

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on December 19, 2013

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair  
Patricia L. Acampora  
Garry A. Brown  
Gregg C. Sayre  
Diane X. Burman

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

ORDER ESTABLISHING NEW YORK GREEN BANK AND PROVIDING  
INITIAL CAPITALIZATION

(Issued and Effective December 19, 2013)

BY THE COMMISSION:

INTRODUCTION

In this order, we consider a proposal made by the New York State Energy Research and Development Authority (NYSERDA) to establish and fund the operations of a new clean energy financing entity, the New York Green Bank. Specifically, NYSERDA has asked us to reallocate \$165.6 million in uncommitted NYSERDA Energy Efficiency Portfolio Standard (EEPS) I and System Benefits Charge (SBC) III funds, uncommitted utility EEPS funds, and NYSERDA Renewable Portfolio Standard (RPS) funds for this purpose.<sup>1</sup> As proposed, the Green Bank will be a division within NYSERDA whose mission is to help clean energy technologies gain economies of scale and attract private capital through various public/private capital arrangements. As discussed in our

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<sup>1</sup> Case 13-M-0412 - Petition of New York State Energy Research and Development Authority to Provide Initial Capitalization for the New York Green Bank [hereinafter Green Bank Petition] (filed September 9, 2013).

accompanying order in the EEPS proceeding, the Commission agrees that on a going-forward basis our clean energy programs should focus on developing robust markets for these technologies for the benefit of energy consumers. Because we find that the dedication of these funds to the Green Bank will serve the goals and policies that the Commission has set for the EEPS, RPS, and SBC III programs, and because NYSERDA's proposal presents market transformation opportunities and offers potentially significant benefits to ratepayers, including increased leverage of private capital, we will grant NYSERDA's petition.

#### BACKGROUND

In 2013, more than \$700 million was collected from ratepayers to promote and support energy efficiency and renewable energy through several programs created by the Commission and overseen by NYSERDA and the utilities, including the RPS program, the EEPS program, and the SBC program.<sup>2</sup> The Commission designed these programs to benefit ratepayers in a number of ways, including by increasing the availability and reducing the price of clean energy technology, by reducing dependence on fossil fuels, by lowering energy bills through

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<sup>2</sup> Case 10-M-0457 - Petition of New York State Energy Research and Development Authority in the Matter of the System Benefits Charge IV, Order Continuing Systems Benefits Charge Funded Programs [hereinafter SBC IV Order] (issued December 30, 2010); Case 07-M-0548 - Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard, Order Establishing Energy Efficiency Portfolio Standard and Approving Programs [hereinafter EEPS Order] (issued June 23, 2008); Case 05-M-0900 - In the Matter of the System Benefits Charge III, Order Continuing the System Benefits Charge (SBC) and the SBC-Funded Public Benefit Programs [hereinafter SBC III Order] (issued December 21, 2005); Case 03-E-0188 - Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard, Order Regarding Retail Renewable Portfolio Standard [hereinafter RPS Order] (issued September 24, 2004).

energy efficiency measures, and by reducing emissions of greenhouse gases and other pollutants. Many projects supported by these programs also provide secondary benefits to ratepayers, including economic development in New York and improvements in system resiliency.

A substantial portion of the money collected from ratepayers and spent on energy efficiency and renewable energy is provided in the form of grants and one-time subsidies. These grants have supported a number of successful renewable generation and efficiency projects. However, market barriers frequently prevent even economically viable clean energy projects from achieving the scale necessary to attract the financing required for commercial deployment. These barriers may include a lack of standardized commercial arrangements, insufficient performance data, misperceptions of risk, and lack of access to secondary capital markets. These problems cannot be overcome by subsidies and grants alone. Furthermore, the grant-based approach requires continuous collection and distribution of ratepayer money in order to achieve significant market penetration.

On September 9, 2013 NYSERDA filed a petition suggesting an alternative approach to achieving our clean energy goals while protecting ratepayers' interest. NYSERDA proposes to deploy ratepayer funds to finance clean energy and energy efficiency projects in collaboration with private financial institutions. To accomplish this, NYSERDA proposes to establish, within NYSERDA, a "Green Bank." NYSERDA explains that strategically-managed, ratepayer-supported financing mechanisms have the potential to eliminate market barriers while also reducing the need for continuing incentive programs. If capital markets respond by embracing clean energy technologies, capital costs for those technologies will be reduced, allowing

customers to acquire them with more attractive financing options. As a result, providers of these technologies will be better able to achieve scale and cost-efficiencies.

NOTICE OF PROPOSED RULEMAKING

NYSERDA submitted its petition to the Commission on September 9, 2013. A Notice Soliciting Comments was issued by the Commission on September 13, 2013. A Notice of Proposed Rulemaking concerning the Petition was published in the State Register on September 25, 2013. The Commission accepted initial comments on the petition until October 28, 2013 and reply comments until November 12, 2013. A number of individuals, corporations, and public interest organizations submitted comments;<sup>3</sup> some also intervened as parties. NYSERDA submitted reply comments on November 12, 2013.

NYSERDA'S PROPOSAL FOR A GREEN BANK

NYSERDA describes the operations of the proposed Green Bank in its petition and in its reply comments. Supporting details are provided in a report by Booz & Co. (Booz), a consulting firm retained by NYSERDA to perform a market assessment, identify potential financial products, analyze potential impacts of the Green Bank, and make recommendations on its formation and organization.

As noted in the petition, Governor Andrew M. Cuomo proposed creating the Green Bank and funding it at the \$1 billion level in his 2013 State of the State address. The Governor explained that the Green Bank would provide financing to clean energy and energy efficiency projects in order to

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<sup>3</sup> Appendix B lists the parties who have submitted comments.

stimulate the growth of New York's clean energy economy and encourage the entry of private sector capital into the market.<sup>4</sup>

NYSERDA's petition and the Booz report identify a number of barriers and market inefficiencies that currently prevent promising clean energy projects from receiving financing. NYSERDA states that the Green Bank will focus on projects that are economically viable but not currently financeable due to the existence of these barriers, which include an undeveloped secondary market for clean energy financing and the large upfront costs of some projects. To accomplish this, the Green Bank will develop and deploy a variety of financing tools. The Booz report identifies four categories of such financial products: credit enhancements, loan warehousing, direct lending and investing, and structured products.<sup>5</sup> NYSERDA's petition argues that the Green Bank should have flexibility to determine what sort of financial product is most appropriate for a given project or sector.

NYSERDA further asserts that this model of public/private financing will reduce the need for ratepayers to continue funding grant and incentive programs at the current levels. The Green Bank will be able to redeploy its capital in successive rounds of financings, and to redirect it as the clean energy financing markets evolve, without the need for additional ratepayer contributions. NYSERDA also states that the Green Bank will earn sufficient market returns on its investments to become self-supporting. Thus, if successful, the Green Bank may allow a partial shift away from the subsidy model for clean energy funding.

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<sup>4</sup> Governor Andrew M. Cuomo, 2013 State of the State Address (January 9, 2013), available at <https://www.governor.ny.gov/press/01092013sostranscript>.

<sup>5</sup> Green Bank Petition, Green Bank Final Report.

The petition and the Booz report explain that the activities of the Green Bank will contribute to the important public goals and policies that the Commission has established for clean energy programs. The Green Bank will deploy its capital to serve the same goals as the RPS, EEPs, and SBC programs, funding clean energy projects which result in reduced emissions and a cleaner environment. Many projects will also provide system resiliency benefits. Improvements in the clean energy market could also lead to lower energy costs and increased availability of clean energy technologies. Finally, NYSERDA asserts that projects funded by the Green Bank will result in economic benefits to New York.

NYSERDA states that the Green Bank will operate as a division of NYSERDA and will be led by an Executive Director who will report to NYSERDA's President and Chief Executive Officer (CEO). The Green Bank will establish an Advisory Committee, composed of experts in the field, to advise the Green Bank and NYSERDA. The Green Bank will also form an Investment Committee composed primarily of NYSERDA employees to review its investment decisions and ensure that the bank complies with appropriate policies and procedures for managing risk. In the startup stage, the bank will use NYSERDA staff and resources for functions such as accounting, finance, human resources, communications, marketing, information technology (IT), and legal to scale up quickly and efficiently. It will coordinate with other NYSERDA programs and external public and private entities.

NYSERDA points out that, as a division of the authority, the Green Bank will be governed by NYSERDA rules and oversight, including annual reporting requirements, budget reporting requirements, and independent audit requirements. The Green Bank and its officers and employees will also be subject

to all of the statutory requirements and controls that already apply to NYSERDA, including, among others, the Public Authorities Law, the Internal Control Act, and the Public Officers Law, and to oversight by the Authorities Budget Office. NYSERDA states that federal and state banking regulations will not apply to the Green Bank, but explains that the Green Bank will adopt best practices used in public and private financing institutions in developing its own policies and procedures.

A number of comments were received in response to NYSERDA's proposal. These addressed (1) the sources of the Green Bank's funding; (2) the scope of the Green Bank's activities; (3) governance issues; and (4) accountability concerns. We summarize and respond to these below.

#### ANALYSIS OF ISSUES

##### Establishment of the Green Bank

###### Comments

With few exceptions, commentators were supportive of the establishment of the Green Bank. Support came from all stakeholder sectors, including utilities, public interest organizations, participants in the clean energy market, private financial firms, consumer interest groups, and energy suppliers. Some comments provided suggestions related to specific aspects of the Green Bank; those suggestions, as well comments opposing part or all of the Green Bank petition, are addressed below.

###### Discussion

As discussed in our accompanying orders on EEPS and RPS, our clean energy programs should focus on developing robust markets for clean energy technologies for the benefit of energy consumers. The Green Bank has the potential to reduce market barriers and more efficiently leverage public and private financing in support of this goal. The Green Bank's ability to

animate private financing and help technologies achieve lower costs of capital and economies of scale will be a critical tool in maturing the clean energy market. For these reasons, the Commission grants NYSERDA's Petition and encourages the establishment of the Green Bank as an important part of our clean energy strategy.

### Sources of Funding

#### Comments

NYSERDA proposes that the following money be reallocated to the Green Bank: \$3.5 million in uncommitted NYSERDA EEPS I funds; \$22.1 million in uncommitted NYSERDA SBC III funds;<sup>6</sup> \$90.0 million in uncommitted utility EEPS I funds;<sup>7</sup> and \$50.0 million in NYSERDA RPS funds. NYSERDA also intends to allocate \$44.7 million in 2013 Regional Greenhouse Gas Initiative (RGGI) proceeds to the Green Bank, and may further fund the Green Bank from future RGGI auctions.<sup>8</sup> NYSERDA expects to request or reallocate additional funding in the future in order to fully capitalize the Green Bank at \$1 billion.

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<sup>6</sup> Two charts prepared by NYSERDA provide further details on uncommitted NYSERDA EEPS I and SBC funds. See EEPS Uncommitted Funds as of 12/31/12, available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={86640649-8E47-43C1-A51B-9667C0BC5597}>; SBC Uncommitted Funds as of 12/31/12, available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={E4F763DD-D3C0-40BC-B1A8-6B13AA92FB38}>.

<sup>7</sup> Appendix A identifies the sources of these funds broken down by utility. A proportional percentage of each utility's uncommitted EEPS budget was calculated by Department of Public Service Staff.

<sup>8</sup> RGGI funds derive from auctions for CO<sub>2</sub> allowances, not ratepayer collections, and are not collected or administered by the Commission. NYSERDA directs the use of RGGI funds consistent with an Operating Plan approved by NYSERDA's Board.

Commentators are generally supportive of the reallocation of funds to the Green Bank. Some, including Joint Utilities, the Empire State Forest Products Association, Independent Power Producers of New York, and the Sierra Club, express concerns about further transfers of money out of RPS and EEPS. Similarly, Senator Joseph Griffo, the Center for Working Families, Energy Technology Savings, the Natural Resources Defense Council, the Alliance for Clean Energy, and the Pace Energy and Climate Center state that the Green Bank should act as a supplement to rather than a replacement for current NYSERDA programs, including RPS, EEPS, and NY-Sun.

Multiple Intervenors comment that this shift of funds should be accompanied by a timeline for the reduction and eventual elimination of customer surcharges used for clean energy projects. The Business Council of New York State also argues that the creation of the Green Bank should be accompanied by a plan to reduce surcharges. NYSERDA responds that while the Green Bank might result in long-term reduction of ratepayer costs, the request to outline a schedule for such reduction is premature. NYSERDA explains that data on market response to the Green Bank and the results of initial Green Bank funding will be necessary before NYSERDA can develop recommendations for changes in subsidy programs.

National Fuel Gas Distribution Corporation proposes that instead of transferring EEPS funds to the Green Bank, the Commission return unused EEPS I funds to consumers. A surcharge could then be added to consumer bills to fund the Green Bank for an amount equivalent with expected EEPS funding. National Fuel believes transfer of EEPS funds directly to the Green Bank is inappropriate because EEPS funds were collected for energy efficiency purposes.

Discussion

The funds that NYSERDA proposes to reallocate have been collected from ratepayers but not yet committed by program administrators to any particular project or activity. In previous orders, the Commission has indicated willingness to reallocate EEPS and SBC funds based on future proposals.<sup>9</sup> The Green Bank petition presents us with just such a proposal. Here, NYSERDA plans to utilize a new form of financing assistance other than direct subsidies that will provide the same benefits to ratepayers and the public that the Commission sought in establishing the EEPS, SBC, and RPS programs. NYSERDA suggests, and we agree, that this approach may offer an opportunity to deploy those ratepayer funds more efficiently and thereby provide greater benefits.

In response to parties' concerns about future reallocations, the Commission reiterates that this Order does not set a precedent for the future distribution of ratepayer funds among the EEPS, RPS, and SBC programs. At this time, we expect the Green Bank to supplement rather than replace existing programs; the funding we are shifting to the Green Bank will not increase collections from ratepayers, as we are only allocating uncommitted funds that otherwise might not be deployed. Over the next year, NYSERDA will develop and file an organization plan, institute investment selection and risk management procedures, form the Advisory and Investment Committees,

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<sup>9</sup> Case 07-M-0458 - Proceeding on Motion of the Commission to Review Policies and Practices Intended to Foster the Development of Competitive Retail Energy Markets, Order Authorizing Efficiency Programs, Revising Incentive Mechanism, and Establishing a Surcharge Schedule (issued October 25, 2011); Case 10-M-0457 - Petition of New York State Energy Research and Development Authority in the Matter of the System Benefits Charge IV, Order Continuing the System Benefits Charge (issued October 24, 2011).

establish a business plan, develop metrics, and submit quarterly status reports. Once these efforts are complete, we expect that NYSERDA will be positioned to identify for the Commission's consideration the level of funding the Green Bank will require to achieve its goals.

We share Multiple Intervenors' aspiration for future reductions in ratepayer collections. But, we agree with NYSERDA that Multiple Intervenors' request for a schedule for reduction or elimination of other programs is premature. The ability to reduce or better focus ratepayer funding is a goal of each of the initiatives we are announcing today. In our companion EEPS Order,<sup>10</sup> we are launching a broad examination of how our regulatory framework can be better aligned with the retail and wholesale markets and the utility planning process, in order to more efficiently integrate clean energy technology into the electric system. NYSERDA cannot recommend a timeline for reductions in other subsidies before that review is complete.

National Fuel's alternate funding proposal would result in additional costs and a delay in funding the Green Bank. Transfer of EEPS funds directly to the Green Bank is appropriate because the Green Bank will target the same goals as the EEPS program and because the Green Bank is a division of NYSERDA. Since the funds will continue to be applied to the Commission's clean energy goals, we do not accept National Fuel's proposal.

#### Scope of Green Bank Activities

##### Comments

A number of commenting parties, including the New York Public Interest Research Group and the Sierra Club, raise

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<sup>10</sup> Case 07-M-0548 - Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard.

questions about the scope of the Green Bank activities. Several commentators, including ClearEdge Power, Bloom Energy, EtaGen, and the Fuel Cell and Hydrogen Energy Association, urge that the Green Bank be technology-agnostic and expressed concerns that certain technologies had not been adequately considered in the Booz report. Northeast Clean Heat and Power suggests that the Green Bank treat all distributed energy resources equally. The New York Oil Heating Association and the Oil Heat Institute of Long Island ask the Green Bank provide funding to projects on a fuel-neutral basis. The Fuel Cell and Hydrogen Energy Association also recommends fuel neutrality with respect to hydrogen energy projects.

National Fuel Gas Distribution Corporation argues that the Green Bank should follow standards of geographic equity in selecting projects for financing. National Fuel also states that the Green Bank should use funds collected from gas surcharges on projects that result in gas-related savings. New York City and Joint Utilities also request information on whether factors such as geographic equity and technology diversity will be considered in selecting projects. The Workforce Development Institute states that the Green Bank should require applicants for financing to submit a Workforce Impact Statement and consider local employment and economic development in choosing projects.

In its reply comments, NYSERDA explains that the funding requested in the petition will be used to support the same types of technologies, and target the same public benefits, that the Commission contemplated when it made SEQR determinations in the SBC, EEPS, and RPS proceedings. NYSERDA does not expect to exclude from funding or otherwise discriminate against any technology or fuel source that was the subject of those analyses. Thus, technologies and projects

falling within the scopes of the SBC, EEPS, and RPS programs would be eligible for Green Bank financial support. NYSERDA adds that the list of technologies considered in the Booz report was not intended to be prescriptive.

Some commentators emphasize the collaboration between the Green Bank and other stakeholders. The Utility Intervention Unit at the Department of State encourages the Green Bank to partner with local governments. kWh Analytics states that the Green Bank should work to facilitate, rather than displace, the work of private sector data firms in the clean energy market. The Retail Energy Supply Association requests that NYSERDA work with stakeholders from all market segments, including energy supply companies. The Center for Working Families recommends that the Green Bank work with credit unions and community development financial institutions. The Community Environmental Center states that the Green Bank should be careful to coordinate with NYCEEC on any projects in the New York City area. Both NYCEEC and CEFIA provide detailed and helpful comments discussing their experience as clean energy finance institutions and how they might be able to work with the Green Bank.

NYSERDA explains in its reply comments that the Green Bank will partner with, rather than compete against, public and private market actors wherever possible. The Green Bank will work with financial institutions to originate and support loans; with corporations, individuals, and other organizations in order to identify and fund clean energy projects; with similar entities capitalized by other jurisdictions, such as the New York City Energy Efficiency Corporation (NYCEEC) and Connecticut's Clean Energy Finance & Investment Authority (CEFIA), to share knowledge and partner on appropriate projects; and with other market and public actors.

Some parties request that we instruct the Green Bank to partner with a specific organization or engage in a particular project. PosiGen Solar Solutions recommends that the Green Bank include a dedicated program designed for low to moderate income households. A number of other commentators support PosiGen's proposal or offer similar proposals, including the NAACP New York State Conference, GRID Alternatives, Assemblymember Michael DenDekker, Assemblymember Amy Paulin, Assemblymember Aravella Simotas, and Senator Tim Kennedy. Northeast Clean Heat and Power recommends a revolving-fund approach designed to deal with construction financing needs. Bloom Energy suggests particular financing products which would be helpful for the fuel cell market. The Utility Intervention Unit of the Department of State recommends that the Green Bank work with local governments and finance projects including residential distributed generation. Others suggest particular projects or market segments which the Green Bank should target. In response to these comments, National Fuel argues that the Green Bank and the Commission should avoid committing to spending in excess of the initial capitalization. The Center for American Progress states that flexibility will be very important for the Green Bank.

#### Discussion

In previous orders, supported by environmental impact analyses required by SEQRA, the Commission created rules governing the eligibility of technologies for funding under the RPS, EEPS, and SBC programs, all of which are targeted at expanding the State's clean energy portfolio and achieving

emissions reductions.<sup>11</sup> Here, NYSERDA proposes to allocate funds previously collected to support those programs to the Green Bank as an additional means of achieving the same goals, but asks for flexibility in determining what markets it can best serve. In deciding on the proper scope for the Green Bank's financing activities, we find that those existing incentive programs provide appropriate boundaries. We agree that the Green Bank may deploy the funds NYSERDA seeks here to technologies that fall within the eligibility boundaries set by the RPS Environmental Impact Statement, the EEPS Environmental Impact Statement, the SBC III Environmental Assessment, or the SBC IV Environmental Assessment and the orders creating those programs.

Rather than prescribing the areas of investment, we direct the Green Bank to provide the Commission with timely and public reporting on both the criteria it uses for investment decisions and the outcome of its efforts, as described in the reporting requirements detailed below. The high degree of transparency that the Green Bank will provide to the Commission on the scope and results of its investment activities will provide us the opportunity to gauge the efficacy of its

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<sup>11</sup> Case 10-M-0457 - Petition of New York State Energy Research and Development Authority in the Matter of the System Benefits Charge IV, Notice of Determination of Significance [hereinafter SBC IV Notice] (issued November 19, 2010); Case 07-M-0548 - Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard, Order Adopting and Approving Issuance of Final Generic Environmental Impact Statement [hereinafter EEPS GEIS Order] (issued March 24, 2008); Case 05-M-0900 - In the Matter of the System Benefits Charge III - Notice of Determination of Significance [hereinafter SBC III Notice] (issued September 21, 2005); Case 03-E-0188 - Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard, Order Adopting and Approving Issuance of Final Generic Environmental Impact Statement [hereinafter RPS GEIS Order] (issued August 26, 2004); see also SBC IV Order; EEPS Order; SBC III Order; RPS Order.

investment strategies and, if necessary and appropriate, require changes. For us to impose prescriptive instructions on how to execute the market transforming mission that NYSERDA has articulated for the Green Bank would unnecessarily limit the Green Bank's flexibility and perhaps create insurmountable obstacles to its success. Moreover, before it finalizes any financial transactions, we are requiring the Green Bank to certify that its investment selection criteria have been fully developed and implemented. Therefore, we decline to require the Green Bank to fund specific projects or to partner with specific entities in any particular manner.

The proposed Green Bank is one part of NYSERDA's clean energy strategy. It will operate best if given the flexibility to fund based on dynamic market conditions rather than externally-imposed rules. Therefore, while we encourage the Green Bank to track important factors, such as geographic equity, technology and fuel diversity, employment and economic development, and inclusion of all consumer segments, we decline to require NYSERDA to incorporate these as criteria for the Green Bank's investment decisions. The Green Bank, consistent with its goals, may consider and fund any technology eligible under the Environmental Impact Statements and Environmental Assessments discussed above.

## Governance

### Comments

The petition explains that the Green Bank will operate as a division of NYSERDA, led by an Executive Director reporting to NYSERDA's President and CEO. The Green Bank will be advised by an Advisory Committee, composed of experts in clean energy finance and related fields. It will also have an Investment Committee, composed primarily of NYSERDA employees, which will

review proposed investment decisions and ensure that the bank complies with appropriate policies and procedures. NYSERDA and the Green Bank will establish these committees. The Green Bank will use NYSERDA staff and resources for functions such as accounting, finance, human resources, communications, marketing, legal, and IT, and make use of NYSERDA's expertise. NYSERDA requests the authority to spend \$13.248 million, eight percent of the funding requested, for internal and contracted administrative costs. NYSERDA explains that, once the Green Bank is fully capitalized and operational, it expects Green Bank administrative costs to be covered by customer fees and investment earnings collected by the Green Bank.

Several commentators discuss the Advisory Committee. Environmental Advocates states that the Advisory Committee should include individuals representing a variety of stakeholder groups, including environmental, labor, consumer and environmental justice representatives, and that the Commission should establish a procedure to ensure such representation. The New York Biomass Energy Alliance requests membership on the Advisory Committee. Joint Utilities recommend that there be utility membership on the Advisory Committee.

CEFIA states that based on its experiences, the Green Bank should likely to be separated from NYSERDA once it is running smoothly. CEFIA also recommends that NYSERDA avoid requiring the Green Bank to seek external approval for standard activities. It recommends that the Green Bank employ its own General Counsel, Chief of Staff, and Chief Investment Officer.

### Discussion

The proposed structure of the Green Bank within NYSERDA is appropriate to ensure ready access to NYSERDA's expertise and to ensure effective oversight while also providing

an appropriate degree of flexibility. We instruct NYSERDA to file an organization plan within 60 days identifying key milestones for the Green Bank's establishment and a timeline for reaching those milestones. NYSERDA's request for the authority to spend up to eight percent of the requested funding on administrative costs is reasonable, given NYSERDA's need to bring in staff with new areas of expertise. We expect NYSERDA's reports to the Commission to include information on administrative spending. CEFIA's comments are beyond the scope of this Order, but we recommend that NYSERDA and the Green Bank carefully consider them in making structural decisions. However, we note that separation of the Green Bank from NYSERDA would require Commission approval.

The Advisory Committee will exist purely to provide guidance to the Green Bank. NYSERDA and the Green Bank should therefore have the freedom to determine its membership based on the qualifications they believe will be most helpful to meeting the Green Bank's goals. We require that the organization plan include details on how members of the Advisory and Investment Committees will be selected, the expected role of the committees, and appropriate conflict of interest policies for members of each committee.

## Reporting and Oversight

### Comments

NYSERDA expects the Green Bank to be judged in four primary areas: its operational competence; its ability to appropriately manage risk and preserve ratepayer funds; its mobilization of the private financial market in the clean energy sector; and its results in increasing renewable energy generation and energy efficiency and decreasing greenhouse gas emissions in New York. The Green Bank has committed to working

with the Commission and Department of Public Service Staff (Department Staff) to develop appropriate metrics for performance in these areas. NYSERDA and the Green Bank have committed to providing regular reports to the Commission on projects undertaken and results. NYSERDA requests the authority to spend up to \$4 million of the requested funding for conducting program evaluation activities, including independent external reviews of Green Bank performance.

Multiple Intervenors ask that NYSERDA provide information on risk and risk management policies, internal controls, and selection of projects. In its reply comments NYSERDA explains that, as a division of NYSERDA, the Green Bank is subject to a number of operational, reporting, and ethical requirements. It will also be governed to NYSERDA policies and procedures. The Green Bank will be subject to internal and external audits, and oversight by NYSERDA as well as the independent Authorities Budget Office. While the activities of the Green Bank will not be subject to federal and state banking regulation, it will apply best practice policies and procedures drawn from public and private sector financing entities.

Multiple Intervenors and the Business Council of New York State express concerns that NYSERDA lacks the necessary competency to run a financing institution. The Business Council recommends that NYSERDA hire individuals with appropriate expertise while avoiding unnecessary increase in administrative costs. NYSERDA explains in its reply comments that it intends to leverage the financial expertise of new employees and the Investment and Advisory Committees.

Commenting parties also discuss the creation of metrics for judging the Green Bank's performance. New York City, the Natural Resources Defense Council, and Pace Climate Center recommend that NYSERDA estimate the impact that the

funding reallocated in this order would have in its source program, and compare the Green Bank's impacts with those estimates. Environmental Advocates suggests that metrics for the Green Bank be developed by the Commission through a process that allows for further public participation.

#### Discussion

As NYSERDA explains, the Green Bank will be subject to substantial auditing, reporting, and ethical requirements imposed by existing law and NYSERDA policy. NYSERDA has successfully administered billions of dollars of ratepayer funds. NYSERDA and the Green Bank will also provide an organization plan, a business plan, and regular reports to the Commission. Through the Advisory Committee and the Investment Committee, NYSERDA will also leverage relevant expertise to advise on policy and review its decisions. We expect that each committee will provide reports on its activities to NYSERDA's Board. We believe that the accountability requirements described in NYSERDA's petition and reply comments, together with NYSERDA's ongoing responsibility to work and consult with Department Staff on the Green Bank's activities, are sufficient to safeguard ratepayer funds.

However, our responsibility does not end with ensuring financial accountability in the Green Bank's use of ratepayer funds. We also have responsibility to ensure that those ratepayer funds are properly spent to advance the State's public policy goals. As described in the petition, the Green Bank will be a complementary addition to New York's clean energy portfolio and will serve the State's clean energy objectives, including increasing renewable energy generation capacity, reducing dependence of fossil fuels, lowering energy usage through energy efficiency measures, managing load, and reducing greenhouse gas

emissions. NYSERDA has also identified self-sufficiency as an important goal for the Green Bank, in part because it will reduce demands on ratepayers, another Commission policy objective.

Because we bear this additional responsibility, we agree with many of the commentators that we must establish appropriate metrics for evaluating the Green Bank's performance, just as we have done for our other clean energy programs. However, we recognize that those metrics may be different from those we and NYSERDA have employed in the past. We also believe that establishing specific performance metrics now would be premature, as NYSERDA is still working to identify its possible role in the financial markets. Therefore, we will require NYSERDA to collaborate with Department Staff over the next several months to design appropriate metrics for judging the Green Bank's effectiveness, as well as data collection and reporting requirements that will support our ability to assess, in the future, New Yorkers' return on this investment. NYSERDA and Department Staff should also provide an opportunity for other parties to offer input.

In particular, we require the development of performance metrics in four categories and a schedule for reporting against those metrics. NYSERDA and the Green Bank, with input from Department Staff and other parties, should identify: (1) operations metrics pertaining to organizational structure, establishment of advisory and investment committees, policies and procedures, and overall management; (2) risk management metrics that assist in defining acceptable capital deployment opportunities; (3) financial and market metrics, such as leverage ratio, return on investment, and redeployment cycle time; and (4) energy and environmental metrics, such as greenhouse gas emission reductions, energy saved, and clean

energy generated. NYSERDA should design these metrics to help the Commission and the public evaluate how well the Green Bank is achieving our clean energy goals, including the objectives of market transformation and reducing the need for future ratepayer collections. NYSERDA's request for authority to spend up to \$4 million on program evaluation activities is reasonable, considering the importance of protecting ratepayer funds and the need to establish new evaluation metrics.

#### SEQRA FINDINGS

Pursuant to our responsibilities under the State Environmental Quality Review Act (SEQRA), in conjunction with this order we find that the activities authorized herein are within the overall actions previously examined by us in Cases 10-M-0457, 07-M-0548, 05-M-0900, and 03-E-0188<sup>12</sup> and will not result in any different environmental impact than those previously examined. The SEQRA findings of the November 19, 2010 Notice in Case 10-M-0457, the March 24, 2008 Order in Case 07-M-0548, the September 21, 2005 Notice in Case 05-M-0900, and the August 26, 2004 Order in Case 03-E-0188 are incorporated herein by reference and we certify that: (1) the requirements of SEQRA, as implemented by 6 NYCRR part 617, have been met; and (2) consistent with social, economic, and other essential considerations from among the reasonable alternatives available, the action being undertaken is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable.

#### CONCLUSION

The petition and other filings in this case support NYSERDA's assertion that the Green Bank will serve the goals of

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<sup>12</sup> SBC IV Notice; EEPS GEIS Order; SBC III Notice; RPS GEIS Order.

the RPS, EEPS, and SBC programs, which include reducing dependence on fossil fuels, increasing renewable energy generation capacity, improving system resiliency, reducing emissions, and contributing to a cleaner environment for all New Yorkers. If successful, the Green Bank will transform clean energy markets and reduce the cost of clean energy technologies and reduce the need for continuing ratepayer support of clean energy programs. The Green Bank has the potential to increase the leverage that ratepayers obtain through the grant and incentive model, and to recycle its initial funding, and thereby achieve our policy objectives more efficiently. For these reasons, we grant NYSERDA's petition.

The Commission orders:

1. The New York State Energy Research and Development Authority (NYSERDA) is authorized to reallocate and repurpose funds to the Green Bank as requested in the petition. The money to be reallocated is \$3.5 million in uncommitted NYSERDA EEPS I funds; \$22.1 million in uncommitted NYSERDA SBC III funds; \$90.0 million in uncommitted utility EEPS I funds;<sup>13</sup> and \$50.0 million in NYSERDA RPS funds. NYSERDA is authorized to use up to \$13.248 million for administrative costs and to pay any cost recovery fee under section 2975 of the Public Authorities Law that is allocable to the actual expenditure of any portion of the \$165.6 million. NYSERDA is authorized to spend up to \$4 million on program evaluation activities. NYSERDA shall use the remaining \$148.352 million for the programmatic functions of the Green Bank.

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<sup>13</sup> Appendix A identifies the sources of these funds broken down by utility. A proportional percentage of each utility's uncommitted EEPS budget was calculated by Department of Public Service Staff.

2. Utilities identified in Appendix A shall enter into agreements with NYSERDA within 45 days to transfer funds in the amounts identified therein to NYSERDA.

3. NYSERDA shall develop and file an organization plan for the Green Bank within 60 days of the date of this Order. At a minimum, the organization plan shall provide (1) a list of key milestones for the establishment of the Green Bank; (2) a timeline for organizing the Green Bank; and (3) descriptions of the selection process for the Advisory and Investment Committees and the role of the committees, as well as appropriate conflict of interest policies for members of each committee.

4. When the Green Bank has adopted criteria, processes, and procedures for evaluating and selecting investment proposals, implemented risk management protocols, and formed the Investment Committee, the President of the Green Bank shall send a letter to the Commission certifying that achievement. The Green Bank shall not finalize any financial transactions before the President of the Green Bank has provided to the Commission this certification.

5. NYSERDA shall develop a business plan for the Green Bank and shall file it no later than six months after the date of this order. The business plan shall describe, in a reasonable level of detail, the activities that the Green Bank intends to undertake over the planning period. The business plan shall summarize actions taken by the Green Bank before its filing. NYSERDA shall update the business plan at least annually and file the updates with the Commission.

6. The Green Bank shall establish investment criteria by which it will evaluate all its potential financial transactions. At a minimum, these criteria shall include:

- (i) Transactions will have expected financial returns such that the revenues of the Green Bank on a portfolio basis will be in excess of expected portfolio losses;
- (ii) Transactions will be expected to contribute to financial market transformation in terms of scale, improved private sector participation, level of awareness and confidence in clean energy investments, and/or other aspects of market transformation; and
- (iii) Transactions will 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.

7. NYSERDA shall collaborate with DPS Staff to develop metrics for the evaluation of the Green Bank'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 a proposal for reporting the Green Bank's performance against those metrics. NYSERDA and Department of Public Service Staff should also provide an opportunity for other parties to offer input. NYSERDA shall file these metrics no later than six months after the date of this Order.

8. NYSERDA shall file a quarterly Green Bank status report within 45 days of the end of each quarter that reports on its progress in carrying out the organization and business plans provided pursuant to ordering clauses 3 and 4, above. The first quarterly report shall be filed at the end of the third quarter of 2014.

9. The Secretary in her sole discretion may extend the deadlines set forth in this order, provided the request for such extension is in writing, including a justification for the

extension, and filed on a timely basis, which should be on at least one day's notice prior to any affected deadline.

10. This proceeding is continued.

By the Commission,

KATHLEEN H. BURGESS  
Secretary

Appendix A

The petition requests that \$90 million of uncommitted utility EEPS funds be reallocated and transferred to the Green Bank. This Order grants that request. A proportional percentage of each utility's uncommitted EEPS budget was calculated by Department of Public Service Staff. The following amounts shall be transferred from utility EEPS budgets to the Green Bank.

**Utility EEPS Funds Transfer to Green Bank**

**GAS**

<b>PA</b>	<b>EEPS 1 Funds Transferred to Green Bank</b>
Central Hudson	\$190,305
Con Edison	11,992,878
Corning	151,425
KEDLI	2,785,037
KEDNY	8,709,332
Niagara Mohawk	1,260,594
NYSEG	384,918
O&R	103,226
RG&E	739,319
St. Lawrence	216,501
Total Gas Funds	\$26,533,535

**ELECTRIC**

<b>PA</b>	<b>EEPS 1 Funds Transferred to Green Bank</b>
Central Hudson	729,576
Con Edison	46,822,860
Niagara Mohawk	9,032,090
NYSEG	3,804,546
O&R	1,629,824
RG&E	1,447,569
Total Electric Funds	\$63,446,465

Total EEPS Funds Transferred to Green Bank	\$90,000,000
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Appendix B

**List of Parties Providing Comments**

ACORE

Adirondack North Country Association

Alliance for Clean Energy - NY (ACE NY)

Anthony Marsh (UK Green Investment Bank)

Assemblymember Amy Paulin

Assemblymember Andrew Hevesi

Assemblymember Aravella Simotas

Assemblymember Michael DenDekker

Association for Energy Affordability

Assurant, Inc.

Bloom Energy

Center for American Progress (CAP)

Center for Working Families

ChargePoint, Inc.

ClearEdge Power

Columbia Technology Ventures and NYU-Poly

Community Environmental Center

Community Preservation Corp (CPC)

Con Edison Solutions

Con Edison

Connecticut Clean Energy Finance & Investment Authority (CEFIA)

Conservation Services Group (CSG)

Empire State Forest Products Association

Energy Improvement Corporation (EIC)

Energy Technology Savings (ETS)

Environmental Advocates of New York

Environmental Defense Fund (EDF)

EtaGen

Fuel Cell and Hydrogen Energy Association

Goldman Sachs

Greenhill Contracting

Grid Alternatives

HQ Energy Services

Independent Power Producers New York (IPPNY)

John Joshi (CapitalFusion Partners, NREL, SAPC)

Joint Utilities

JP Morgan Chase

Marguerite Wells (Black Oak Wind Farm)

Multiple Intervenors

NAACP New York State Conference

National Association of Energy Service Companies (NAESCO)

National Fuel Gas Distribution Co.

Northeast Clean Heat & Power Initiative (NECHPI)

New York Bankers Association (NYBA)

New York Biomass Energy Alliance (NYBEA)

New York City

New York City Energy Efficiency Corporation

New York Light Energy

New York Public Interest Research Group (NYPIRG)

New York State Department of State

New York State Department of Environmental Conservation (DEC)

New York State Environmental Facilities Corporation

New York Oil Heating Association and the Oil Heat Institute of  
Long Island

North Country Regional Economic Development Council

Northern Westchester Energy Action Consortium and Energy  
Improvement Corporation

Natural Resources Defense Council (NRDC), PACE Climate Center, &  
Supporters

Peter Sweatman (Climate Strategy & Partners)

PosiGen Solar

PowerBridgeNY

Quadlogic Controls Corporation

ReEnergy Holdings

Retail Energy Supply Association (RESA)

Richard Matsui (kWh Analytics)

Senator Joseph Griffo

Senator Tim Kennedy

Shirley Dittman (Individual/No Affiliation)

Sierra Club

Solar Coalition

Solar One

Sungage

Sunpower Corp

The Business Council of New York State

TRC Environmental

United Wind

Vets Help

Workforce Development Institute