NEW YORK INDEPENDENT SYSTEM OPERATOR
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April 9, 2010

VIA ELECTRONIC MAIL

Hon. Jaclyn A. Brilling, Secretary
Public Service Commission of the State of New York
Three Empire State Plaza, 14th Floor
Albany, New York 12223-1350

Subject: Petition of the New York Independent System Operator, Inc. Pursuant to Section 69 of the New York Public Service Law

Dear Ms. Brilling:

Enclosed for filing is the Petition of the New York Independent System Operator, Inc. for Authority to Incur Indebtedness for a Term in Excess of Twelve Months, together with supporting documents. Should you have any questions, please contact me by phone at (518) 356-6220 or by e-mail at cpatka@nyiso.com.

Very truly yours,

Carl F. Patka
Senior Attorney

cc.

David Drexler, Assistant Counsel
Public Service Commission of the State of New York
Three Empire State Plaza, 18th Floor
Albany, New York 12223-1350

**BEFORE THE**
**NEW YORK STATE PUBLIC SERVICE COMMISSION**

**---------------------------------------------------------x**

| | |
|---|---|
| **In the Matter of the Petition of The New York Independent System Operator, Inc. Under Public Service Law Section 69 for Authority to Incur Indebtedness for a Term in Excess of Twelve Months** | **Case No. 10-E-______** |

**---------------------------------------------------------x**

**PETITION OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**
**FOR AUTHORITY TO INCUR INDEBTEDNESS FOR**
**A TERM IN EXCESS OF TWELVE MONTHS**

**DATED: APRIL 9, 2010**

**BEFORE THE**
**NEW YORK STATE PUBLIC SERVICE COMMISSION**

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**In the Matter of the Petition of The New York Independent System Operator, Inc. Under Public Service Law Section 69 for Authority to Incur Indebtedness for a Term in Excess of Twelve Months**

**Case No. 10-E-______**

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**PETITION OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**
**FOR AUTHORITY TO INCUR INDEBTEDNESS FOR**
**A TERM IN EXCESS OF TWELVE MONTHS**

Pursuant to Section 69 of the New York Public Service Law ("NYPSL") and applicable parts of Title 16 of the New York Code of Rules and Regulations ("NYCRR"), The New York Independent System Operator, Inc. (the "NYISO") submits this Petition to request authorization from the Public Service Commission of the State of New York ("NYPSC" or "Commission") to incur indebtedness for a term in excess of twelve months.

## I. Background

The NYISO is a not-for-profit corporation, tax exempt under section 501(c)(3) of the Internal Revenue Code, that (i) operates and maintains the reliability of the bulk power system, (ii) administers the wholesale electricity markets, and (iii) conducts short-term and long-term planning for the bulk power system, within the New York Control Area. The NYISO is an "electric corporation" under the New York State Public Service Law[1] and, therefore, may not

[1] NYPSL § 2(12-13).

incur indebtedness payable at periods exceeding twelve months without prior authorization from the NYPSC.[2]

The NYPSC has previously authorized eight NYISO requests to incur indebtedness with a term exceeding twelve months:

- The first authorization was by Order issued September 9, 1999, in Case No. 99-E-1176 whereby the Commission authorized a $12,000,000 revolving line of credit ("Revolver") for working capital purposes. On September 7, 2000, the Commission authorized an increase in the Revolver to $50,000,000.

- The second authorization was by Order issued October 20, 1999, also in Case No. 99-E-1176, whereby the Commission authorized a $54,000,000 term loan agreement ("Term Loan") for start-up costs.

- The third authorization was by Order issued October 25, 2001, in Case No. 01-E-1068, whereby the Commission authorized a three-year term note ("3-Year Term Note") with a credit line up to a maximum of $20,000,000 to purchase computer hardware.

- The fourth authorization was by Order issued February 10, 2003, in Case No. 02-E-1565, whereby the Commission authorized a five-year term note ("5-Year Term Note") with a credit line up to a maximum of $59,300,000 to purchase computer equipment and software upgrades.

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[2] NYPSL § 69.

- The fifth authorization was by Order issued March 8, 2004, in Case No. 03-E-1770, whereby the Commission authorized a $100,000,000 revolving line of credit with three separate four-year term loan conversion options ("2004-2006 Budget Facility") to provide funding for strategic initiatives related to the management of the New York power grid for the years 2004, 2005 and 2006.

- The sixth authorization was by Order issued May 10, 2005, in Case No. 05-E-0270, whereby the Commission authorized a total of $25,000,000 in secured financing ("Mortgage and Renovations Loan") to provide funding for the acquisition of certain real property, and for the renovation of the office building thereon.

- The seventh authorization was by Order issued July 21, 2005, in Case No. 05-E-0503, whereby the Commission authorized a $50,000,000 revolving line of credit ("Replacement Revolver") to replace the Revolver, which was to expire in October, 2005.

- The eighth authorization was by Order issued January 19, 2007, in Case No. 06-E-1254, whereby the Commission authorized a $80,000,000 revolving loan facility ("2007-2010 Budget Facility") to provide funding for strategic initiatives related to the management of the New York power grid for the years 2007, 2008, 2009, and 2010.

In addition, on December 10, 2009, the NYISO submitted a petition to the NYPSC requesting authorization to borrow up to $50,000,000 ("Proposed Construction Facility") for renovations and upgrades to the NYISO's power control centers and other facilities. That petition, in Case No. 09-E-0857, is currently pending before the Commission.

By this Petition, the NYISO requests authorization from the NYPSC to enter into a credit facility ("Senior Credit Facility") consisting of (i) an unsecured revolving line of credit ("Revolving Line of Credit") in the maximum principal amount of $50,000,000 to replace the Replacement Revolver, which expires July 21, 2010, and (ii) an unsecured capital and project financings facility ("2011-2013 Budget Facility") in the maximum principal amount of $75,000,000 to replace the 2007-2010 Budget Facility, the draw period for which expires on January 22, 2011. The NYISO does not anticipate making any additional draws under the 2007-2010 Budget Facility after December 31, 2010 and anticipates that the facility will be substantially drawn by that date. Both the Revolving Line of Credit and the 2011-2013 Budget Facility will mature and expire at the same time, on December 31, 2013. As described in more detail below, the NYISO combined the two credit facilities into the proposed Senior Credit Facility to maximize its opportunity to negotiate favorable terms for each of the two, and for ongoing efficiency of administration in the future.

The Revolving Line of Credit, like the Replacement Revolver, will be used as a cash flow management tool, to provide working capital support to balance monthly receipts and remittances, and to provide liquidity to the NYISO-administered markets. The 2011-2013 Budget Facility, like the 2007-2010 Budget Facility, will be used to fund capital investments, software development projects, and other strategic initiatives in support of the NYISO's responsibility for maintaining and enhancing the reliable, safe, and efficient operation of the New York State transmission system and promoting and operating a fair and competitive wholesale market for electricity in New York State.

The terms of the Senior Credit Facility are more fully described below and in the commitment letter, term sheet and riders ("Commitment Letter") attached to and made part of this Petition as Attachment I.

On February 9, 2010, the NYISO Board of Directors unanimously approved the entering into of the Senior Credit Facility. The proposed financing is consistent with the proper purposes of the NYISO, is in the public interest, and is consistent with past practice. For the reasons described herein, since its inception the NYISO has relied on both a revolving line of credit and short term capital loans. The Senior Credit Facility, which combines both of these, is a continuation of this practice. Stakeholders have consistently supported both forms of financing.

## II. The Proposed Senior Credit Facility

The NYISO seeks authorization under Section 69 of the New York Public Service Law to incur indebtedness for a term in excess of twelve months by executing the Senior Credit Facility in the aggregate maximum amount of $125,000,000, consisting of the Revolving Line of Credit in the maximum principal amount of $50,000,000, and the 2011-2013 Budget Facility in the maximum principal amount of $75,000,000. The Administrative Agent and Arranger for the Senior Credit Facility is TD Bank, N.A. ("TD Bank"). TD Bank will also be a lender under the Senior Credit Facility together with a syndicate of banks expected to include KeyBank National Association, JPMorgan Chase Bank, N.A., and HSBC Bank USA, National Association (collectively, the "Lenders").

***Revolving Line of Credit***

The Revolving Line of Credit, like the Replacement Revolver, will be used as a cash flow management tool, to provide liquidity to the NYISO-administered markets. The NYISO's principal need for working capital arises from the following:

(a) To bridge the short time interval between the due date for payments to the NYISO by net buyers of energy, capacity and ancillary services, and the due date for payments by the NYISO to the sellers of those services. If any significant portion of settlement payments to the NYISO from the net buyers is delayed, the NYISO needs available liquidity in order to make timely remittances to net sellers; and

(b) To accommodate temporary shortfalls in operating cash flows caused by seasonal fluctuations in NYISO revenues.

The Replacement Revolver authorized by the Commission on July 21, 2005 served these same needs.

The maximum principal amount of the Revolving Line of Credit is $50,000,000, the same amount as the existing Replacement Revolver. Although the Lenders' commitment will remain open until July 31, 2010, it is important that the NYISO close the Senior Credit Facility before expiry of the Replacement Revolver on July 21, 2010. The NYISO's liquidity may not be adequate to bridge the gap during which neither the Replacement Revolver nor the Revolving Line of Credit is available. Under the terms and conditions of the Revolving Line of Credit the NYISO can borrow, at its option, at an interest rate of either (i) a rate based on one, two, three or six month LIBOR[3] plus a certain margin, or (ii) a "Base Rate" per annum equal to the greater of (a) the Federal Funds Rate plus 50 basis points or (b) the Wall Street Journal Prime Rate. Prior to the closing of the Senior Credit Facility, the NYISO will have the opportunity to elect one of the following two forms of LIBOR-based interest rates:

- LIBOR plus a margin of 125 basis points with a minimum total interest rate of 1.60%; or

- LIBOR plus a margin of 115 basis points with a minimum total interest rate of 1.85%.

The Revolving Line of Credit is unsecured and has a maturity date of December 31, 2013. The term of the Revolving Line of Credit is shorter than past revolving credit facilities due to current market conditions. While the NYISO would prefer a term of four or five years, lenders were unwilling to offer a term of that duration.

***The 2011-2013 Budget Facility***

Like the 2007-2010 Budget Facility, the 2011-2013 Budget Facility will be used to fund capital investments, software development projects, and other strategic initiatives in support of the NYISO's responsibility for maintaining and enhancing the reliable, safe, and efficient operation of the New York State transmission system and promoting and operating a fair and competitive wholesale market for electricity in New York State. Continuing established practice, the various capital investments, projects and initiatives identified by the NYISO will be prioritized in consultation with stakeholders and an aggregate total to be financed will be included in each annual budget. The NYISO has estimated that the average aggregate annual

[3] The London Interbank Offering Rate for the corresponding deposits of U.S. Dollars quoted by major banks in London.

funding required for these selected items will be approximately $20,000,000, which estimate is consistent with past experience[4]. For example, the 2007-2010 Budget Facility allowed up to $20,000,000 for each of the four years during which draws were permitted under that facility. The 2011-2013 Budget Facility also allows an additional $5,000,000 per year to fund the NYISO's obligations in connection with the United States Department of Energy Smart Grid Investment Grant project for the installation of phasor measurement units and capacitor banks across the state over a three-year period. The 2011-2013 Budget Facility will allow the NYISO to amortize such current expenditures over the three-year terms of each term loan, aligning the costs of the equipment and software with their approximate useful lives. Stakeholders have consistently supported such an approach. The NYISO will recover the funds needed to pay the principal and interest of the term loans through Rate Schedule One of its Open Access Transmission Tariff, and Rate Schedule One of its Market Administration and Control Area Services Tariff.

The aggregate maximum principal amount of the 2011-2013 Budget Facility is $75,000,000, reflecting the NYISO's estimated average annual financing requirements for short term capital needs of $25,000,000. Draws under the 2011-2013 Budget Facility will be available beginning January 1, 2011. The period during which draws will be available will expire December 31, 2013. Although the NYISO will continue to make draws under the 2007-2010 Budget Facility until December 31, 2010, the 2011-2013 Budget Facility has been negotiated and combined with the Revolving Line of Credit in order to simplify administration of the loans, and to make negotiation of both loans more favorable and implementation more efficient. The

[4] See, for example, the *Proposed 2010 Project Plan Schedule Milestones* of the NYISO Budget & Priorities Working Group, October 7, 2009.

NYISO believes that bargaining for a $125,000,000 facility assisted it in obtaining more advantageous pricing and terms. The NYISO intends to combine all future revolving lines of credit and short term capital financing facilities.

Draws under the 2007-2010 Budget Facility made during 2007, 2008 and 2009 were converted into three year term loans at the end of each respective calendar year and are currently in repayment. The NYISO anticipates that draws made in 2007 will be repaid by December 31, 2010. Draws made under the 2007-2010 Budget Facility during 2010 will convert to a three year term loan on December 31, 2010.

Under the terms of the 2011-2013 Budget Facility the NYISO can borrow, at its option, at an interest rate of either (i) one, two, three or six month LIBOR plus a margin of 175 basis points, or (ii) a "Base Rate" per annum equal to the greater of (a) the Federal Funds Rate plus 1% or (b) the Wall Street Journal Prime Rate. Interest-only is payable during the calendar year in which a draw is made. At the end of each calendar year during the draw period, the aggregate principal amount of all draws made during that year (plus any interest accrued and unpaid) will be converted to a three-year term loan.

***The Lenders' Commitment***

The commercial terms and conditions set forth in the attached Commitment Letter represent the terms that the NYISO and TD Bank have agreed to and are representative of those available in the market for comparable loans. While the NYISO has not yet executed a definitive loan agreement with the Lenders, the NYISO anticipates closing on the Senior Credit Facility as soon as possible following Commission approval of this Petition. The NYISO expects that the material terms and conditions of the definitive loan agreement will be the same as or consistent with those set forth in the Commitment Letter.

The NYISO is confident that the terms and conditions of the Senior Credit Facility are competitive and well suited to its financing needs as described above. From a cost perspective, the fees associated with the Senior Credit Facility are generally consistent with other lending offers considered by the NYISO, but are higher than under past credit facilities due to generally less favorable market conditions than those that existed for past credit facilities. The interest spread on the Senior Credit Facility is also consistent with other lending offers considered by the NYISO and current market conditions.

***Other Sources of Financing***

The existing credit facilities previously authorized by the Commission are not available to meet the financing needs of the NYISO described above. The Revolver authorized by the Commission in Case No. 99-E-1176 expired in October 2005. The Term Loan authorized in Case No. 99-E-1176 and the 3-Year Term Note authorized in Case No. 01-E-1068 have both been paid off and terminated. The draw period of the 5-Year Term Note authorized in Case No. 02-E-1565 expired in 2004. The draw period of the 2004-2006 Budget Facility authorized in Case No. 03-E-1770 expired in 2007. The draw period for the Mortgage and Renovations Facility authorized in Case No. 05-E-0270 expired in 2006. The Replacement Revolver authorized in Case No. 05-E-0503 expires on July 21, 2010. The 2007-2010 Budget Facility authorized in Case No. 06-E-1245 is intended to finance strategic initiatives budgeted for the years 2007, 2008, 2009, and 2010, and its draw period expires January 22, 2011. Finally, the Proposed Construction Facility, if authorized by the Commission, is solely intended to finance specific renovations and upgrades to the NYISO power control centers and other facilities, and, furthermore, contains terms and conditions not appropriate to meet either short term working capital needs or to finance capital expenditures with an estimated useful life of approximately three years. Therefore, the NYISO requires a new credit facility to meet its needs as described in this Petition.

## III. Required Information

The information required to support a Petition for authorization to incur indebtedness pursuant to Section 69 of the NYPSL is specified in the Commission's regulations, including Part 37 of Title 16 of the NYCRR. In compliance with those regulations, the NYISO states as follows:

***Pursuant to 16 NYCRR, § 37.1***

### (A) Financial Condition of the NYISO

As a not-for-profit corporation, the NYISO has not issued any capital stock or equity interests of any kind and, therefore, has not declared any dividends. The NYISO has not issued any bonds. Pursuant to Commission authorization granted in Case No. 05-E-0270, the NYISO executed a 20-year commercial mortgage on July 8, 2005 to fund the purchase of, and certain improvements to, the NYISO's property at 10 Krey Boulevard. HSBC Bank USA, National Association is the mortgagee. The terms of the Proposed Construction Facility currently pending authorization before the Commission in Case No. 09-E-0857 include a mortgage on the NYISO's property at Carman Road. If the Proposed Construction Facility is authorized and completed as contemplated, the mortgagee will be Berkshire Bank, N.A.

As discussed above, the Commission has previously authorized eight credit facilities for the NYISO pursuant to Section 69 of the NYPSL: (i) the $50,000,000 Revolver authorized in Case No. 99-E-1176, (ii) the $54,000,000 Term Loan authorized in Case No. 99-E-1176, (iii) the $20,000,000 3-Year Term Note authorized in Case No. 01-E-1068, (iv) the $59,300,000 5-Year Term Note authorized in Case No. 02-E-1565, (v) the $100,000,000 2004-2006 Budget Facility authorized in Case No. 03-E-1770, (vi) the $25,000,000 Mortgage and Renovations Loan authorized in Case No. 05-E-0270, (vii) the $50,000,000 Replacement Revolver authorized in Case No. 05-E-0503, and (viii) the $80,000,000 2007-2010 Budget Facility authorized in Case No. 06-E-1245. As discussed above, the $50,000,000 Proposed Construction Facility is pending authorization in Case No. 09-E-0857.

As of today, there are no amounts outstanding under the Replacement Revolver. Borrowings under the 2004-2006 Budget Facility have been converted into term loans under which there is currently $2,584,000 outstanding. The aggregate balance currently outstanding under the 2007-2010 Budget Facility (including borrowings which have been converted into term loans) is $43,377,728. There is currently $20,938,958 outstanding under the Mortgage and Renovations Loan.

The NYISO has no contingent assets or liabilities. Included with this Petition, as Attachment II hereto, is a table containing the amounts of interest accrued at each applicable rate of interest on the outstanding indebtedness of the NYISO for the most recent audited fiscal period ending December 31, 2008. The latest unaudited financial statements through December 31, 2009, are included in Attachment III hereto. Also included, as Attachment IV hereto, is a copy of the Annual Report of the NYISO for the year ended December 31, 2008 which includes detailed financial statements for the calendar years ending December 31, 2007, and December 31, 2008. *See* 16 NYCRR, §§ 37.1(a) and 18.1.

**<u>(B) Book Cost of the NYISO's Utility Property</u>**

The value of the NYISO's property and equipment as of December 31, 2009, was $205,420,831. Such value represents the "original cost" of such property and equipment as defined in 16 NYCRR § 31.1(f). *See* 16 NYCRR, § 37.1(b).

**<u>(C) No Amounts for a Franchise</u>**

The book value reported for the NYISO's property and equipment includes no amount for a franchise, consent, or any other right to operate as a public utility. *See* 16 NYCRR, § 37.1(c).

**<u>(D) No Issuance of Stock</u>**

As a New York State not-for-profit corporation, Type B, the NYISO has not issued any stock or equity interests of any kind and does not propose in this Petition to do so now. *See* 16 NYCRR, § 37.1(d).

**<u>(E) Amount of Proposed Indebtedness</u>**

As described above in Section II of this Petition, the NYISO proposes to execute the Senior Credit Facility in the combined aggregate principal amount of up to $125,000,000. The $50,000,000 Revolving Line of Credit will mature on December 31, 2013. Advances under the 2011-2013 Budget Facility will be available from January 1, 2011 until December 31, 2013. Once converted to term loans, advances made in 2011, 2012 and 2013 will mature on December 31, 2014, 2015 and 2016, respectively. Amounts outstanding under the Revolving Line of Credit will bear interest at a rate, depending on the NYISO's pre-closing election, of either (i) one, two, three or six month LIBOR plus a margin of 125 basis points with a minimum total interest rate of 1.60%, or a "Base Rate" per annum equal to the greater of (a) the Federal Funds Rate plus 50 basis points or (b) the Wall Street Journal Prime Rate (the "Base Rate"), or (ii) one, two, three or six month LIBOR plus a margin of 115 basis points with a minimum total interest rate of 1.85%, or the Base Rate. Amounts outstanding under the 2011-2013 Budget Facility will bear interest at a rate of either (i) one, two, three or six month LIBOR plus a margin of 175 basis points, or (ii) a "Base Rate" per annum equal to the greater of (a) the Federal Funds Rate plus 1% or (b) the Wall Street Journal Prime Rate. The Senior Credit Facility is unsecured. *See* 16 NYCRR, § 37.1(e).

**(F) Purpose of the Senior Credit Facility**

As described above in Section II of this Petition, the NYISO proposes to use the funds from the Senior Credit Facility as follows: The Revolving Line of Credit will be used as a cash flow management tool, to provide working capital support to balance monthly receipts and remittances, and to provide liquidity to the NYISO-administered markets. The 2011-2013 Budget Facility will be used to fund capital investments, software development projects, and other strategic initiatives in support of the NYISO's responsibility for maintaining and enhancing the reliable, safe, and efficient operation of the New York State transmission system and promoting and operating a fair and competitive wholesale market for electricity in New York State. *See* 16 NYCRR, § 37.1(f).

**(G) Other Funds Available For Stated Purpose**

As described above in Section II of this Petition, the existing credit facilities previously authorized by the Commission are not available to meet the financing needs of the NYISO described herein. The Term Loan and 3-Year Term Note have been paid off and terminated, and consequently are not financial resources. The draw period for the 5-Year Term Note expired in 2004 and consequently is not a financial resource. The draw period for the 2004-2006 Budget Facility expired in 2007, and consequently is not a financial resource. The Mortgage and Renovations Loan is an unavailable resource because the draw period expired in 2006. The

2007-2010 Budget Facility is an unavailable resource because it is intended to finance strategic initiatives budgeted for the years 2007, 2008, 2009, and 2010, including computer equipment and software upgrades, and its draw period expires January 22, 2011. Finally, the Replacement Revolver is not an available resource because it expires on July 21, 2010. If authorization is granted by the Commission in Case No. 09-E-0857, the Proposed Construction Facility will be wholly committed to fund renovations and upgrades to the NYISO power control centers and other facilities; consequently, the Proposed Construction Facility will not be an available resource. *See* 16 NYCRR, § 37.1(g).

**(H) Finalized Loan Agreement**

The commercial terms and conditions set forth in the attached Commitment Letter represent the terms that the NYISO and TD Bank have agreed to and are representative of those currently available in the commercial loan market. The NYISO believes the terms of the Senior Credit Facility are reasonable and competitive. While the NYISO has not yet executed a definitive loan agreement with the Lenders, it anticipates closing the Senior Credit Facility on or before July 15, 2010. The NYISO expects that the material terms and conditions of the final loan agreement will be the same as or consistent with those set forth in the Commitment Letter, and requests authorization for the Senior Credit Facility on the basis of those described terms and conditions. *See* 16 NYCRR, § 37.1(h).

**(I) Estimated Costs and Expenses of the Senior Credit Facility**

Because the NYISO has not yet executed a definitive loan agreement with the Lenders, the NYISO does not know what the exact costs and expenses associated with the Senior Credit Facility will be. However, Section 3 of the term sheet forming part of the Commitment Letter attached hereto contains a cap on the expenses incurred by the Lenders that the NYISO would be obliged to reimburse. The NYISO anticipates that any other costs and expenses associated with the Senior Credit Facility will be comparable to those associated with comparable credit facilities offered by other lenders and, therefore, will be commercially reasonable. *See* 16 NYCRR, § 37.1(i).

**(J) Mortgage or Other Security Agreement**

As described above in Section II of this Petition, the Senior Credit Facility is unsecured. There is no mortgage or other security instrument associated with the Senior Credit Facility. *See* 16 NYCRR, § 37.1(j).

**(K) No Planned Merger or Consolidation**

The NYISO has no plans to merge or consolidate with another organization. *See* 16 NYCRR, § 37.1(k).

**(L) Stockholders Consent to Senior Credit Facility**

The NYISO has no stockholders, but has obtained consent of its Board of Directors. *See* 16 NYCRR, § 37.1(l).

**(M) No Other Required Approvals**

Based on the terms and conditions of the Senior Credit Facility, no authorization or approval is required from any other public authority. *See* 16 NYCRR, § 37.1(m). The NYISO is regulated by the Federal Energy Regulatory Commission, but that federal agency need not approve a financing authorized under Section 69 of the NYPSL. *See* 16 NYCRR, § 37.1; *and see* 16 U.S.C. § 824(f).

**(N) No Capitalization of Any Franchise**

The NYISO is not proposing to capitalize any franchise in connection with the Senior Credit Facility. *See* 16 NYCRR, § 37.1(n).

**(O) Affidavit of Principal Accounting Officer**

The affidavit of Mary McGarvey, Vice President and Chief Financial Officer of the NYISO and its principal accounting officer, is attached as Attachment V hereto, attesting that, among other things, the NYISO is in compliance with all applicable accounting standards. *See* 16 NYCRR, § 37.1(o).

## IV. The Proposed Financing Is In the Public Interest

The NYISO respectfully submits that entering into the Senior Credit Facility is in the public interest and further submits that the terms and conditions of the Senior Credit Facility are reasonable and competitive.

## V. Supporting Attachments

In support of this Petition, the NYISO submits the following Attachments:

| Attachment | Description |
|---|---|
| I. | Commitment Letter and Term Sheet |
| II. | Accrued Interest on Outstanding Indebtedness |
| III. | Most Recent Unaudited Financial Statements |
| IV. | Most Recent Annual Report including Most Recent Audited Financial Statements |
| V. | Affidavit: 16 NYCRR Section 37.1(o) |
| VI. | Certificate of Incorporation |

**WHEREFORE**, for the reasons set forth herein, the NYISO respectfully requests that the Commission issue an Order by no later than July 15, 2010 authorizing the NYISO to enter into the Senior Credit Facility and take such other actions in connection therewith as described herein; and grant such other and further relief to which the NYISO may be entitled.

Respectfully submitted,

**NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

By: Robert E. Fernandez

Robert E. Fernandez
General Counsel

10 Krey Boulevard
Rensselaer, New York 12144
(518) 356-7504

Dated: April 9, 2010

# Attachment I.

## Commitment Letter and Term Sheet

**TD Bank**
America's Most Convenient Bank®

TD Bank, N.A.
One Old Loudon Road
Latham, NY 12110
www.tdbank.com

# COMMITMENT LETTER

**February 26, 2010**

Mary K. McGarvey, CPA
Chief Financial Officer
The New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144

Patricia Putman
Controller & Assistant Treasurer
The New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144

Dear Mary and Patricia:

On behalf of TD Bank, N.A., as arranger, as administrative agent and as a lender (the "Bank"), I am pleased to offer The New York Independent System Operator, Inc. ("NYISO") the "Borrower" a commitment for the senior facilities (the "Senior Facilities") that are described on the attached term sheet, subject to the following and the terms and conditions set forth on the attachments to this letter. The Terms and Conditions of the Senior Facilities, the Commitment Letter Rider and the Syndication Rider, each dated of even date herewith are attached and are made part of this letter with the same force and effect as if they were set forth herein (such attachments and this letter collectively constituting the "Commitment Letter"). The Bank is committing to $60,000,000 consisting of $30,000,000 on each of the two Senior Facilities and hereby confirms that the Bank has received commitments from other Lenders for the remaining $65,000,000 of the Senior Facilities.

The Bank may terminate this Commitment Letter, and will have no obligation to extend the Senior Facilities, upon the happening of any of the following events: (a) the Bank does not receive the accepted copy of this commitment on or before March 1, 2010 or the Bank does not receive the Arrangement Fee when due; (b) the Senior Facilities do not for any reason close by July 31, 2010; (c) the Borrower's failure to comply with any material term or condition set forth herein or in this Commitment Letter; (d) any material adverse change occurs with respect to the economic value, business assets, liabilities, results of operations or condition (financial or otherwise) of the Borrower since December 31, 2008, which is, in the Bank's reasonable judgment, materially adverse to the interests of the Lenders in connection with the Senior Facilities ("Material Adverse Change"); (e) any report or statement made to the Bank by the Borrower in connection herewith is or proves to be false or misleading in any material respect as of the date made or furnished; or (f) any of the other Lenders who have committed to the remaining $65,000,000 of the Senior Facilities on the terms and conditions referred to herein, fails to honor their commitment.

The NYISO may terminate this Commitment Letter, and will have no obligations hereunder, if the NYISO fails to receive unconditional authorization to enter into the Senior Facilities from the New York State Public Service Commission on or before July 31, 2010; provided, however, the NYISO's obligations under the provisions hereof relating to Fees and Expenses, Indemnification, Confidentiality, and Governing Law and Jurisdiction, shall survive such termination.

This Commitment Letter replaces in their entirety all of our previously dated commitment letters to NYISO which are hereby rendered null and void.

If you have any questions or comments on the terms of this letter, please do not hesitate to call me.

Very truly yours,
TD Bank, N.A.

By:______________________
*Robert C. Hergrueter*
*Senior Vice President*

The above commitment is hereby accepted:

Borrower:

The New York Independent System Operator, Inc.

By: Mary McGarvey
*Mary K. McGarvey, CPA*
*Chief Financial Officer*

<u>This letter may be executed in any number of counterparts, each of which shall be an original and all of which, when taken together, shall constitute one agreement.</u>

# TD BANK, N.A.
## TERMS AND CONDITIONS OF SENIOR FACILITES
## dated February 26, 2010

## 1. REVOLVING LINE OF CREDIT:

| | | |
|---|---|---|
| (a) | Borrower: | The New York Independent System Operator, Inc. ("NYISO"). |
| (b) | Guarantor(s): | None |
| (c) | Arranger and Administrative Agent: | TD Bank, N.A. |
| (d) | Lenders: | A group of financial institutions reasonably acceptable to Borrower and Arranger |
| (e) | Facility Amount: | $50,000,000.00 outstanding at any one time |
| (f) | Facility: | Revolving Line of Credit |
| (g) | Term: | Maturity on December 31, 2013 |
| (h) | Purpose of Facility: | Proceeds of the loan shall be used to support liquidity needs of NYISO markets and to fund temporary cash flow / timing differences for operating activities. |
| (i) | Collateral: | Unsecured. Negative Pledge on assets which will allow for liens in connection with currently existing or committed credit facilities and other usual and customary permitted encumbrances. |

(j) Interest Rate: Prior to closing, the Borrower will need to choose Option A OR B as described below:

<u>Option A</u>

The Borrower may choose for advances to accrue interest at one of the options provided below subject to an all-in Interest Rate Floor of 1.60%:

- 30, 60, 90 or 180 day LIBOR plus a margin of 125 basis points, or
- The Base Rate, which shall mean a rate per annum equal to the higher of the Federal Funds Rate + ½% or the Wall Street Journal Prime Rate plus 0 basis points.

<u>Option B</u>

The Borrower may choose for advances to accrue interest at one of the options provided below subject to an all-in Interest Rate Floor of 1.85%:

- 30, 60, 90 or 180 day LIBOR plus a margin of 115 basis points, or
- The Base Rate, which shall mean a rate per annum equal to the higher of the Federal Funds Rate + ½% or the Wall Street Journal Prime Rate plus 0 basis points.

(k) Loan Fees:

1. <u>Unused fee</u> of 25 basis points per annum, due quarterly in arrears, on the unused portion of the facility.
2. <u>Up-front fee</u> of 25 basis points payable at closing.

(l) Default Rate of Interest: Upon the occurrence and during any continuance of any Event of Default, the applicable borrowing rates will increase by 200 basis points.

| | | |
|---|---|---|
| (m) | Late Charges: | If any payment due the Bank is more than fifteen (15) days overdue, a late charge of six percent (6%) of the overdue payment shall be assessed. |
| (n) | Payments: | For Base Rate outstandings, interest will be payable monthly. For LIBOR outstandings, interest will be payable at the end of the applicable LIBOR period. Borrower's final payment due on the Maturity Date will be for all principal, accrued interest and all other applicable fees and expenses if any, not yet paid. |
| (o) | Prepayment Privilege: | The loan may be repaid in full or in part at any time without prepayment charge or premium, with the exception of any draws tied to LIBOR ("LIBOR Loan") which may be prepaid subject to a prepayment charge or premium as described below. In the event of (a) the payment of any principal of a LIBOR Loan other than on the last day of the interest period applicable thereto (including as a result of an Event of Default and whether by voluntary prepayment, acceleration or otherwise), (b) the conversion or continuation of a LIBOR Loan other than on the last day of the interest period applicable thereto, or (c) the failure by the Borrower to borrow, prepay, convert or continue any LIBOR Loan on the date specified in any applicable notice (regardless of whether such notice is withdrawn or revoked), then, in any such event, the Borrower shall indemnify each Lender, and hold each Lender harmless from any and all Breakage Costs which such Lender may sustain or incur as a consequence thereof, and shall compensate each Lender, within fifteen (15) Business Days after written demand from such Lender, for Breakage Costs attributable to such event which Breakage Costs shall be deemed to include an amount determined by such lender to be the excess, if any, of (A) the amount of interest that would have accrued on the principal amount of such LIBOR Loan if such event had not occurred at the LIBOR rate applicable to such LIBOR Loan for the period from the date of such event to the last day of the then current interest period therefor (or in the case of a failure to borrow, convert or continue, for the period that would have been the interest period for such LIBOR Loan) over (B) the amount of interest that would accrue on the principal amount of such LIBOR Loan for the same period if the LIBOR rate were set on the date such LIBOR Loan was prepaid or converted or the date on which the Borrower failed to borrow, convert or continue such LIBOR Loan. A certificate as to any additional amount payable under this provision submitted to the Borrower by any Lender (with a copy to the Administrative Agent) shall be conclusive, absent manifest error. |

## 2. CAPITAL AND PROJECT FINANCINGS FACILITY:

| | | |
|---|---|---|
| (a) | Borrower: | The New York Independent System Operator, Inc. ("NYISO") |
| (b) | Guarantor(s): | None |
| (c) | Arranger and Administrative Agent: | TD Bank, N.A. |
| (d) | Lenders: | A group of financial institutions reasonably acceptable to Borrower and Arranger |
| (e) | Facility Amount: | $75,000,000.00 |
| (f) | Facility: | Delayed Draw Term Loan |
| (g) | Term: | The Facility may be drawn upon after January 1, 2011 and until December 31, 2013 ("The Draw Down Period").<br><br>Each individual draw will be made on an interest only basis for the calendar year in which they are made. All draws outstanding at the end of each calendar year shall convert to one or more term loans payable in thirty-six nearly equal monthly installments of principal plus interest so that each such term loan(s) is fully repaid within 3 years of conversion. |
| (h) | Purpose of Loan: | Fund capital investments, software development projects and other strategic initiatives in support of NYISO's responsibility for maintaining and enhancing the reliable, safe, and efficient operation of the New York State transmission system and promoting and operating a fair and competitive wholesale market for electricity in New York State. |
| (i) | Collateral: | Unsecured. Negative Pledge on assets which will allow for liens in credit with currently existing or committed credit facilities and other usual and customary permitted encumbrances. |
| (j) | Interest Rate: | Each advance will accrue interest at a rate chosen by the Borrower from the following interest rate options:<br>• 30, 60, 90 or 180 day LIBOR plus a margin of 175 basis points, or<br>• The Base Rate, which shall mean a rate per annum equal to the higher of the Federal Funds Rate + 1% or the Wall Street Journal Prime Rate plus 0 basis points. |
| (k) | Loan Fees: | 1. <u>Unused fee</u> of 25 basis points per annum, due quarterly in arrears, on the unused portion of the facility from and after January 1, 2011.<br>2. <u>Upfront fee</u> of 30 basis points payable at closing. |
| (l) | Default Rate of Interest: | Upon the occurrence and during any continuance of any Event of Default, the applicable borrowing rates will increase by 200 basis points. |
| (m) | Late Charges: | If any payment due the Lenders is more than fifteen (15) days overdue, a late charge of six percent (6%) of the overdue payment shall be assessed. |

(n) Payments: Base Rate outstandings interest will be payable monthly. For LIBOR outstandings, interest will be payable at the end of the applicable LIBOR period. Principal payments will be due and payable as per section 2 (g) above.

(o) Prepayment Privilege: The loan may be repaid in full or in part at any time without prepayment charge or premium, with the exception of any Libor Loans which may be prepaid subject to a prepayment charge or premium as described below. In the event of (a) the payment of any principal of a LIBOR Loan other than on the last day of the interest period applicable thereto (including as a result of an Event of Default and whether by voluntary prepayment, acceleration or otherwise), (b) the conversion or continuation of a LIBOR Loan other than on the last day of the interest period applicable thereto, or (c) the failure by the Borrower to borrow, prepay, convert or continue any LIBOR Loan on the date specified in any applicable notice (regardless of whether such notice is withdrawn or revoked), then, in any such event, the Borrower shall indemnify each Lender, and hold each Lender harmless from any and all Breakage Costs which such Lender may sustain or incur as a consequence thereof, and shall compensate each Lender, within fifteen (15) Business Days after written demand from such Lender, for Breakage Costs attributable to such event which Breakage Costs shall be deemed to include an amount determined by such lender to be the excess, if any, of (A) the amount of interest that would have accrued on the principal amount of such LIBOR Loan if such event had not occurred at the LIBOR rate applicable to such LIBOR Loan for the period from the date of such event to the last day of the then current interest period therefor (or in the case of a failure to borrow, convert or continue, for the period that would have been the interest period for such LIBOR Loan) over (B) the amount of interest that would accrue on the principal amount of such LIBOR Loan for the same period if the LIBOR rate were set on the date such LIBOR Loan was prepaid or converted or the date on which the Borrower failed to borrow, convert or continue such LIBOR Loan. A certificate as to any additional amount payable under this provision submitted to the Borrower by any Lender (with a copy to the Administrative Agent) shall be conclusive, absent manifest error.

3. Fees and Expenses.

Arrangement Fee: 15 basis points on the maximum available principal amount of all Senior Facilities payable to the Arranger for its own account on the closing date of the Senior Facilities ("Closing Date").

Annual Agency Fee: $15,000 per annum payable to the Arranger for its own account at closing and on each one year anniversary thereafter.

In addition to the above, the Borrower shall pay to the Bank within fifteen (15) Business Days after receipt of a written request any and all reasonable and documented third party costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements, court costs, litigation and other expenses) incurred or paid by the Bank in connection with the Senior Facilities, whether or not the closing of the Senior Facilities occurs. Borrower's aggregate obligation to pay such costs and expenses shall not exceed $50,000, other than with the Borrower's consent, such consent not to be unreasonably withheld. Such costs and expenses shall be in addition to, and shall not be offset against, any commitment or other fee due and owing to the Bank.

4. Financial Reporting.

Borrower(s) shall furnish the following financial reports:

- Annual audited financial statements audited by a CPA firm, acceptable to the Borrower and the Bank, within 120 days of fiscal year end.
- Quarterly management unaudited financial statements, within 45 days of Quarter End.

In addition, Borrower(s) shall furnish to the Bank such other reports as shall be reasonably required as further documented in the loan documents.

5. Covenants:

The loan agreement will include customary affirmative and negative covenants and events of default which are acceptable to the Lenders and the Borrower. Based on the unique financial structure of the Borrower, the Bank is not proposing any financial covenants for ongoing compliance.

6. Market Flex Provision:

The Senior Facilities shall be syndicated by the Arranger on a "best efforts" basis, prior to close. A "Successful Syndication" shall be defined as the Arranger reaching its targeted final combined hold level of $60,000,000 between both Senior Facilities and receiving commitments from other Lenders for the remaining $65,000,000 of the Senior Facilities. As of the date hereof, the Arranger has received commitments for the Senior Facilities aggregating $65,000,000 from other Lenders. If at any time prior to closing of the Senior Facilities any of the Lenders terminates or fails to honor its commitment regarding the Senior Facilities, Arranger shall, on a "best efforts" basis, try to further syndicate such portion of the Senior Facilities. If the Arranger is thereafter unsuccessful in achieving a Successful Syndication, Arranger, in consultation with the Borrower, may change any and all of the terms and conditions and or pricing of the Senior Facilities, if the Arranger, in its discretion, determines that such changes are necessary in order to achieve a Successful Syndication. The Borrower reserves the right not to pursue the transaction if the amended terms and conditions are not acceptable to it, in its sole discretion, in which event it may, upon notice to the Arranger, terminate all obligations it may have with regard to the Senior Facilities and the transaction contemplated hereby.

7. Other Conditions:

a. The Borrower will maintain adequate insurance in order to address its areas of risk and liability that result from its operations.

b. No additional debt (other than in connection with existing or presently committed credit facilities) unless debt service is adequately covered by the Borrower's tariffs.

c. The Borrower will maintain at all times its policy regarding Creditworthiness Requirements for Customers, as such policy is in effect and as it may be amended, modified or waived from time to time, provided that any such amendment, modification or waiver is not, in the Bank's reasonable judgment, materially adverse to the interests of the Lenders in connection with the Senior Facilities.

d. All required approvals are obtained from the necessary regulatory bodies for the borrowing of the Senior Facilities set forth herein, and Bank receives satisfactory evidence of such approvals.

e. Satisfactory evidence that the NYISO's Open Access Transmission Tariff (OATT) and the Market Administration and Control Area Services Tariff (Services Tariff) are in effect without any change, which in the Bank's reasonable judgment, would cause a Material Adverse Change, and that there is no litigation, judgment or regulatory proceeding in existence which has or could cause a Material Adverse Change.

f. Closing must occur by July 31, 2010.

g. Preparation, execution and delivery of mutually acceptable definitive loan documentation customary for Senior Facilities of this amount and structure, including a satisfactory opinion from counsel to the Borrower regarding usual and customary matters and specifically including New York Public Service Commission approval of the borrowing of the Senior Facilities.

h. Under the loan documents, Required Lenders shall be 66-2/3%, and assignments to other financial institutions will be permitted with the written approval of the Administrative Agent and, if no Event of Default has occurred and is continuing, the Borrower. Assignments shall be in minimum amounts of \$5,000,000 and minimum increments of \$1,000,000, provided, however, no such consent of the Borrower or the Administrative Agent shall be required to any assignment by a Lender to an affiliate wholly-owned by such Lender or wholly-owned by a person that wholly owns, either directly or indirectly such Lender. The parties to any assignment (other than the Borrower) will pay to the Administrative Agent an administrative fee of \$3,500. Each Lender may sell participations in its rights and obligations under the loan documents subject to customary restrictions on the participants' voting rights.

i. During the duration of the Senior Facilities, the Borrower will establish and maintain a satisfactory account relationship with the TD Wealth Management Group.

# COMMITMENT LETTER RIDER DATED FEBRUARY 26, 2010

1. Representations. All representations made by the Borrower to the Bank in connection with the Senior Facilities shall be deemed to be material and relied upon by the Bank in issuing this letter.

2. Limitation of Liability. None of the Bank's depositors, incorporators, trustees or directors, nor any of its officers, employees, counsel or agents shall be liable personally hereunder for any action taken with respect to the Borrower's application, this letter or the Senior Facilities. In the event of a dispute with respect to this letter or the Senior Facilities, the Borrower will look solely to the Bank for any performance of any obligations or for any other claim. It is further agreed that only the Borrower, and no shareholder, partner, member; affiliate, officer, director or employee of Borrower, nor any guarantor of the Senior Facilities, may assert any such claim against the Bank.

3. Bank's Counsel. Counsel will be engaged to represent the Bank in connection with the Senior Facilities, and at present we have secured the services of Raymond H. Seitz of Phillips Lytle LLP. The responsibility of the Bank's counsel is limited to representing the interest of the Bank, notwithstanding the fact that the Borrower shall be obligated to pay the Bank's reasonable legal fees and expenses.

4. Limitations on Transfer. This letter and the Senior Facilities shall not be assigned or transferred by the Borrower, nor may there be any sale or transfer of ownership of any interest in the Borrower without the Bank's prior written consent.

5. Additional Terms. This letter does not include all the terms and conditions that will be covered in the Bank's legal documentation for the Senior Facilities, but it does state the essential business terms of the Bank's proposal. These terms have been approved in reliance on the financial statements, and other information provided by Borrower to the Bank, and are therefore conditional upon there being no Material Adverse Change or any litigation, judgment or regulatory proceeding in existence which could cause a Material Adverse Change. In addition, the extension of any financial accommodation by the Bank is subject to the execution of, and compliance with, customary documentation that is satisfactory to the Bank and its counsel, which shall include additional terms and conditions, including without limitation additional reports, as well as the filing by Bank, in its discretion, of customary initial financing statements. When definitive documentation in respect of the Senior Facilities has been executed, the terms and conditions of this letter shall be superseded and replaced by such definitive loan documentation.

6. Supersedes Prior Dealings. This letter supersedes Borrower's application for the Senior Facilities and any other prior dealings between the Borrower and its agents and the Bank in connection with the Senior Facilities.

# SYNDICATION RIDER DATED FEBRUARY 26, 2010

## I) Arrangement of the Syndication

As the Arranger, the Bank intends to arrange the syndication of the Senior Facilities targeting a group of lenders reasonably acceptable to Borrower and the Arranger. Subject to the terms and conditions herein, in the Term Sheet, and the subject loan documents, the Bank is committing $60,000,000.00 of the Senior Facilities. As you know, the Arranger has received commitments from a group of lenders which you have approved for $65,000,000 of the Senior Facilities. In the event any of the other lenders fails to honor their commitment, the Arranger will, on a best efforts basis, along with the Borrower contact other potential lenders to replace such lender or lenders so that an aggregate of $65,000,000 of the Senior Facilities is committed from other lenders.

As compensation for these services, the Arranger shall be paid an arrangement fee of 15 basis points of the Senior Facilities, or $187,500 (the "Arrangement Fee"). (Note: such arrangement fee is also described in the Term Sheet). The Arrangement Fee shall be payable by Borrower, on the Closing Date. In addition, the Arranger may charge additional up-front fees as set forth in the attached Term Sheet which additional up-front fees are due and payable on the Closing Date.

In addition to acting as Arranger, the Bank shall act as Administrative Agent on behalf of the lender group after the closing of the Senior Facilities. Agent fees payable to the Bank in connection with this role are set forth in the attached Term Sheet.

Borrower understands and agrees that it will actively assist the Arranger in order to achieve a Successful Syndication as defined on page 6 of this Commitment Letter in item 6 entitled "Market Flex Provision" (the "Market Flex Provision").

In the event a Successful Syndication cannot be achieved in accordance with the Market Flex Provision, the Borrower reserves the right not to pursue the Senior Facilities if the amended terms and conditions are not acceptable to it, in its sole discretion, in which event, (i) any commitments of the Arranger described herein will no longer be valid, (ii) this letter shall automatically terminate and (iii) Borrower shall have no monetary obligations under this letter other than for the portion of the Arrangement Fee due upon PSC Approval (if not previously paid) and fees and expenses due and payable pursuant to Section IV hereof.

## II) Mandate

By signing this Commitment Letter, Borrower grants the Arranger (a) an exclusive mandate, subject to the terms hereof, to arrange the syndication of the Senior Facilities and to act as Arranger for the Senior Facilities, (b) authorization to begin working on the Senior Facilities contemplated hereunder and materials related to the Senior Facilities, and (c) authorization to approach, in consultation with Borrower, other lenders to participate in the Senior Facilities. The Bank, subject to the conditions described in this Commitment Letter, agrees to act as Arranger for the Senior Facilities. Borrower agrees to work collaboratively with Arranger on all aspects of the syndication of the Senior Facilities, including decisions as to the selection of institutions to be approached, any titles to be offered to such institutions, and when they will be approached, when their commitments will be accepted, which institutions will participate, the allocation of the commitments among the proposed lenders and the amount and distribution of fees among the proposed lenders.

The parties hereto agree that the terms of the Senior Facilities will be set forth in a loan agreement and other documentation in each case containing customary representations, warranties, covenants, conditions, and indemnity provisions acceptable in form and substance to the Arranger and Borrower.

The Borrower expressly acknowledges that the Arranger has been mandated solely by the Borrower, and not by or on behalf of any other person, and that the Borrower's engagement of the Arranger is not intended to confer rights upon any persons not a party hereto (including shareholders, employees or creditors of the Borrower) as against any of the Arranger, affiliates of the Arranger or any of their respective directors, officers, agents and employees.

**III) Conditions Precedent**

The obligations of the Arranger under this Commitment Letter are subject to: (a) the preparation, negotiation, due execution and delivery of mutually acceptable and customary documentation; (b) the absence of any Material Adverse Change; (c) all necessary regulatory approvals, if any, having been obtained; (d) completion of a due diligence of Borrower, satisfactory to the Arranger and (e) Arranger's satisfaction that, prior to and during the syndication of the Senior Facilities, there shall be no competing issues of debt securities or commercial bank or other credit facilities of the Borrower or its subsidiaries being offered, placed or arranged other than the pending $50,000,000 mortgage financing from a group of banks for which Berkshire Bank is the Administrative Agent in connection with upgrades to the Borrower's existing control room and construction of a new main control room and other related improvements on real property owned or leased by the Borrower.

**IV) Fee and Expenses of Borrower**

All expenses of the Borrower relating to the Senior Facilities or this Commitment Letter, including, but not limited to, the fees and expenses of the Borrower's lawyers, accountants and other external consultants, any listing fees, printing expenses, the fees and expenses of any fiscal agent or trustee or clearing agent(s), rating agencies and the Borrower's own out-of-pocket expenses and travel expenses relating to any lender meetings shall be the responsibility of the Borrower.

**V) Indemnification**

Borrower agrees to indemnify and hold harmless the Arranger, each of its respective affiliates and each of their respective officers, directors, employees, advisors, and agents (each, an "Indemnified Party") from and against any and all losses, claims, damages, and liabilities to which any such Indemnified Party may become subject arising out of or in connection with this Commitment Letter, the Senior Facilities, the uses of the proceeds thereof or any related transaction or any claim, litigation, investigation or proceeding relating to any of the foregoing, regardless of whether any Indemnified Party is a party thereto, and to reimburse each Indemnified Party within fifteen (15) Business Days from receipt of a written request for any reasonable legal or other expenses incurred in connection with investigating or defending any of the foregoing, provided that the foregoing indemnity will not, as to any Indemnified Party, apply to losses, claims, damages, liabilities or related expenses to the extent they are found by a final, non-appealable judgment of a court to arise from the willful misconduct or gross negligence of such Indemnified Party. Neither Borrower nor any Indemnified Party shall be liable for any damages arising from the use by others of the Information (as defined below) or other materials obtained through electronic, telecommunications or other information transmission systems for any special, indirect, exemplary, consequential or punitive damages in connection with activities related to the Senior Facilities.

The Borrower agrees that, without the prior written consent of the Arranger, which consent shall not be unreasonably withheld, it will not settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding in respect of which indemnification would be sought under the indemnification provision of this Commitment Letter (provided that the Arranger or another Indemnified Party is an actual or potential party to such claim, action or proceeding), unless such settlement, compromise or consent includes an explicit and unconditional release of each Indemnified Party from all liability arising out of such claim, action or proceeding.

## VI) Information

The Borrower agrees to furnish or cause to be furnished to the Arranger such information as it may reasonably request (all information previously furnished, in each case, including general industry information or general economic information, and all such information so furnished being the "Information") and take all action as it may reasonably request in connection with the Senior Facilities. The Borrower's assistance shall include (but not be limited to): (a) making senior management and representatives of the Borrower available to participate in meetings and to provide information to potential lenders at such times and places as Arranger may reasonably request; and (b) providing to Arranger all information reasonably deemed necessary by Arranger to complete the syndication, including, if necessary, an information memorandum with respect to the Senior Facilities (the "Information Memorandum"), to be prepared by the Arranger and the Borrower. The Borrower acknowledges and confirms that the Arranger will use and rely primarily on the Information made available by Borrower, and that the Arranger may also use other sources of information from generally recognized public sources in performing the services contemplated by this Commitment Letter without having independently verified the same and does not assume responsibility for the accuracy or completeness of the Information and such other information.

Borrower, represents and warrants to the Arranger that (a) all Information that has been or will hereafter be made available to the Arranger directly by the Borrower or any of the Borrower's representatives in connection with the Senior Facilities contemplated hereby is and will be complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not misleading in light of the circumstances under which such statements were or are made, and (b) all financial information that has been or will be prepared by Borrower, and made available to the Arranger has been or will be prepared in good faith based upon reasonable assumptions (it being understood that such financial information is subject to significant uncertainties and contingencies, many of which are beyond the Borrower's control). The Borrower agrees to supplement the Information and financial information upon the reasonable request of the Arranger, from time to time, consistent with the requirements of the Borrower's governing tariffs, if the Information or financial information have materially changed. Borrower agrees that if at any time prior to the closing of the Senior Facilities any of the representations in the preceding sentence would be materially incorrect if the Information and financial Information were being furnished, and such representations were being made, at such time, then Borrower will promptly supplement the Information and financial information so that such representations will be correct under those circumstances.

## VII) Confidentiality

The parties hereunder agree to keep confidential the existence and contents of this Commitment Letter. In addition, the Arranger shall keep confidential all information provided by the Borrower in connection with the Senior Facilities and the Borrower shall keep confidential all proposals, ideas and concepts prepared by the Arranger and delivered in writing or verbally conveyed to the Borrower in connection with the Senior Facilities, in each case except (a) for disclosure to each of the parties' officers, employees and agents, legal counsel, and other advisors involved in evaluating the Senior Facilities and negotiating and preparing any documents related to the Senior Facilities, as well as other members of the syndicate group or potential investors; (b) information which has become generally available to the public (other than as the result of a breach of this confidentiality provision, but including by means of being part of any regulatory filings or approvals); (c) as required by law or (d) as requested or required in connection with any subpoena or similar legal process, in which case the party that is required to disclose such information will promptly notify the other parties each of which may seek an appropriate protective order or waive such party's compliance with this provision. In the absence of a protective order or the receipt of a waiver hereunder, if in such party's counsel opinion the party is compelled to disclose the information it will furnish only the portion legally required to be disclosed. Notwithstanding the foregoing, it is understood and agreed that the Borrower may disclose this Commitment Letter in connection with any applicable regulatory filings whether or not such filings are made on a confidential basis.

Borrower should be aware that the Arranger may have other customers or partners whose interests may conflict with those of the Borrower, and the Arranger may be providing financial or other services to them. However, the Arranger hereby assures you that, consistent with its long-standing policies to keep confidential the affairs of its customers, it will not use confidential information obtained from the Borrower, except in connection with its services to, and its relationship with, the Borrower, and will not furnish confidential information obtained from the Borrower to any of its other customers. Conversely, the Arranger agrees that it will not use, or make available to the Borrower, confidential information that it has obtained or may obtain from any other customer or partner, without their express written consent.

## VIII) Exclusivity

The Borrower agrees that during the term of this Commitment Letter neither it nor any of its affiliates shall approach, appoint, authorize nor retain other persons or institutions to perform services on behalf of the Borrower similar to the Senior Facilities that the Arranger has been engaged to perform hereunder.

## IX) Governing Law and Jurisdiction

THIS COMMITMENT LETTER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICT OF LAWS PROVISIONS THEREOF (EXCEPT, TO THE EXTENT APPLICABLE, SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW), ANY DISPUTE, CLAIM CONTROVERSY OR DISAGREEMENT (OF EVERY KIND AND TYPE, WHETHER BASED IN CONTRACT, TORT, STATUTE OR OTHERWISE) ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY RELATED TO THIS COMMITMENT LETTER OR THE RELATIONSHIP OF THE PARTIES ESTABLISHED THEREBY ("DISPUTE") SHALL BE FULLY AND FINALLY RESOLVED IN A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITUATED IN AND FOR THE COUNTY OF ALBANY, NEW YORK, WHICH COURT SHALL BE THE SOLE AND EXCLUSIVE FORUM FOR THE ADJUDICATION OF ANY SUCH DISPUTE. EACH OF THE PARTIES IRREVOCABLY, UNCONDITIONALLY, AND TO THE FULLEST EXTENT PERMITTED BY LAW, (i) SUBMITS TO THE PERSONAL JURISDICTION OF SUCH STATE OR FEDERAL COURT; (ii) WAIVES ANY DEFENSE OR OBJECTION OF LACK OF PERSONAL JURISDICTION, INCONVENIENT FORUM, OR IMPROPER VENUE; AND (iii) WAIVES ANY RIGHT TO TRIAL BY JURY, EACH PARTY FURTHER CONSENTS TO SERVICE OF PROCESS IN ANY SUCH LEGAL PROCEEDING BY MEANS OF REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE ADDRESS PROVIDED HEREIN FOR THE GIVING OF NOTICE, OR BY SUCH OTHER MEANS AS ARE PROVIDED BY APPLICABLE LAW.

## X) Termination

If executed by you, this Commitment Letter shall terminate at the earliest to occur of (i) the completion of documentation of the Senior Facilities, (iii) the Arranger's breach of any material term of this Commitment Letter, or (iv) mutual agreement of the Arranger and the Borrower to terminate this Commitment Letter. The provisions relating to "Fee and Expenses" (but only to the extent such provisions relate to fees and expenses that are accrued and unpaid at the time of termination), "Indemnification", "Confidentiality", and "Governing Law and Jurisdiction" will survive any termination of this Commitment Letter except in the case of the occurrence of the closing of the Senior Facilities, at which time such provisions shall terminate.

XI) **Other**

All payments by the Borrower under this Commitment Letter shall be made to the Bank in U.S. Dollars, free and clear of any applicable taxes (including withholding taxes), to such account or accounts as it shall designate. If the Borrower shall be required by law to deduct or withhold any such taxes with respect to any sum payable hereunder, the sum payable shall be increased as may be necessary, so that after making all required withholding and deductions, the Bank receives an amount equal to the sum they would have received had no such deductions of taxes been made; provided however, if the Bank receives any refund, credit or other tax benefit from a taxing authority as a result of any taxes deducted or withheld by the Borrower, and the Borrower has paid an increased amount to the Bank pursuant to this provision, the Bank shall promptly pay over to the Borrower the amount of such refund, credit or tax benefit (but only to the extent of such increased amount paid by the Borrower to the Bank with respect to the deducted or withheld taxes giving rise to such refund or credit or tax benefit).

This Commitment Letter embodies the entire agreement and understanding of the parties hereto and supersedes any and all prior agreements, arrangements and understandings, written or oral, relating to the matters provided for herein. No waiver, amendment or other modification of this Commitment Letter shall be effective unless in writing and signed by each party to be bound thereby. The Borrower may not assign or delegate any of its rights or obligations hereunder without prior written consent of the Bank.

This Commitment Letter may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original, and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Commitment Letter by telefacsimile or other electronic method of transmission shall have the same force and effect as the delivery of an original executed counterpart of this Commitment Letter.

Doc # 01-2348421.10

## Attachment II.

## Accrued Interest on Outstanding Indebtedness

**NYISO**
**STATEMENT OF FINANCIAL CONDITION**
**ACCRUED INTEREST ON INDEBTEDNESS**

| | *At December 31, 2008:* | | |
|---|---|---|---|
| Facility | Interest Rate | Outstanding Principal | Accrued Interest |
| Replacement Revolver | n/a | $ - | $ - |
| 2004-2006 Budget Facility | 2.23% | $ 12,252,000 | $ 23,540 |
| 2007-2010 Budget Facility | 1.83% - 5.73% | $ 26,700,000 | $ 111,543 |
| Mortgage and Renovations Loan | 5.79% - 5.96% | $ 21,956,497 | $ 110,858 |
| **Totals** | | **$ 60,908,497** | **$ 245,941** |

# Attachment III.

## Most Recent Unaudited Financial Statements

**NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Statements of Financial Position

December 31, 2009 and 2008

| **Assets** | | **2009** | **2008** |
|---|---|---|---|
| Current assets: | | | |
| Cash and cash equivalents | $ | 53,582,089 | 56,529,694 |
| Restricted cash | | 371,162,251 | 285,476,866 |
| Accounts receivable – net | | 12,799,522 | 16,206,343 |
| Prepaid expenses | | 4,180,713 | 6,051,561 |
| Regulatory assets – current portion | | 5,469,179 | — |
| Other current assets | | 580,800 | 3,166 |
| Total current assets | | 447,774,554 | 364,267,630 |
| Noncurrent assets: | | | |
| Regulatory assets | | 10,555,399 | 11,604,891 |
| Property and equipment – net | | 57,174,512 | 55,991,406 |
| Other noncurrent assets | | 6,870,581 | 13,760,670 |
| Total noncurrent assets | | 74,600,492 | 81,356,967 |
| Total | $ | 522,375,046 | 445,624,597 |
| **Liabilities** | | | |
| Current liabilities: | | | |
| Accounts payable and accrued expenses | $ | 23,633,450 | 16,331,310 |
| Market participant prepayments | | 24,982,564 | 15,238,741 |
| Market participant security deposits | | 341,578,621 | 263,728,426 |
| Long-term debt – current portion | | 21,342,581 | 19,696,570 |
| Working capital reserve | | 46,543,644 | 48,941,193 |
| Deferred revenue | | 3,243,681 | 4,556,769 |
| Regulatory liabilities – current portion | | 1,074,704 | 10,281,089 |
| Other current liabilities | | 3,996,295 | 1,589,811 |
| Total current liabilities | | 466,395,540 | 380,363,909 |
| Noncurrent liabilities: | | | |
| Accrued pension liability | | 4,084,576 | 6,506,665 |
| Accrued postretirement liability | | 5,900,528 | 5,616,569 |
| Regulatory liabilities | | 3,905,605 | 2,857,999 |
| Other noncurrent liabilities | | 3,919,451 | 9,067,528 |
| Long-term debt | | 38,169,346 | 41,211,927 |
| Total noncurrent liabilities | | 55,979,506 | 65,260,688 |
| Commitments and contingencies | | | |
| Total liabilities | | 522,375,046 | 445,624,597 |
| Unrestricted net assets | | — | — |
| Total liabilities and net assets | $ | 522,375,046 | 445,624,597 |

**NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Statements of Activities

Years ended December 31, 2009 and 2008

| | 2009 | 2008 |
|---|---|---|
| Revenues: | | |
| Rate Schedule 1 tariff charge | $ 135,410,542 | 140,644,871 |
| Interconnection studies revenue | 2,928,825 | 1,807,610 |
| Fees and services | 883,788 | 749,849 |
| Interest income | 49,863 | 1,488,580 |
| Total revenues | 139,273,018 | 144,690,910 |
| Operating expenses: | | |
| Compensation and related benefits | 57,429,618 | 53,124,882 |
| Professional fees and consultants | 26,742,719 | 29,396,356 |
| Maintenance, software licenses and facility costs | 17,993,618 | 15,461,573 |
| Depreciation and amortization | 16,712,438 | 16,803,549 |
| Federal Energy Regulatory Commission fees | 9,980,421 | 8,854,182 |
| Telecommunication expenses | 3,531,688 | 3,981,689 |
| Administrative and other expenses | 3,148,969 | 2,753,913 |
| Interest expense | 3,131,547 | 3,568,235 |
| Insurance expense | 2,801,008 | 2,860,053 |
| Training, travel, and meeting expenses | 1,256,716 | 1,975,850 |
| Northeast Power Coordinating Council fees | 251,976 | 161,929 |
| Change in fair value of interest rate swaps and caps | (3,707,700) | 5,748,699 |
| Total operating expenses | 139,273,018 | 144,690,910 |
| Change in unrestricted net assets | — | — |
| Unrestricted net assets, beginning of year | — | — |
| Unrestricted net assets, end of year | $ — | — |

**NEW YORK INDEPENDENT**
**SYSTEM OPERATOR, INC.**

Statements of Cash Flows

Years ended December 31, 2009 and 2008

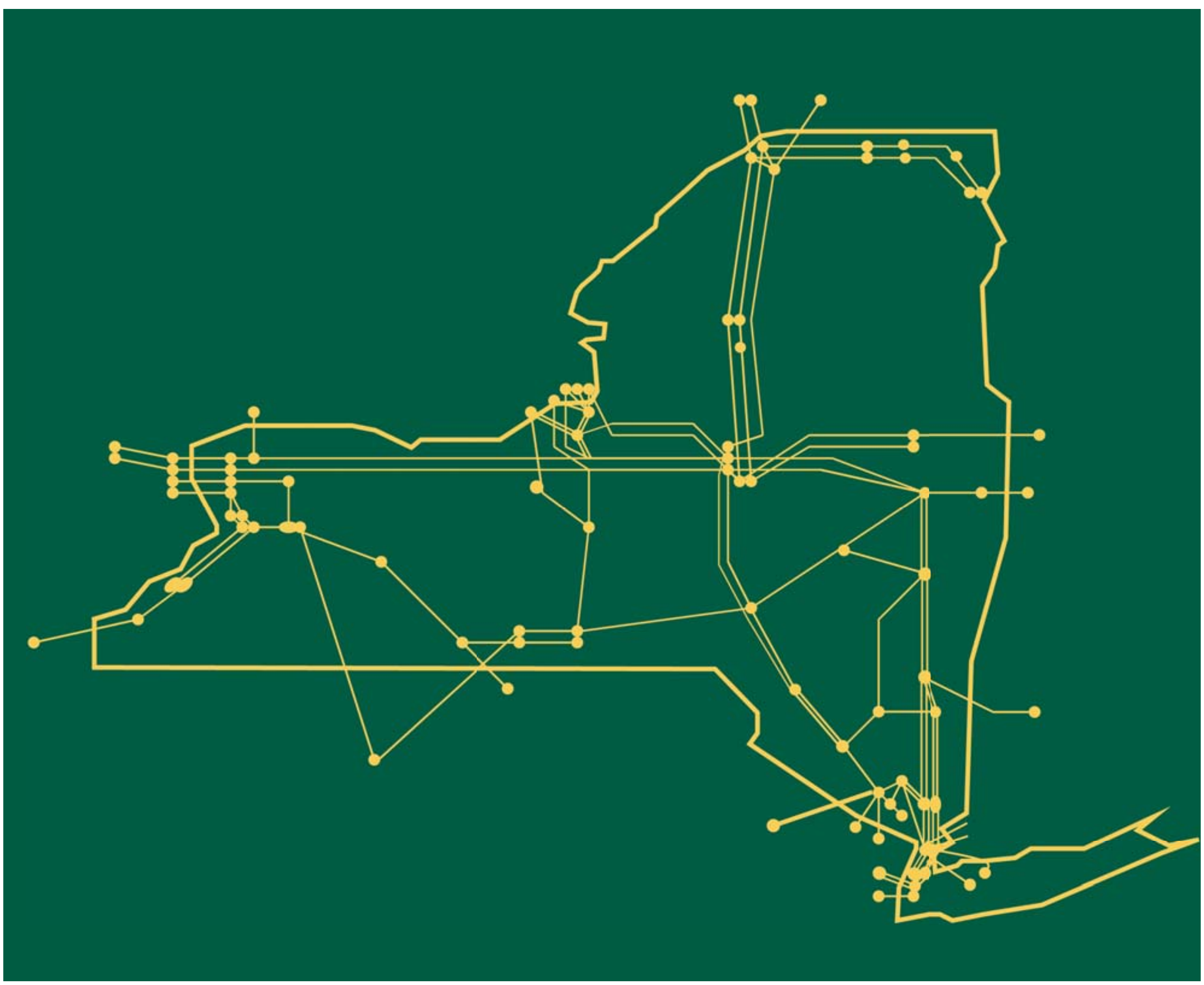
| | | 2009 | 2008 |
|---|---|---|---|
| Cash flows from operating activities: | | | |
| Net results of activities | $ | — | — |
| Adjustments to reconcile net results of activities to net cash provided by operating activities: | | | |
| Depreciation and amortization | | 16,712,438 | 16,803,549 |
| Loss on disposal of fixed asset | | — | 35,242 |
| Change in operating assets and liabilities: | | | |
| Decrease (increase) in accounts receivable and prepaid expenses | | 5,277,669 | (4,252,578) |
| Increase in restricted cash | | (85,685,385) | (8,463,962) |
| Increase in regulatory assets | | (4,419,687) | (2,769,915) |
| Decrease in other assets | | 6,312,455 | 2,100,716 |
| Increase in accounts payable and accrued expenses | | 3,013,317 | 2,725,298 |
| Increase (decrease) in market participant prepayments | | 9,743,823 | (46,426,604) |
| Increase in market participant security deposits | | 77,850,195 | 53,716,400 |
| Decrease in working capital reserve | | (2,397,549) | (2,997,679) |
| (Decrease) increase in regulatory liabilities | | (8,158,779) | 4,926,098 |
| (Decrease) increase in deferred revenue and other liabilities | | (6,192,811) | 10,320,450 |
| Net cash provided by operating activities | | 12,055,686 | 25,717,015 |
| Cash flows from investing activities: | | | |
| Acquisition of property and equipment (including capitalized interest) | | (13,606,721) | (17,088,126) |
| Proceeds from sale of assets | | — | 9,000 |
| Net cash used in investing activities | | (13,606,721) | (17,079,126) |
| Cash flows from financing activities: | | | |
| Proceeds from 2007 – 2010 budget facility loan | | 18,300,000 | 16,700,000 |
| Repayment of mortgage and renovations loan | | (753,903) | (311,642) |
| Repayment of 2004 – 2006 budget facility loan | | (8,376,000) | (18,876,000) |
| Repayment of 2007 – 2010 budget facility loan | | (10,566,667) | (5,000,000) |
| Net cash used in financing activities | | (1,396,570) | (7,487,642) |
| Net (decrease) increase in cash and cash equivalents | | (2,947,605) | 1,150,247 |
| Cash and cash equivalents – beginning of year | | 56,529,694 | 55,379,447 |
| Cash and cash equivalents – end of year | $ | 53,582,089 | 56,529,694 |
| Supplemental disclosure of cash flow: | | | |
| Information – cash paid during the year for interest net of capitalized interest | $ | 2,948,240 | 3,354,557 |
| Noncash investing activities: | | | |
| Property and equipment additions which were accrued but not paid | $ | 4,820,759 | 531,936 |
| Property and equipment additions previously accrued which were paid | | 531,936 | 1,448,615 |

## Attachment IV.

## Most Recent Annual Report including Most Recent Audited Financial Statements

ANNUAL REPORT 2008

**NEW YORK INDEPENDENT SYSTEM OPERATOR**



# Energizing the Empire State

## New generation and interstate transmission added

*More than 7,500 megawatts of new generation have been built by public power and private suppliers since 2000, with 80% sited where demand is greatest (New York City, Long Island and the Hudson Valley.) Nearly 1,000 megawatts of transmission have been added to bring more power from out of state.*

## Power plant efficiency and availability increased

*The system-wide heat rate of fossil-fueled generation improved 21% since 2000. Average plant availability increased from 87.5% (1992-1999) to 94.7% (2001-2007), adding 2,400 megawatts to the system – the equivalent of four medium-sized power plants.*

## Renewable "green power" resources increasing

*More than 1,000 megawatts of wind generation were in operation by the end of 2008 and wind projects totaling over 8,000 megawatts had been proposed for grid connection.*

## Emission rates declining

*Power plant emission rates (tons/year) for Sulfur Dioxide ($SO_2$), Nitrogen Oxides (NOx), and Carbon Dioxide ($CO_2$) dropped by double-digits between 1999 and 2008.*

## Demand-side innovations fostered

*In 2008, there were over 2,000 megawatts of demand response resources participating in programs that provide incentives for electricity customers to reduce their power during times of peak demand.*

## Wholesale electricity costs declined

*If the cost of fuel used to generate electricity were the same in 2008 as it was in 2000, wholesale electricity costs would have dropped by 18% — $2.23 billion in savings on a current annual basis.*

## Table of Contents

## Letter from the Board Chair and President & CEO

Dear NYISO Stakeholders:

Over the years, the NYISO and its stakeholders have worked together to address a great many challenges. Among other things, we have improved the operation of New York's wholesale electricity markets; upgraded and replaced a variety of software and technology infrastructure; and integrated demand response programs and renewable resources. Through our collaborative efforts, we have begun to realize the promise of restructured power markets. Today, the NYISO is a leader in market design, grid operations, and electricity system planning.

Since the inception of wholesale electricity markets in New York State, cleaner generation has been built and green power resources are increasing. Emissions from power plants have declined by double-digits. Electricity produced by wind has grown to more than 1,000 MW, with 8,000 MW more proposed. Demand-side resources have flourished, providing the ability to conserve over 2,000 MW when needed. And we have been making the grid smarter, deploying information technologies that have optimized the dispatch of power in ways that would have been unimaginable a generation ago.

Nevertheless, 2008 was a challenging and unpredictable year that came to be dominated by a deteriorating economic environment. While many enterprises were caught in the turmoil, the NYISO's sound financial management practices minimized the credit exposure to our markets. New York's competitive wholesale electricity markets remained financially viable through the year.

Our success in maintaining and enhancing the state's competitive wholesale electric system during stormy economic times is attributable, in large part, to our shared governance system and a firm commitment to active, engaged collaboration with market participants and other stakeholders.

The NYISO Board of Directors proactively moved to reduce the NYISO's 2009 spending in recognition of the financial constraints facing our state and the nation. Our budget cutbacks are designed to hold 2009 spending to 2008 levels. The *2008 Annual Report* reflects those spending reductions. By limiting its publication to digital form, available for download from www.nyiso.com, we saved printing and distribution costs. In 2008, the NYISO initiated a number of cost-saving measures in anticipation of revenue constraints resulting from the economic downturn. These included cuts in travel, meeting and related expenditures.

Given the challenges of the current economic climate, the NYISO has taken the initiative to control costs and prepare for the future. While we have been at the forefront of a dramatic transformation in the energy industry, additional challenges and opportunities lie ahead. We see a future for New York that includes a more reliable generation fleet, even greater benefits from demand response and renewable resources, and a smarter, more interactive system for delivering electricity to consumers. As we move forward, our focus will continue to be on reliability, sustainability, infrastructure development, and increasing the benefits of competition to the consumers of New York State. We face this future with confidence, and we are ready to build on a record of which we can already be proud.

Karen Antion
Chair, Board of Directors

Stephen G. Whitley
President and Chief Executive Officer

## Board of Directors – 2008

*(as of December 31, 2008)*

**Karen Antion, Board Chair**

*President of Karen Antion Consulting, LLC and former Senior IT Executive at Oracle Corporation and the Port Authority of New York and New Jersey.*

**Alfred F. Boschulte**

*President of AFB Consulting, specializing in strategic planning and operating margin improvements for telecommunications firms.*

**Richard J. Grossi**

*Former Chairman and CEO of United Illuminating, a Connecticut utility, and past Chairman of the North American Electric Reliability Council.*

**Robert A. Hiney**

*Former Executive Vice President for Power Generation of the New York Power Authority (NYPA).*

**Erland E. Kailbourne**

*Chairman of the Board of Financial Institutions, Inc. and its subsidiary Five Star Bank.*

**James V. Mahoney**

*President and CEO of Energy Market Solutions, Inc. and former President and CEO of DPL Inc., a regional energy and utility company.*

**Thomas F. Ryan, Jr.**

*Former President and COO of the American Stock Exchange.*

**Richard E. Schuler**

*Professor Emeritus of Economics and Civil /Environmental Engineering at Cornell University and former New York State Public Service Commissioner and Deputy Chairman.*

**Stephen G. Whitley**

*President and CEO - NYISO.*

## Corporate Officers – 2008
*(As of December 31, 2008)*

**Stephen G. Whitley**, *President and CEO*

**Henry Chao**,*Vice President, System and Resource Planning*

**Richard Dewey**, *Vice President and Chief Information Officer*

**Diane L. Egan,** *Board Secretary and Corporate Secretary*

**Robert E. Fernandez**, *General Counsel*

**Rick Gonzales,** *Vice President, Operations*

**Thomas J. Lynch,** *Vice President, Human Resources*

**Mary McGarvey,** *Vice President and Chief Financial Officer*

**Rana Mukerji,** *Vice President, Market Structures*

## New Appointments – 2008

Several new corporate officers were appointed in 2008 including:

**Stephen G. Whitley**
President & Chief Executive Officer

*In June, the Board of Directors announced the selection of Mr. Whitley, a highly respected 38-year veteran of the energy industry with extensive experience in bulk power system planning and operations.*

**Mary McGarvey**
Vice President & Chief Financial Officer

*Ms. McGarvey has been with the NYISO since it began operations in 1999 and was promoted from her previous position as Controller and Assistant Treasurer.*

**Henry Chao, Ph.D.**
Vice President of System & Resource Planning

*Dr. Chao has more than 25 years of experience in electric utility planning and operations and was promoted from his previous role as Director of System & Resource Planning, a position he held since joining the NYISO in 2007.*

**Richard Dewey**
Vice President and Chief Information Officer

*Following a nationwide search, Mr. Dewey was promoted from his role as Director of Product and Project Management. He joined the NYISO in 2000 after extensive experience as a corporate IT professional.*

# THE YEAR IN BRIEF - 2008

## Reliability – Meeting the Challenge

Reliable power system operation requires constant vigilance. “Keeping the lights on” is at the center of the NYISO’s responsibilities.

The record of reliable operations continued in 2008 as the system met the challenge of a new peak load for the month of June. The afternoon of Monday, June 9, saw unseasonably warm temperatures drive the hourly average load to a peak of 32,432 megawatts — the highest peak load ever for the month of June and the second highest yearly peak load on record.

In 2008, the Northeast Power Coordinating Council (NPCC) concluded an audit of the NYISO’s operation of the bulk electricity system and found that NYISO processes and procedures are fully compliant with new federal reliability standards.

## Markets – Designed for Progress

The NYISO, in collaboration with its stakeholders, has continued to evolve grid operations and market design to a level of sophistication few imagined possible a decade ago.

In 1999, electricity generated by wind was virtually non-existent in New York State.  By the end of 2008, wind power management had become one of the NYISO's major priorities. In 2008, the NYISO put into operation one of the nation's first wind management systems to better utilize existing wind resources and pave the way for the continued growth of green power in New York State.

Discounting the cost of fuel, wholesale electricity prices in 2008 were 18% lower than 2000, the first full year of New York's electricity markets. That represents a reduction of $2.23 billion in wholesale power costs on a current annual basis.

In 2008, the NYISO addressed the developing credit crisis afflicting the national economy through a number of measures that avoided bad debt losses. The NYISO also began implementation of a new Credit Management System to automate and integrate credit requirements and processes.

The NYISO identified and halted the adverse market impacts of transactions impacting Lake Erie loop flow in 2008, and enhanced monitoring and analysis to increase transparency and provide more rigorous scrutiny.

## Planning – Vision for the Future

The 2008 planning process included the publication of the Reliability Needs Assessment (RNA) which assesses the state's electricity needs over a ten-year horizon, and the Comprehensive Reliability Plan (CRP). The 2008 CRP found that a net addition of 2,350 MW of market-based proposals plus bulk power system upgrades would provide an adequate power supply through 2017.

In 2008, FERC approved important new NYISO economic analysis procedures to expand its system-wide planning process. The NYISO was actively involved as a technical advisor to the State's energy planning process as Governor David Paterson established, by Executive Order, a new State Energy Planning Board.

In addition to providing essential planning resources, the NYISO's contributions to informed deliberations on New York's energy future included *Power Trends 2008*, its annual analysis of forces and factors influencing the future of New York State's bulk electricity grid and its wholesale electricity markets, and white papers on windpower integration, fuel diversity and transmission expansion. In May 2008, the NYISO sponsored a two-day symposium, *True Grid: Smart Metering and Advanced Technologies*, bringing government and private sector leaders together to explore New York's energy future.

## Innovation – Excellence in Execution

Staying ahead of the information technology curve continues to pay dividends. NYISO information technology features architectures and platforms that rival the best in the nation, resulting in significant efficiencies for the competitive wholesale electricity markets and market participants. Completing its multi-year “virtualization” Information Technology infrastructure project in 2008, the NYISO reduced the number of computer servers from more than 1,000 to fewer than 500, saving an estimated $16.3 million over the life of the program.

In 2008, the use of “Lean Six Sigma” methodology helped dramatically reduce the download time for documents on the NYISO website and streamlined the Thunderstorm Alert billing process – improvements developed in collaboration with market participants.

The NYISO again earned outside recognition on a number of fronts, including a sixth consecutive unqualified SAS 70 audit opinion. The independent audit by KPMG LLP found that NYISO controls were complete, accurate and in accordance with the standards established by the American Institute of Certified Public Accountants. The NYISO was honored as one of five “Best Practice Organizations” by the internationally recognized APQC for its Enterprise Risk Management activities. The NYISO also won the Spring 2008 Storage Networking World “Best Practices Award for Storage Reliability and Data Recovery.”

## Shared Governance – Moving Forward Together

The continued success of the NYISO in 2008 is attributable to a number of factors that include a talented and committed workforce, the guidance of policy makers and regulators, and the direct involvement of market stakeholders.

As the NYISO strives to serve the greater interest of the state and the people of New York, those efforts are most clearly visible in the forum it provides to share ideas on how to solve problems and resolve issues.

With more than 400 Market Participants, the NYISO engages voices from all sectors of the electric industry. There is no aspect of the NYISO's core mission that is not assisted by the involvement of participants in the committee process. In 2008, the NYISO conducted a total of 245 governance meetings, involving committees, sub-committees, task forces, and working groups.

By maintaining this open process, the various elements of the NYISO's mission are understood by all who participate. This interdependent system is an invaluable asset as the NYISO moves forward to address the challenges to come.

## Governance Committee Leadership – 2008

The NYISO's shared governance system involves representatives from market sectors that include Public Power & Environmental Parties, End-Use Consumers, Transmission Owners, Generation Owners, and Other Suppliers. The governance structure includes three standing committees — the Management Committee, the Business Issues Committee, and the Operating Committee. Each committee oversees its own set of working groups and/or subcommittees.

### Management Committee

***Ray Kinney*** *- New York State Electric & Gas /*
*Rochester Gas & Electric*
*Chair*

***Bill Palazzo*** *- New York Power Authority*
*Vice Chair*

### Business Issues Committee

***Glen McCartney*** *- Constellation Energy Commodities*
*Chair*

***Stuart Nachmias*** *- Con Edison*
*Vice Chair*

### Operating Committee

***Liam Baker*** *- US Powergen*
*Chair*

***Ted Pappas*** *- Keyspan Energy*
*Vice Chair*

I certify that:

1. I have reviewed this report of the NYISO for the year ended December 31, 2008;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the NYISO as of, and for, the periods presented in this report;

4. The NYISO's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for NYISO and have:

    a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the NYISO is made known to us by others within the NYISO, particularly during the period in which this report is being prepared;

    b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c. Evaluated the effectiveness of the NYISO's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d. Disclosed in this report any change in the NYISO's internal control over financial reporting that occurred during the NYISO's most recent fiscal quarter (the NYISO's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the NYISO's internal control over financial reporting; and

5. The NYISO's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the NYISO's auditors and the audit committee of NYISO's board of directors (or persons performing the equivalent functions):

    a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the NYISO's ability to record, process, summarize and report financial information; and

    b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the NYISO's internal control over financial reporting.

**Disclosure Controls and Procedures**

Under the supervision and with the participation of our management, including the Chief Executive Officer and the Chief Financial Officer, we have evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of December 31, 2008. The reporting process is designed to ensure that information required to be disclosed by the NYISO is recorded, processed, summarized and reported within the appropriate time periods. Based on that evaluation, we have concluded that the NYISO disclosure controls and procedures are functioning effectively to provide reasonable assurance that the NYISO can meet its disclosure obligations.

**Management's Report of Internal Control over Financial Reporting**

We have evaluated any change in our internal control over financial reporting that occurred during the fourth quarter of 2008, and have concluded that there was no change during the fourth quarter of 2008 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Date: March 16, 2009

Stephen G. Whitley
President & Chief Executvie Officer

I certify that:

1. I have reviewed this report of the NYISO for the year ended December 31, 2008;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the NYISO as of, and for, the periods presented in this report;

4. The NYISO's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for NYISO and have:

    a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the NYISO is made known to us by others within the NYISO, particularly during the period in which this report is being prepared;

    b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c. Evaluated the effectiveness of the NYISO's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d. Disclosed in this report any change in the NYISO's internal control over financial reporting that occurred during the NYISO's most recent fiscal quarter (the NYISO's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the NYISO's internal control over financial reporting; and

5. The NYISO's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the NYISO's auditors and the audit committee of NYISO's board of directors (or persons performing the equivalent functions):

    a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the NYISO's ability to record, process, summarize and report financial information; and

    b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the NYISO's internal control over financial reporting.

**Disclosure Controls and Procedures**

Under the supervision and with the participation of our management, including the Chief Executive Officer and the Chief Financial Officer, we have evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of December 31, 2008. The reporting process is designed to ensure that information required to be disclosed by the NYISO is recorded, processed, summarized and reported within the appropriate time periods. Based on that evaluation, we have concluded that the NYISO disclosure controls and procedures are functioning effectively to provide reasonable assurance that the NYISO can meet its disclosure obligations.

**Management's Report of Internal Control over Financial Reporting**

We have evaluated any change in our internal control over financial reporting that occurred during the fourth quarter of 2008, and have concluded that there was no change during the fourth quarter of 2008 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Date: March 16, 2009

Mary McGarvey

Mary McGarvey
Vice President & Chief Financial Officer

KPMG LLP
515 Broadway
Albany, NY 12207

## INDEPENDENT AUDITORS' REPORT

The Board of Directors
New York Independent System Operator, Inc.:

We have audited the accompanying statement of nancial position of New York Independent System Operator, Inc. (NYISO or the Company) as of December 31, 2008, and the related statement of activities and statement of cash ows for the year then ended. These nancial statements are the responsibility of NYISO's management. Our responsibility is to express an opinion on these nancial statements based on our audit. The nancial statements of NYISO as of December 31, 2007, were audited by other auditors whose report dated March 31, 2008 expressed an unquali ed opinion on those statements.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the nancial statements are free of material misstatement. An audit includes consideration of internal control over nancial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the NYISO's internal control over nancial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the nancial statements. An audit also includes assessing the accounting principles used and signi cant estimates made by management, as well as evaluating the overall nancial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the nancial statements present fairly, in all material respects, the nancial position of NYISO as of December 31, 2008, and the results of its operations and its cash ows for the year then ended in conformity with U.S. generally accepted accounting principles.

As discussed in note 1 to the nancial statements, effective January 1, 2008, NYISO adopted Statement of Financial Accounting Standards No. 157, *Fair Value Measurements*, related to the fair value measurements of nancial assets and nancial liabilities.

KPMG LLP

March 16, 2009

## STATEMENTS OF FINANCIAL POSITION
## DECEMBER 31, 2008 AND 2007

| | | 2008 | 2007 |
|---|---|---|---|
| **Assets** | | | |
| Current assets: | | | |
| Cash and cash equivalents | $ | 56,529,694 | 55,379,447 |
| Restricted cash | | 285,476,866 | 277,012,904 |
| Accounts receivable – net (note 2) | | 16,206,343 | 13,645,777 |
| Prepaid expenses | | 6,051,561 | 4,359,549 |
| Regulatory assets – current portion (note 3) | | — | 4,563,047 |
| Other current assets | | 3,166 | 378,620 |
| Total current assets | | 364,267,630 | 355,339,344 |
| Noncurrent assets: | | | |
| Regulatory assets (note 3) | | 11,604,891 | 4,271,929 |
| Property and equipment – net (note 4) | | 55,991,406 | 56,667,750 |
| Other noncurrent assets | | 13,760,670 | 15,485,932 |
| Total noncurrent assets | | 81,356,967 | 76,425,611 |
| Total assets | $ | 445,624,597 | 431,764,955 |
| **Liabilities** | | | |
| Current liabilities: | | | |
| Accounts payable and accrued expenses | $ | 16,331,310 | 14,522,691 |
| Market participant prepayments | | 15,238,741 | 61,665,345 |
| Market participant security deposits | | 263,728,426 | 210,012,026 |
| Long-term debt – current portion (note 6) | | 19,696,570 | 24,187,642 |
| Working capital reserve (note 10) | | 48,941,193 | 51,938,872 |
| Deferred revenue (note 11) | | 4,556,769 | 3,295,410 |
| Regulatory liabilities – current portion (note 12) | | 10,281,089 | 8,062,882 |
| Other current liabilities | | 1,589,811 | 2,310,198 |
| Total current liabilities | | 380,363,909 | 375,995,066 |
| Noncurrent liabilities: | | | |
| Accrued pension liability (note 8) | | 6,506,665 | 4,002,678 |
| Accrued postretirement liability (note 8) | | 5,616,569 | 4,548,507 |
| Regulatory liabilities (note 12) | | 2,857,999 | 150,108 |
| Other noncurrent liabilities (notes 7 and 8) | | 9,067,528 | 2,860,099 |
| Long-term debt (note 6) | | 41,211,927 | 44,208,497 |
| Total noncurrent liabilities | | 65,260,688 | 55,769,889 |
| Commitments and contingencies (note 13) | | — | — |
| Total liabilities | | 445,624,597 | 431,764,955 |
| **Unrestricted net assets** | | — | — |
| Total liabilities and net assets | $ | 445,624,597 | 431,764,955 |

See accompanying notes to nancial statements.

## STATEMENTS OF ACTIVITIES
## YEARS ENDED DECEMBER 31, 2008 AND 2007

| | | 2008 | 2007 |
|---|---|---|---|
| Revenues: | | | |
| Rate Schedule 1 tariff charge | $ | 140,644,871 | 146,892,009 |
| Interconnection studies revenue | | 1,807,610 | 3,261,406 |
| Interest income | | 1,488,580 | 3,765,488 |
| Fees and services | | 749,849 | 652,614 |
| Total revenues | | 144,690,910 | 154,571,517 |
| Operating expenses: | | | |
| Compensation and related bene ts (note 8) | | 53,124,882 | 49,529,995 |
| Professional fees and consultants | | 29,396,356 | 32,879,042 |
| Depreciation and amortization | | 16,803,549 | 28,352,679 |
| Maintenance, software licenses and facility costs | | 16,240,772 | 17,247,444 |
| Interest expense | | 9,316,934 | 6,696,591 |
| Federal Energy Regulatory Commission fees | | 8,854,182 | 7,744,646 |
| Administrative and other expenses | | 4,834,767 | 5,208,760 |
| Telecommunication expenses | | 3,981,689 | 4,228,646 |
| Training, travel, and meeting expenses | | 1,975,850 | 2,153,666 |
| Northeast Power Coordinating Council fees | | 161,929 | 530,048 |
| Total operating expenses | | 144,690,910 | 154,571,517 |
| Change in unrestricted net assets | | — | — |
| Unrestricted net assets, beginning of year | | — | — |
| Unrestricted net assets, end of year | $ | — | — |

See accompanying notes to nancial statements.

## STATEMENTS OF CASH FLOWS
## YEARS ENDED DECEMBER 31, 2008 AND 2007

| | 2008 | 2007 |
|---|---|---|
| Cash ows from operating activities: | | |
| Net results of activities | $ — | — |
| Adjustments to reconcile net results of activities to net cash provided by operating activities: | | |
| Depreciation and amortization | 16,803,549 | 28,352,679 |
| Loss on disposal of xed asset | 35,242 | 86,632 |
| Change in operating assets and liabilities: | | |
| Increase in accounts receivable and prepaid expenses | (4,252,578) | (1,901,033) |
| Increase in restricted cash | (8,463,962) | (87,713,687) |
| Increase in regulatory assets | (2,769,915) | (1,176,866) |
| Decrease in other assets | 2,100,716 | 4,647,229 |
| Increase in accounts payable and accrued expenses | 2,725,298 | 862,705 |
| (Decrease) increase in market participant prepayments | (46,426,604) | 30,228,246 |
| Increase in market participant security deposits | 53,716,400 | 57,922,031 |
| (Decrease) increase in working capital reserve | (2,997,679) | 668,838 |
| Increase (decrease) in regulatory liabilities | 4,926,098 | (1,500,406) |
| Increase in deferred revenue and other liabilities | 10,320,450 | 3,247,766 |
| Net cash provided by operating activities | 25,717,015 | 33,724,134 |
| Cash ows from investing activities: | | |
| Acquisition of property and equipment (including capitalized interest) | (17,088,126) | (19,086,522) |
| Proceeds from sale of assets | 9,000 | 333,500 |
| Net cash used in investing activities | (17,079,126) | (18,753,022) |
| Cash ows from nancing activities: | | |
| Proceeds from 2007 – 2010 budget facility loan | 16,700,000 | 15,000,000 |
| Payment of nancing costs for 2007 – 2010 budget facility loan | — | (195,000) |
| Repayment of mortgage and renovations loan | (311,642) | (278,198) |
| Repayment of 2004 – 2006 budget facility loan | (18,876,000) | (18,872,000) |
| Repayment of 2007 – 2010 budget facility loan | (5,000,000) | — |
| Repayment of 2003 budget facility loan | — | (13,708,334) |
| Net cash used in nancing activities | (7,487,642) | (18,053,532) |
| Net increase (decrease) in cash and cash equivalents | 1,150,247 | (3,082,420) |
| Cash and cash equivalents – beginning of year | 55,379,447 | 58,461,867 |
| Cash and cash equivalents – end of year | $ 56,529,694 | 55,379,447 |

## STATEMENTS OF CASH FLOWS (continued)

| | | 2008 | 2007 |
|---|---|---|---|
| Supplemental disclosure of cash ow: | | | |
| Information – cash paid during the year for interest net of capitalized interest | $ | 3,354,557 | 3,904,758 |
| Noncash investing activities: | | | |
| Property and equipment additions which were accrued but not paid | $ | 531,936 | 1,448,615 |
| Property and equipment additions previously accrued which were paid | | 1,448,615 | 6,346,053 |

See accompanying notes to nancial statements.

## (1) Summary of Significant Accounting Policies

### *(a) Business Description*

The New York Independent System Operator, Inc. (NYISO) was formed in April 1997 and commenced operations on December 1, 1999. NYISO is incorporated in the state of New York as a not-for-pro t organization. NYISO assumed the responsibilities of its predecessor, the New York Power Pool (NYPP), which had coordinated the reliability of New York State's electric power grid for more than 30 years. Formed as a result of Federal Energy Regulatory Commission (FERC) policies, NYISO monitors a network of 10,904 miles of high-voltage transmission lines and serves over 400 market participants.

NYISO's mission, in collaboration with its stakeholders, is to serve the public interest by maintaining and enhancing the reliable, safe, and ef cient operation of the New York State transmission system and promoting and operating a fair and competitive wholesale market for electricity in New York State while providing quality customer service. NYISO facilitates fair and open competition in the wholesale power market and creates an electricity commodity market in which power is purchased and sold on the basis of competitive bidding. NYISO utilizes a bid process for electricity and transmission usage, which enables New York State's utilities and other market participants to offer electricity at competitive prices, rather than regulated rates. Billing invoices are issued to each market participant by NYISO each month to settle transactions occurring in the previous month.

NYISO is governed by an independent board of directors, as well as a committee structure consisting of market participant representatives. In addition to FERC oversight, NYISO is also subject to regulation in certain aspects by the New York State Department of Public Service.

### *(b) Basis of Accounting*

The accompanying nancial statements have been prepared on an accrual basis of accounting in accordance with U.S. generally accepted accounting principles.

### *(c) Regulation*

NYISO's nancial statements are prepared in accordance with generally accepted accounting principles for rate-regulated entities. Statement of Financial Accounting Standards (SFAS) No. 71, *Accounting for the Effects of Certain Types of Regulation*. As such, regulators may permit speci c incurred costs, typically treated as expenses by unregulated entities, to be deferred and expensed in future periods when it is probable that such costs will be recovered in customer rates. Incurred costs are deferred as regulatory assets when NYISO concludes that it is probable future revenues will be provided to permit recovery of the previously incurred cost. A regulatory liability is recorded when amounts that have been recorded by NYISO are likely to be refunded to customers through the rate-setting process.

### *(d) Revenue Recognition*

Monthly settlements of market participants' energy transactions are not re ected in NYISO's Statements of Activities since they do not represent revenues or expenses of NYISO, as NYISO merely acts as an intermediary in the settlement process. In this role, NYISO receives and disburses funds to/from market participants in the month following the month transactions occurred.

NYISO's two FERC-approved tariffs, the Open Access Transmission Tariff (OATT) and the Market Administration and Control Area Services Tariff (Services Tariff), allow recovery of NYISO's capital requirements and operating expenses through a surcharge assessed to market participants. The revenue from this surcharge, Rate Schedule 1, is earned when energy is scheduled and dispatched. Market participants are then billed for such charges in the subsequent month.

NYISO's Rate Schedule 1 includes a timing mechanism that effectively meets the requirements of an alternative revenue program set forth in Financial Accounting Standards Board's (FASB) Emerging Issues Task Force Issue No. 92-7, *Accounting by Rate-Regulated Utilities for the Effects of Certain Alternative Revenue Programs*.

Accordingly, revenue is recognized for net financing obligations and capital costs incurred during the reporting period based on the revenue requirement formula in the tariffs. NYISO has recorded an Other Noncurrent Asset of $4,917,092 and $11,728,390, respectively, in the accompanying 2008 and 2007 Statements of Financial Position in connection with this rate-making recovery mechanism.

Revenues recorded as interconnection studies revenues arise from billing and collection services in the interconnection service agreement process performed by NYISO. These revenues are offset by the corresponding interconnection expenses, recorded in operating expenses, which were incurred in performing such studies.

***(e) Cash and Cash Equivalents***

NYISO considers short-term marketable securities with original maturities of three months or less to be cash equivalents. The cash equivalents at December 31, 2008 and 2007 were held in money market accounts invested primarily in short-term U.S. government obligations. NYISO's cash and cash equivalents consist primarily of funds accumulated for the working capital reserve, amounts due to market participants for overcollections on the voltage market, amounts collected for Transmission Congestion Contract (TCC) auctions, amounts for funding employee benefit plans, and for general operating purposes.

***(f) Restricted Cash***

Restricted cash consists primarily of market participant security deposits held in escrow accounts, amounts prepaid by market participants in advance of settlements billing dates, and amounts deposited for interconnection studies. NYISO presents changes in restricted cash in the operating activities section of the statements of cash flows instead of in the investing activities section. NYISO has determined that this classification is more suitable to the nature of the Company's operations.

***(g) Other Assets***

Other assets consist primarily of timing differences on certain rate-making recoveries, the fair value of securities held by the Trust Share Option Agreement, interest receivable, the fair value of interest rate cap and swap agreements, and other deferred charges.

***(h) Property and Equipment***

Property and equipment are recorded at cost. NYISO capitalizes property and equipment additions in excess of $5,000 with a useful life greater than one year. Depreciation is computed on the straight-line method over the assets' estimated useful lives of three to five years, except for building and building improvements, which are depreciated on a straight-line basis over 20 years. When assets are retired or otherwise disposed of, the cost and related depreciation are removed, and any resulting gain or loss is reflected in expense for the period. Repairs and maintenance costs are charged to expense when incurred.

In accordance with Statement of Position 98-1, *Accounting for Costs of Computer Software Developed or Obtained for Internal Use*, labor, overhead, interest, consulting, and related costs incurred to acquire and develop computer software for internal use are capitalized and amortized using the straight-line method over three years. Costs incurred prior to the determination of feasibility of developed software and following the in-service date of developed software are expensed.

Long-lived assets are recorded at cost, and are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amounts of the assets may not be recoverable. Management is not aware of any events or changes in circumstances that would necessitate a review of any long-lived assets as of the years ended December 31, 2008 and 2007.

***(i) Working Capital Reserve***

In order to maintain the liquidity and stability of NYISO's markets, NYISO has accumulated a working capital fund through amounts charged to market participants under Rate Schedule 1. Any additional working capital needs would be billed to market participants in future Rate Schedule 1 charges. Market participants are entitled to interest on their principal contributions to the working capital reserve. Each market participant is allocated interest based on the respective ratio share of each market participant's principal contributions to the total working capital fund. Accumulated interest on the working capital fund is distributed annually to market participants.

***(j) Market Participant Prepayments***

Amounts received from certain market participants who do not provide an alternate form of financial assurance and must prepay their obligations to NYISO in advance of settlements billing dates are recorded as market participant prepayments.

***(k) Deferred Revenue***

Advance payments from developers for interconnection studies are reflected as deferred revenue. Fees for participation in NYISO's governance process are billed to market participants in advance of the year for which they apply and are amortized over the related governance period. All such unamortized amounts are also included in deferred revenue.

***(l) Income Taxes***

NYISO is not subject to income taxes because it is operating as a corporation described in Section 501(c)(3) of the Internal Revenue Code, exempt under Section 501(a) of the Internal Revenue Code. NYISO is also exempt from paying New York State income tax or sales tax.

***(m) Fair Value of Financial Instruments***

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements* (SFAS No. 157). NYISO adopted the provisions of SFAS No. 157 on January 1, 2008, for fair value measurements of financial assets and financial liabilities. SFAS No. 157 defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. SFAS No. 157 also establishes a framework for measuring fair value and expands disclosures about fair value measurements.

On January 1, 2009, NYISO will be required to apply the provisions of SFAS No. 157 to fair value measurements of nonfinancial assets and nonfinancial liabilities that are recognized or disclosed at fair value in the financial statements on a nonrecurring basis. NYISO does not expect the adoption of these provisions to have any effect on its financial statements.

SFAS No. 157 establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The three levels of the fair value hierarchy are as follows:

- Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities that NYISO has the ability to access at the measurement date.
- Level 2 inputs are inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly.
- Level 3 inputs are unobservable inputs for the asset or liability.

The level in the fair value hierarchy within which a fair measurement in its entirety falls is based on the lowest level input that is significant to the fair value measurement in its entirety.

The fair value of NYISO's interest rate swaps and caps are determined using pricing models developed based on the LIBOR swap rate and other observable market data (Level 2 inputs).

The following table presents the carrying amounts and estimated fair values of NYISO’s nancial instruments at December 31, 2008 and 2007:

| | | 2008 | | 2007 | |
|---|---|---|---|---|---|
| | | Carrying amount | Fair value | Carrying amount | Fair value |
| Financial assets: | | | | | |
| Interest rate caps | $ | 2,075 | 2,075 | 115,557 | 115,557 |
| Financial liabilities: | | | | | |
| Interest rate swaps | $ | 7,428,686 | 7,428,686 | 1,487,918 | 1,487,918 |

Interest rate caps are included in other current assets and the interest rate swaps are included in noncurrent liabilities.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities – Including an amendment of FASB Statement No. 115* (SFAS No. 159). This Standard permits entities to choose to measure many nancial instruments and certain other items at fair value. The objective is to improve nancial reporting by providing entities with the opportunity to mitigate volatility in reported earnings caused by measuring related assets and liabilities differently without having to apply complex hedge accounting provisions. This Statement is expected to expand the use of fair value measurement, which is consistent with the FASB’s long-term measurement objectives for accounting for nancial instruments. SFAS No. 159 is effective for scal years beginning after November 15, 2007. The adoption of SFAS No. 159 did not have any effect on NYISO’s nancial statements.

***(n) Concentration of Credit Risk***

Financial instruments that subject NYISO to credit risk consist primarily of market settlement billings and Rate Schedule 1 revenue due from market participants. As provided in the OATT and Services Tariff, NYISO reviews the creditworthiness of market participants, who are required to either maintain certain nancial statement criteria and/or approved credit ratings, to post speci ed nancial security in an amount suf cient to cover their outstanding liability to NYISO, or to prepay their obligations in advance of settlement billing dates.

NYISO’s tariffs establish speci c periods for the adjustment of settlement invoices as originally billed and for challenges to amounts billed for a particular service month. Subsequent invoices issued during the settlement adjustment period “true up” amounts previously billed. After all true-up invoices are issued during the settlement adjustment period, market participants may challenge the amounts billed for a particular service month. If NYISO agrees with the provisions of the challenge, a nal invoice is issued for that service month. As a result, NYISO is exposed to credit risk until all settlement adjustment and nal invoices for each service month are nalized and liquidated. However, Rate Schedule 1 of the OATT allows NYISO to recover bad debt losses from remaining market participants in future billings.

For original invoices issued prior to October 2002, settlement invoices could be adjusted up to two years after the date of original issuance, and these invoices could be challenged for an additional one year after the issuance of all settlement adjustment invoices. Effective with the October 2002 settlement invoice, these periods were shortened to one year for adjustments and an additional four months for invoice challenges. Beginning with the January 2007 settlement invoice, these periods were further shortened to six months for adjustments and an additional one month for invoice challenges. Beginning with the January 2009 settlement invoice, the adjustment period has been further shortened to four months. As of December 31, 2008, the adjustments and true-ups of all settlement invoices through January 2008 were completed.

***(o)*** ***Use of Estimates***

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Significant items subject to such estimates and assumptions include the useful lives of fixed assets, regulatory assets, the valuation of derivatives, compensation, and liabilities for employee benefit obligations.

***(p)*** ***Reclassifications***

Certain reclassifications of prior period data have been made to conform with the current-year presentation.

***(q)*** ***Derivative Financial Instruments***

NYISO records derivative financial instruments in accordance with SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities* (SFAS No. 133). SFAS No. 133 requires that all derivative financial instruments be recognized as either assets or liabilities, measured at fair value. The accounting for changes in fair value of derivatives (i.e., gains and losses) depends on the intended use of the derivative and the corresponding designation. The fair values of NYISO's derivative instruments are quoted by external sources. The changes in the fair value of these derivatives are recorded as interest expense. Due to NYISO's regulated rates, the offset to the changes in fair value of these derivatives is recorded as other noncurrent assets. See additional details in note 7.

***(r)*** ***New Accounting Pronouncements***

In March 2008, the FASB issued SFAS No. 161, *Disclosures about Derivative Instruments and Hedging Activities* (SFAS No. 161). SFAS No. 161 amends SFAS No. 133 requiring enhanced disclosures about an entity's derivative and hedging activities thereby improving the transparency of financial reporting. SFAS No. 161's disclosures provide additional information on how and why derivative instruments are being used. This statement is effective for financial statements issued for fiscal years beginning after November 15, 2008, with early application encouraged. NYISO does not anticipate that the adoption of this pronouncement will have a material effect on its financial statements.

In 2008, the FASB issued SFAS No. 162, *The Hierarchy of Generally Accepted Accounting Principles*. This Statement identifies the sources of accounting principles and the framework for selecting the principles to be used in the preparation of financial statements of nongovernmental entities that are presented in conformity with generally accepted accounting principles (GAAP) in the United States (the GAAP hierarchy). This statement is effective for NYISO for the fiscal year beginning January 1, 2009.

In 2008, the FASB issued Financial Accounting Standards Board (FASB) Statement of Position 48-1 a definition of FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes – An Interpretation of FAS 109* (FIN 48). FIN 48 clarifies the accounting for uncertainty in income tax recognized in an entity's financial statements. FIN 48 requires entities to determine whether it is more likely than not that a tax position will be sustained upon examination by the appropriate taxing authorities before any part of the benefit can be recorded in the financial statements. It also provides guidance on the recognition, measurement, and classification of income tax uncertainties, along with any related interest or penalties. A tax position is measured at the largest amount of benefit that is greater than fifty percent likely of being realized upon settlement. The Statement of Position requires certain nonpublic enterprises to adopt FIN 48 for fiscal periods beginning after December 15, 2008. FIN 48 is effective for NYISO for the fiscal year beginning January 1, 2009 and it is not expected to have an impact on the financial statements.

### (2) Accounts Receivable

NYISO's accounts receivable at December 31, 2008 and 2007, consisted of the following:

| | | 2008 | 2007 |
|---|---|---|---|
| Billed: | | | |
| Past due settlement invoices | $ | 5,068,261 | 3,476,670 |
| Miscellaneous billed receivables | | 368,076 | 424,000 |
| Reserve for doubtful accounts – past due settlement invoices | | (1,134,187) | (3,442,407) |
| | | 4,302,150 | 458,263 |
| Unbilled: | | | |
| Operating expenses for December | | 11,538,473 | 12,523,317 |
| Miscellaneous unbilled receivables | | 339,511 | 339,425 |
| Bad debt losses recoverable from market participants | | 25,903 | 286,271 |
| Replenishments of working capital reserve | | 306 | 38,501 |
| | | 11,904,193 | 13,187,514 |
| Total | $ | 16,206,343 | 13,645,777 |

Rate Schedule 1 of the OATT allows NYISO to recover bad debt losses from market participants and provides guidance on the provisions of such recoveries. NYlSO's reserve for doubtful accounts at December 31, 2008 and 2007, results primarily from past due settlement invoices related to a subsidiary of Enron Corporation. The bad debt losses were recovered from market participants in accordance with the OATT and any amounts recovered from the Enron bankruptcy proceedings are refundable to these market participants. All amounts recovered from the Enron bankruptcy proceedings through December 31, 2008, were refunded to market participants as of December 31, 2008. As of December 31, 2008 and 2007, NYISO recorded unbilled receivables of $25,903 and $286,271, respectively, to re ect amounts yet to be recovered from remaining market participants in connection with other bad debt losses.

NYISO recovers its operating expenses via Rate Schedule 1 in the month following the month of service. Therefore, the unbilled operating expenses for December are billed and recovered in January of the subsequent year.

Unbilled replenishments of working capital reserve relate to amounts recoverable from market participants via future Rate Schedule 1 charges to recover amounts temporarily utilized by NYISO out of the working capital reserve.

### (3) Regulatory Assets

At December 31, 2008 and 2007, regulatory assets were comprised of the following:

| | | 2008 | 2007 |
|---|---|---|---|
| Asset related to recognition of SFAS No. 158 for pension plan | $ | 9,527,335 | 4,232,525 |
| Asset related to recognition of SFAS No. 158 for postretirement plan | | 366,920 | — |
| Funding for deferred charges | | 1,710,636 | 39,404 |
| Voltage support service (reactive power) market | | — | 3,021,124 |
| Replenishment of working capital reserve | | — | 1,541,923 |
| Total | | 11,604,891 | 8,834,976 |
| Less current portion | | — | (4,563,047) |
| Long-term portion | $ | 11,604,891 | 4,271,929 |

The adoption of SFAS No. 158 at December 31, 2007 required NYISO to recognize the unfunded balance of the pension plan as a liability in the Statements of Financial Position. The recognition of this unfunded status created a Noncurrent Regulatory Asset of $4,232,525 for pension costs to be recovered in future rates at December 31, 2007.

In order to maintain acceptable transmission voltages on the New York State transmission system, certain market participants within the New York Control Area produce or absorb voltage support service (reactive power). Payments to market participants supplying voltage support service and recoveries from other market participants are assessed via Rate Schedule 2 of the OATT and Services Tariff. Differences between the timing of recoveries and payments for voltage support service that result in under collections are re ected as regulatory assets. At December 31, 2008 and 2007, respectively, NYISO recognized a regulatory liability of $2,314,198 and a regulatory asset of $3,021,124 related to such timing differences.

During 2004, NYISO entered into a settlement agreement with its market participants to resolve a billing issue in NYISO's Transmission Congestion Contracts market. As of 2007, NYISO's working capital fund has been temporarily depleted by $1,541,923 as a result of this settlement. NYISO replenished this temporary draw on the working capital reserve via a FERC-approved surcharge assessed to certain future transmission congestion contracts. The full replenishment of the working capital reserve related to this settlement was completed in 2008.

## (4) Property and Equipment

Property and equipment includes interest of $25,574 and $186,066 capitalized during 2008 and 2007, respectively. As of December 31, 2008 and 2007, property and equipment consisted of the following:

| | | 2008 | 2007 |
|---|---|---|---|
| Software developed for internal use | $ | 88,554,051 | 80,295,603 |
| Computer hardware and software | | 55,917,646 | 53,267,924 |
| Building, building improvements, and leasehold improvements | | 32,392,758 | 30,129,552 |
| Machinery and equipment | | 3,692,980 | 3,272,366 |
| Furniture and xtures | | 2,763,214 | 2,757,115 |
| Land and land improvements | | 2,065,571 | 2,065,571 |
| Work in progress | | 4,431,779 | 3,433,444 |
| | | 189,817,999 | 175,221,575 |
| Accumulated depreciation and amortization | | (133,826,593) | (118,553,825) |
| Property and equipment – net | $ | 55,991,406 | 56,667,750 |

Depreciation expense for the years ended December 31, 2008 and 2007 was $16,803,549 and $28,352,679, respectively.

## (5) Short-Term Debt

On July 21, 2005, NYISO entered into a $50.0 million Revolving Credit Facility that expires on July 21, 2010. The proceeds from this facility are to be used for working capital purposes. Interest on borrowings under this agreement is based on NYISO's option of varying rates of interest tied to either the prime rate or the London Inter Bank Offer Rate (LIBOR). At December 31, 2008 and 2007, respectively, there were no amounts outstanding on the Revolving Credit Facility.

## (6) Long-Term Debt

On February 13, 2003, NYISO entered into a $59.3 million unsecured line of credit facility (2003 Budget Facility), the proceeds of which could be drawn until February 29, 2004, to fund the 2003 development of signi cant information technology projects. By December 31, 2003, $47.0 million was borrowed on the 2003 Budget Facility, with principal and interest payments payable over four years, beginning in March 2004. In October 2007, the 2003 Budget Facility was fully repaid, with $3.9 million representing voluntary prepayments against this debt. See additional information in note 7.

On March 17, 2004, NYISO entered into an unsecured $100.0 million line of credit facility (2004 – 2006 Budget Facility), the proceeds of which could be drawn until December 2006 to fund the development of signi cant information technology projects during 2004 through 2006, with principal repayments made over four years. Interest on borrowings under this facility is due monthly and is based on NYISO's option of varying rates of interest tied to either LIBOR plus 60 basis points for borrowings during the draw period not yet converted to term loans, LIBOR plus 100 basis points for borrowings converted to term loans, or the prime rate. On April 8, 2005, this facility was re nanced to lower the LIBOR interest rate spread to 52.5 basis points for borrowings during the draw period and 80 basis points for borrowings converted to term loans. NYISO entered into interest rate cap agreements on $82.0 million of this debt, which caps the maximum interest rate at 4.60% for borrowings during the draw periods not yet converted to term loans (4.525% after April 8, 2005, re nancing) and 5.00% for borrowings converted to term loans (4.80% after April 8, 2005, re nancing). See additional information in note 7.

At December 31, 2004, $42.0 million was drawn on the 2004 – 2006 Budget Facility, which was converted to a term loan in February 2005 with monthly principal and interest payments payable beginning March 2005. As of December 31, 2008, these borrowings were fully repaid, with $3.1 million representing voluntary prepayments against this debt. At December 31, 2007 the interest rate on these borrowings was at the cap level of 4.8%. During 2005, an additional $18.0 million was drawn on the 2004 – 2006 Budget Facility, which was converted to a term loan in February 2006 with monthly principal and interest payments payable from March 2006 through December 2009. At December 31, 2008 and 2007, the interest rate on these borrowings was 2.23% and 4.80%, respectively. During 2006, an additional $15.5 million was drawn on the 2004 – 2006 Budget Facility, which was converted to a term loan in March 2007 with monthly principal and interest payments payable through December 2010. At December 31, 2008 and 2007, the interest rate on these borrowings was 2.23% and 4.80%, respectively.

On January 22, 2007, NYISO entered into an unsecured $80 million line of credit facility (2007 – 2010 Budget Facility), the proceeds of which may be drawn until January 2011 to fund capital purchases and the development of signi cant information technology projects during 2007 – 2010. NYISO must convert each year's annual borrowings to term loans, with principal and interest payments payable over three years. Interest on borrowings under this facility is based on NYISO's option of varying rates of interest tied to either LIBOR plus 40 basis points for borrowings during the draw periods, LIBOR plus 65 basis points for borrowings converted to term loans, or the prime rate. Interest payments on borrowings are due monthly. During 2007, $15.0 million was drawn on the 2007 – 2010 Budget Facility, which was converted to a term loan in January 2008 with monthly principal and interest payments payable from January 2008 through December 2010. At December 31, 2008 and 2007, the interest rate on these borrowings was  xed at 5.726% and 5.476%, respectively. During 2008, an additional $16.7 million was drawn on the 2007 – 2010 Budget Facility, which was converted to a term loan in January 2009 with monthly principal and interest payments payable from January 2009 through December 2011. At December 31, 2008, the interest rate on $15 million of these borrowings was  xed at 5.392% and the remaining $1.7 million was at 1.831%.

On January 23, 2007, NYISO entered into four interest rate swap agreements to  x interest payments on $60 million of the $80 million available on this line of credit facility. Under the swap agreements, NYISO will pay  xed interest rates ranging between 5.392% to 5.515% during the annual borrowing periods and 5.642% to 5.765% on the four annual term loan conversions. See additional information in note 7.

On July 8, 2005, NYISO entered into two  nancing agreements to purchase and renovate a 140,000-square foot of ce building. The  rst agreement is a $14.7 million mortgage to  nance the building purchase (Mortgage), and the second agreement represents a $10.0 million line of credit for renovations during an 18-month period, beginning in July 2005 (Renovations Loan). The Mortgage has principal and interest payments payable over 20 years, beginning September 2005. Principal and interest payments on borrowings made during the Renovations Loan draw period are payable over 20 years, beginning in January 2007. During 2005, $14.7 million was borrowed on the Mortgage, and during 2006, $10.0 million was drawn on the Renovations Loan. Both agreements are secured by liens on the building and subsequent capitalized renovations. Interest on borrowings under both facilities is due monthly and is based on varying rates of interest tied to LIBOR plus 100 basis points. On February 15, 2005, NYISO entered into an interest rate swap agreement on the Mortgage, which fixed the interest rate on this loan at 5.79%. On February 15, 2005, NYISO also entered into an interest rate swap agreement on the Renovations Loan, which fixed the interest rate on these borrowings at 5.96%, beginning on January 1, 2007.

At December 31, 2008, the following amounts were outstanding on NYISO's long-term debt:

| | 2004 – 2006 Budget Facility loan | 2007 – 2010 Budget Facility loan | Mortgage | Renovations | Total |
|---|---|---|---|---|---|
| Outstanding balance | $ 12,252,000 | 26,700,000 | 12,481,756 | 9,474,741 | 60,908,497 |
| Less current portion | (8,376,000) | (10,566,667) | (455,434) | (298,469) | (19,696,570) |
| Long-term portion | $ 3,876,000 | 16,133,333 | 12,026,322 | 9,176,272 | 41,211,927 |

At December 31, 2007, the following amounts were outstanding on NYISO's long-term debt:

| | 2004 – 2006 Budget Facility loan | 2007 – 2010 Budget Facility loan | Mortgage | Renovations | Total |
|---|---|---|---|---|---|
| Outstanding balance | $ 31,128,000 | 15,000,000 | 12,513,971 | 9,754,168 | 68,396,139 |
| Less current portion | (18,876,000) | (5,000,000) | (32,215) | (279,427) | (24,187,642) |
| Long-term portion | $ 12,252,000 | 10,000,000 | 12,481,756 | 9,474,741 | 44,208,497 |

At December 31, 2008, scheduled maturities of NYISO's long-term debt were as follows:

| | 2004 – 2006 Budget Facility loan | 2007 – 2010 Budget Facility loan | Mortgage | Renovations | Total |
|---|---|---|---|---|---|
| 2009 | $ 8,376,000 | 10,566,667 | 455,434 | 298,469 | 19,696,570 |
| 2010 | 3,876,000 | 10,566,667 | 482,901 | 317,013 | 15,242,581 |
| 2011 | — | 5,566,666 | 512,025 | 336,709 | 6,415,400 |
| 2012 | — | — | 541,065 | 356,162 | 897,227 |
| 2013 | — | — | 575,536 | 379,757 | 955,293 |
| Thereafter | — | — | 9,914,795 | 7,786,631 | 17,701,426 |
| Total | $ 12,252,000 | 26,700,000 | 12,481,756 | 9,474,741 | 60,908,497 |

**(7) Derivatives and Hedging Activities**

The fair values of NYISO's derivative instruments, which are free-standing agreements, are quoted by external sources. The changes in the fair value of these derivatives are recorded in Interest Expense. In December 2003, NYISO entered into an interest rate cap agreement with a commercial bank to cap interest payments at 5.375% (4.65% after refinancing on April 8, 2005) on its 2003 Budget Facility. The notional amount of the debt on the date of the cap agreement was $47,000,000. Under the cap agreement, NYISO pays a variable interest rate tied to LIBOR on the outstanding principal amount of the 2003 Budget Facility from January 2004 through February 2008; however, this variable interest rate cannot exceed 5.375% (4.65% after refinancing). As of December 31, 2007, the fair value of the interest rate cap was $2,512 and was recorded in Other Current Assets. For the years ended December 31, 2008 and 2007, NYISO recorded interest income of $4,795 and interest expense of $18,329, respectively, related to this derivative instrument.

In March 2004, NYISO entered into interest rate cap agreements with a commercial bank to cap interest payments at 4.60% for draws and 5.00% for term loans (4.525% and 4.80% after re nancing on April 8, 2005) on its 2004 – 2006 Budget Facility. The notional amount of the debt on the date of the cap agreements was $82,000,000. Under the cap agreements, NYISO pays a variable interest rate tied to LIBOR on the draws and term loans of the 2004 – 2006 Budget Facility from March 2005 through December 2010; however, this variable interest rate cannot exceed 4.525% for draws or 4.80% for term loans. As of December 31, 2008 and 2007, the fair value of the interest rate cap was $2,075 and $115,557, and is recorded in Other Current Assets. For the years ended December 31, 2008 and 2007, NYISO recorded interest income of $187,274 and interest expense of $512,277, respectively, related to this derivative instrument.

In February 2005, NYISO entered into two interest rate swap agreements with a commercial bank to  x interest rate payments on the  nancing of a new of ce building purchase. The notional amount of debt on the swap agreement for the Mortgage was $14,708,750, and NYISO pays a  xed interest rate of 5.79% on the outstanding principal amount of this  nancing on payments from August 2005 through August 2025. The notional amount of debt on the swap agreement for the Renovations Loan was $10,000,000, and NYISO pays a  xed interest rate of 5.96% on payments from January 2007 through January 2027. As of December 31, 2008 and 2007, the fair value of these interest rate swap agreements was ($2,375,734) and ($177,095) for the Mortgage and ($2,068,308) and ($252,713) for the Renovations Loan, recorded in Other Noncurrent Liabilities. For the years ended December 31, 2008 and 2007, NYISO recorded interest expense of $4,014,234 and $895,958, respectively, related to these two swap agreements.

In January 2007, NYISO entered into four interest rate swap agreements with a commercial bank to  x interest rate payments on the 2007 – 2010 Budget Facility. The notional amount of debt on the swap agreements was $60,000,000. NYISO pays  xed interest rates ranging between 5.392% to 5.515% during the annual borrowing periods and 5.642% to 5.765% on the four annual term loan conversions from March 2007 through December 2013. As of December 31, 2008 and 2007, the fair value of these interest rate swap agreements was ($2,984,644) and ($1,058,110), respectively, recorded in Other Noncurrent Liabilities. For the years ended December 31, 2008 and 2007, NYISO recorded interest expense of $1,926,534, and $1,058,110 related to these four swap agreements.

| | Notional amount at inception | Notional amount at December 31, 2008 | Fair value at December 31, 2007 | Fair value at December 31, 2008 | 2008 Loss on market value | Location of gain/loss |
|---|---|---|---|---|---|---|
| Loan: | | | | | | |
| 2003 Budget Facility | $ 47,000,000 | — | 2,512 | — | (2,512) | Interest expense |
| 2004-2006 Budget Facility | 82,000,000 | 16,708,334 | 115,557 | 2,075 | (113,482) | Interest expense |
| 2007-2010 Budget Facility | 60,000,000 | 32,500,000 | (1,058,110) | (2,984,644) | (1,926,534) | Interest expense |
| Mortgage | 14,708,750 | 12,481,756 | (177,095) | (2,375,734) | (2,198,639) | Interest expense |
| Renovations | 10,000,000 | 9,474,742 | (252,713) | (2,068,308) | (1,815,595) | Interest expense |

NYISO is exposed to credit loss in the event of nonperformance by the commercial banks under the interest rate cap and swap agreements. However, NYISO does not anticipate nonperformance by the commercial banks.

## (8) Employee Benefit Plans

### *(a) Pension and Postretirement Plans*

NYISO has a de ned bene t quali ed pension plan covering substantially all employees. Plan bene ts are based on employee compensation levels and years of service, including service for certain employees previously employed by NYPP member companies. Employees become vested in pension bene ts after  ve years of credited service. Effective January 1, 2008, the vesting period was reduced from  ve years to three years of credited service to conform to requirements of the Pension Protection Act of 2006. NYISO expects to contribute $2.5 million to the quali ed pension plan in 2009. In 2008, NYISO adopted changes to its pension plan to end the accrual of future bene ts for most employees, effective December 1, 2009. Certain grandfathered employees will continue to accrue bene ts until attaining age 55. NYISO plans to replace the de ned bene t accruals with equivalent contributions to employee 401(k) plan accounts after December 1, 2009. As a result of the amendment to stop most accruals for future benefits, NYISO recorded a curtailment gain of $1,368,980.

NYISO sponsors a defined benefit postretirement plan to provide medical and life insurance benefits for eligible retirees and their dependents. Substantially all employees who retire from NYISO become eligible for these benefits provided they have been credited with at least five years of NYISO service (10 years of NYISO service for those employees hired on or following January 1, 2005). The benefits are contributory based upon years of service, with NYISO paying up to 50% of costs for retired employees and up to 25% for their dependents (subject to specified dollar limits). Medical coverage becomes secondary upon Medicare eligibility and life insurance coverage is reduced upon reaching age 65.

The schedules that follow show the benefit obligations, the plan assets, and the funded status as of December 31, 2008 and 2007, and the change in benefit obligations for NYlSO's qualified pension and postretirement plans for the years ended December 31, 2008 and 2007.

| | | **Pension plan** | | **Postretirement plan** | |
|---|---|---|---|---|---|
| | | **2008** | **2007** | **2008** | **2007** |
| Change in benefit obligation: | | | | | |
| Benefit obligation – beginning of year | $ | 20,985,149 | 20,971,282 | 4,688,623 | 4,715,194 |
| Service cost | | 1,894,157 | 1,948,970 | 408,135 | 443,059 |
| Interest cost | | 1,257,442 | 1,151,467 | 281,201 | 291,626 |
| Actuarial (gain) loss | | 1,490,415 | (967,051) | 482,540 | (725,108) |
| Participant contributions | | — | — | 96,333 | 73,611 |
| Terminated plan/plan amendment | | (1,368,980) | — | — | — |
| Benefits paid | | (1,113,862) | (2,119,519) | (147,125) | (109,759) |
| Benefit obligation – end of year | $ | 23,144,321 | 20,985,149 | 5,809,707 | 4,688,623 |
| Change in plan assets: | | | | | |
| Fair value of plan assets – beginning of year | $ | 16,982,471 | 15,493,064 | — | — |
| Actual return on plan assets | | (3,621,163) | 1,221,406 | — | — |
| Employer contributions | | 4,500,000 | 2,500,004 | 50,792 | 36,148 |
| Participant contributions | | — | — | 96,333 | 73,611 |
| Benefits paid | | (1,113,862) | (2,119,519) | (147,125) | (109,759) |
| Expenses paid | | (109,790) | (112,484) | — | — |
| Fair value of plan assets – end of year | $ | 16,637,656 | 16,982,471 | — | — |
| Funded status | $ | (6,506,665) | (4,002,678) | (5,809,707) | (4,688,623) |

Amounts recognized in the 2008 and 2007 statements of  nancial position consist of:

| | | Pension plan | | Postretirement plan | |
|---|---|---|---|---|---|
| | | 2008 | 2007 | 2008 | 2007 |
| Bene t obligation | $ | (6,506,665) | (4,002,678) | (5,809,707) | (4,688,623) |
| Other noncurrent asset or liability | | 9,527,335 | 4,232,525 | 366,920 | (150,108) |
| Projected bene t obligation | $ | (23,144,321) | (20,985,149) | (5,809,707) | (4,688,623) |
| Fair value of assets | | 16,637,656 | 16,982,471 | — | — |
| Unfunded projected bene t obligation | $ | (6,506,665) | (4,002,678) | (5,809,707) | (4,688,623) |

The unfunded projected bene t obligation for the postretirement plan at December 31, 2008 and 2007 is recorded as $193,138 and $140,116, respectively, in Other Current Liabilities and $5,616,569 and $4,548,507, respectively, in Accrued Postretirement Liability.

Amounts recognized in the statements of activities consist of:

| | | Pension plan | | Postretirement plan | |
|---|---|---|---|---|---|
| | | 2008 | 2007 | 2008 | 2007 |
| The components of net periodic pension and postretirement cost are as follows: | | | | | |
| Service cost | $ | 1,894,157 | 1,948,970 | 408,135 | 443,059 |
| Interest cost | | 1,257,442 | 1,151,467 | 281,201 | 291,626 |
| Recognized loss due to curtailments | | 1,125,270 | — | — | — |
| Expected return on plan assets | | (1,347,956) | (1,179,837) | — | — |
| Amortization of unrecognized prior service cost | | 157,007 | 304,824 | — | — |
| Amortization of unrecognized loss | | 162,146 | 224,568 | (34,488) | 33,988 |
| Total | $ | 3,248,066 | 2,449,992 | 654,848 | 768,673 |

NYISO uses a December 31 measurement date for its pension and postretirement bene t plans. NYISO's accumulated bene t obligation for the de ned bene t pension plan is $21,933,275 and $18,233,261 at December 31, 2008 and 2007, respectively.

The following table as of December 31, 2008 and 2007, shows the assumptions used to calculate the pension and postretirement bene t obligations and net periodic costs:

| | Pension plan | | Postretirement plan | |
|---|---|---|---|---|
| | 2008 | 2007 | 2008 | 2007 |
| Bene t obligations: | | | | |
| Discount rate | 5.75% | 6.00% | 5.75% | 6.00% |
| Rate of compensation increases | 4.00 | 4.00 | 4.00 | 4.00 |
| Net cost or credit: | | | | |
| Discount rate | 6.29% | 6.00% | 6.00% | 6.00% |
| Rate of compensation increases | 4.00 | 4.00 | 4.00 | 4.00 |
| Expected return on plan assets | 7.75 | 7.75 | N/A | N/A |

NYISO's expected rate of return on plan assets re ects anticipated returns on the quali ed pension plan's current and future assets. To determine this rate, NYISO considers historical returns for equity and debt securities, as well as current capital market conditions and projected future conditions. NYISO selected an assumed rate of 7.75%, which is lower than the rate otherwise determined solely on historical returns.

The targeted allocation and actual investment mix of the pension plan's assets are as follows:

| | Target allocation | December 31 | |
|---|---|---|---|
| | | 2008 | 2007 |
| Cash equivalents | —% | 3% | —% |
| Equity securities | 60 | 51 | 59 |
| Debt securities | 40 | 46 | 41 |
| Total | 100% | 100% | 100% |

Pursuant to resolutions adopted by NYISO's Board of Directors, NYISO's Retirement Board has been granted the authority to control and manage the operation and administration of NYISO's quali ed pension plan, including responsibility for the investment of plan assets and the ability to appoint investment managers. The Retirement Board currently consists of NYISO's Chief Financial Of cer, Vice President of Human Resources, General Counsel, and Controller. The Retirement Board provides reports to the Commerce and Compensation Committee of the Board of Directors on at least an annual basis.

The long-term investment objective for NYISO's quali ed pension plan is to maximize the total return on plan assets while limiting risk, re ected in volatility of returns, to prudent levels. To that end, NYISO's Retirement Board has appointed and regularly meets with an investment advisor to review asset performance, compliance with target asset allocation guidelines, and appropriate levels of asset diversi cation. NYISO's investment advisor operates under written guidelines provided by NYISO, which cover such areas as investment objectives, performance measurement, permissible investments, investment restrictions, and communication and reporting requirements.

The assumed health care cost trend rates for the postretirement plan are 9% for 2008 decreasing to 4.75% in 2018, and 9% for 2007 decreasing to 5% in 2014. A one-percentage point change in the assumed health care cost trend rate would change the 2008 postretirement bene t obligation as follows:

| | | 1% increase | 1% decrease |
|---|---|---|---|
| Effect on postretirement bene t obligation | $ | 375,100 | (344,000) |
| Effect on total of service and interest cost components | | 55,900 | (50,200) |

The following bene t payments, which re ect expected future service, are expected to be paid:

| | | Pension plan | Postretirement plan |
|---|---|---|---|
| 2009 | $ | 1,509,538 | 198,613 |
| 2010 | | 1,668,497 | 259,924 |
| 2011 | | 1,751,669 | 334,419 |
| 2012 | | 1,829,377 | 376,604 |
| 2013 | | 1,933,471 | 413,153 |
| 2014 – 2018 | | 10,577,199 | 2,741,566 |

***(b) 401(k)Plan***

NYISO has a 401(k) Retirement and Savings Plan open to all nontemporary employees. This plan provides for employee contributions up to speci ed limits. NYISO matches 100% of the rst 3% of employee contributions, and 50% of the next 2% of employee contributions. Employees are immediately vested in NYISO's matching contributions, which were $1,424,834 and $1,347,709 for 2008 and 2007, respectively.

***(c) Long-Term Incentive Plan***

NYISO's Long-Term Incentive Plan provides certain members of senior management with deferred compensation bene ts. Bene ts are based upon the achievement of three-year performance goals established by the Board of Directors, with participants becoming fully vested and distributions payable for these deferred amounts after the completion of the third year. Accrued Long-Term Incentive Plan bene ts included in Other Noncurrent Liabilities at December 31, 2008 and 2007, were $1,585,340 and $645,761, respectively. The short-term portion of such liability, included in Other Current Liabilities, at December 31, 2008 and 2007, was $0 and $160,903, respectively.

***(d) Trust Share Option Agreement***

NYISO has entered into a nonquali ed share option agreement with a key former of cer whereby NYISO has granted to such former of cer the right to acquire debt and equity securities held by NYISO in a trust for an amount equal to 25% of the fair value of such securities. The options are immediately vested and are subject to certain restrictions of transferability. All options were exercised in December 2008. At December 31, 2008 and 2007, the fair market value of securities held by the trust was $114 and $968,560, respectively. The remaining balance will be disbursed in 2009.

## (9) Lease and Other Commitments

***Operating Leases***

During 2008, NYISO entered into obligations under two operating lease agreements for the use of computer hardware.

Expenses related to these leases totaled $1,066,500 in 2008. The remaining obligations of the NYISO with respect to these leases are as follows:

| | | |
|---|---|---|
| 2009 | $ | 2,991,277 |
| 2010 | | 3,194,640 |
| 2011 | | 2,928,420 |
| Total | $ | 9,114,337 |

***Other Commitments***

On July 8, 2005, NYISO purchased an of ce building to relocate NYISO's alternate control center and to consolidate employees located in leased facilities. In connection with the purchase, management entered into a Payment in Lieu of Taxes (PILOT) Agreement with the Rensselaer County Industrial Development Agency (RCIDA) to achieve certain bene ts. Per the terms of this agreement, NYISO will be required to make annual payments of approximately $175,000 for the rst 10 years. The agreement is cancelable at the discretion of NYISO.

### (10) Working Capital Reserve

At December 31, 2008 and 2007, the working capital reserve consisted of:

| | | 2008 | 2007 |
|---|---|---|---|
| Market participant contributions through Rate Schedule 1 | $ | 46,440,345 | 46,440,345 |
| Interest on market participant contributions | | 2,500,848 | 5,498,527 |
| Total | $ | 48,941,193 | 51,938,872 |

### (11) Deferred Revenue

Deferred revenue at December 31, 2008 and 2007, consisted of the following:

| | | 2008 | 2007 |
|---|---|---|---|
| Advance payments received on interconnection studies | $ | 4,163,169 | 2,907,510 |
| Governance participation fees | | 393,600 | 387,900 |
| Total | $ | 4,556,769 | 3,295,410 |

### (12) Regulatory Liabilities

At December 31, 2008 and 2007, NYISO recorded the following amounts as regulatory liabilities:

| | | 2008 | 2007 |
|---|---|---|---|
| Rate Schedule 1 transactional volume overcollections | $ | 6,461,676 | 6,319,291 |
| Voltage support service (reactive power) market | | 2,314,198 | — |
| Rate Schedule 1 underspending | | 1,505,215 | 1,743,591 |
| Funding for deferred charges | | 2,857,999 | — |
| Liability related to recognition of SFAS No. 158 for postretirement plan | | — | 150,108 |
| Total | | 13,139,088 | 8,212,990 |
| Less current portion | | (10,281,089) | (8,062,882) |
| Long-term portion | $ | 2,857,999 | 150,108 |

NYISO recovers its operating expenses through a surcharge assessed to market participants via Rate Schedule 1 of the OATT and Services Tariff. To the extent that transactional volumes billed under Rate Schedule 1 exceed the amount expected when the Rate Schedule 1 surcharge is established, NYISO re ects a regulatory liability for the overcollection amounts. Additionally, to the extent that NYlSO's spending does not exceed the annual Rate Schedule 1 revenue requirement, a regulatory liability is also established for the underspending amounts. The regulatory liabilities resulting from Rate Schedule 1 transactional volume overcollections and underspending at December 31, 2008 and 2007, respectively, are applied toward reduction of long-term debt.

SFAS No. 158 requires an employer to recognize the overfunded or underfunded status of a de ned bene t or postretirement plan (other than a multiemployer plan) as an asset or liability in its statement of nancial position and to recognize changes in the funded status in the year in which the changes occur. This recognition creates a noncurrent regulatory asset or liability for accumulated actuarial losses or gains to be recognized in future periods. As of December 31, 2008 and 2007 the amounts were $366,920 and ($150,108), respectively.

**(13) Commitments and Contingencies**

NYISO is routinely involved in regulatory actions. In the opinion of management, none of these matters will have a material adverse effect on the nancial position, results of operations, or liquidity of NYISO.

The most signi cant legal proceeding affecting NYISO is a civil suit, led by New York State Electric and Gas, seeking recovery of $6.6 million in compensatory damages and unspeci ed punitive damages, associated with alleged excessive payments for reserves of electricity during the period January to March 2000. This case, which is pending in the U.S. District Court for the Northern District of New York (Northern District), has been stayed pending the outcome of related proceedings at the FERC and the D.C. Circuit Court of Appeals. The D.C. Circuit Court of Appeals rendered a decision af rming FERC's determination to deny refunds on December 18, 2007, and no further related appellate or regulatory proceedings are anticipated. The civil suit remains stayed and on inactive status, pending further action by the parties or the Northern District seeking to reopen the action.

NYISO is also defending a civil suit that is pending in New York State Supreme Court, Albany County. The suit, which named the NYISO and two individuals as defendants, was led by a former employee, seeking reinstatement, as well as compensatory and punitive damages totaling $5 million, as relief for certain events alleged to have occurred during this individual's NYISO employment. On September 24, 2007, the Supreme Court granted, in part, a motion to dismiss the complaint and dismissed all claims asserted directly against the NYISO, leaving in place a single claim against a NYISO employee, the plaintiff's former supervisor. On December 31, 2008, the Third Department of the New York State Appellate Division reversed the Supreme Court's dismissal of some of the causes of action against the NYISO and the other defendants. No trial date has been set.

NYISO is also a defendant in a civil suit, pending in United States District Court for the Southern District of New York, commenced by 330 Fund I, L.P. In the suit, the plaintiff alleges that NYISO failed to timely post certain information regarding transmission system changes and outages on NYISO's Open Access Same-Time Information System, in violation of NYISO's OATT, which allegedly resulted in plaintiff incurring unspeci ed losses in connection with several transmission congestion contracts. By mutual agreement, the suit had been stayed pending the completion of administrative proceedings that were simultaneously led by plaintiff with FERC and involve the same subject matter. On October 1, 2007, FERC denied the plaintiff's complaint, and on February 20, 2009, FERC denied plaintiff's rehearing request. Plaintiff has sixty days from the date FERC denied its rehearing request to le a petition for review with a federal court of appeals.

# FINANCIAL STATEMENTS

330 Fund I, L.P.
330 Investment Management, LLC
3M Tonawanda
AB Energy NY, Pty.Ltd.
Absolute Energy Inc.
Accent Energy Midwest II LLC
Accent Energy Midwest LLC
Ace Energy Company, Inc.
AES Eastern Energy LP
AG Energy, L.P.
Agway Energy Services, LLC
Aleph One, Inc.
Allied Utility Network
Amber Power, LLC
Ambit Energy, LP
American Electric Power Service Corp.
American Utility Consultants
Amerinco, LLC
Amherst Utility Cooperative (AUC)
Astoria Energy LLC
Astoria Generating Company L.P.
Athens Generating Company, L.P.
August Power, LLC
Automated Energy, Inc.
Automated Power Exchange (APX)
Axon Energy, LLC
Bank of America, N.A.
Barclays Bank PLC
Beacon Power Corporation
Bear Energy LP
Bell Independent Power Corp.
BG Energy Merchants, LLC
BJ Energy LLC
Black Oak Energy LLC
Blue Rock Energy, Inc.
BluePoint Energy
Boralex Hydro Operations Inc
Boralex New York LP
BP Energy Company
Brookfield Energy Marketing Inc.
Bruce Power Inc.
Calpine Energy Services LP
CAM Energy Trading LLC
Cambridge Valley Enterprises LLC
Canandaigua Power Partners, LLC
Canastota Windpower LLC
Cargill Power Markets, LLC
Carr Street Generating Station LP
CBA Endeavors, LLC
CBK Group, LTD
CECONY-LSE
Centaurus Energy Master Fund, LP
Central Hudson Gas & Electric Corp.
Central Vermont Public Service Corp.
CHGE Roseton
Citadel Energy Investments Ltd.
Citadel Energy Products LLC
Citadel Energy Strategies LLC
Citigroup Energy Inc.
City of Niagara Falls
City Power Marketing, LLC
Clearview Electric, Inc.
CMT Fund IX LLC
Columbia Utilities Power, LLC
Commerce Energy, Inc.
Con Edison Solutions, Inc.
Conectiv Energy Supply, Inc.
Conservation Services Group
Consolidated Edison Co. of New York, Inc.
Consolidated Edison Energy, Inc.
Consolidated Hydro New York, Inc.
Constellation Energy Commodities Group, Inc.
Constellation NewEnergy 1123-DADRP
Constellation NewEnergy, Inc.

# MARKET PARTICIPANTS

Core Equities, Inc.
County Energy Services, LLC
County of Erie NY
County of Niagara NY
Covanta Niagara, LP
CPower, Inc.
Credit Suisse (USA) Inc.
Credit Suisse Energy LLC
Crucible Specialty Metals
Cummins Inc
Cutone & Company Consultants, LLC
DART Premiums
David Sholk, LLC
Day Automation Systems, Inc.
DB Energy Trading LLC
DC Energy LLC
DC Energy New England, LLC
DC Energy New York, LLC
DE Shaw Plasma Power LLC
Delaware County Electric Cooperative, Inc.
Demand Direct LLC
Direct Energy Marketing Inc
Direct Energy Services, LLC
Discount Energy LLC
Dominion Energy Marketing, Inc.
Dominion Retail, Inc.
drop18 Energy
DTE Energy Trading Inc
Dynamis ETF, LLC
Dynegy Power Marketing, Inc.
East Coast Power, LLC
ECS Power Corp
Edison Mission Marketing & Trading, Inc.
E-Energy, Inc.
Emera Energy Services, Inc
Emera Energy U.S. Subsidiary No. 1, Inc.
Empire Natural Gas Corp.
Empire Power Systems LLC
Energetix, Inc.
ENERGY AMERICA, LLC
Energy Analytics, Inc.
Energy Connect, Inc.
Energy Conservation and Supply, Inc.
Energy Cooperative of New York (ECNY)
Energy Curtailment Specialists, Inc.
Energy Endeavors, LLC
Energy Enterprises Inc.
Energy Investment Systems, Inc
Energy New England, LLC
Energy Plus Holdings LLC
Energy Services Provider, Inc.
Energy Solutions Group LLC
Energy Spectrum Inc.
Energy Systems North East LLC
EnerNOC, Inc.
Enerwise Global Technologies, Inc.
Engage Networks, Inc.
Entergy Nuclear Power Marketing LLC
Entergy Solutions Ltd.
Entergy Solutions Supply Ltd.
EPCOR Energy Marketing (US) Inc.
EPCOR Merchant and Capital (US) Inc.
EPIC Merchant Energy NY, L.P.
Erie Boulevard Hydropower LP
Exelon Generation Company LLC
FC Energy Services Company, LLC
First Commodities Ltd.
FirstLight Power Resources Management, LLC
Flat Rock Windpower II LLC
Flat Rock Windpower LLC
Fortis Energy Marketing & Trading, GP
Fortis Ontario Inc
FPL Energy Marketing, Inc.
FPL Energy Services, Inc.

Franklin Power LLC
Freeport Electric
Galt Power Inc.
Gateway Energy Services Corporation
Gemsys LLC
General Electric Plastics
Glacial Energy New York, Inc.
GLE Trading LLC
Glens Falls Lehigh Cement Company
Good Energy, L.P.
Grant Energy, Inc.
Grunwald Fund
Hampshire Paper Co., Inc.
Hess Corporation
HIJ Power, LLC
Horizon Power, Inc.
HQ Energy Services (US)
HSBC Bank USA
Hudson Energy Services, LLC
Hudson Valley Trading Group, Inc.
Huntrise Fund of Funds LLC
IDT Energy, Inc
Indeck Energy Svs of Silver Springs
Indeck-Corinth LP
Indeck-Olean LP
Indeck-Oswego LP
Indeck-Yerkes LP
Innovative Energy Systems, Inc.
Innoventive Power LLC
Integrys Energy Services of New York, Inc.
Integrys Energy Services, Inc.
International Paper Company
ISO Trader, LLC
J Aron and Company
J. P. Morgan Ventures Energy Corporation
Jamestown Board of Public Utilities
Juice Energy, Inc
Jump Power, LLC
Kaleida Health
KeySpan - Ravenswood, Inc.
KeySpan Energy Services, Inc.
Keystone Energy Partners, LP
KeyTex Energy LLC
Koch Supply & Trading, LP
KW Control Systems Inc.
Lafarge Building Materials Inc.
LaIssez Faire Energy, Inc.
Lavand and Lodge, LLC
Lehman Brothers Commodity Services Inc.
Liberty Power Corp.
Liberty Power Holdings LLC
Liberty Power New York LLC
Lighthouse Energy Trading Co., Inc.
Lockport Energy Assoc.
Long Island Power Authority
Louis Dreyfus Energy Services L.P.
Lynx Technologies Inc.
Lyonsdale Biomass, LLC
Macquarie Cook Power, Inc.
Madison Windpower, LLC
MAG Energy Solutions Inc.
MDSP - Hess Corporation
MDSP - Excel Energy Technologies
MDSP - WPS Energy Services, Inc (ESI)
Merrill Lynch Commodities, Inc.
Metering Authority - Central Hudson Gas and Electric
Metering Authority - Consolidated Edison of NY
Metering Authority - Long Island Power Authority
Metering Authority - New York Power Authority
Metering Authority - New York State Electric & Gas
Metering Authority - Niagara Mohawk
Metering Authority - Orange and Rockland Utilities
Metering Authority - Rochester Gas and Electric
MG Industries

# MARKET PARTICIPANTS

Mirabito Gas & Electric Inc.
Mirant Energy Trading, LLC
MM Albany Energy LLC
Model City Energy LLC
Modern Innovative Energy, LLC
Monroe County NY
Morgan Stanley Capital Group, Inc.
MxEnergy Electric Inc
Nationwide Energy, LLC
New York Energy Savings Corp
New York Industrial Energy Buyers, LLC
New York Municipal Power Agency
New York Power Authority
New York State Electric & Gas Corp.
Niagara Frontier Transportation Authority
Niagara Mohawk Power Corp.
Niagara University
Nine Mile Point Nuclear Station, LLC
Nissequogue Cogen Partners
NMPC-DADRP
Noble Altona Windpark, LLC
Noble Bliss Windpark, LLC
Noble Chateaugay Windpark, LLC
Noble Clinton Windpark I, LLC
Noble Ellenburg Windpark, LLC
Noble Wethersfield Windpark LLC
NOCO Electric LLC
Norbord Industries, Inc.
North American Energy, Inc.
North American Power Partners LLC
Northbrook New York LLC
Northeast Utilites Service Co.
Northern States Power Company
NorthPoint Energy Solutions Inc.
NRG Power Marketing LLC
NuEnerGen, LLC
NYSEG Solutions, Inc.
Occidental Chemical Corp.
Occidental Power Services Inc
Ocean Power LLC
Old Lane Commodities, LP
Olin Chlor - Alkali Products
Onondaga Cogeneration, LP.
Ontario Power Generation, Inc.
Orange & Rockland Utilities, Inc.
ORU-LSE
Peoples Energy Services Corp.
Pepco Energy Services
Petra Technical Consultant Group, LLC
Pine Bush Energy Trading, LLC
Pirin Solutions, Inc
Plant-E Corp.
Power Biddiing Strategies, LLC
Power City Partners, L.P.
Powerex Corporation
PP&L EnergyPlus Co. (EPLUS)
PPM Energy, Inc.
Praxair Inc
Pro Energy Marketing LLC
Pro-Energy Development LLC
Project Orange Associates, L.P.
PSEG Energy Resource & Trade, LLC
Public Energy Solutions, LLC
Pure Energy Inc
R.E. Ginna Nuclear Power Plant, LLC
Rainbow Energy Marketing Corp
RBC Energy Services LP
RedGreen288, LLC
Reliable Power Management, Inc.
Reliant Energy Services, Inc.
Reliant Energy Solutions Northeast, LLC
Rensselaer Cogeneration LLC
Robison Energy, LLC
Rochester Gas & Electric Corp.

RTP Controls, Inc
S.A.C. Energy Investments, L.P.
Saracen Energy, LP
Saracen Merchant Energy, LP
Schools & Municipal Energy Cooperative (SMEC)
Select Energy New York, Inc.
Select Energy, Inc.
Selkirk Cogen Partners, L.P.
Sempra Energy Solutions
Sempra Energy Solutions - DRP
Sempra Energy Trading Corp.
Seneca Energy II, LLC
Seneca Power Partners, L.P.
SESCO Enterprises LLC
Shell Energy North America (US), L.P.
Sierra Power Asset Marketing, LLC
SIG Energy, LLLP
Silverhill Ltd., GP for Power Fund LPs.
Site Controls LLC
Sithe Energy Marketing, L.P.
Sithe Independence Power Partners L.P.
Sol Energy, LLC
Solios Power LLC
South Jersey Energy Company
Spark Energy, L.P.
Specialized Energy Services, Inc.
Standard Binghamton LLC
StatArb Investment LLC
State of New York
State University of New York
State University of New York at Buffalo
Stealth Energy Company, LLC
Sterling Power Partners, L.P.
Strategic Energy, LLC
Strategic Power Management, Inc.
Suez Energy Marketing NA, Inc
Suez Energy Resources NA, Inc
SUNY Potsdam
Swiftwater Energy Trading, LLC
Tallgrass Energy Partners, LLC
Tarachand Enterprises, Inc.
Telemagine, Inc.
Texas Retail Energy, LLC
The Dayton Power and Light Company
Time Warner Inc.
Tops Markets, Inc.
TransAlta Energy Marketing (U.S.) Inc.
TransCanada Power Marketing, Ltd.
Trigen-Syracuse Energy Corp.
Triton Power Company
Twin Cities Power Generation
Twin Cities Power, LLC
U.S. Energy Partners LLC
UBS AG, London Branch
University of Rochester
Upstate Energy Trading Inc
VC Marketing Inc
Velocity American Energy Master I, L.P.
Verisae, Inc
Village of Hilton
Village of Rockville Centre
Virtual Energy LLC
Virtual Energy, Incorporated
Watchtower Bible and Tract Society of New York, Inc.
West Delaware Hydro Associates L.P.
Western New York Wind Corp.
Wheelabrator Westchester, L.P.
Wilman Energy, LLC
Windy Bay Power, LLC
Zone Energy
ZZ Corporation

*Listing reflects names of entities registered as active market participants as of December 2008.*

## The New York Independent System Operator (NYISO)

The NYISO is governed by an independent Board of Directors and a committee structure comprised of stakeholder representatives. It is subject to the oversight of the Federal Energy Regulatory Commission (FERC) and regulated in certain aspects by the New York State Public Service Commission (NYSPSC). NYISO operations are also overseen by electric system reliability regulators, including the North American Electric Reliability Corporation (NERC), Northeast Power Coordinating Council (NPCC), and the New York State Reliability Council (NYSRC). The core functions of the NYISO include:

- **RELIABILITY** — Managing the efficient flow of power on nearly 10,900 miles of high-voltage transmission lines — from more than 500 generating units — on a minute-to-minute basis, 24 hours-a-day, seven days-a-week.

- **MARKETS** — Administering and monitoring New York's wholesale electricity markets totaling $11 billion in 2008, involving over 400 market participants in daily and hourly auctions that match the buyers and sellers of power.

- **PLANNING** — Conducting long-term assessments of New York State's electricity resources and needs, evaluating the feasibility of projects proposed to meet those needs, and providing information and analysis to policy makers on energy issues.

reliability | markets | planning

The New York Independent System Operator (NYISO) - www.nyiso.com – is a not-for-profit corporation that began operations in 1999. The NYISO operates New York's bulk electricity grid, administers the state's wholesale electricity markets, and conducts reliability and resource planning for the state's bulk electricity system.

PHONE 518.356.6000 | WWW.NYISO.COM

NEW YORK INDEPENDENT SYSTEM OPERATOR

10 Krey Boulvard, Renssleaer, NY 12144

**Attachment V.**

**Affidavit: 16 NYCRR Section 37.1(o)**

NEW YORK STATE PUBLIC SERVICE COMMISSION

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**In the Matter of Petition of The New York Independent System Operator, Inc. Under Public Service Law Section 69 for Authority to Incur Indebtedness for a Term in Excess of Twelve Months**

**Case No. 10-E-______**

-----------------------------------------------------------X

**AFFIDAVIT**

**STATE OF NEW YORK** )
) **ss.:**
**COUNTY OF ALBANY** )

Mary McGarvey, being duly sworn, deposes and says:

1. I am the Vice President and Chief Financial Officer of the New York Independent System Operator, Inc. (the "NYISO").

2. The accounts of the NYISO have been kept strictly in accordance with the accounting orders of the New York State Public Service Commission (the "Commission") applicable thereto, and that since the effective date of such orders there have been no charges to asset accounts not in accordance therewith and that all required credits to such asset accounts have been made for the amount and in the manner prescribed therefor in such accounting orders.

Mary McGarvey
Mary McGarvey

Subscribed and sworn to
before me this 7th day
of April, 2010.

Carl F. Patka

Notary Public, State of New York
Qualified in Albany County
Commission Expires: 2/12/14

CARL F. PATKA
Notary Public - State of New York
No. 4962209
Qualified in Albany County
My Commission Expires Feb. 12, 2014

## Attachment VI.

## Certificate of Incorporation

A copy of the Certificate of Incorporation of the New York Independent System Operator, Inc., and all amendments thereto, was filed with the New York Public Service Commission on December 10, 2009 in connection with Case No. 09-E-0857.