

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

<b>Niagara Mohawk Power Corporation,</b>	)	<b>Docket No. EL06-1-000</b>
<b>a National Grid Company</b>	)	
<b>v.</b>	)	
	)	
<b>New York State Reliability Council, L.L.C.</b>	)	
	)	
<b>and</b>	)	
	)	
<b>New York Independent System</b>	)	
<b>Operator, Inc.</b>	)	

**MOTION OF NEW YORK INDEPENDENT SYSTEM OPERATOR, INC IN  
OPPOSITION TO REQUEST FOR FAST TRACK PROCESSING**

Pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure,<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO”) submits this motion opposing Niagara Mohawk Power Corporation’s (“NIMO”) request for fast track processing of its September 30, 2005 complaint against the NYISO and the New York State Reliability Council, L.L.C. (“NYSRC”) (“Complaint”). The Complaint does not qualify for fast track processing because it raises complex issues, would require tariff revisions, could have significant effects on other NYISO rules, and because the alleged need for expedited action is the product of NIMO’s own decision to file at the last minute. This motion does not speak to the merits of the Complaint, which the NYISO will address in its answer in accordance with whatever procedural schedule is ultimately adopted by the Commission.

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<sup>1</sup> 18 C.F.R. § 385.212 (2005).

## I. Copies of Correspondence

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## II. Statement of Issue

In compliance with Order No. 663,<sup>2</sup> the NYISO respectfully states that the Complaint is not eligible for fast track processing because the Commission has ruled that expedited treatment is not appropriate for complex disputes that involve proposed changes to jurisdictional tariffs. *See Amoco Energy Trading Corp., et al.*, 89 FERC ¶ 61,165 (1999); *Complaint Procedures*, Order No. 602, FERC Stats. & Regs. ¶ 31,071 at 30,766 (1999). Fast track processing would also leave the NYISO with too little time to address the ramifications of NIMO's proposed changes before they went into effect and would unfairly favor NIMO, which could have filed much earlier.

## III. Argument

The Commission has consistently held that fast track processing is to be used "sparingly" and is not suitable for complaints that raise complex issues, particularly in cases where the

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<sup>2</sup> *Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663, 112 FERC ¶ 61,297 (2005).

requested relief would involve changes to jurisdictional tariffs. In Order No. 602, the Commission stated that:

Fast Track processing will be employed in only limited circumstances because of the extraordinarily compressed time schedule that would place a heavy burden on all parties to the proceeding. The Commission strongly encourages potential complainants to seek Fast Track processing sparingly and only in the most unusual cases that demand such accelerated treatment. A misuse of Fast Track processing could ultimately tax the Commission's limited resources and jeopardize the availability of the Fast Track procedures. Any continuing pattern of misuse by a particular party would also ultimately undermine that party's credibility when future requests for Fast Track processing are requested.<sup>3</sup>

Later, in the *Amoco* case, the Commission refused to grant fast track processing to a complaint that challenged the justness and reasonableness of a natural gas pipeline's tariff provisions governing the allocation of firm delivery point capacity. The Commission agreed:

[W]ith El Paso that it was inappropriate for Amoco and Burlington to file the complaint using the Fast Track process. While the Commission recognizes that Amoco and Burlington viewed the issue as time sensitive in light of the then impending close of the open season, the complex nature of the issues raised by the complaint do not lend themselves to the Fast Track process. Not only are the issues complex, but more importantly, El Paso's existing delivery point capacity allocation method is in conformance with its Commission-approved tariff and there is no claim that El Paso has deviated from those methods. An example of a situation where the Fast Track process may be appropriate is where a complainant asserts a pipeline has violated its own tariff provisions. On the other hand, when a complainant, as here, seeks to change a provision in a pipeline's tariff by in a complaint proceeding by alleging that the provision is unjust, unreasonable, unduly discriminatory or otherwise in violation of Commission regulations or policy, the complaint is likely to raise more complex issues. Because such complex issues are likely to take some time to resolve, complaints seeking changes to a pipeline's tariff should not be filed using the Fast Track process.<sup>4</sup>

Like the *Amoco* complaint, NIMO's complaint does not allege that the NYISO has failed to comply with its tariff; it asks that previously approved tariff provisions be changed because

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<sup>3</sup> Order No. 602 at 30,766.

<sup>4</sup> 89 FERC at 61,498.

they are supposedly unjust and unreasonable. In addition, the issues raised by the Complaint are complex because the re-allocation of capacity costs in New York State raises a host of issues about the fairness of sub-regional cost allocations in an integrated electric system. These factors alone should suffice to disqualify the Complaint from fast track processing.

The Commission should also deny fast track processing in this proceeding for two additional reasons. First, NIMO has asked for expedited treatment so that its requested relief can be in place by December 1, 2005. Even if the Commission were to issue an order granting the complaint by November 1, the NYISO would have just a month to address the order's ramifications. That would not be enough time for the NYISO to determine whether additional tariff revisions were necessary in response to the required changes, let alone to develop and file them. Examples of potentially affected areas include: (i) rules governing Installed Capacity ("ICAP") deficiencies, because adopting NIMO's remedy would apparently place New York City and Long Island in a capacity deficiency state, (ii) ICAP demand curves; and (iii) ICAP auction rules generally.

Second, NIMO's claims that it will be injured if relief is not granted by December 1 are not persuasive because NIMO could have filed its Complaint much earlier. None of the NYSRC and NYISO rules about which NIMO complains have changed in recent years. None of NIMO's arguments depend on authority that the Commission obtained under the Energy Policy Act of 2005 so it did not need to wait for the enactment of that statute to file. Even if one assumes that it was reasonable for NIMO to wait until it exhausted all other options, the Complaint itself admits that NIMO's last attempt to persuade other stakeholders to adopt its views was rebuffed

on July 8, 2005.<sup>5</sup> It would be inequitable to grant NIMO fast track processing when it took, at a minimum, nearly three months to prepare its Complaint.

WHEREFORE, for the reasons set forth above, the New York Independent System Operator, Inc., respectfully moves that the Commission deny the Complaint's request for fast track processing.

Respectfully submitted,

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<sup>5</sup> See Complaint at 18.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day electronically served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2005).

Dated at Washington, DC this 8<sup>th</sup> day of October 2005.

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