STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

COMMENTS OF MULTIPLE INTERVENORS ON THE PROPOSED NEW YORK GREEN BANK

Dated: October 28, 2013

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PRELIMINARY STATEMENT

Pursuant to the Notice Soliciting Comments and Notice of Technical Conferences ("Notice") issued by the New York State Public Service Commission ("Commission") on September 13, 2013 in Cases 13-M-0412, 07-M-0548, 05-M-0090 and 03-E-0188, Multiple Intervenors hereby submits its Initial Comments in Case 13-M-0412, pertaining to the New York Green Bank ("Green Bank") proposed by the New York State Energy Research and Development Authority ("NYSERDA") via petition dated September 9, 2013 ("Petition").[1] Contemporaneous herewith, Multiple Intervenors also is submitting under separate cover Initial Comments in response to the Notice (i) in Case 07-M-0548, pertaining to implementation of an Energy Efficiency Portfolio Standard ("EEPS"), and (ii) in Case 03-E-0188, pertaining to implementation of a Renewable Portfolio Standard ("RPS").

Formed in 1972, Multiple Intervenors is an association of approximately 60 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State. Multiple Intervenors has participated actively in all proceedings involving the EEPS, the RPS and the System Benefits Charge ("SBC") since they were instituted by the Commission. Multiple Intervenors members are strong proponents of energy efficiency and, upon information and belief, are among the most energy efficient consumers of electricity and natural gas in the State. Because energy constitutes a significant cost of operations, Multiple Intervenors members undertake efficiency projects routinely in the normal

[1] 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 07-M-0548, *Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard*, Case 05-M-0090, *In the Matter of the System Benefits Charge III*; and Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*.

course of their respective businesses. Additionally, Multiple Intervenors has no objections to market-based renewable energy projects and, in fact, a number of members have undertaken such projects at their facilities.

Significantly, however, Multiple Intervenors has numerous concerns regarding the manner in which the EEPS, the RPS and the SBC are being implemented in New York State. To date, the Commission's policies on "clean energy" (*i.e.*, energy efficiency and renewable energy) have focused on, and are extremely reliant upon, customer-funded subsidies recovered through mandatory surcharges. Multiple Intervenors strongly opposes, *inter alia*, the magnitude of the existing EEPS, RPS and SBC surcharges (individually and collectively), as well as the highly-inequitable manner in which such surcharges are recovered from customers (*i.e.*, volumetrically, based solely on energy consumption, which results in enormous and inequitable impacts on large high-load-factor customers). The cumulative impact of this "alphabet soup" of surcharges imposed on customers is impeding, and in some cases, jeopardizing, business expansion and retention efforts by many of the State's largest employers.

In its Petition, NYSERDA characterizes the Green Bank proposal as necessary to help transition New York away from its existing reliance on subsidies to fund "clean energy" projects. (*See*, *e.g.*, Petition at 1-3.) To the extent the Green Bank succeeds in facilitating and contributing to the completion of such transition, thereby allowing for the meaningful and expeditious reduction, and ultimate elimination, of onerous EEPS, RPS and SBC surcharges, it could represent a positive development for the State. On the other hand, if the Green Bank is not successful, and becomes yet another financial drain on customers, such that they are forced to subsidize the EEPS, the RPS, the SBC and the Green Bank, it will damage the State's competitiveness and ability to attract and retain jobs.

As detailed below, the Petition omits numerous, critical details as to how the Green Bank would be capitalized and administered. Consequently, Multiple Intervenors is unable to support the Petition absent additional information, identified herein. Accordingly, for the reasons set forth below, the Commission should refrain from rendering a decision on the proposed Green Bank until all necessary information has been provided with an opportunity for further public comment thereon.

ARGUMENT

POINT I

THE GREEN BANK COULD BE A POSITIVE DEVELOPMENT IF IT FACILITATES THE EXPEDITIOUS REDUCTION AND ULTIMATE ELIMINATION OF MANDATORY CUSTOMER-FUNDED SUBSIDIES FOR CLEAN ENERGY

Initially, the Petition contains an honest, but somewhat damning, assessment of New York's implementation of the EEPS, the RPS and the SBC, which are dependent upon customer-funded subsidies recovered through mandatory surcharges:

> New York State spends roughly $1.4 billion each year to promote and advance energy efficiency and renewable energy, yet the State is still falling short of achieving its clean energy goals.

(Petition at 1.) Although this conclusion has been apparent from recent reports on the EEPS and RPS programs, NYSERDA's statements represent the most explicit acknowledgement of this shortfall to date. The Petition also represents the first time in which a State entity has proposed a specific "exit strategy" for the current extreme reliance on mandatory customer-funded subsidies to finance clean energy projects. Multiple Intervenors is encouraged that NYSERDA has acknowledged such deficiencies in the EEPS and RPS initiatives, and is attempting to transition to increased reliance on self-sustaining, market-based solutions.

In its Petition, NYSERDA expresses, repeatedly, an intent to transition away from exclusive, or near-exclusive, reliance on mandatory customer-funded subsidies to support clean energy initiatives. For instance, the Petition states that:

> The Green Bank presents a market transformative opportunity for New York through its introduction of a self-sustaining financial model. New York spends roughly $1.4 billion each year to promote and advance energy efficiency and renewable energy, yet the State is still falling short of achieving its clean energy goals. As the Governor highlighted in January [2013], nearly 80% of this annual budget is currently provided in the form of one-time subsidies and grants. This system has been effective in kindling the State's clean energy market, but has proven unsuccessful in achieving real market scale.

(Petition at 1.)

The Petition also contains a number of other statements reflecting this intent, including, but not limited to, the following: (a) "One of the primary advantages of the Green Bank is its ability to achieve significantly greater leverage of ratepayer funds than the one-time use subsidy/grant model" (*id.* at 2); (b) "By reducing costs and developing a track record of project and loan performance, the Green Bank will 'kickstart' that sector of the market, so that it can thrive without the need for further ratepayer funding because market opportunities will prove attractive to private sector entities" (*id.*); and (c) "The success of the Green Bank activities in developing reasonably priced private sector financing solutions to fill current financing gaps for clean energy will allow for carefully considered reductions in, or even possible elimination of, subsidy-based incentives in certain sectors, thus reducing long-term ratepayer costs to support clean energy" (*id.* at 3). Multiple Intervenors strongly supports the proposed transition away from today's extreme reliance on customer-funded subsidies and mandatory surcharges, and commends NYSERDA for recognizing this objective in the Petition.

Such transition is needed to mitigate the impact that expensive, policy-oriented surcharges have on the cost of energy in New York State. As of July, 2013, New York State had the second-highest retail price of electricity (15.62¢ per kWh) in the contiguous United States.[2] The average retail price of electricity in New York State as of July 2013 exceeded the national average by approximately 56%, and 32 other states had an average retail price of electricity that was less than 10¢ per kWh.[3] Thus, irrespective of the benefits that some parties may attribute to various policy initiatives, they have been wholly unsuccessful in overcoming, or reducing materially, New York's energy cost disadvantage.

That cost disadvantage is exacerbated, in part, by the onerous surcharges that are imposed on customers to finance the State's energy policy initiatives. To date, the Commission has authorized $2.6 billion in EEPS surcharges on customers through 2015.[4] The Commission also has authorized $3 billion in RPS surcharges on customers.[5] Overall, the aggregate cost of

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[2] U.S. Energy Information Administration, *Electric Power Monthly*, Table 5.6.B, Average Retail Price of Electricity to Ultimate Customers by End-Use Sector. Although the retail price of electricity was higher in Connecticut, it exceeded New York State by only 0.01¢ per kWh. (*Id.*)

[3] *Id.*

[4] Case 07-M-0548, *supra*, Energy Efficiency Portfolio Standard (EEPS) Restructuring Proposal (dated September 13, 2013) at 2 ("EEPS Proposal"). Such surcharges are solely to support EEPS and RPS programs and do not include, *inter alia*, other surcharges imposed on customers separate and apart from utility commodity and delivery service, such as surcharges related to the SBC or authorized under New York Public Service Law Section 18-a. Individually and collectively, these surcharges are substantial and impose material rate impacts on large non-residential customers struggling to compete and conduct business in the State.

[5] Case 03-E-0188, *supra*, Renewable Portfolio Standard Main Tier 2013 Program Review (dated September 5, 2013) at Vol. 1 at 17.

those surcharges, coupled with the SBC, can equal or exceed the cost of traditional delivery service (*i.e.*, excluding various reconciliations and surcharges) on an annual basis for large high-load-factor customers.[6]

It is not clear to Multiple Intervenors whether the Commission recognizes or appreciates the magnitude of current EEPS, RPS and SBC surcharges on large high-load-factor customers. In fact, for many such customers, EEPS, SBC and RPS surcharges collectively exceed the cost of "traditional" delivery service, and often by a substantial amount. To illustrate this point without violating individual customer confidentiality, Multiple Intervenors hereby relies on several examples based directly on utility tariff leaves.

First, consider a hypothetical, large non-residential electric customer taking delivery service from Niagara Mohawk Power Corporation d/b/a National Grid ("Niagara Mohawk") under S.C. 3-A, transmission voltage. The customer has a steady 20 MW electric demand and operates at an 85% load factor. The annual cost of "traditional" delivery service for such customer under Niagara Mohawk's existing rates is $680,400.[7] In comparison, the combined annual cost of the EEPS, RPS and SBC surcharges for the same hypothetical customer is

[6] Multiple Intervenors contends that the imposition of burdensome, volumetric surcharges on the State's most price-elastic energy consumers is contrary to the State's economic development objectives.

[7] S.C. 3-A transmission customers pay two charges for "traditional" delivery service (*i.e.*, excluding various reconciliations and surcharges). The first charge, the Customer Charge, is $3,500 per month, or $42,000 annually. The second charge, the Demand Charge, is $2.66 per kW. A customer with a steady 20 MW demand would pay a Demand Charge of $53,200 per month (*i.e.*, 20,000 kW x $2.66 per kW), or $638,400 annually. Combining those two charges (*i.e.*, $42,000 + $638,400) produces an annual cost of "traditional" delivery service of $680,400. *See* Niagara Mohawk Electric Tariff, PSC No. 220, Leaf 391.

$1,071,926.16.[8] Thus, the three surcharges more than double the hypothetical customer's cost of "traditional" delivery service.

Importantly, these exorbitant impacts are not limited to Niagara Mohawk. For instance, consider a hypothetical, large non-residential electric customer taking delivery service from New York State Electric & Gas Corporation ("NYSEG") under S.C. 7-3, sub-transmission (industrial/high-load-factor) voltage. The customer has a steady 10 MW demand and operates at an 80% load factor. The annual cost of "traditional" delivery service for such customer under NYSEG's existing rates is $196,189.32.[9] In comparison, the combined annual cost of the EEPS, SBC and RPS for the same hypothetical customer is $404,338.80.[10] Thus, the three surcharges more than triple the hypothetical customer's cost of "traditional" delivery service.

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[8] A customer with a 20 MW demand and an 85% load factor consumes 148,920,000 kWh annually (*i.e.*, 20,000 kW x 8,760 hours x .85). Niagara Mohawk's existing EEPS, SBC and RPS surcharges are $0.002433 per kWh, $0.001775 per kWh, and $0.002990 per kWh, respectively. *See* Niagara Mohawk Electric Tariff, PSC No. 220, SBC Statement (depicting the EEPS and SBC surcharges) and RPS Statement (depicting the RPS surcharge). Applying combined surcharges of $0.007198 to 148,920,000 kWh results in total annual surcharges of $1,071,926.14.

[9] S.C. 7-3 sub-transmission (industrial/high-load-factor) customers pay two charges for "traditional" delivery service. The first charge, the Customer Charge, is $849.11 per month, or $10,189.32 annually. (For purposes of this example, NYSEG's Meter Ownership Charge, Meter Service Charge and Meter Data Service Charge were added to the Customer Charge.) The second charge, the Demand Charge, is $1.55 per kW. A customer with a steady 10 MW demand would pay a Demand Charge of $15,500 per month (*i.e.*, 10,000 kW x $1.55 per kW), or $168,000 annually. Combining those two charges (*i.e.*, $10,189.32 + $186,000) produces an annual cost of "traditional" delivery service of $196,189.32. *See* NYSEG Electric Tariff, PSC No. 120, Leaf 249.

[10] A customer with a 10 MW demand and an 80% load factor consumes 70,080,000 kWh annually (*i.e.*, 10,000 kW x 8,760 hours x .8). NYSEG's existing EEPS, SBC and RPS surcharges are $0.002268 per kWh, $0.001095 per kWh, and $0.002348 per kWh, respectively. *See* Niagara NYSEG Electric Tariff, PSC No. 220, SBC Statement (depicting the EEPS and SBC surcharges) and RPS Statement (depicting the RPS surcharge). Applying combined surcharges of $0.005711 to 70,080,000 kWh results in total annual surcharges of $404,338.80.

As a final example, consider a hypothetical, large non-residential electric customer taking delivery service from Central Hudson Gas & Electric Corporation ("Central Hudson") under S.C. 13, transmission voltage. The customer has a steady 40 MW demand and operates at a 90% load factor. The annual cost of "traditional" delivery service for such customer under Central Hudson's existing rates is $1,768,920.[11] In comparison, the combined annual cost of the EEPS, SBC and RPS for the same hypothetical customer is $2,289,513.60.[12] Thus, the three surcharges more than double the hypothetical customer's cost of "traditional" delivery service.

According to NYSERDA, the Green Bank is a $1 billion initiative proposed by Governor Andrew Cuomo in his 2013 State of the State address that is intended to stimulate New York State's clean energy economy by leveraging public funds to attract private investment. (Petition at 1.)[13] NYSERDA explains that the Green Bank would provide financing options for a range of energy efficiency and renewable energy projects that purportedly are economic but unable to attract sufficient financing. (*Id.*) NYSERDA further asserts that the Green Bank's focus on

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[11] S.C. 13 transmission customers pay two charges for "traditional" delivery service. The first charge, the Customer Charge, is $3,810 per month, or $45,720 annually. The second charge, the Demand Charge, is $3.59 per kW. A customer with a steady 40 MW demand would pay a Demand Charge of $143,600 per month (*i.e.*, 40,000 kW x $3.59 per kW), or $1,723,200 annually. Combining those two charges (*i.e.*, $45,720 + $1,723,200) produces an annual cost of "traditional" delivery service of $1,768,920. *See* Central Hudson Electric Tariff, PSC No. 15, Leaf 246.1.

[12] A customer with a 40 MW demand and a 90% load factor consumes 315,360,000 kWh annually (*i.e.*, 40,000 kW x 8,760 hours x .9). Central Hudson's existing SBC surcharge, which includes EEPS-related costs, is $0.00423 per kWh, and its RPS surcharge is $0.00303. *See* Central Hudson Electric Tariff, PSC No. 15, SBC Statement (depicting the combined EEPS and SBC surcharge and the RPS surcharge). Applying combined surcharges of $0.00726 to 315,360,000 kWh results in total annual surcharges of $2,289,513.60.

[13] Inasmuch as the vast majority of proposed funding to initially capitalize the Green bank originates from mandatory EEPS, RPS and SBC surcharges on captive customers (*see infra*), it may be more accurate to describe the Green Bank as a public initiative seeking to leverage private funds "repurposed" by the State to attract private investment.

these "market gaps" will enable it to promote the development of a private market for such financing options, and ultimately will support the eventual elimination of customer-funded subsidies for clean energy projects. (*Id.* at 2.)

The Green Bank is presented as an institution that would transform the market for projects supported currently by the existing EEPS, RPS and SBC programs, thereby enabling market support for such projects without mandatory customer-funded subsidies. The Petition, however, fails to establish that the Green Bank actually will accomplish that goal, nor does it provide a schedule for doing so. Multiple Intervenors recommends that NYSERDA be directed to file a schedule providing for: (a) the expeditious reduction of customer surcharges associated with the EEPS, the RPS and the SBC; and (b) an approximate schedule for eliminating such surcharges altogether. Inasmuch as the proposed funding for the Green Bank is quite substantial (*i.e.*, $1 billion), any approval of the Petition should be accompanied by a discrete schedule providing for the expeditious reduction and ultimate elimination of customer surcharges associated with clean energy projects. While such schedule could be modified from time to time depending upon, *inter alia*, the relative success of the Green Bank, it would send an important and much-needed message to businesses that the State is serious about addressing these exorbitant surcharges.

Apart from the Green Bank's possible utility in transitioning the State away from reliance on customer-funded subsidies, it is not clear whether or to what extent most retail customers actually would benefit from its proposed existence. For instance, for many if not most of the large energy consumers that comprise Multiple Intervenors, the financing of clean energy projects is not a substantial impediment. Rather, large energy-intensive customers possess strong financial incentives to practice energy efficiency, provided the resulting payback periods are consistent with corporate requirements. For Multiple Intervenors members, the most glaring problem with the existing EEPS, RPS and SBC is that the exorbitant surcharges, coupled with the current practice recovering them on a purely volumetric (*i.e.*, per kWh) basis, results in cost and rate impacts that far exceed realistically-achievable benefits associated therewith.

Multiple Intervenors also has concerns regarding whether certain assumptions underlying the Green Bank proposal are too optimistic. Specifically, the *Business Plan Development* ("Business Plan") filed with the Petition relies on certain assumptions that appear to overstate the Green Bank's realistic market potential and, therefore, its potential ability to "catalyz[e] market transformation." (Business Plan at 2.) For instance, the Business Plan assumes, *inter alia*, that (i) the entire remaining fleet of pre-2008 buildings and units participates in Green Bank financing, and (ii) 100% of the entire residual wood chip supply associated with the New York State logging/lumber industries will be utilized for biomass facilities. (Business Plan at 15.) The theoretical market potential presented in the Business Plan as justification for a $1 billion capitalization likely bears no relation to the actual Green Bank market potential. Consequently, it is impossible to conclude from the Petition that the Green Bank actually will catalyze market transformation, or even that $1 billion is a reasonable level of capitalization for the institution.

Multiple Intervenors is concerned that the probable market potential for the Green Bank is likely to be less than that estimated by NYSERDA and its consultants.[14] If, *arguendo,* the Commission elects to approve the establishment of a Green Bank notwithstanding the concerns identified herein, then it should: (a) limit that institution's initial capitalization to the $210.3 million proposed in the Petition; and (b) refrain from approving incremental increases to the Green Bank's capitalization unless and until they are shown to be warranted by actual market demand.

[14] Multiple Intervenors also is concerned that if the actual market for the Green Bank is underwhelming, there will be pressure to finance increasingly-risky projects in an effort to justify its existence.

Additionally, if the Green Bank demonstrates a need for incremental capital, it either should be provided by the State or drawn exclusively from Regional Greenhouse Gas Initiative auction proceeds, as opposed to repurposing more customer collections related to the EEPS, the RPS and/or the SBC.

Further, although the proposed Green Bank could represent a positive step towards the reduction and ultimate elimination of customer-funded subsidies, the Petition fails to demonstrate that the Green Bank will in fact provide the "exit strategy" that urgently is needed to relieve customers from the economic and commercial challenges posed by the cost of implementing State energy policy initiatives. The potential – but as yet uncertain – benefits that may accrue to customers must be balanced against the potential risk to customers. There are no guarantees that the Green Bank will perform as proposed, and it remains possible that the financial institution, if established, never would achieve the scale needed to survive without relying on a continuous, material stream of customer-funded "repurposed" subsidies. Accordingly, in exchange for providing the hundreds of millions of dollars requested for an initial bank capitalization, the Commission should adopt a definitive schedule for reduced collections under the EEPS, RPS and SBC surcharges, if it elects to approve the Petition. Regardless, for the reasons described in Point II, *infra*, the Commission should refrain from reaching a decision on the proposed Green Bank at this time and until certain information, identified below, has been made available and issued for public comment.

POINT II

THE PETITION DOES NOT INCLUDE SUFFICIENT INFORMATION TO EVALUATE THE PROPOSED GREEN BANK ADEQUATELY

NYSERDA proposes to establish a financial institution capitalized with $1 billion. (Petition at 1.) The Petition, however, fails to include certain financial and operational information that is essential to understanding the costs, the risks, and the potential benefits associated with the proposed Green Bank. These omissions are significant, and render the Petition insufficient to provide a rational basis for Commission approval at this time. Accordingly, Multiple Intervenors urges the Commission to refrain from ruling on the proposed Green Bank until such time that NYSERDA supplements the Petition, as detailed below, and the additional information is disseminated for public comment.

A. The Petition Fails To Provide Adequate Funding Information

NYSERDA proposes that the Green Bank initially be capitalized with $210.3 million that otherwise would be used to benefit utility customers. Specifically, NYSERDA requests that the following amounts related to the EEPS, the RPS, the SBC, and RGGI be "repurposed" towards the Green Bank:

Funding Source	Amount Proposed For Repurposing
Uncommitted EEPS I Funds (NYSERDA)	$3.5 million
Uncommitted SBC III Funds	$22.1 million
Uncommitted EEPS I Funds (Utilities)	$90.0 million
Uncommitted RPS Funds	$50.0 million
RGGI Auction Proceeds	$44.7 million
Total	**$210.3 million**

(Petition at 14-15.)[15]

Thus, the Petition identifies, with specificity, the sources of approximately $210 million out of the proposed $1 billion capitalization for the proposed Green Bank. Significantly, however, the Petition is devoid of details, or specific proposals, regarding the sources and the timing of the other $790 million. Thus, NYSERDA essentially is requesting that the Commission approve a $1 billion initiative while disclosing funding sources for only approximately 21% of that amount. NYSERDA does not identify the funding source or sources for the other $790 million, nor does it provide any indication as to when such funds might be needed. Absent such critical information, it is difficult, if not impossible, to evaluate the Petition adequately.[16]

NYSERDA acknowledged at the Technical Conference convened on October 15, 2013, that it would seek incremental customer contributions to the Green Bank in the future. (*See*, *also*, Petition at 1 [stating that "[u]sing a discrete portion of this ***annual*** clean energy funding over a few years to capitalize the Green Bank …"; emphasis added].) Thus, it appears that NYSERDA

[15] For purposes of the Petition, NYSERDA seeks Commission approval with respect to the repurposing of customer collections related to the EEPS, the RPS and the SBC, totaling $165.6 million. (*Id.* at 15.) The Commission lacks the authority to sanction the repurposing of RGGI auction proceeds and, therefore, that proposed funding source for a portion of the Green Bank's initial capitalization is not part of the Petition.

[16] For instance, Multiple Intervenors' perspective of the Green Bank would be more positive if the State funded the remaining capital requirement, or that RGGI auction proceeds be used for such purpose, as compared to "repurposing" EEPS, RPS and/or SBC collections from customers in lieu of reducing or eliminating those surcharges.

envisions seeking the "repurposing" of additional customer-funded monies to capitalize the Green Bank. If that is the case – an outcome Multiple Intervenors would not support – NYSERDA at a minimum should disclose the anticipated timing and the rationale for such proposals.

For instance, when will additional funds likely be needed for Green Bank purposes? Will such funds necessitate increases in existing customer surcharges or delay much-needed reductions to the surcharges? How much in uncommitted EEPS, RPS, SBC and RGGI funds exist currently and are projected to exist in the future? What are the priorities and/or objectives being pursued in proposing the "repurposing" of specific amounts of funds from the EEPS, the RPS, the SBC and RGGI? With respect to this latter issue, Multiple Intervenors recommends that if, *arguendo*, the Green Bank is approved and additional funds eventually are needed for capitalization purposes, that NYSERDA utilize RGGI auction proceeds exclusively for such purpose, thereby facilitating expeditious and much-needed reductions in existing EEPS, RPS and SBC surcharges.

It also is not clear what effect, if any, the "repurposing" of customer funds would have on existing EEPS, RPS and/or SBC initiatives. If EEPS programs, for instance, are going to be impacted, the Commission should be mindful of interclass equities. For instance, if certain EEPS programs are to be terminated or have their budgets reduced to fund the proposed Green Bank, such terminations or budget reductions should be done in a manner that does not unduly harm individual customer classes or segments. In other words, the Commission should at all times endeavor to ensure that EEPS program expenditures are aligned with collections from the various customer classes and segments in accordance with cost causation principles.

It currently appears that the solicitation for initial and reply comments on the "inter-related proposals affecting New York's portfolio of clean energy programs" – *i.e.*, the Petition, EEPS Proposal, and RPS Reports – will comprise the full scope of the comprehensive program reviews. (Notice at 1.) If NYSERDA intends to seek additional funding for the Green Bank via a change in how customer collections are allocated among those initiatives, and/or a change in the overall level of customer collections, then such proposal should have been presented in the Petition for consideration during the ongoing program reviews. It would be irrational and arbitrary for the Commission now to approve a capitalization of $1 billion for the Green Bank without understanding precisely when, and from which programs or other sources, NYSERDA would procure the substantial balance (*i.e.*, approximately $790 million) of that capital.

B. The Petition Fails To Describe Key Operating Policies

The Petition fails to explain in adequate detail: (a) the Green Bank's policies on risk and risk management; (b) whether the Green Bank would be subject to the State and Federal laws that typically would apply to a financial institution such as the Green Bank; and (c) how projects would be selected for financial support. These deficiencies are material and require remediation.

If NYSERDA is intent on "repurposing" hundreds of millions of dollars of customer collections to capitalize a bank that will specialize in riskier loans and investments forsaken currently by the existing financial markets, then it is imperative that customers' investment is protected to the fullest extent possible. The Green Bank must have clear policies and well-defined procedures that establish how transactional risk is to be determined and managed. Ill-defined and/or inadequate risk management policies likely would result in the dissipation of Green Bank capital. The Petition, however, does not provide adequate information on the Green Bank's proposed risk management policies. If the Green Bank is going to realize a return on its investments and be self-sustaining without additional injections of customer collections after full capitalization, as asserted by NYSERDA, then it needs to have clear and well-defined risk management policies and procedures. Accordingly, such policies should be developed and subject to public comment and Commission review and approval before the Commission rules on the Petition.

NYSERDA states that the Green Bank would be governed by NYSERDA's Board of Directors and be "subject to all applicable requirements of the Public Authorities Law, including annual reporting requirements, budget reporting requirements, and independent auditing requirements." (Petition at 11.) NYSERDA further explains that the Green Bank would be regulated by NYSERDA's system of internal controls and subject to the Authorities Budget Office. (*Id.*) NYSERDA's Petition, however, does not provide any detail regarding the internal controls and governance structures that protect the Green Bank, however, against fraud, waste and abuse. NYSERDA also declines to state whether the Green Bank would be subject to all State and Federal laws and regulations that ordinarily would apply to a comparable lending institution. *See, e.g.*, N.Y. Banking Law. Given NYSERDA's lack of experience and expertise in operating a bank of any form, governance issues are important and should be resolved before hundreds of millions of customers' dollars are "repurposed."

The proposed Green Bank would be a financial institution with assets of at least $1 billion that specializes in riskier loans and investments. Multiple Intervenors is concerned that NYSERDA's existing internal controls and governance structures may be insufficient to provide effective oversight of the Green Bank. It is important in this regard to note that the Petition fails to demonstrate that NYSERDA possesses either the institutional capacity or technical expertise to competently operate a billion-dollar financial institution that trades in sophisticated financing products.[17] To date, no information has been provided to substantiate NYSERDA's claim that the internal controls cited generally and without description in the Petition are adequate. If, *arguendo*, NYSERDA is proposing that the Green Bank ***not*** be subject to the State and Federal laws and rules that otherwise would apply to any other lending institution, then it is imperative for the Commission to scrutinize the oversight mechanisms cited by NYSERDA, and determine whether they truly are adequate to substitute for the relevant State and Federal laws that ordinarily would apply to a major lending institution.

Finally, the Petition also is silent with respect to how individual projects will be selected for Green Bank financing. Aside from indicating that the Green Bank would finance clean energy projects, NYSERDA does not provide any detail regarding the projects that may or may not be eligible to receive Green Bank financing. For instance, how will potentially-competing clean energy projects be evaluated and approved for financing? The Petition also is silent as to how Green Bank financing products would interact with subsidies provided by other State programs and incentives. For instance, would a renewable energy project that obtains project financing from the Green Bank remain eligible to receive the full subsidy that otherwise would apply under the RPS initiative? Such questions should be resolved before the Commission rules on the Petition.

For the foregoing reasons, the Petition is insufficient to provide a rational basis for Commission decision at this time.

[17] Multiple Intervenors presumes that NYSERDA is working actively to acquire such capacity and expertise. The results of such efforts should be disclosed before hundreds of millions of dollars are "repurposed" to the Green Bank.

CONCLUSION

For all the foregoing reasons, the Commission should adopt Multiple Intervenors' positions with respect to the proposed Green Bank.

Dated: October 28, 2013
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