UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

United Illuminating Company	)	Docket No. ER92-397-000

PETITION OF THE UNITED STATES DEPARTMENT OF JUSTICE
TO INTERVENE FOR THE PURPOSE OF REQUESTING REHEARING

Pursuant to Section 308 of the Federal Power Act, 16 U.S.C. § 825(g), and Rule 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.214, the United States Department of Justice ("Department") moves that it be granted late intervention as a party in the above-captioned proceeding. In support of this motion, the Department states:

The Department is the agency of the Executive Branch of the United States government charged by Congress with the enforcement of the antitrust laws. The Department also acts to protect the national interest in competition and economic efficiency in various regulated industries (28 C.F.R.§ 0.40(b) and (g)). Pursuant to this mandate, the Department regularly appears before the Commission to advocate policies that preserve and promote competition and the economic efficiency of industries regulated by the Commission.

This proceeding arises under Section 205 of the Federal Power Act, 16 U.S.C. § 824(d). The policies underlying the

antitrust laws will be a critical part of the Commission's ultimate public interest determination under that statute. Indeed, the "fundamental national economic policy" of competition and economic efficiency expressed in the antitrust laws must be considered by the Commission in its "public interest" review under the Federal Power Act, 16 U.S.C. § 824. See Gulf States Utilities Co. v. FPC, 411 U.S. 747, 758-60 (1973), reh'g denied, 412 U.S. 944 (1973); New York State Electric and Gas Corp. v. FERC, 638 F.2d 388, 399 (2d. Cir. 1980).

Pursuant to Rule 214(d) of the Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), in support of its request to intervene, the Department states:

(1) The Commission has issued an order in this proceeding that, based on a new policy of significant competitive import, rejected an application for market-based prices. This final agency action was reported in the letter dated July 2, 1992 from Donald J. Gelinas, Director for the Division of Applications for the Commission to Robert G. Fitzgibbons, Jr., Counsel for United Illuminating Company. The Department had no reason to intervene prior to learning of the new policy that produced an unwarranted rejection of a just and reasonable market based rate. See 18 C.F.R. § 385.214(d)(1)(i).

(2) The Department's request for rehearing will be filed within the statutory 30-day time period following the final decision. United Illuminating Company has filed its own Request for Rehearing, so our intervention will not disrupt the proceeding. See 18 C.F.R. § 385.214(d)(1)(ii).

(3) The position and interest of the Department will not be represented adequately by any other person likely to be a party to this proceeding. No current party in the proceeding is similarly charged with the responsibility to protect the national interest in competition and economic efficiency. See 18 C.F.R. § 385.214(d)(1)(iii).

(4) Intervention by the Department will neither prejudice nor place any significant burden on any existing party. The only current party, United Illuminating Company, does not oppose the Department's intervention. The Department accepts the record as it now stands. See 18 C.F.R. § 385.214(d)(1)(iv).

(5) The Department's motion conforms to the requirements of 18 C.F.R. § 385.214(b) because the Department's motion states the position taken by the Department, the basis for that position, good cause why the time limit should be waived, and that the Department's participation is in the public interest. See 18 C.F.R. § 385.214(d)(1)(v).

CONCLUSION

For the above-stated reasons, the Department requests that it be granted leave to intervene in the above-captioned proceeding and be treated as a party hereto for all purposes.

Respectfully submitted,

Charles A. James
Acting Assistant Attorney General
Antitrust Division

Janusz A. Ordover
Deputy Assistant Attorney General
Antitrust Division

Mary E. Fitzpatrick
Assistant Chief
Economic Regulatory Section

J. Mark Gidley
Deputy Assistant Attorney General
Antitrust Division

Mark C. Schechter
Chief
Transportation, Energy, and Agriculture Section

Roger W. Fones
Assistant Chief
Transportation, Energy, and Agriculture Section

Jade Alice Eaton
Attorney
Transportation, Energy and Agriculture Section

Theodore R. Bolema
Attorney
Transportation, Energy and Agriculture Section

Room 9114
U.S. Department of Justice
Antitrust Division
555 Fourth Street, N.W.
Washington, D.C. 20001
(202) 307-6316
(202) 307-0909

Dated: July 31, 1992

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a copy of the Petition of the United States Department of Justice to Intervene for the Purpose of Requesting Rehearing on each person listed on the Service List for Docket No. ER92-397-000.

Dated in Washington, D.C. this 31st Day of July, 1992.

Jade Alice Eaton
Attorney
United States Department of Justice
Antitrust Division

555 Fourth Street, N.W.
Room 9114
Washington, D.C. 20001
(202) 307-6316