

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on September 14, 2023

COMMISSIONERS PRESENT:

Rory M. Christian, Chair  
Diane X. Burman  
James S. Alesi  
Tracey A. Edwards  
John B. Howard  
David J. Valesky  
John B. Maggiore

CASE 23-E-0293 - Petition of 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.

ORDER GRANTING AUTHORIZATION TO INCUR INDEBTEDNESS

(Issued and Effective September 15, 2023)

BY THE COMMISSION:

INTRODUCTION

In a petition filed on June 1, 2023 (the Petition), the New York Independent System Operator, Inc. (NYISO) requested authority pursuant to New York State Public Service Law (PSL) §69 to: (i) replace its expiring revolving credit facility with a new five-year, revolving line of credit of up to \$50 million to serve as a cash flow management tool to provide liquidity to the NYISO-administered markets (the Revolving Facility); and (ii) replace its expiring term loan facility with a new five-year \$100 million unsecured term loan facility that is dedicated to funding capital investments, software development projects, and other strategic initiatives (the Term Facility)

(collectively, the 2024 Senior Credit Facility). The NYISO avers that these instruments would support its operational needs at competitive terms, rates, and conditions. On April 18, 2023, the NYISO Board of Directors (Board) approved entering into these debt instruments.

By this Order, the Public Service Commission (Commission) determines that the proposed credit facilities are reasonably required for the purposes stated in the Petition and discussed below. Accordingly, the Commission authorizes the NYISO to enter into the proposed debt instruments.

#### BACKGROUND

The NYISO is a Type B New York State not-for-profit corporation that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code. The NYISO operates and manages the State's bulk power system, administers the State's wholesale electricity markets, and conducts short-term and long-term planning for the State's bulk power system.

The Commission has approved various multi-year credit facilities proposed by the NYISO since it was formed in 1999. Most recently, the Commission authorized a combined credit facility consisting of: (i) a \$30 million revolving line of credit, later increased to \$50 million, that provides working capital support to balance monthly receipts and remittances and provides liquidity to the NYISO-administered markets; and (ii) a \$90 million term loan facility that provides funding for

strategic initiatives related to the management of the New York power grid.<sup>1</sup>

THE PETITION

To provide the financing necessary to support the NYISO's responsibilities, including maintaining and enhancing the reliable, safe, and efficient operation of New York's transmission system, as well as promoting and operating a fair and competitive wholesale market for electricity in New York State, the Petition notes that the NYISO generally utilizes a revolving credit facility and a multi-year term-loan facility. According to the NYISO, the revolving credit facility serves as a cash flow management tool to provide liquidity to the NYISO-administered markets. The multi-year term-loan facility is used to finance capital investments, software development projects, and other strategic initiatives.

In its Petition, the NYISO summarizes the amount and status of current and prior debt instruments. On April 18, 2023, the Board approved entering into the 2024 Senior Credit Facility.

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<sup>1</sup> Case 18-E-0439, New York Independent System Operator, Inc., Order Granting Authorization to Incur Indebtedness (issued November 16, 2018) (2018 Order). See also Case 15-E-0655, New York Independent System Operator, Inc., Order Granting Authorization to Incur Indebtedness (issued March 18, 2016) and Case 13-E-0240, New York Independent System Operator, Inc., Order Conditionally Granting Authorization to Incur Indebtedness (issued September 20, 2013) (collectively, the Financing Orders).

Revolving Facility

The NYISO proposes to replace its expiring revolving credit facility, which was approved in the 2018 Order, with a new five-year revolving line of credit for the years 2024 to 2028. This debt instrument, the NYISO explains, would serve as a cash flow management tool to provide liquidity to the NYISO-administered markets. The NYISO avers that such working capital is needed, for instance, to bridge the short interval between the due date for payments to the NYISO from net buyers of market products, and the due date for NYISO payments to the net suppliers of those products. The liquidity provided by the Revolving Facility is also needed to smooth seasonal fluctuations in revenues, which can lead to temporary shortfalls in operating cash flows.

Under the terms of the Revolving Facility, up to \$50 million would be available upon closing. The NYISO could draw on the Revolving Facility, at its option, at an interest rate equal to either: (i) the greater of the U.S. Prime Rate as published in the Wall Street Journal or the Federal Funds Rate plus one percent; or (ii) the Secured Overnight Financing Rate (SOFR) plus a margin of 60 basis points. There are no arranger or agency fees payable with respect to the Revolving Facility. The interest rate structure is similar to the interest rate structure of its current revolving credit line. The Revolving Facility would expire on December 31, 2028.

Term Facility

The NYISO proposes to replace its expiring unsecured delayed draw term loan facility, which was approved in the 2018 Order, with a new five-year unsecured delayed draw term loan facility for 2024-2028 with a maximum aggregate outstanding principal amount of \$100 million. The Term Facility would be used to support the NYISO's core responsibilities by funding

capital investments, software development projects, and other strategic initiatives. The NYISO estimates that its expected capital investments would cost an average of approximately \$35 million per year, for an aggregate five-year total of approximately \$175 million. This represents an increase over the approximately \$28 million annual spending level for the five-year period 2019-2023. This increase is due primarily to the number and scope of planned initiatives, which include supporting the ongoing transition and decarbonization of the electric grid in response to State initiatives, such as the Climate Leadership and Community Protection Act.

The Term Facility includes a "Replenishment Feature," which provides that repaid principal could be borrowed again on or before December 31, 2028. According to the NYISO, this feature eliminates the need to pursue a \$175 million credit facility, such that its expected financing needs could be met with a \$100 million facility, thereby reducing the amount of unused fees charged to the NYISO.<sup>2</sup>

The NYISO may draw on the Term Facility periodically from January 1, 2024, until December 31, 2028. All draws that the NYISO makes during a given calendar year would be consolidated and converted into a three-year term loan on January 1 of the following year. The term loans shall be repaid in 36 monthly equal principal payments plus interest, placing the final maturity date on the facility at December 31, 2031. Early repayments, however, would be permitted. Interest only would be payable during the calendar year in which draws are made on amounts drawn during the year. Under the terms and

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<sup>2</sup> The NYISO would pay fees equal to 10 basis points annually on the unused portion of the facilities. There is also an upfront fee of 7.5 basis points. Both the Revolving Facility and the Term Facility are subject to these fees.

conditions of the Term Facility, the NYISO would be charged, at its option, an interest rate equal to either: (i) the greater of the U.S. Prime Rate as published in the Wall Street Journal or the Federal Funds Rate plus one percent; or (ii) the SOFR plus a margin of 60 basis points.

The NYISO explains that the term loan structure would enable it to amortize project expenditures over a three-year period. This would align the recovery of costs for equipment and software with their approximate useful lives. Further, the NYISO would service its term loans with collections from market participants through Rate Schedule 1 of the NYISO's Market Administration and Control Area Services Tariff and Rate Schedule 1 of the Open Access Transmission Tariff.<sup>3</sup> The NYISO explains that stakeholders consistently have supported this approach.

#### Lender's Commitment

The NYISO asserts that credit facilities previously approved by the Commission are unavailable or inadequate to meet its current financing needs, and that the 2024 Senior Credit Facility would provide it with access to the capital needed to support continuing NYISO operations under competitive terms and conditions. According to the NYISO, the terms and conditions of the 2024 Senior Credit Facility are competitive and tailored to its financing needs.

The NYISO states that it negotiated the Revolving Facility and the Term Facility as a single commitment with one lender, TD Bank, to achieve the most-favorable commercial terms. This enabled the NYISO to negotiate fees and interest rates that

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<sup>3</sup> These collections from market participants would be made through tariffs approved by the Federal Energy Regulatory Commission.

are the same as or better than its previously approved facilities.

Financial Condition

Pursuant to 16 NYCRR Part 37, the Petition includes additional information regarding the NYISO's financial condition. As of April 30, 2023, the NYISO had approximately \$86 million of total long-term debt outstanding, \$5.44 million of which was the remaining balance on a 20-year mortgage with HSBC Bank U.S.A., N.A. executed in 2005 to fund the purchase of, and improvements to, the NYISO premises. Another \$21.72 million reflects the remaining balance on a 19-year infrastructure loan from Key Bank N.A. to fund additions to the NYISO premises. The remainder of the \$86 million reflects debt that was borrowed under the current credit facilities that are about to expire. The NYISO does not have any contingent assets or liabilities, and the Petition includes a statement of interest accrued on outstanding debt, as well as audited and unaudited financial statements. As of December 31, 2022, the original cost of the NYISO's property and equipment was approximately \$416 million, and its current depreciated book value was approximately \$95 million.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking (Notice) was published in the State Register on July 5, 2023 [SAPA No. 23-E-0293SP1]. The time for submission of comments pursuant to the Notice expired on September 5, 2023. No comments were received.

LEGAL AUTHORITY

The NYISO operates "electric plant" and, therefore, it is an "electric corporation," as these terms are defined under

PSL §2(12) and §2(13), respectively. As an electric corporation, the NYISO is required to obtain the Commission's approval under PSL §69 before incurring indebtedness that has a term of more than one year, such as those proposed in the Petition. Any such approvals under this section require findings that the financings are "reasonably required for the purposes specified in the order" and that "such purposes are not ... reasonably chargeable to operating expenses or to income."

#### DISCUSSION

The Commission finds that the NYISO has demonstrated both an adequate basis for the amounts sought, as well as a need for external financings. With regard to the Revolving Facility, the Commission previously authorized a revolving line of credit of up to \$30 million in order to bridge the short time intervals between the due dates for payments to the NYISO by net buyers of energy, capacity, and ancillary services, and the due date for the payments by the NYISO to the sellers of these services.<sup>4</sup> The revolving line of credit also allowed the NYISO to accommodate temporary shortfalls in operating cash flows caused by seasonal fluctuations in its revenues. This revolving line of credit included a \$20 million "Accordion Feature," which the NYISO exercised, bringing its total available credit up to \$50 million.

The proposed Revolving Facility would continue to be used for the purposes noted above. The NYISO negotiated an interest rate that is comparable to its existing revolving line of credit, although its structure would no longer include the "Accordion Feature." Even so, the Revolving Facility will provide adequate access to capital at a reasonable cost.

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<sup>4</sup> See, e.g., Financing Orders.

In addition, the structure of the multi-year Term Facility will allow for adequate funding of the NYISO's objectives and provide a cap on the level of spending the NYISO is able to achieve in any one year.<sup>5</sup> This financing is similar to the multi-year budget facilities that the NYISO has used since its establishment to fund capital improvements, software development projects, and other strategic initiatives in support of its critical operation of the transmission system in a reliable manner, as well as the facilitation of fair and open competition in the wholesale electricity markets. The Replenishment Feature increases the aggregate capital potentially available under the Term Facility while avoiding the increased interest payments and unused fees that would emanate from a larger initial capital commitment. Also, the NYISO negotiated an interest rate that is 7.5 basis points lower than its existing delayed draw facility. Accordingly, the Term Facility will provide adequate access to capital while lowering debt service costs.

The transactions for the Revolving Facility and Term Facility provide comparable or better terms than those of the NYISO's existing facilities. These facilities will allow the NYISO to meet its working capital needs and provide funding for short-term capital improvements, software development projects, and other strategic initiatives. Further, consistent with past practice, although all of the NYISO's proposed capital expenditures are debt-financed, it matches the loan repayment schedules with the useful lives of the assets financed by its

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<sup>5</sup> The NYISO's objectives include significant market design initiatives to facilitate continued market planning and operational enhancements to support the ongoing transition and decarbonization of the electric grid in response to State climate, environmental, and energy initiatives.

loans. The NYISO thus ensures that it will continue to have a small amount of net plant that is not funded by long-term financing at all times during the next five-year period. The Commission finds that the \$50 million Revolving Facility and the \$100 million Term Facility authorized herein are reasonably required for the NYISO to carry out these purposes.

In accordance with PSL §69, the Commission finds that the financings approved in this Order are reasonably required for the purposes identified in the Petition. The NYISO is a not-for-profit corporation that does not earn income. Consequently, none of the proceeds emanating from the 2024 Senior Credit Facility can be recognized as income. While the proceeds from the Revolving Facility will be used for a variety of purposes that include certain operating expenses, the liquidity made available under this debt instrument is necessary to support critical functions and, therefore, such use is in the public interest.

#### CONCLUSION

To provide the NYISO with the financial flexibility it needs to address its financing requirements, subject to the conditions in this Order, the NYISO is authorized to enter into the Revolving Facility and the Term Facility through December 31, 2028. For the reasons stated in this Order, the Commission finds that the NYISO's requests are reasonable and in the public interest.

#### The Commission orders:

1. The New York Independent System Operator, Inc. is authorized to enter into a new five-year \$50 million revolving line of credit through December 31, 2028.

2. The New York Independent System Operator, Inc. is authorized to enter into a new five-year \$100 million unsecured term loan facility dedicated to funding capital investments, software development projects and other strategic initiatives through December 31, 2028.

3. The credit facilities authorized in Ordering Clause Nos. 1 and 2 may be used only for the respective purposes and in the manner described in the body of this Order.

4. If, prior to closing, the respective terms of one or more of the credit facilities authorized in Ordering Clause Nos. 1 or 2 indicate higher interest costs or other material changes that increase the cost of the proposed facilities compared to the costs described in the Petition or the body of this Order, the New York Independent System Operator, Inc. shall seek additional Commission authority before closing on the applicable credit facility or facilities.

5. Within 120 days of the closing of any part of the facilities authorized under this Order, the New York Independent System Operator, Inc. shall file with the Secretary to the Commission at [Secretary@dps.ny.gov](mailto:Secretary@dps.ny.gov), a copy of the agreement and a verified report that shows all costs and expenses associated with that portion of the financial facility.

6. The New York Independent System Operator, Inc. shall, within 60 days after the end of each calendar year, file with the Secretary to the Commission at [Secretary@dps.ny.gov](mailto:Secretary@dps.ny.gov), a verified report in the form prescribed by 16 NYCRR Section 115.1. The report shall include the date the proceeds were utilized for the purposes authorized in Ordering Clause Nos. 1 and 2 of this Order, the amount, and the purpose for which the funds were utilized.

7. The securities authorized by this Order shall not be issued unless and until there has been filed with this

Commission an unconditional acceptance by the New York Independent System Operator, Inc. to obey all the terms, conditions, and requirements of this Order. If such acceptance is not so filed within a period of 30 days from the effective date of this Order, this Order may be revoked by the Commission without further notice.

8. In the Secretary's sole discretion, the deadlines set forth in this Order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline.

9. This proceeding shall be closed upon compliance with Ordering Clause Nos. 1 through 7, unless the Secretary finds good cause to continue the proceeding further.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS  
Secretary