

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

PPL Energy Plus, LLC)	Docket No. EL06-72-000
)	
v.)	
)	
New York Independent System)	
Operator, Inc.)	

**MOTION OF NEW YORK INDEPENDENT SYSTEM OPERATOR, INC. FOR
ADDITIONAL TIME TO ANSWER COMPLAINT**

Pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) submits this motion seeking an extension of time to answer PPL EnergyPlus, LLC’s (“PPL”) May 15, 2006 complaint against the NYISO (“Complaint”). By granting PPL’s request for a ten day answer and comment period, the Commission effectively accepted PPL’s request for fast-track processing. Under the Commission’s own precedent, however, the Complaint should not be eligible for fast track processing because it raises complex issues, because PPL has known about the issues that are the subject of its Complaint since at least February, 2006, and because PPL itself seems to believe that it can be made whole regardless of when the Commission acts. 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.

¹ 18 C.F.R. § 385.212 (2005).

I. Copies of Correspondence

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II. Motion for Additional Time to Answer

The Commission has consistently held that fast track processing is to be used “sparingly” and is not suitable for complaints that raise complex issues. In Order No. 602,² which established the current complaint procedures, 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.³

Later, in *Amoco Energy Trading Corp., et al.*,⁴ the Commission refused to grant fast track processing to a complaint that challenged the justness and reasonableness of a natural gas

² *Complaint Procedures*, Order No. 602, 64 Fed. Reg. 17087 (April 8, 1999), 1996-2000 FERC Stats. & Regs., Regulations Preambles ¶ 31,071 (1999), *order on reh’g and clarification*, Order No. 602-A, FERC Stats. & Regs. 1996 - 2000 ¶ 31,076, *order on reh’g*, Order No. 602-B, 88 FERC ¶ 61,294 (1999).

³ Order No. 602 at 30,766.

⁴ 89 FERC ¶ 61,165 (1999).

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.⁵

PPL's Complaint does not satisfy the Commission's requirements for fast track processing. First, the Complaint raises complex legal and policy issues that the NYISO, and other interested parties, should be afforded a reasonable opportunity to address. At the heart of the Complaint are questions involving the applicability and enforceability of non-tariff documents. For example, in support of its argument, PPL relies in part upon statements contained in an informal newsletter that the NYISO publishes for its market participants.⁶ The question of how much weight can be given to such secondary materials is not suited for resolution under fast track procedures. Moreover, the Complaint takes certain NYISO tariff provisions out of context while mischaracterizing others. For example, the Complaint claims that the tariff's definition of "Bid," which is expressly limited to offers to purchase or sell specific products (*i.e.*, Energy, Demand Reductions, Transmission Congestion Contracts and Ancillary Services),⁷ is relevant to requests for ICAP import rights.

Even beyond the complexities presented both by the issues raised in the Complaint and the manner in which the Complaint presents them, there is a further reason why fast track processing is inappropriate: PPL has engaged in a course of conduct that does not evidence the

⁵ 89 FERC at 61,498.

⁶ See Complaint at 16 and Attachment E.

⁷ See NYISO Market Administration and Control Area Services Tariff at § 2.13.

need for expedited processing of the Complaint, and actually suggests that it believes fast track processing is unnecessary.

First, PPL's claim relates to an auction that was held in early February.⁸ PPL discussed the issue with the NYISO in February and March 2006, as shown in its Complaint,⁹ as well as in Attachments B and C to the Complaint. Subsequently, PPL and the NYISO availed themselves of the Commission's dispute resolution service in an effort to resolve the matter informally. After that process did not produce the result that PPL desired, it still waited 3-4 weeks before filing this Complaint. PPL should not now be permitted to rush the Complaint through the Commission, and deprive the NYISO and other interested parties of adequate time to respond in the process.

Second, PPL itself appears to believe that the Commission could make it whole – although the NYISO does not concede or believe that PPL should be granted the relief it seeks – at essentially any point during the summer capability period. In particular, footnote 1 of the Complaint states that “[r]elief that reallocates the rights to PPL EnergyPlus could be afforded at the beginning of any month during the summer capability period, but the full relief requested that grants 220 MW of external rights to PPL EnergyPlus for the entire summer would have required a resolution prior to May 1, 2006. PPL may be held financially harmless for any period before a Commission order reallocates the External Rights award.”¹⁰ While the NYISO does not agree

⁸ See Complaint at n.5 (indicating that PPL first raised the issue on February 22, 2006). Indeed, it had raised general questions about the process about which it now complains in this proceeding even prior to February.

⁹ See *id.* at 4-5 (describing the timeline of events).

¹⁰ *Id.* at n.1.

with the merits of PPL's Complaint (and the NYISO will respond to the merits at the appropriate time), it notes that the Complaint itself cuts against PPL's request for fast track processing.

The NYISO therefore respectfully requests that the Commission grant it and other interested parties an extension of time to respond to PPL's Complaint. The notice issued by the Commission provided only 10 days to respond to the Complaint, *i.e.*, by May 25, 2006. As discussed above, the Complaint does not warrant fast track processing. Therefore, the NYISO submits that it should be provided until June 5, 2006 to respond to the Complaint. A June 5 answer date would be consistent with the Commission's Rules of Practice and Procedure governing answers to complaints which makes twenty days the standard response time.¹¹

III. Conclusion

WHEREFORE, for the reasons set forth above, the New York Independent System Operator, Inc., respectfully moves that the Commission grant additional time to respond to the Complaint filed by PPL EnergyPlus, LLC in this proceeding.

Respectfully submitted,

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May 19, 2006

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¹¹ See 18 C.F.R. § 385.206(f). The NYISO should be given the additional time for the reasons stated herein even if the Commission finds that the Complaint is eligible for fast-track processing.

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 19th day of May 2006.

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