



partner, appointee, or representative of another entity, including certain financial institutions, underwriting organizations, equipment producers or suppliers, and leading purchasers of electric energy from the public utility.<sup>2</sup> The relevant purchasers of electric energy are defined as: “any company, firm, or organization which during any one of the three calendar years immediately preceding the filing date was one of the 20 purchasers of electric energy which purchased (for purposes other than for resale) one of the 20 largest annual amounts of electric energy sold by such public utility (or by any public utility which is part of the same holding company system) during any one of such three calendar years.”<sup>3</sup> The public utility is required to publish a list of these purchasers, as set forth in 18 C.F.R. § 46.3 and implemented through FERC Form 566, “for purposes of any filing” that the director or officer of the public utility may have to make to report its association with such purchaser.<sup>4</sup> As described by the Commission, the purpose of publishing this list is to provide “officers and directors with the information necessary to determine whether any of the entities with whom they are related are any of the largest 20 purchasers of the public utility with which they are affiliated.”<sup>5</sup>

The Commission should exclude the NYISO from having to submit FERC Form 566. The NYISO is the independent system operator responsible for providing open-access transmission service, maintaining reliability, conducting bulk electric system planning, and administering competitive wholesale markets for electricity, capacity, and ancillary services in

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<sup>2</sup> 16 U.S.C. §§ 825d(c)(1) & (2).

<sup>3</sup> 16 U.S.C. § 825d(c)(2)(D).

<sup>4</sup> 16 U.S.C. § 825d(c)(2) (“On or before January 31 of each calendar year, each public utility shall publish a list, pursuant to rules prescribed by the Commission, of the purchasers to which subparagraph (D) applies, *for purposes of any filing under paragraph (1) of such calendar year*”) (emphasis added).

<sup>5</sup> February 2014 Comment Request at p 5.

New York State. Directors and officers of the NYISO are required to be independent from all NYISO market participants and their affiliates under the conflict of interest requirements set forth in Attachment F of the NYISO Open Access Transmission Tariff accepted by the Commission. Under the NYISO's independence requirements, its directors and officers are explicitly prohibited from being associated with (*i.e.*, being an officer, director, partner, or employee of), taking secondary employment with, or transacting business with a NYISO market participant or its affiliates, which include all entities making purchases in the NYISO-administered markets.<sup>6</sup> For this reason, NYISO directors and officers cannot simultaneously be employed with a purchaser in the NYISO-administered market, and will not, therefore, be required to file with the Commission to inform it of any simultaneous employment. As the Federal Power Act makes clear, entities must publish this list of purchasers simply “for purposes of any filing” that a director or officer must make to report on its association with the purchaser.<sup>7</sup> Therefore such list is not necessary with regard to NYISO. Moreover, the NYISO already publicly discloses on its website all of its market participants, from which NYISO directors and officers must remain independent.

In addition, compliance with Form 566 poses practical difficulties for the NYISO. ISOs/RTOs' principal focus is on administering Commission-jurisdictional wholesale energy and providing Commission-jurisdictional transmission service. Thus, ISOs/RTOs are focused primarily on sales for resale and generally have much more limited interaction with purchasers of electric energy “for purposes other than for resale.” Further, entities engaged in the purchase of energy both for their own use and for resale, as well as consumers of station power, pose particular difficulties in responding to Form 566. Given that compliance with Form 566 is

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<sup>6</sup> OATT, Attachment F §§ 12.7.1.2 & 12.7.4.

<sup>7</sup> 16 U.S.C. § 825d(c)(2).

redundant with existing provisions related to the demonstration of ISO/RTO independence as described above, there is no reason to require the NYISO to expend the potentially significant time and resources necessary to track their interactions with purchasers “for purposes other than for resale” and to quantify and rank the purchases made by such customers.

For the above-stated reasons, the Commission should exclude the NYISO from having to submit FERC Form 566.

## II. COMMUNICATIONS

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<sup>8</sup> Waiver of the Commission’s regulations (18 C.F.R. § 385.203(b)(3) (2012)) is requested to the extent necessary to permit service on counsel for the NYISO in both Richmond, VA and Washington, DC.

### **III. CONCLUSION**

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully requests that the Commission accept these comments and exclude it from having to submit FERC Form 566.

Respectfully submitted,

*/s/ Ted J. Murphy*

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