

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

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| Seneca Power Partners, L.P. |) | |
| |) | Docket No. EL12-6-000 |
| |) | |
| v. |) | |
| |) | |
| New York Independent System Operator, Inc. |) | |
| |) | |

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

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully submits this Opposition to the request for Fast Track processing included in the *Complaint of Seneca Power Partners Requesting Fast-Track Processing* (“Complaint”) that was submitted in this proceeding on October 27, 2011. This Opposition addresses only the Complainant’s request for Fast Track processing. It explains why the Federal Energy Regulatory Commission (“Commission”):

(a) should allow the standard thirty day period² for responding to the Complaint; and (b) should take no action until it considers the NYISO’s response. As explained below, the NYISO is prepared to submit an answer to the Complaint by November 28, 2011 consistent with the Commission’s regulations.

¹ 18 C.F.R. § 385.213 (2011).

² See 18 C.F.R. §385.206(f) (“Unless otherwise ordered by the Commission, answers, interventions, and comments to a complaint must be filed within 20 days after the complaint is filed. In cases where the complainant requests privileged treatment for information in its complaint, answers, interventions, and comments are due within 30 days after the complaint is filed.”). Seneca’s complaint contains information for which Seneca requests privileged treatment.

I. COMMUNICATIONS

Communications regarding this proceeding should be addressed to:

Robert E. Fernandez, General Counsel
Raymond Stalter, Director of Regulatory Affairs
Alex M. Schnell
* James Sweeney, Attorney
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Tel: (518) 356-7659
Fax: (518) 356-8825
rfernandez@nyiso.com
rstalter@nyiso.com
aschnell@nyiso.com
jsweeney@nyiso.com

* William F. Young
Hunton & Williams LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037
Tel: (202) 955-1684
Fax: (202) 828-3740
byoung@hunton.com

*Designated for receipt of service.

II. OPPOSITION TO REQUEST FOR FAST TRACK PROCESSING

Seneca Power Partners (“Seneca”) seeks Fast Track processing under Commission Rule 206(b)(11) and (h) based on alleged substantial financial harm that it has suffered and continues to suffer. Seneca fails to indicate how much time, if any, it believes that the NYISO and other stakeholders should be afforded to respond to its assorted claims. The Complaint simply states that immediate action is required in this case because without expedited treatment, Complainant may not have sufficient cash flow to meet payroll and related obligations.

To the extent that Seneca is seeking an abbreviated answer or comment period, that request should be denied. Rule 206(b)(11) places the burden on a complainant seeking Fast Track processing to explain “why the standard processes will not be adequate for expeditiously resolving the complaint.” Complainant must make “a highly credible claim and persuasive showing that standard processes will not be capable of resolving the complaint promptly enough

to provide meaningful relief.”³ Fast track processing is to be employed only under such limited circumstances because “of the extraordinarily compressed time schedule that would place a heavy burden on all parties to the proceeding” and the potential for over-taxing the Commission’s limited resources.⁴ The allegations in the Complaint do not satisfy the Commission’s standards.

Fast Track processing is not suited for “complex issues” that have remained open for extended periods of time.⁵ Seneca served the Commission and the NYISO with a substantive Complaint of approximately 160 pages, including many confidential exhibits covering multiple years of interactions between Seneca, the NYISO and Potomac Economics, the NYISO’s Market Monitoring Unit (“MMU”). The 160 page Complaint consists of numerous facts, allegations and arguments that the NYISO must carefully review in order to respond to and/or refute. The Complaint and the attached exhibits raise complex issues related to the development of appropriate reference levels, including the development of reference levels for non-price operating parameters (minimum run time). The Complaint also raises broader cost recovery issues that extend beyond Seneca’s request to revise or maintain specific components of the Batavia generator’s reference levels.

The Complaint contains new information that the NYISO has not had the opportunity to review or consider. A key example is Exhibit H to the Complaint, which contains a brand new economic evaluation of the Batavia power plant that was performed by GE Energy (“GE Study”). The GE Study was completed on October 12, 2011 and first provided to the NYISO on

³ See Commission “Fast Track Procedures”, June 28, 2010, available at <<http://www.ferc.gov/legal/complaints/form-comp/fast-track.asp#skipnav>>.

⁴ *Complaint Procedures*, Order No. 602, FERC Stats. & Regs. ¶ 31,071 at 30,766 (1999).

⁵ *Texas Gas Service Company, et al.*, 133 F.E.R.C. ¶ 61,079 at PP 39 - 40 (2010).

October 18, 2011. The NYISO must be afforded sufficient time to review the GE Study before it can be expected to respond to an allegation in a complaint based on the study.⁶

Finally, while Seneca has made statements suggesting that Fast Track processing would be beneficial to addressing its cash flow concerns, Seneca has not submitted any evidence demonstrating that it will suffer significant financial harm if the Complaint is processed consistent with the standard schedule that is set forth in Rule 206(f) of the Commission's Rules of Practice and Procedure.⁷ Should the Commission ultimately determine that Seneca is eligible for relief because the NYISO incorrectly developed the reference levels for the Batavia generator, the rate of interest set by the Commission will be applied to any unpaid amounts if/when the NYISO's application of mitigation is corrected in conformance with the Commission's instructions.

It would be unreasonable to expect the NYISO to address the numerous complex issues raised in the Complaint through Fast Track processing. The Commission should proceed with its standard complaint and answer process pursuant to Rule 206 of the Commission's Rules of Practice and Procedure. The Complaint in this case was filed on October 27, 2011. Consistent with Rule 206(f) of the Commission's Rules of Practice and Procedure, answers are due within 30 days because there is a substantial quantity of privileged information included with the Complaint. The NYISO respectfully requests that it be permitted to answer the Complaint on Monday November 28, 2011, consistent with the timeline established in the Commission's regulations for the NYISO's response.

⁶ In the ordinary course of reference level development, the NYISO and the MMU would ask questions of Seneca and GE regarding the new study before the study is relied on as the basis for developing revised reference levels for a generator.

⁷ 18 C.F.R. § 385.206 (2011).

III. CONCLUSION

For the reasons set forth above the NYISO respectfully requests that the Commission utilize the standard thirty day answer and comment period, resulting in a November 28, 2011 due date for the submission of answers, interventions and comments in this proceeding.

Respectfully submitted,

/s/ Alex M. Schnell
Alex M. Schnell
James Sweeney
New York Independent System Operator, Inc.

November 1, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day 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.

Dated at Rensselaer, NY this 1st day of November, 2011.

/s/ Joy Zimmerlin

Joy Zimmerlin
New York Independent System Operator, Inc
10 Krey Blvd.
Rensselaer, NY 12114
(518) 356-6207