission owners. Although such a precedent may be unintentional, it seems inevitable if the Commission were to subsequently adopt a refund period herein back at least 10 years from the order identifying the new rate. Such a precedent would add risk and uncertainty in future rate

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<sup>7</sup> See *Ass’n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operators*, Opinion No. 569, 169 FERC ¶ 61,129 at P 17 (2019).

<sup>8</sup> *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 at P 60 (2018) (“*Coakley* Briefing Order”).

<sup>9</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 169 FERC ¶ 61,233 at PP 26-28 (2019), *remanded sub nom. Am. Clean Power Ass’n v. FERC*, 54 F.4th 722 (D.C. Cir. 2022) (granting Invenergy Renewable LLC’s (“Invenergy”) late-filed motion to intervene because the Commission had not yet issued a dispositive order on the supplemental briefing and Invenergy had accepted the record to date in the proceeding).

matters that the Commission must avoid. By permitting the requested late intervention, WIRES would be afforded the opportunity to weigh in on the broader policy impact such an approach would have on investor-owned utilities.

Additionally, WIRES' interest in intervening in this matter is based on its ability to represent the views of a significantly broader group of transmission owners and developers. WIRES represents the interests of a diverse membership that seeks to promote investment in transmission. WIRES members also have a direct and substantial interest in these proceedings.

Thus, the Commission should find that good cause exists for WIRES to intervene at this stage of the NETOs ROE proceedings and accept this motion so as to allow WIRES to offer potential industry-wide implications of adopting such a refund framework in the NETOs ROE Dockets and, more broadly, the effects it may have on the development of and investment in much needed electric transmission.

***B. WIRES' Intervention Will Not Disrupt the Proceedings, Prejudice Existing Parties, or Create Additional Burden for Existing Parties***

Granting WIRES' Motion to Intervene Out-of-Time will not disrupt these proceedings, prejudice existing parties, or create additional burdens for existing parties. The Commission has previously accepted late motions to intervene after issuance of a remand order but prior to issuing a dispositive order following briefing.<sup>10</sup> Additionally, the Commission has previously accepted late motions to intervene when the order under review presents issues that have broader implications. Granting WIRES' late intervention will not prejudice or create additional burdens

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<sup>10</sup> See, e.g., *Pub. Serv. Comm'n of Wisc. v. Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,104 at P 69 (2015) (granting late-filed motion to intervene of the City of Escanaba, which sought rehearing of a Commission order that raised issues that may have implications beyond the current proceeding); *S. Nat. Gas Co.*, 130 FERC ¶ 61,193 at PP 5-7 (2010) (granting trade association's late-filed motion to intervene for the purpose of seeking rehearing of an issue with broad industry implications). See also *Paiute Pipeline Co.*, 70 FERC ¶ 61,227 at 3 (1995) (stating that trade association's motion to intervene out-of-time is granted and that the Commission will address the simultaneously-filed request for rehearing).

for existing parties because WIRES is seeking to intervene to provide additional industry-wide perspective on the consequences of retroactive refunds, particularly as they relate to ROE proceedings.

Because WIRES seeks to intervene to present its views on the discrete legal issue related to refunds and because that issue does not depend on any factual development or other procedures, WIRES' intervention will not delay or disrupt these proceedings. Additionally, WIRES will accept the record in the NETOs ROE Dockets as it has been developed up to this point.

Granting WIRES intervention is particularly important as the WIRES members would be substantially impacted if the Commission were to carry forward a retroactive refund period similar to the one adopted under the October 17 Order on Remand in the MISO TOs ROE Dockets. Accordingly, the Commission should grant WIRES' motion to intervene so that WIRES is permitted the opportunity to address this issue on briefing and before a dispositive order is issued in this matter.

***C. WIRES' Interests Are Not Adequately Represented***

As stated above, WIRES has a direct and substantial interest in these proceedings and this interest is not adequately represented in these proceedings. WIRES represents the interests of a diverse membership that seeks to promote investment in transmission. WIRES has sponsored several widely-recognized studies demonstrating the need for transmission investment and the societal benefits from such investment at a time when transmission is so greatly needed to meet the Commission's overarching goal of promoting a robust, reliable transmission system.<sup>11</sup>

The Commission has long recognized the value of perspectives from industry organizations such as WIRES in considering matters with broad policy implications, noting previously that

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<sup>11</sup> See, e.g., <https://wiresgroup.com/wires-reports/>.

“[w]here membership associations meet the standard of Rule 214, [the Commission] should encourage informed pleadings . . . .”<sup>12</sup> Accordingly, WIRES requests intervention in these proceedings to provide a unique and well-informed industry perspective. The interests of the WIRES members cannot be adequately represented by any other existing party to these proceedings.

## II. COMMUNICATIONS

All correspondence, communications, pleadings, and other documents related to these proceedings should be addressed to the following representative:

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<sup>12</sup> *Am. Elec. Power Serv. Corp.*, 120 FERC ¶ 61,265 at P 9 (2007) (agreeing with “the Membership Organizations that ‘[w]here membership associations meet the standard of Rule 214, [the Commission] should encourage informed pleadings . . . .’”). *See also S. Nat. Gas Co.*, 130 FERC ¶ 61,193 at PP 5-7 (granting trade association’s late-filed motion to intervene and noting that the trade association “is able in this proceeding to present [its members’] common views regarding an issue of continued significance for the industry.”).

### **III. CONCLUSION**

For the above-stated reasons, WIRES respectfully requests that the Commission grant its motion to intervene-out-of-time, making it a party to these proceedings with all rights attendant thereto.

Respectfully submitted,

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Dated: December 9, 2024



## **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that I have this day had served the foregoing document upon each person designated on the official service lists compiled by the Secretary in these proceedings.

Dated at Washington, D.C. this 9<sup>th</sup> day of December 2024.

/s/ Larry Gasteiger

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