

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on July 12, 2012

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman  
Patricia L. Acampora  
Maureen F. Harris  
James L. Larocca  
Gregg C. Sayre

CASE 12-E-0168 - Petition of the New York Independent System  
Operator, Inc. for Authorization to Incur  
Indebtedness for a Term in Excess of Twelve  
Months.

ORDER APPROVING FINANCING  
WITH CONDITIONS

(Issued and Effective July 12, 2012)

BY THE COMMISSION:

INTRODUCTION

In April 2011, we approved the request of the New York Independent System Operator, Inc. (NYISO) to enter into a construction loan/mortgage for up to \$45 million.<sup>1</sup> The NYISO closed on the loan with Berkshire Bank in July 2011. The purpose of the loan was to finance the NYISO's infrastructure plan that is currently in progress and entails the renovation and construction of the NYISO's alternate and primary control center facilities in Guilderland, NY, and East Greenbush, NY, respectively.

In a petition filed on April 11, 2012, the NYISO requested authorization, pursuant to Section 69 of the New York

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<sup>1</sup> Case 10-E-0640, Petition of the New York Independent System Operator, Inc. for Authority to Incur Indebtedness, Order Approving Financing with Conditions (issued April 19, 2011).

Public Service Law (PSL), in order to enter into a new loan for up to \$45 million with KeyBank National Association (KeyBank) and RBS Citizens, N.A. (Citizen's Bank) (Construction Loan). The Construction Loan would be used to pay off and replace the NYISO's existing loan with Berkshire Bank being utilized to construct the power control center facilities. The NYISO explains that the significantly lower cost of borrowing associated with the new Construction Loan justifies refunding and replacing the existing loan.

In this Order, we approve the NYISO's request to enter into the Construction Loan. The Construction Loan is being authorized, with conditions, in order to reduce the costs of the power control center facilities and to ensure the terms are in the public interest.

#### BACKGROUND

The NYISO is an independent not-for-profit corporation that was formally established in December 1999. At that time, the New York Power Pool (NYPP) transferred its responsibilities to the NYISO, in response to the Commission's electric utility competitive restructuring policies, as well as the Federal Energy Regulatory Commission (FERC) mandates to ensure non-discriminatory open-access to the electric transmission grid. The NYISO's primary function is to administer New York's competitive wholesale electricity markets, while maintaining the reliability of the State's transmission system.

The NYISO currently houses its primary power control center (PCC) in Guilderland, NY, and maintains its headquarters and alternate power control center (ACC) in East Greenbush, NY. Given the age of its PCC, which was built and designed over 40 years ago, and the requirements of the North American Electric

Reliability Corporation (NERC),<sup>2</sup> the NYISO's infrastructure plan includes converting the current PCC into its ACC, and constructing a new PCC at the site of its current ACC.

#### THE PETITION

The NYISO's April 11, 2012 petition seeks to enter into a 19-year unsecured loan with KeyBank and Citizen's Bank in an amount up to \$45 million. In addition to being a lender, KeyBank would also serve as the Administrative Agent for the loan. Upon approval of the petition, the NYISO intends to use the proceeds from the Construction Loan to refinance the existing loan it acquired in July 2011. KeyBank and Citizen's Bank would advance an amount necessary to repay all outstanding amounts under the existing loan at the time of closing. The NYISO estimates that as of July 31, 2012, it will have borrowed approximately \$13 million of the authorized \$45 million under the existing loan.

During the first two years of the Construction Loan (construction phase), the NYISO would draw down funds to pay the costs of construction and renovation at its power control center facilities. The payments on the draw downs during the first two years would be interest only. After the two-year construction phase,<sup>3</sup> KeyBank would convert the total amount of the funds drawn down to a 17-year loan. The NYISO would recover the funds needed to pay the principal and interest of the Construction

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<sup>2</sup> The NERC requires that Independent System Operators, such as the NYISO, design fully redundant primary control centers and alternate (back up) control centers to provide duplicative capabilities in the event of a failure. See, NERC EOP-008 - Plans for Loss of Control Center Functionality.

<sup>3</sup> The NYISO infrastructure plan includes a construction phase up to 36 months. Since one year has already elapsed, 24 months is the remaining construction phase for the Construction Loan.

Loan through Rate Schedule 1 of its Open Access Transmission Tariff (OATT) and through Rate Schedule 1 of its Market Administration and Control Area Services Tariff (MST).

During the construction phase, as well as the remaining 17-year duration of the loan, the interest rate would be based on the one-, two- or three- month London InterBank Offered Rate (LIBOR), as selected by the NYISO, plus 225 basis points (2.25%).<sup>4</sup> In comparison, the interest rate on the existing loan is LIBOR plus 3.25%. The NYISO also indicates that it may enter into an interest rate swap arrangement (derivative) to mitigate its interest rate risk.<sup>5</sup>

The following chart and listing provides a summary of the major borrowing terms and conditions for the Construction Loan.

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<sup>4</sup> For example, the three-month LIBOR as of June 22, 2012, was 0.46%.

<sup>5</sup> This arrangement would involve a contract between the NYISO and KeyBank (or a counterparty selected by KeyBank) to exchange interest payments for a set amount of time. The NYISO would pay a fixed amount and the counterparty would pay a floating rate based on a short-term debt index. The execution of the derivative would not create any additional debt or exchange any principal.

Term	Description	Detail
Amount	Up to \$45,000,000	
Lenders	KeyBank and Citizens Bank	Up to: \$30,000,000 - KeyBank \$15,000,000 - Citizens Bank
Collateral	None; Unsecured	
Maturity	19 years	
Facility		First 2 years - Construction Phase; Conversion to permanent loan following construction phase for a period of 17 years from the date of conversion
Interest Rate	LIBOR plus 225 basis points (2.25%)	NYISO has option of a one-, two- or three-month LIBOR at time of each advance
Upfront/ Commitment Fee	\$225,000	Fifty basis points (0.50%) * \$45 million loan payable at closing; fee to be split pro-rata between KeyBank and Citizens Bank
Administration Fee	\$500 per Advance	
Prepayment Penalty	One percent of amount prepaid	Applicable only through fifth year of loan

The NYISO states that the Construction Loan is consistent with the proper purposes of the NYISO and is in the public interest. The Construction Loan, according to the NYISO, would be beneficial because it carries a lower interest rate, is unsecured, and KeyBank committed to provide an interest rate protection product (e.g. a fixed interest rate swap agreement). Moreover, the NYISO asserts that the terms of the Construction Loan are reasonable, competitive, and offer additional advantages over the existing loan being used to finance construction of the power control center facilities.

NOTICE

On May 2, 2012, in conformance with the State Administrative Procedure Act (SAPA), notice of the rulemaking issues under consideration here was published in the State Register [SAPA 12-E-0168SP1]. The 45-day period for submitting comments in response to the notice expired on June 16, 2012. No comments were received within the SAPA comment period, or thereafter.

DISCUSSION

The NYISO is an electric corporation under the PSL. As such, it must obtain Commission approval under PSL §69 to incur indebtedness which has a term of more than one year. Since the NYISO's establishment in 1999, the Commission has authorized eleven NYISO requests to incur indebtedness with a term exceeding a year, including five that are currently active.<sup>6</sup>

The proposed terms and conditions for the Construction Loan would allow the NYISO to amortize expenditures over a 17-year term. The NYISO provided cash flow analyses of its debt service payments over the life of the Construction Loan and over the remaining life of the existing loan. The analyses show that based solely on the 100 basis point reduction in the variable interest

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<sup>6</sup> The active credit facilities and respective current outstanding balances authorized by the Commission include: (i) \$19.3 million as part of a Mortgage and Renovations Loan authorized in Case 05-E-0270; (ii) \$20.7 million as part of the 2007-2010 Budget Facility authorized in Case 06-E-1245; (iii) \$29.7 million as part of the Revolving Line of Credit authorized in Case 10-E-0160; (iv) a zero balance on the 2011-2013 Budget Facility, also authorized in Case 10-E-0160; and, (v) \$6.5 million as part of the existing Construction Loan authorized in Case 10-E-0640.

rate, the NYISO would save \$4.497 million<sup>7</sup> over the life of the Construction Loan. The net present value of the savings is \$2.647 million.<sup>8</sup> Further, the savings achieved by the NYISO would offset the fees from both the existing loan (\$400,000) and the refinanced Construction Loan (\$225,000) within three years. Therefore, the Construction Loan would lower the NYISO's financing costs, thereby reducing the costs that New York State electricity consumers would otherwise be required to pay.

In addition to lower financing costs, some of the non-quantifiable advantages of the Construction Loan over the existing loan include the following:

1. The Construction Loan is unsecured, therefore there is no lien on NYISO property;
2. KeyBank committed to provide the NYISO with an interest rate protection product (e.g., a fixed interest rate swap arrangement), which the NYISO expects to be a competitive rate;
3. Since the covenants are constructed similar to that of the NYISO's existing unsecured financings, the NYISO's reporting and monitoring for this loan would be facilitated;
4. Since the conditions for each advance (including a \$500 fee) are expected to be less onerous, the Construction Loan would reduce the NYISO's internal administrative costs and streamline its construction process;

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<sup>7</sup> Although the NYISO's petition indicates potential savings of \$4.6 million, a cash flow analysis provided subsequently in response to Department Staff's inquiry accurately reflects savings of \$4.497 million.

<sup>8</sup> The net present value was determined based on a discount rate of 6.35%, the assumed rate at which the NYISO could issue a long-term bond.

5. Since the NYISO already maintains a significant portion of its deposits at KeyBank, the requirement to do so is not incremental to its current operating procedures; and,
6. The requirement to establish and maintain a relationship with Citizens Bank would give the NYISO additional financing and banking opportunities with a large financial institution.

Regarding the potential derivative transaction, such a transaction would be neither a security instrument nor an obligation to pay off a security, and would therefore not require our approval pursuant to PSL §69.<sup>9</sup> The NYISO would recover the costs associated with the derivative through Rate Schedule-1 of its OATT and MST. However, we are concerned with the costs associated with such derivative and therefore require the NYISO to consult with Department Staff in the Office of Accounting and Finance prior to entering into any such derivative instrument to explain the rationale for the transaction. Should the NYISO execute such a derivative transaction, it shall also file a statement that justifies why it entered into any interest rate swap arrangement for a fixed interest rate and why the transaction is in the public interest.

We find that the NYISO's proposed 19-year Construction Loan of up to \$45 million is consistent with the proper purposes of the NYISO and is in the public interest. Furthermore, the Construction Loan does not substantially change the circumstances under which we conducted our previous review under the State Environmental Quality Review Act, and which resulted

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<sup>9</sup> Case 11-G-0347, Petition of National Fuel Gas Distribution Corporation for Authorization to Issue up to \$130,000,000 of Promissory Notes Pursuant to a Three Year Financing Plan for Calendar Years 2012-2014, Order Authorizing Issuance of Securities (issued October 14, 2011).



in a Negative Declaration.<sup>10</sup> The NYISO's request to incur indebtedness of up to \$45 million for the purposes described herein is therefore approved, subject to the conditions below.

The Commission orders:

1. The New York Independent System Operator, Inc.'s petition to incur indebtedness for the purposes stated in its April 11, 2012 petition, and as described above, is approved, subject to the following conditions:

a. The New York Independent System Operator, Inc. shall submit to the Secretary to the Commission at [Secretary@dps.ny.gov](mailto:Secretary@dps.ny.gov) within 120 days of the closing on all or part of the credit facilities authorized by this Order, a verified report that provides all details of actual and expected costs and expenses drawn down on the credit facilities.

b. The New York Independent System Operator, Inc. shall submit to the Secretary to the Commission at [Secretary@dps.ny.gov](mailto:Secretary@dps.ny.gov) an update of the verified report pursuant to Ordering Clause 1(a), every four months.

c. The New York Independent System Operator, Inc. shall submit to the Secretary to the Commission at [Secretary@dps.ny.gov](mailto:Secretary@dps.ny.gov) within four months after the close of the 24-month drawdown period, a verified report that provides the details of all costs and expenses drawn down on the credit facility.

2. The New York Independent System Operator, Inc. shall submit to the Secretary to the Commission at

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<sup>10</sup> Case 10-E-0640, supra, Order Approving Financing with Conditions (issued April 19, 2011), pp. 21-24.

[Secretary@dps.ny.gov](mailto:Secretary@dps.ny.gov) annually a copy of anticipated infrastructure plans for at least the upcoming five-year period.

3. If the New York Independent System Operator, Inc. opts to enter into a derivative transaction, it shall consult with Department Staff in the Office of Accounting and Finance in advance. Should the New York Independent System Operator, Inc. enter into a derivative transaction, it shall submit a justification statement to the Secretary to the Commission at [Secretary@dps.ny.gov](mailto:Secretary@dps.ny.gov). The New York State Independent System Operator, Inc. shall submit the statement within 30 days after the execution of the derivative transaction and the statement shall indicate why the New York Independent System Operator, Inc. entered into the derivative transaction and why the transaction is in the public interest.

4. The Secretary, at her sole discretion, may extend the deadlines set forth in this Order.

5. This proceeding is continued, however, the Secretary will close it following compliance with the directives set forth herein.

By the Commission,

(SIGNED)

JACLYN A. BRILLING  
Secretary