

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on July 16, 2015

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman, concurring

CASE 13-M-0412 - Petition of New York State Energy Research and
Development Authority to Provide Initial
Capitalization for the New York Green Bank.

CASE 14-M-0094 - Proceeding on Motion of the Commission to
Consider a Clean Energy Fund.

ORDER APPROVING ADDITIONAL CAPITALIZATION WITH MODIFICATION FOR
NEW YORK GREEN BANK

(Issued and Effective July 17, 2015)

BY THE COMMISSION:

INTRODUCTION

On October 30, 2014, the New York State Energy Research and Development Authority (NYSERDA) filed a petition requesting that the Commission authorize the allocation of \$781.5 million to the New York Green Bank (NYGB) in order to complete its planned \$1 billion capitalization, build upon the initial momentum, ensure continuity of investment activities and market responsiveness, and minimize any chilling effects from capital uncertainties. The petition proposes that this amount be provided through five annual installments of \$195.375 million, with the first installment in 2015. NYSERDA states that the first installment can be funded through available cash balances in existing clean energy accounts, to be replenished through future incremental collections, and the remaining four

installments can be funded through the incremental collections requested in NYSERDA's Clean Energy Fund Proposal (CEF), which is currently before the Commission.

In this order, the Commission seeks to balance its continuing support and commitment to the NYGB with its interest in avoiding a premature allocation of funding. Therefore, NYSERDA is authorized to reallocate \$150 million of uncommitted NYSERDA Energy Efficiency Portfolio Standard (EEPS1), System Benefits Charge (SBC3 and SBC4), and Renewable Portfolio Standard (RPS) funds to NYGB upon the submission of a compliance filing demonstrating that \$150 million, representing approximately 75% of NYGB's total current capitalization, net of administration, cost recovery fee and evaluation, has been committed to NYGB investments.¹ Consideration of additional NYGB funding in future years and technology eligibility criteria is deferred to deliberations in the CEF Proceeding.

BACKGROUND

NYGB is a state-sponsored specialty finance entity working in partnership with the private sector to drive investment into New York's clean energy markets. It is designed to transform New York's clean energy financing markets by addressing gaps and barriers in those markets so that participants gain the confidence needed to finance proven, scalable technologies. Governor Andrew M. Cuomo proposed the

¹ NYGB total current capitalization is \$218.5 representing \$165.6 million of ratepayer funds and \$52.9 million of RGGI funds, inclusive of administration, cost recovery fee, and evaluation.

creation of NYGB as a \$1 billion initiative in his 2013 State of the State address.²

On September 9, 2014, NYSERDA filed a petition to establish NYGB and provide initial capitalization.³ The Commission approved NYSERDA's petition for initial capitalization and authorized the reallocation of \$165.6 million in uncommitted NYSERDA EEPS1, SBC3, and RPS funds and uncommitted utility EEPS1 funds to NYGB in its December 19, 2013 Order Establishing New York Green Bank and Providing Initial Capitalization (Initial Capitalization Order).⁴ Additionally, NYSERDA allocated \$52.9 million⁵ of Regional Greenhouse Gas Initiative (RGGI) auction proceeds for a total initial capitalization of \$218.5 million.⁶ The Initial Capitalization Order authorized the expenditure of up to \$4 million on program

² Governor Andrew M. Cuomo, 2013 State of the State Address (January 9, 2013), available at <https://www.governor.ny.gov/press/01092013sostranscript>.

³ Case 13-M-0412, Petition of New York State Energy Research and Development Authority to Provide Initial Capitalization for the New York Green Bank, Petition (filed September 9, 2013).

⁴ Case 13-M-0412, supra, Order Establishing New York Green Bank and Providing Initial Capitalization (issued December 19, 2013).

⁵ The December 2013 Order stated that NYSERDA's intention was to allocate \$44.7 million of RGGI funds. Subsequently, NYSERDA increased this amount to \$52.9 million.

⁶ Additionally, in May 2014, NYSERDA transferred \$500,000 of U.S. Department of Energy (DOE) funds specifically designated for providing loan loss reserve facilities to support commercial property-assessed clean energy (C-PACE) projects to NYGB. The DOE funds, together with all repayments and related fees over time, must remain segregated and available only for the particular purposes originally intended. Case 13-M-0412, supra, NYGB Petition to Complete Capitalization at 3 (filed October 30, 2014).

evaluation activities and up to \$13.248 million on administrative costs and to pay for any cost recovery fee under Public Authorities Law §2975 allocable to the expenditure of any portion of the \$165.6 million. The Initial Capitalization Order also required NYSERDA to develop and file an organizational plan, a business plan, and a metrics and evaluation plan within prescribed time periods. In accordance with the Order, the organizational plan was filed on February 18, 2014 and the business plan and the metrics and evaluation plan were filed on June 19, 2014. The Order also required the President of NYGB to send a letter to the Commission certifying that NYGB had adopted criteria, processes, and procedures for evaluating and selecting investment proposals, implemented risk management protocols, and formed the Investment Committee prior to finalizing any financial transactions. Alfred Griffin, President of NYGB, sent this certification on July 24, 2014.

NYGB released a Clean Energy Financing Arrangements Request for Proposals on February 5, 2014; it was revised and re-released in July 2014.⁷ NYGB accepts proposals based on this ongoing solicitation on a continuous basis. Proposals are reviewed and evaluated in a multi-stage process adhering to investment and business standards and practices that include extensive risk management principles.⁸ Transactions resulting from the solicitation will leverage NYGB funds with private

⁷ Version 2.0 of the New York Green Bank Clean Energy Financing Arrangements Requests for Proposals can be found at <http://greenbank.ny.gov/Partnering-With-Us/Propose-an-Investment>.

⁸ NYGB Typical Transaction Process includes Pre-Proposal Discussions, Proposal Submittal, Scoring Criteria Evaluation, Greenlight Committee Recommendation, Investment and Risk Committee Approval, and Executed and Closed Agreements. Case 13-M-0412, *supra*, New York Green Bank Business Plan at 31 (filed June 19, 2015).

capital to facilitate clean energy projects throughout the State.

In accordance with the Metrics, Reporting and Evaluation Plan, quarterly reports have been filed on November 15, 2014, February 15 and May 15, 2015. The first Annual Report, including audited financial statements, was filed on June 29, 2015.

Other jurisdictions nationally, as well as internationally, have recognized the critical role green banks can play in offering a complementary, if not alternative, approach at supporting clean energy markets as compared to traditional clean energy programs. This is evidenced by the "green bank" initiatives underway in California, Connecticut, Hawaii, Kentucky, New Jersey, Australia, and the United Kingdom, as well as Maryland, Minnesota, Vermont, and Washington in the process of establishing Green Bank entities.

SUMMARY OF PETITION

On October 30, 2014, NYSERDA filed a petition to complete the capitalization of NYGB.⁹ In its petition, NYSERDA requests that the Commission authorize it to allocate \$781.5 million to NYGB over four years beginning in 2015 to fully capitalize NYGB to the \$1 billion level identified by Governor Cuomo in his 2013 State of the State address. The petition notes this is the same amount set out in NYSERDA's CEF Proposal

⁹ Case 13-M-0412, supra, New York Green Bank Petition to Complete Capitalization (filed October 30, 2014).

filed on September 23, 2014.¹⁰ The petition requests the Commission authorize the allocation in four equal installments of \$195.4 million. It proposes the 2015 allocation be made available to NYGB in June of 2015 from available cash balances in dedicated NYSERDA clean energy accounts, to be replenished from future incremental collections, and the allocations in June of 2016, 2017, and 2018 come from incremental collections for which authorization is requested in the CEF Proposal. The petition states that NYGB will become self-sufficient and self-sustaining after complete capitalization and will not seek further capital allocations from the Commission beyond the amount requested in the petition.

The petition notes that on October 22, 2014, Governor Andrew M. Cuomo announced NYGB had reached agreements in principle with certain global and statewide financial services institutions and developers representing NYGB's first seven transactions. According to NYSERDA, once executed, these transactions will use nearly \$200 million of NYGB's initial capitalization, will stimulate an additional \$600 million of private investment in clean energy projects statewide, and will result in the annual reduction of 575,000 tons of carbon dioxide.

NYSERDA states the \$1 billion funding level sends the appropriate signal to the private sector that supporting NYGB and its goals is a priority of New York State. NYSERDA asserts that funding of \$1 billion, provided in sequential years, will

¹⁰ Case 14-M-0094, Proceeding on Motion of the Commission to Consider a Clean Energy Fund, Clean Energy Fund Proposal (filed September 23, 2014). The proposal was supplemented and replaced by NYSERDA's Clean Energy Fund Information Supplement filed on June 25, 2015 in the same docket. The June 25, 2015 Information Supplement revises the proposed 2015 NYGB allocation to \$150 million.

create market confidence and ensure continuous interest from private sector participants, including ongoing submission of project proposals in response to NYGB's request for proposals.

Further, in the petition NYSERDA explains that fully funding NYGB will support more effective portfolio management, allowing individual transactions to fall within the expected \$5 - \$50 million range, and address diversification and risk management issues across the full size of the portfolio. NYSERDA states that fully capitalizing NYGB and supporting its operations at scale will allow clean energy markets to become self-sustaining, reducing and eventually eliminating the need for rate-payer support, more quickly and help reduce both the hard and soft costs of subsequent clean energy projects through the creation of economies of scale.

Additionally, NYSERDA requests that the Commission permit NYGB to invest in any technology considered in the Generic Environmental Impact Statement (GEIS) issued in the Reforming the Energy Vision (REV) and CEF proceedings because NYGB is an important component of the State's integrated energy strategy.¹¹

NOTICE OF PROPOSED RULE MAKING

A Notice of Proposed Rulemaking was published in the State Register on November 19, 2014 (SAPA 13-M-0412SP2). The minimum time period for the receipt of comments pursuant to the State Administrative Procedure Act (SAPA) regarding the notice expired on January 5, 2015. On November 6, 2014, the Secretary issued a notice soliciting comments on, among other things, NYSERDA's Petition to Complete Capitalization of NYGB. The

¹¹ Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, Final Generic Environmental Impact Statement (filed February 6, 2015).

notice provided for the submission of initial comments by January 12, 2015 and reply comments by February 2, 2015. An alphabetical list of commenting parties is included as Appendix A.

ANALYSIS OF ISSUES

The majority of commenters, twenty-two, fully support the petition.¹² Commenters supporting the petition agree that authorizing full capitalization, as requested, will create market certainty, build confidence for private sector investors, encourage business participation, and support the development of large scale projects needed to meet State clean energy objectives.

Level and Timing of Capitalization

Comments

Several commenters oppose full capitalization for NYGB at this time but support partial capitalization. Both the City of New York (NYC) and Multiple Intervenors (MI) argue that NYGB has not demonstrated sufficient need for additional funds at this time. The concern of both parties is that new collections may result in NYGB holding uncommitted funds in years beyond 2018. Joint Utilities (JU), National Fuel Gas Distribution (NFG), and the New York State Department of State's Utility Intervention Unit (UIU) argue that NYGB should follow the same

¹² Ameresco, American Council of Renewable Energy, Bernhard Energy, BQ Energy, Black Oak Wind Farm, Bret Salzer, Citigroup Global Markets, Clean Energy Finance Corporation (CEFC), Clean Energy Finance & Investment Authority (CEFIA), Convergent Energy, Deutsche Bank, Energy Efficiency 4 All, Environmental Entrepreneurs, Environmental Defense Fund, First Niagara, GreenCity Power, KKR Capital Markets, Level Solar, Natural Resource Defense Council, NRG, Related Companies, and Renewable Funding.

"bill as you go" plan outlined in the September 23, 2014 CEF Proposal. UIU argues that a "bill as you go" approach would prevent unexpended funds from accumulating and underutilization of ratepayer funds. The Association of Energy Affordability (AEA), JU, PACE, and Sierra Club state the Commission should not act on full capitalization of NYGB independently at this time because the decision should be evaluated in the context of the overall CEF, future main tier RPS activities, and utility REV filings. Parties seek clarity on the source of the existing cash balances being proposed for the 2015 allocation.

With regard to the need for full capitalization at this time, NYSERDA replies that it needs to have sufficient funds available to invest in scalable projects and to maintain confidence with the private sector for private investors to continue developing projects, dedicating personnel, and incurring development costs. NYSERDA argues that increasing NYGB's capitalization will also allow it to more effectively diversify its investments and address other risk management issues. With respect to the length of time it is taking for NYGB to close on the initial projects, NYSERDA states that with additional experience it expects future project closings to be more efficient.

Discussion

NYGB represents a key component of New York's integrated energy policy and strategy focused on addressing gaps and barriers in the clean energy finance markets in partnership with the private sector, including the ability to effectively leverage and recycle public dollars into subsequent investments in support of our clean energy objectives. In the Initial Capitalization Order, the Commission recognized the value NYGB could bring in animating private financing and helping

technologies achieve lower costs of capital and economies of scale and a number of steps were laid out for NYGB to establish itself as a functioning entity poised to take on this role. NYSERDA has complied with all of the requirements established in the Initial Capitalization Order, as well as instituting the key elements necessary to fully operate including, retaining high quality staff, and establishing a risk and compliance framework for NYGB transactions and operational processes. Consistent with how a bank or investment fund approaches transaction opportunities, there are a number of steps involved with a NYGB transaction moving from a proposal to an executed agreement. Each step involves detailed review, input and other work of the NYGB transaction team, its advisors, committees and clients and partners (including their respective advisors) in an iterative and ongoing process until milestones are reached, culminating in the execution and closing of fully-negotiated deals.¹³

Supporters of NYSERDA's NYGB petition state that NYGB's ability to continue negotiating deals and attracting interest from the private sector will be hindered without additional capitalization at this time. Other parties express concern that none of the initial transactions announced in October 2014 have progressed to fully executed agreements. They therefore claim that NYGB has not sufficiently demonstrated the immediate need for additional funds at this time.

As detailed in NYGB's 2015 Business Plan, a key indicator of NYGB's early success is the robust pipeline it has

¹³ NYGB Typical Transaction Process includes Pre-Proposal Discussions, Proposal Submittal, Scoring Criteria Evaluation, Greenlight Committee Recommendation, Investment and Risk Committee Approval, and Executed and Closed Agreements. Case 13-M-0412, supra, New York Green Bank Business Plan at 31 (filed June 19, 2015).

developed. Through June 12, 2015, NYGB has received requests for NYGB capital totaling \$734 million, representing approximately \$3 billion of total investment. These requests span all end-use customer segments and represent broad geographic and technology diversity. Based on these requests, \$569 million of transactions has passed NYGB Scoring Committee criteria, and NYGB is actively negotiating and conducting due diligence on \$338 million of transactions.¹⁴ Strong market response demonstrates the value of NYGB and is indicative of its need in the marketplace and the potential for demand to exceed currently authorized funding levels. NYGB is already accelerating, and has the potential to continue to accelerate, private investment in clean energy technologies both through direct participation in transactions and by making connections between developers with market-ready proposals and private financial institutions. Several transactions proposed through NYGB's RFP have received final approval from the Green Bank's Investment and Risk Committee and are working through closing conditions, while others are likely to receive wholly private financing through negotiations initiated and facilitated by NYGB; instances of the latter have already occurred.¹⁵ NYGB's continued capitalization is crucial to both of these processes because its presence as a credible

¹⁴ Once a proposal has passed NYGB Scoring Committee the approval process continues with a focus on credit analysis, NYGB compliance, and progress towards an agreement-in-principle, along with conditions precedent. Case 13-M-0412, supra, New York Green Bank Business Plan at 8 and 31 (filed June 19, 2015).

¹⁵ Information on the status of NYGB transactions, as well as examples of transactions receiving wholly private financing after interaction with NYGB, appears in the NYGB Business Plan. Case 13-M-0412 supra, New York Green Bank Business Plan at 9-11 (filed June 19, 2015).

counterparty allows project developers to demonstrate the potential of their proposals.

While the multi-faceted nature of the negotiations required to close NYGB transactions has proven to be more time and resource intensive than originally anticipated, disruption of NYGB's ability to solicit and close transactions should be avoided. NYGB is believed to be on pace with both Connecticut's Green Bank and the UK Green Investment Bank, where each experienced a ramp-up period prior to committing material capital.¹⁶ Current and pending respondents to NYGB's RFP should be confident in the availability of NYGB capitalization to support worthy investments.

Certainty of capital availability to support continued development of NYGB's transaction pipeline is critical to enabling NYGB to meet its objectives and to market confidence in the NYGB. The Commission supports NYGB's growing momentum, as demonstrated by its transaction pipeline and seeks to avoid any disruption or loss of market confidence. Therefore, a 2015 allocation to NYGB of \$150 million is authorized. Given the current absence of fully negotiated and executed agreements, providing certainty to potential private sector partners must be balanced with the prospect of overcapitalization resulting in an excessively large balance of ratepayer funds being held by NYGB must be addressed. As a safeguard against overcapitalization, the reallocation of the 2015 NYGB allocation is conditioned upon NYGB demonstrating \$150 million, representing approximately 75% of its total current capitalization, net of administration, cost

¹⁶ Connecticut Green Bank Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2014; UK Green Investment Bank Annual Report 2014.

recovery fee and evaluation,¹⁷ has been committed to NYGB investments.¹⁸ That demonstration shall be made in a compliance filing detailing all executed financing agreements, including identification of clients and partners, a brief description of the transaction, funding commitment expressed in dollars, and date upon which commitment was made, that cumulatively achieve this milestone. The compliance filing requirement should not impede the review of transactions by NYGB's investment and risk committee or the approval of transactions by NYSERDA's President and CEO.

With regard to parties comments suggesting NYGB follow the same "bill-as-you-go" approach as is proposed for the CEF, as the 2015 allocation is being reallocated from uncommitted funds that currently exist in NYSERDA accounts, the "bill-as-you-go" approach is not applicable. However, the safeguards placed on the 2015 allocations are consistent with guarding against the concern of overcapitalization. Allocations for 2016 and beyond, along with the method in which the funding will be dispersed will be considered and addressed in the CEF Proceeding because full NYGB capitalization and CEF collections are too interrelated to address separately.

¹⁷ Currently authorized capital includes \$165.6 million of ratepayer funds and \$52.9 million of RGGI funds net of \$17.248 million authorized for administration, cost recovery fee, and evaluation.

¹⁸ For purposes of this requirement, the definition of committed is consistent with the definition as described on page 5 of NYGB's Metrics, Reporting & Evaluation Plan, filed June 19, 2014 and is as follows: "Committed Funds means, in any period, the aggregate funds to be provided by NYGB pursuant to fully negotiated client and partner financing agreements executed in that period, without such funds having yet been deployed, expressed in dollars. Committed has a corresponding meaning."

In the Initial Capitalization Order, the Commission authorized \$4 million for program evaluation and up to \$13.248 million for administrative costs and to pay any cost recovery fee under Public Authorities Law §2975 allocable to the actual expenditure of any portion of the \$165.6 million authorized in that order.¹⁹ The \$17.248 million previously authorized may also be used to cover administrative, cost recovery fee and evaluation costs associated with the \$150 million additional capitalization approved in this Order.

Funding Source for Additional Capitalization

Comments

JU, MI, NFG, and NYC object to the remaining capitalization being fully borne by rate-payers and suggest other sources of funds, including future RGGI auction proceeds, interest payments from unspent/uncommitted funds currently held by NYSERDA, collections from New York Power Authority (NYPA) and Long Island Power Authority (LIPA) customers, reallocation of SBC3 funds, or the issuance of bonds. Parties note that in the Initial Capitalization Petition, NYSERDA indicated that funds from future RGGI auctions might be allocated to NYGB.²⁰ These commenters argue that including other sources with rate-payer collections will reduce customer bill impacts and reduce reliance on customer support for State programs.

Independent Power Producers of New York (IPPNY) and Sierra Club oppose the allocation of RPS Main Tier funds to

¹⁹ Case 13-M-0412, supra, Order Establishing New York Green Bank and Providing Initial Capitalization at 23 (issued December 19, 2013).

²⁰ Case 13-M-0412, supra, Petition of New York State Energy Research and Development Authority to Provide Initial Capitalization for the New York Green Bank at 15 (filed September 9, 2013).

NYGB. IPPNY also objects to the use of RGGI auction proceeds to further capitalize NYGB, stating that RGGI proceeds are earmarked for specific technology investments which include innovative carbon dioxide emissions abatement, renewable technologies, non-carbon dioxide emitting technologies, and energy efficiency. IPPNY argues any RGGI funds provided to NYGB must be used for projects eligible under these terms, such as the Competitive Greenhouse Gas Reduction Program and large scale renewables resource development.

NYSERDA states in its reply comments that it has identified the sources of the existing cash balances it expects to draw from to provide capitalization for NYGB and CEF programs and notes they can be found in the slides created for the Clean Energy Fund Technical Conference.²¹ NYSERDA's reply clarifies the original petition by stating the funds to be made available to NYGB in June 2015 from available cash balances in dedicated clean energy accounts will be replenished from incremental rate payer collections. NYSERDA also replies that due to uncertainty around RGGI auction proceeds, RGGI is not a suitable funding source because the potential volatility would be perceived by the private sector as a risk to full capitalization.

Discussion

NYSERDA is authorized to fund the NYGB 2015 allocation of \$150 million from available cash balances in dedicated clean energy accounts but the proposal to replenish these funds from incremental ratepayer collections is rejected. Ratepayer collections post-2015 and the allocations of those collections will be determined within the CEF proceeding and therefore their use will not be authorized prematurely at this time. To

²¹ Case 14-M-0094, supra, Clean Energy Fund Forum Presentation at 78 (filed January 20, 2015).

effectuate the funding authorized, NYSERDA shall reallocate \$150 million from uncommitted NYSERDA SBC3, SBC4, EEPS1, and RPS funds in 2015. NYSERDA shall reallocate all uncommitted EEPS1 and SBC3 funds with the remaining balance to be reallocated from uncommitted SBC4 and RPS funds. These funds will be used to provide the same benefits to ratepayers and the public that the Commission sought in establishing the SBC, EEPS and RPS and may offer an opportunity to deploy those ratepayer funds more efficiently and thereby provide greater benefits. These funds shall be used for programmatic purposes and no portion of these funds shall be used for administrative, cost recovery fee, or evaluation purposes.

Some parties have expressed concerns regarding the use of ratepayer funds for the full cost of NYGB capitalization and offered alternative solutions. The Commission does not have the jurisdictional authority to extend surcharges to LIPA and NYPA customers or to direct the disposition of RGGI funds. RGGI proceeds, as NYSERDA contends, are not a reliable source of funding because their amount is determined in an auction process that is inherently uncertain and so could create a perception in the private sector that the funding is at risk of a shortfall. Further, the same volatility would make RGGI funds unsuitable collateral for a bond issuance because bond holders require certainty that sufficient funds will be available to repay both principle and interest. Moreover, NYGB progress can continue without additional ratepayer collections by using already-collected funds that have not yet been committed. This reallocation of uncommitted funds is appropriate because it properly furthers, through NYGB, the goals stated when the funds were collected.

Increased Transparency & Accountability

Comments

AEA, Environmental Defense Fund (EDF), JU, PACE, NYC and Sierra Club call for increased transparency and accountability. They argue that environmental goals and benchmarks should be set and appropriate program data should be provided by NYGB for the public, stakeholders and the Commission to properly evaluate NYGB's performance. The New York Independent System Operator (NYISO) requests continued comprehensive evaluation, measurement, and verification. NYISO states that data similar to that which is available through the EEPS scorecard should be available to assist NYISO in preparing its long term zonal energy and peak load forecasts.

Sierra Club argues that the Commission should only capitalize NYGB after its success can be properly determined through achievement of quantifiable greenhouse gas reduction, MWh renewable generation and demand savings targets.

NYSERDA comments that NYGB is willing to provide as much transparency as it can without violating the needs and expectations of private sector clients and partners. It explains that the Metrics, Reporting, and Evaluation Plan prepared in conjunction with DPS staff provides a balance of information the public seeks for transparency and accountability and maintains the level of disclosure the private sector normally provides in the course of similar private market transactions, without compromising confidential and proprietary information.

Discussion

A number of parties believe transparency and accountability at NYGB could be improved. In the Initial Capitalization Order, however, a number of filings and reporting

requirements were imposed that facilitate the monitoring of the effective use of ratepayer funds at NYGB and assist interested parties in tracking the progress of NYGB.²² Moreover, the level of information in NYGB's quarterly reports has been enhanced, as evidenced by the addition of information, in the May 15, 2015 Quarterly Report related to: the requests for NYGB investments to date; transaction status and investment process; and cumulative operating expenses to date.

It is expected that much of the information requested by commenters about individual transactions will be provided in the Transaction Profile that, as detailed in NYGB's Metrics, Evaluation, and Reporting Plan,²³ will be completed upon closing of each transaction, posted on NYGB's website, and included in corresponding quarterly reports. The Transaction Profile(s) will provide additional key data including: form of investment; location; type of client/partner organizations; summary of financial market objectives and barriers addressed; technologies involved; planned energy and environmental metrics; planned market characterization baseline and market transformational potential; and proposed method of outcome/impact evaluation and timeline. While these reporting requirements are sufficient at this time, review and assessment of the adequacy of NYGB plans

²² These requirements are: an Organization Plan; a Business Plan, which outlined the intended activities that NYGB would undertake, updated on an annual basis; establishment of investment criteria to evaluate all potential financial transactions; and an Evaluation, Metrics and Reporting Plan that developed metrics for evaluation of NYGB's performance in meeting the State's clean energy and energy efficiency goals, as well as metrics for evaluating operational performance, risk management, and financial and market metrics; and Quarterly Reports on NYGB's operations.

²³ Case 13-M-0412, supra, NYGB Metrics, Reporting, and Evaluation Plan (filed June 19, 2014).

and reports will continue, in consultation with NYGB. Revisions and modifications will be made as needed, to accurately reflect the status and benefits of NYGB activities.

Expanding the Scope of Eligible Investments

Comments

Sierra Club, PACE, and AEA comment that NYSERDA did not specifically state or explain what technologies it is seeking to include in its proposal by broadening allowable technologies. NYC supports expanding NYSERDA's proposal to expand eligible investments. However, NYC expresses concerns that clean energy program funds are being consolidated to support "REV-related" technologies and projects, which may reduce available funding for projects that "fall outside the parameters of REV." NYC believes this may lead to reducing funding for projects, such as installation of energy efficient boilers and furnaces, which are credible energy saving projects that yield environmental benefits consistent with the City's and the State's energy policy objectives. NRDC opposes NYSERDA's request, stating the Commission should only address future funding of NYGB at this time and the decision on expanding the technologies allowable for investments should be put forth in a separate petition.

NYSERDA states in its reply comments that NYGB is seeking the same scope for eligible investments as proposed for REV and CEF in the Draft GEIS completed for those proceedings. Since NYGB is a part of the CEF and the CEF was developed to work "synergistically" with REV, it is essential that NYGB to have the same investment ability as the CEF to aid the State in meeting its clean energy goals. NYSERDA addresses the concerns of several parties in relation to eligible technologies it seeks to invest in by clarifying that the Commission set requirements

in NYGB's Initial Capitalization Order regarding eligible investments by NYGB. Ordering Clause 6(iii)²⁴ states NYGB may only invest in energy efficient and clean energy generation technologies that "contribute to greenhouse gas reductions in support of New York's clean energy policies." NYSERDA explains that this clause will continue to apply, so even if the Commission permits NYGB to make investments in any technology considered in the final GEIS approved for the REV and CEF proceedings, NYGB must also demonstrate that the technology implemented by each project will contribute to reducing statewide GHG emissions. NYSERDA also explains that expanding the scope of allowable technologies will assure NYGB can invest in the most up to date technologies in support of NY's clean energy policies. It states that the technologies approved in the prior environmental impact statements, including those prepared in relation to the SBC, EEPS, RPS, will become increasingly dated while the REV and CEF GEIS is designed to include new and developing technologies.

Discussion

NYSERDA requests that the scope of the investment types eligible for NYGB funding be expanded to include technologies considered in the Generic Environmental Impact Statement (GEIS) regarding the impacts of REV and the CEF. Although the GEIS is the most recent consideration of the environmental impacts of clean energy technologies, it does not require that the scope of permissible NYGB investments be expanded at this time. Eligibility for funding under the CEF, including NYGB, will be considered holistically in the CEF

²⁴ Case 13-M-0412, supra, Order Establishing New York Green Bank and Providing Initial Capitalization (issued December 19, 2015).

proceeding. A letter from NYSERDA on July 9 states that proposed CEF eligibility rules will be filed by July 31, 2015 for consideration and comment.²⁵

At this time, the NYGB will continue to be subject to the eligibility rules created in the Initial Capitalization Order. As laid out in that order, investments made pursuant to the requirements must contribute to greenhouse gas reductions in support of New York State's clean energy policies. In accordance with the State Environmental Quality Review Act, a Findings Statement prepared by the Commission as lead agency in this action is attached to this Order as Appendix B.

CONCLUSION

The actions taken in this Order recognize the critical role NYGB plays in supporting New York's clean energy policy objectives by providing NYGB with access to additional capital that will maintain NYGB's ability to meet market demand for its services and achieve all of NYGB's attendant benefits, including increased leverage of public funds, transformation of clean energy markets, as well as the associated environmental and energy benefits. The increased prevalence of green bank initiatives nationally and internationally provides further validity to the inclusion of this approach among New York clean energy strategies.

Providing certainty to potential private sector partners and maintaining the momentum that NYGB has built to date is balanced with the prospect of controlling for overcapitalization and inefficient allocation of rate-payer funds by conditioning access to the additional funds upon a NYGB compliance filing demonstrating 75% of its current capital has

²⁵ Case 14-M-0094, supra, Letter from NYSERDA (filed July 9, 2015).

been committed to NYGB investments. The compliance filing requirement should not impede the review of transactions by NYGB's investment and risk committee or the approval of transactions by NYSERDA's President and CEO.

The Commission orders:

1. The New York State Energy Research and Development Authority is authorized to reallocate uncommitted NYSERDA funds totaling \$150 million to support investments of the New York Green Bank upon demonstration through a compliance filing that the New York Green Bank has committed \$150 million, representing approximately 75% of its total current capitalization, net of administration, cost recovery fee and evaluation, to fully negotiated and executed agreements. The compliance filing shall provide information on the executed financing agreements, inclusive of client/partner, a brief description of the transaction, funding commitment expressed in dollars, and date upon which commitment was made, that cumulatively achieve this milestone.

2. The New York State Energy Research and Development Authority is directed to reallocate the \$150 million from all uncommitted Energy Efficiency Portfolio Standard 1 and System Benefits Charge 3 funds with the remaining balance to be reallocated from uncommitted System Benefit Charge 4 and Renewable Portfolio Standard funds. The New York State Energy Research and Development Authority shall submit a compliance filing detailing the amount of funding reallocated by funding source concurrent with its compliance filing demonstrating the \$150 million level of NYGB commitments as prescribed in Ordering Clause 1.

3. The \$13.248 million designated for administrative and cost recovery fee costs under Public Authorities Law §2975

and the \$4 million designated for program evaluation activities previously authorized may also be used to cover administrative, cost recovery fee, and evaluation costs associated with the \$150 million additional capitalization approved in this Order.

4. These proceedings are continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

Appendix A: List of Commenters

AARP/Public Utility Project
Alliance for Clean Energy (ACE)
Ameresco
American Council on Renewable Energy (ACORE)
Association for Energy Affordability (AEA)
Bernhard Energy
Black Oak Wind Farm
Bret Salzer
Citigroup
Connecticut Clean Energy Finance & Investment Authority (CEFIA)
Convergent Energy
Energy Efficiency Coalition
Environmental Defense Fund (EDF)
Environmental Entrepreneurs (EE)
First Niagara
Gary Hattem (Deutsche Bank)
GreenCity Power
Independent Power Producers of New York (IPPNY)
Joint Utilities (JU)
KKR
Multiple Intervenors (MI)
National Fuel Gas Distribution Co.
Natural Resource Defense Council (NRD)
City of New York
New York Independent System Operator (NYISO)
New York State Energy and Research Authority (NYSERDA)
Oliver Yates (CEFC)
PACE Climate Center
Paul Curran (BQ Energy)
Ray Long (NRG)
Related Companies
Renewable Funding
Richard Keiser (Level Solar)
Rick Benas
Sierra Club
Utility Intervention Unit

APPENDIX B

State Environmental Quality Review Act

FINDINGS STATEMENT

July 16, 2015

Prepared in accordance with Article 8 - State Environmental Quality Review Act (SEQRA) of the Environmental Conservation Law and 6 NYCRR Part 617, the New York State Public Service Commission (Commission), as Lead Agency, makes the following findings.

Name of Action: New York Green Bank (Case 14-M-0312)
Order Approving Additional
Capitalization with Modification

SEQRA Classification: Unlisted Action

Location: New York State/Statewide

**Date of Final
Generic Environmental
Impact Statement:** February 6, 2015

FGEIS available at: [http://documents.dps.ny.gov/public/
MatterManagement/CaseMaster.aspx?
MatterCaseNo=14-m-0101](http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=14-m-0101)

I. Purpose and Description of Action

In the attached order, the Commission authorizes additional capitalization of the New York Green Bank (NYGB), a program of the New York State Research and Development Authority (NYSERDA), subject to certain modifications and conditions. The NYGB is a state-sponsored specialty finance entity working in partnership with the private sector to drive investment into New York's clean energy markets by entering into various financing arrangements with private sector partners. Based on the order previously issued by the Commission on December 19, 2013 authorizing the initial capitalization of the NYGB, the NYGB may invest in any technology which would be eligible for investment

in the Renewable Portfolio Standard, Energy Efficiency Portfolio Standard, or System Benefits Charge programs, as long as each investment transaction has "the potential for energy savings and/or clean energy generation that will contribute to greenhouse gas reductions in support of New York's clean energy policies."

II. Facts and Conclusions in the EIS Relied Upon to Support the Decision

In developing this findings statement, the Commission has reviewed and considered the "Final Generic Environmental Impact Statement in Case 14-M-0101 - Reforming the Energy Vision and Case 14-M-0094 - Clean Energy Fund" prepared for the Reforming the Energy Vision (REV) and Clean Energy Fund (CEF) proceedings and issued on February 6, 2015 (FGEIS). The following findings are based on the facts and conclusions set forth in the FGEIS.

A. Public Needs and Benefits

Chapter 1 of the FGEIS describes the need for and expected benefits of the CEF, of which NYGB is one component. As a part of the CEF, the NYGB will address challenges facing New York's energy system, including the need to reduce greenhouse gas emissions, dependence on natural gas for electricity generation, and market failures in the clean energy sector [FGEIS 1-12]. By both directly investing in clean energy technologies and spurring private investments, the NYGB will create public benefits including reduction in carbon and other pollutant emissions, increased penetration of clean distributed generation, reduced fossil fuel dependence, and increased customer choice and opportunity [FGEIS 1-18].

B. Potential Impacts

Chapter 5 of the FGEIS describes the expected environmental impacts of the proposed REV and CEF as a whole.

Areas of analysis relevant to NYGB include Demand Management, Distributed Energy Resources, Energy Efficiency, and Low-Carbon and Carbon-Free Energy Resources. As described above, each potential transaction is required to have "the potential for energy savings and/or clean energy generation that will contribute to greenhouse gas reductions in support of New York's clean energy policies." Therefore, a primary impact of this action will be greenhouse gas reductions [FGEIS 5-21, 5-48]. As more fully described in the FGEIS, individual clean energy projects may have local impacts including construction impacts, land use, and the generation of hazardous materials during construction [FGEIS 5-5, 5-22].

C. Mitigation

Chapters 5 and 6 of the FGEIS identify mitigation measures that could address the potential adverse impacts of the proposed REV and CEF as a whole. As more fully described therein, existing and applicable federal, state, and local regulations will serve to mitigate a number of potential impacts [FGEIS 6-1]. In addition, particular project assessments regarding proposed distributed generation installations can consider local impacts [FGEIS 5-8]. In the REV proceeding, the Commission directed Staff to cooperate with the New York State Department of Environmental Conservation (DEC) to develop rules that avoid or mitigate the potential for harmful local emissions. To the extent that any specific NYGB proposals present the potential for harmful local emissions, those rules will also apply and mitigate the impacts of those proposals [FGEIS 5-7, 5-8].

D. Cumulative Impacts and Climate Change

The FGEIS describes in detail the harmful environmental impacts of greenhouse gases such as carbon dioxide [FGEIS 3-14; 3-15]. The clean energy technologies and resources

promoted by REV and the CEF as a whole, and by the NYGB specifically, create a long-term reduction in the use of energy generated from fossil fuels [FGEIS 4-5]. The environmental impact of a reduction in the use of fossil-fuel based energy generation on the human environment is generally positive, but will occur over a long time horizon [FGEIS 5-48].

III. Conclusion

The NYGB is anticipated to yield overall positive environmental impacts, primarily by reducing the State's use of, and dependence on, fossil fuels, among other benefits. In conjunction with other State and Federal policies and initiatives, particularly the CEF and REV, NYGB is designed to reduce the adverse economic, social, and environmental impacts of fossil fuel energy resources by increasing the use of clean energy resources and technologies [FGEIS ES-10]. Ordinary construction-related impacts are expected [FGEIS 5-5, 5-22] but do not outweigh the overall positive environmental impact.

CERTIFICATION TO APPROVE:

Having considered the Draft and Final Generic Environmental Impact Statement, and having considered the preceding written facts and conclusions relied upon to meet the requirements of 6 NYCRR 617.11, this Statement of Findings certifies that:

1. The requirements of 6 NYCRR Part 617 have been met;
2. Consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as Practicable; and
3. Consistent with the applicable policies of Article 42 of the Executive Law, as implemented by 19 NYCRR 600.5, this action will achieve a balance between the protection of the environment and the need to accommodate social and economic considerations.

Name of Lead Agency:

New York State Public Service Commission

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CASES 13-M-0412 and 14-M-0094

Commissioner Diane X. Burman, concurring:

As reflected in my comments made at the public session on July 16, 2015, I concur.