

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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NEW JERSEY DIVISION OF RATE)	
COUNSEL, <i>et al.</i> ,)	
)	
	Petitioners,)	
)	
v.)	No. 20-1059
)	
FEDERAL ENERGY)	
REGULATORY COMMISSION,)	
)	
	Respondent.)	
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**MOTION TO INTERVENE OF
THE ELECTRIC POWER SUPPLY ASSOCIATION**

Pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure, the Electric Power Supply Association (“EPSA”) respectfully moves to intervene in this case in support of respondent the Federal Energy Regulatory Commission (the “Commission”).

BACKGROUND

On June 6, 2018, the Commission issued an order in the consolidated proceedings below, finding PJM Interconnection, L.L.C.’s (“PJM’s”) Open Access Transmission Tariff to be unjust and unreasonable, in that it allowed state subsidies to distort pricing in the capacity market administered by PJM. On December 19,

2019, the Commission issued a further order establishing a just and reasonable replacement rate with specific features intended to remedy the price distortions.

On February 28, 2020, the New Jersey Division of Rate Counsel, the Office of the People's Counsel for the District of Columbia, the Maryland Office of People's Counsel, and the Delaware Division of the Public Advocate petitioned this Court for review of the December 19 order, and requested that the petition be held in abeyance.

STATEMENT OF INTEREST

EPSA seeks to intervene in this case because it has a direct and substantial interest that cannot be adequately represented by any other party. EPSA is the national trade association representing competitive power suppliers, including generators and marketers. Many of EPSA's members both own and operate assets located within the market administered by PJM and are active participants in that market, and EPSA therefore has an interest in the tariff that governs pricing in that market. Moreover, EPSA and its members have been and continue to be active in many of the Commission's ongoing proceedings on PJM regulatory matters.

Because of its interests in these issues, EPSA successfully intervened in the proceedings before the Commission below, and the Commission cannot adequately represent EPSA's interests. *See, e.g., Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003) (“[W]e have often concluded that governmental entities

do not adequately represent the interests of aspiring intervenors.”) (collecting cases); *Dimond v. District of Columbia*, 792 F.3d 179, 193-194 (D.C. Cir. 1986) (government entity “charged by law with representing the public interest” could not adequately represent private intervenor’s “more narrow and ‘parochial’ financial interest” in the subject matter of the dispute).

Allowing EPSA to participate as an intervenor would not inconvenience the Court or any other party, as the Court has not yet ordered a briefing schedule. This motion is filed within 30 days of the petition for review. *See* Fed. R. App. P. 15(d).

CONCLUSION

EPSA respectfully requests that it be permitted to intervene in this case with full rights attendant thereto.

Respectfully submitted,

/s/ Paul W. Hughes

David G. Tewksbury

Paul W. Hughes

Andrew A. Lyons-Berg

MCDERMOTT WILL & EMERY LLP

500 North Capitol Street, NW

Washington, D.C. 20001

phughes@mwe.com

(202) 756-8000 (office)

(202) 756-8087 (facsimile)

Counsel for the Electric Power Supply Association

Dated: March 27, 2020

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Rule 26.1 of the Rules of this Court, the Electric Power Supply Association (“EPSA”) states as follows:

EPSA is not a public company, has no parent corporation, and no publicly held corporation owns 10% or more of its stock. It is a trade association within the meaning of Circuit Rule 26.1(b).

Respectfully submitted,

/s/ Paul W. Hughes

David G. Tewksbury

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Andrew A. Lyons-Berg

MCDERMOTT WILL & EMERY LLP

500 North Capitol Street, NW

Washington, D.C. 20001

phughes@mwe.com

(202) 756-8000 (office)

(202) 756-8087 (facsimile)

Counsel for the Electric Power Supply Association

Dated: March 27, 2020

CERTIFICATE OF SERVICE

I certify that on March 27, 2020, the foregoing document was served on all parties or their counsel of record through the CM/ECF system. All parties or their counsel are registered users.

/s/ Paul W. Hughes

Paul W. Hughes