United States of America

Before the

Department of Energy

Interstate Electric Transmission System

Electric Reliability Issues

Notice of Inquiry (NOI)

Comments of Niagara Mohawk Power Corporation

General Comments[1]

Niagara Mohawk Power Corporation ("Niagara Mohawk") believes that the electric utility industries' current efforts to build upon its' history of successful self-regulation are sufficient for the purpose of protecting the public's interest in the reliable operation of the electricity delivery system. The electric utility industry's self-regulation effort is premised upon the introduction of mandatory compliance and enforcement mechanisms through the Northeast Reliability Council ("NERC"), the ten regional councils and the Federal Energy Regulatory Commission ("FERC") approved New York State Reliability Council ("NYSRC"). In the event the Department of Energy ("DOE") continues with its plan to develop its own national reliability rules, it should first undertake to narrow the scope of its effort by limiting its efforts to those elements that solely impact transmission system security.

Niagara Mohawk believes that an overly broad initiative by the DOE would create a substantial risk of being drawn into a discussion of rules that will tread on those aspects of delivery system infrastructure design and operations that are intended to be addressed by, and should result from, the emerging market place.

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1 As there are numerous acronyms used in these comments, a glossary of references has been included at the end of these comments.

Furthermore, the DOE's effort should recognize that numerous, overlapping entities already occupy the field of transmission reliability. The NYSRC is in existence and running effectively, while the NERC is in the process of transforming itself in to a self-regulating reliability organization ("SRRO"). An element of this movement to mandatory reliability compliance on a national scale is the development of a Reliability Compliance Enforcement Program. It is strongly suggested that the DOE first review the elements of the NERC and the Reliability Council's efforts in their transformations. Niagara Mohawk encourages the DOE to examine also the industry-wide effort to establish sanctions to enforce reliability criteria in lieu of initiating its proposed separate effort. Niagara Mohawk believes the DOE should encourage completion of these industry-based initiatives. At a minimum, DOE should take full advantage of the work already completed by the industry in the area of self-regulation.

While reliability is often defined (as NERC defines it) as a combination of adequacy and security, Niagara Mohawk submits that separation of adequacy into the components of generation adequacy and transmission adequacy has not been considered in the questions posed by the NOI. It should be. The rulemaking should be limited solely to those rules necessary to reliably perform the electric transmission delivery function. It is suggested that the DOE carefully avoid any broader objective that might employ use of the command and control approaches of the past.

In summary Niagara Mohawk believes that the DOE should not initiate proposed rulemaking at this time. The new industry-based approaches should be encouraged to evolve in response to the changing market structures.

Specific Responses to the DOE's Questions

Question 1. *Is the existing arrangement of voluntary compliance with industry reliability rules sufficient to ensure reliability of the bulk power transmission system? If no, why not, and has reliability been jeopardized by violation of the existing bulk power reliability standards?*

To Niagara Mohawk's knowledge, reliability has not been jeopardized. The existing voluntary compliance approach has been recognized as insufficient by the industry. As a result, the industry is steadily moving toward mandatory compliance with reliability standards with a national scope. For example, Niagara Mohawk, as a member of the New York Independent System Operator ("NYISO") and the Northeast Power Coordinating Council (NPCC), is obligated to comply with state reliability standards set forth in the rules of the New York State Reliability Council ("NYSRC"). These rules are designed to be compatible with reliability standards of the regional reliability council (the Northeast Power Coordinating Council – "NPCC"), and the North American Electric Reliability Council ("NERC"), while incorporating additional rules particular to New York State. Moreover, NPCC's *Membership Agreement* was amended recently to establish a mechanism for enforcing compliance with reliability criteria. The regional reliability councils and NERC are developing mechanisms that will obligate all regional reliability councils to have in place sanctions-based reliability compliance and enforcement programs.

Question 2. *What can FERC do under existing authorities to address reliability concerns?*

The FERC has indicated that it believes it does not have authority to establish reliability standards. For example, in testimony before the Senate Energy and Natural Resources Committee on March 20, 1997, the then-Chairman of the FERC stated, "There is no clear Federal authority for establishing reliability standards for the electric utility industry." More recently, the FERC's current Chairman stated in testimony before the House Energy and Power Subcommittee on October 5, 1999 that:

> Today, industry participants increasingly recognize that cooperative efforts among transmission-owning utilities may not be sufficient in a competitive environment, and that a mandatory system for ensuring the reliability of the grid is needed. This recognition has caused the industry to begin seeking the Commission's involvement on reliability issues, even though the Commission has not regulated system reliability historically and it has no

> express authority to do so. For example, while the Commission has authority to address discrimination in jurisdictional transmission services, it has no explicit statutory role in setting or reviewing particular reliability standards or in ensuring the security of the electrical system or the adequacy of supply. That was left largely to the industry and the States.

Nevertheless, in Western Systems Coordinating Council, 87 FERC ¶ 61,060 (1999), the FERC ruled regarding a reliability system that requires participants to adhere to reliability criteria and contains sanctions for failure to comply with those criteria. The Western Systems case involved a regional council's reliability management system under which the regional council entered into contracts with transmission providers and generators obligating them to adhere to selected reliability standards. The FERC agreed to play a backstop role when disputes could not be resolved through alternative dispute resolution procedures. This type of backstop role fits naturally with the reliability compliance and enforcement programs the regional reliability councils and NERC are developing. FERC should be encouraged to continue to play this role.

Question 3. *If FERC has the authority to establish and enforce reliability standards, may FERC delegate such authority to a self-regulating reliability organization? Should it do so?*

Yes, if FERC is given authority to establish reliability standards, there are two reasons why FERC should delegate this authority to industry-based self-regulatory reliability organizations (SRRO). First, a FERC-mandated reliability standard would be applicable only to jurisdictional entities in the United States, even though reliability is internationally interdependent. Industry-based SRROs can and have developed reliability criteria that are applicable across international boundaries. Second, reliability standards have different local requirements across North America as a result of local and regional circumstances. Specialized expertise is required to assess the reliability needs of each region and develop reliability criteria that fit those needs. The industry has this expertise and has in

fact used it to develop reliability criteria that are consistent with and representative of regional, national and international circumstances.

Question 4. *Are there elements in Comprehensive Electricity Competition Act (CECA), or other electric reliability legislative language, which can, with or without modification, be used in a rulemaking?*

Niagara Mohawk believes there are adequate self-imposed rules developing to govern its conduct as a transmission provider so as to assure delivery system reliability. For instance, NERC and the other regional reliability councils are already developing and implementing reliability compliance and enforcement programs in which the regional reliability councils will establish a sanctions-based means of enforcing compliance with reliability standards. NERC will provide oversight, coordination and assessment of the effectiveness of these programs. They are doing so to meet the essential reliability assurance elements contemplated in the proposed reliability legislation.

NERC is also moving forward with its transition into a formal SRRO – NAERO (North American Electric Reliability Organization). At its October 12-13, 2000 meeting, the NERC Board approved its transition plan, in advance of federal legislation, because the Board believed that it could not wait for legislation to begin to make the changes needed to maintain the reliability of the transmission system. The Board approved the formation of three new Board-level task groups – Governance, Funding, and Compliance – to develop specific recommendations for consideration at the February 2001 Board meeting as outlined below:

- Governance - to recommend the details of how governance could be turned over to NERC's Independent Trustees with a stakeholders committee available to provide advice and recommendations.
- Funding - to consider a new funding mechanism for NERC that would incorporate the concept of user fees.

- Compliance - to recommend a contract-based model in which Regional Councils enforce compliance with selected NERC and regional standards, including the imposition of monetary penalties and other sanctions. NERC would have responsibility for oversight, coordination, and assessment of the effectiveness of the Regional programs.

The effectiveness of the programs being developed can be strengthened by FERC taking on the backstop role for the NYSRC, NERC and regional council rules as they exist and evolve.

Additionally it is noteworthy that Niagara Mohawk's retail tariff PSC No. 207-Electricity ("tariff"), approved by the Public Service Commission of the State of New York ("PSC"), already specifies that it perform its utility functions in compliance with all applicable reliability rules by specifying in the tariff (and its FERC jurisdictional Transmission Services Agreements) the definition of "Good Utility Practice" as:

> *"Good Utility Practice" - shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region and consistently adhered to by the Company. Good Utility Practice shall include conformance to the Policies, criteria, practices, guidelines and requirements of NERC, NPCC and NYPP or their successor organizations.*

Question 5. *What should the relationship be between Regional Transmission Organizations, as advanced in FERC Order No. 2000, 65 FR 809 (January 6, 2000), FERC Stats. & Regs., and an Electric Reliability Organization as proposed in CECA?*

The relationship between a Regional Transmission Organization (RTO) and an SRRO should be much as the FERC outlined in Order No. 2000, 65 Fed. Reg. at 875, i.e. the SRRO should utilize open and inclusive procedures to develop reliability criteria that implement broad-based, industry-wide standards to support the reliability requirements of the region in which the RTO is located. The RTO should then operate in accordance with these criteria. The SRRO should then

assess whether the criteria are being followed and enforce compliance as necessary.

In addition, an SRRO can provide support for many of the FERC-prescribed RTO characteristics and functions. For example, assuming the New York Independent System Operator (NYISO) and ISO-New England (ISO-NE) file to form respective RTOs, their membership and participation in NPCC helps to satisfy three of the four FERC RTO characteristics for the RTO functions. The characteristics supported by participation in NPCC are: scope and regional configuration (RTO Characteristic No. 2); Operational Authority (Characteristic No. 3); and Short-Term Reliability (Characteristic No. 4).

The SRRO can also support RTO functions, such as inter-regional coordination (RTO Function No. 8), planning and expansion (RTO Function No. 7), congestion management and parallel path flow (RTO Function Nos. 2 and 3). Through NPCC, New York and New England participate in various reliability related activities that involve other regional reliability areas, neighboring regions and NERC. In addition, NPCC has historically played a major role in coordinating transmission system additions within northeastern North America. This includes involvement in relieving transmission system congestion and addressing parallel path flows. SRROs should continue to provide this support.

Question 6. *How should the responsibilities and roles of FERC and the States be addressed in a rulemaking?*

The authority of a State to take action to ensure the safety, adequacy and reliability of electric service within that State must not be preempted, as long as such action is not inconsistent with broad-based, industry-wide standards. The responsibilities and associated authorities of the States focus on the adequacy and siting of facilities necessary to ensure reliability and the local utilization of facilities. The consensus legislative language accommodates more stringent regional and sub-regional implementation of broad-based industry-wide standards.

Question 7. *Recognizing the international nature of the interconnected transmission grid, how could implementation of mandatory reliability standards be coordinated with Canada and Mexico?*

Reliability has an international scope. Interconnections between the Northeastern United States and Eastern Canada make it necessary to coordinate reliability aspects of the Canadian portion of the interconnected transmission system with the United States system. Any proposal to establish a comprehensive SRRO structure must ensure that this international reliability interdependency is considered. Reliability standards imposed by regulatory authority in the United States will not be applicable to the transmission providers in Canada. Enforcement of these standards must take place through industry-based organizations with the applicable regulatory authorities in other nations or at a minimum with voluntary cooperation by foreign utilities.

GLOSSARY OF TERMS

CECA	proposed Federal legislation entitled Comprehensive Electricity Competition Act
DOE	United States Department of Energy
FERC	Federal Energy Regulatory Commission
ISO-NE	Independent System Operator – New England
NAERO	North American Electric Reliability Organization
NERC	North American Electric Reliability Council
Niagara Mohawk	Niagara Mohawk Power Corporation
NOI	Notice of Inquiry
NPCC	Northeast Power Coordinating Council
NYISO	New York Independent System Operator
NYSRC	New York State Reliability Council
PSC	Public Service Commission of the State of New York
RCEP	reliability compliance and enforcement programs
RTO	Regional Transmission Organization
SRRO	self-regulating reliability organization