



November 12, 2013

Via email to secretary@dps.ny.gov

Hon. Kathleen H. Burgess
Secretary
Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

RE: 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; and,

Case 03-E-0188 Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard.

Dear Secretary Burgess,

The New York Public Interest Research Group (NYPIRG) appreciates the opportunity to submit reply comments on the above-captioned proceedings. We also commend the Public Service Commission for holding a technical conference on October 15th, 2013 on these three proceedings, thereby providing an opportunity for the public to listen and ask questions in advance of the comment deadline.

NYPIRG is New York's largest environmental, consumer advocacy, and good government organization, with more than 80,000 student members and community supporters across the state. NYPIRG has a long history of advocating for clean and affordable energy in New York State, as well as for transparency, accountability, and citizen participation in government decision-making.

We support many of the recommendations previously made in this proceeding by our environmental colleagues regarding the Green Bank, the Energy Efficiency Portfolio Standard (EEPS), and the Renewable Portfolio Standard (RPS) and have added some additional comments of our own.

1. GREEN BANK: Case 13-M-0412

The New York State Energy Research and Development Authority (NYSERDA) proposes to repurpose \$165.6 million in uncommitted funds from the RPS, EEPs, and Systems Benefit Charge III (SBC), as well as \$44.7 million from Regional Greenhouse Gas Initiative (RGGI) auction proceeds, to provide the initial capitalization for the Governor's proposed billion-dollar Green Bank initiative.

NYPIRG supports creating a Green Bank to supplement New York's existing clean energy programs and provide additional financing tools in order to maximize New York's energy efficiency and renewable energy potential. Done properly, this is an exciting opportunity to make New York truly a leader in the field and significantly reduce carbon emissions.

We do however share many of the concerns raised by previous commentators about the Green Bank, specifically regarding:

- eligibility guidelines
- program goals and evaluation criteria
- governance
- public review process, and
- future funding.

Eligibility Guidelines

What is most notably lacking from NYSERDA's petition are guidelines for determining what types of technologies would be eligible for financing through the Green Bank. The term "clean energy" is never defined. As NYPIRG noted in our comments at the October 15th technical conference, there are competing definitions of "renewable energy" in New York's laws and programs. "Clean energy" is an even a looser term, with no statutory or regulatory definition.

Leaving these terms up for industry interpretation is dangerous and could result in an abuse of public funds. For instance, at the October 15th technical conference a representative from the biomass industry suggested that since biomass is stored solar thermal energy, New York's solar incentive programs should be expanded to include biomass. Without defining the eligibility criteria, the Green Bank as proposed provides far too much latitude to an advisory panel created by NYSERDA (discussed further below, under "Governance") to make their own interpretation of what is "clean" energy. The Green Bank program as described in the petition does not provide adequate safeguards to ensure that risky and polluting technologies will not be financed through it.

The most efficient solution is to utilize the PSC orders establishing the RPS and EEPs programs, which include guidelines and eligibility criteria developed after conducting a thorough public review process and rigorous analysis by professional agency staff. There is a well-established process for making modifications to this program, providing both the flexibility that would be desired to encourage innovation and the public input and transparency that are expected when dedicated public funds are being utilized. In addition, there will be opportunities to modify the eligibility for these programs during their respective reviews next year.

This may also eliminate the need to conduct an extensive review under the State Environmental Quality Review Act (SEQRA) regarding the repurposing of the RPS and EEPs funds (discussed further below, under "Public Review Process"), and ensure the timely launching of the Green Bank's initial offerings in early 2014, as proposed in the Green Bank petition.

Although there are no details in the petition, in response to questioning by NYPIRG at the technical conference, NYSERDA's CEO John B. Rhodes responded that he envisioned that the \$50 million repurposed from the RPS would be utilized for projects that meet the RPS criteria, leaving open the possibility that non-RPS-sourced funds in the Green Bank could be used for other purported "renewable energy" projects that would be inconsistent with the RPS. For all practical purposes, this structure would be unworkable.

Sierra Club, Natural Resources Defense Council, Pace Energy and Climate Center, and other groups also recommended utilization of the RPS order for determining which renewable energy projects would be eligible for funding through the Green Bank.

Program Goals and Evaluation Criteria

The NYSERDA petition lists nine "guiding principles" for the Green Bank's operation. While these principles focus on financing goals, such as addressing market barriers and inefficiencies that are impeding the scale of clean energy financing, NYPIRG concurs with NRDC, Pace et al. that Green Bank investments "first and foremost must further the meeting of the State's clean energy goals."

Moreover, the proposed metrics and evaluation in the Green Bank petition fail to correspond with the programmatic goals of the funding sources which NYSERDA is seeking to tap into for the initial capitalization, and possible future funding.

The NYSERDA petition states that "selected core metrics in this area *may* include: energy efficiency savings, primary energy savings from CHP systems, and clean energy generation and capacity. Other metrics that *could potentially be* estimated or analyzed based on the core metrics include emissions reductions and jobs created/retained." [emphasis added]

This section is notable because it is the only place in the Green Bank petition that mentions emissions reductions. Yet emissions reductions are the primary driver for several of the programs for which NYSERDA is seeking to repurpose uncommitted public funds. (The RPS order is even broader, in that its goal is not only to reduce greenhouse gas emissions, but all air emissions and other adverse environmental impacts from power generation, including impacts on environmental justice communities.) Below is a summary of these program goals:

RPS: One of the seven objectives in the PSC's 2004 order creating the RPS is: "improve New York's environment by reducing air emissions, including greenhouse gas emissions, and other adverse environmental impacts on New York State, including upon underserved communities, of electricity generation."¹

EEPS: In the instituting order for the EEPS, the PSC stated "The purpose of the proceeding is to design an EPS to meet the targets for energy efficiency which, along with additional renewable resource development, and other programs, **decreases the State's dependence on fossil fuel-based generation and imported fuels, and reduces its greenhouse gas**

¹ STATE OF NEW YORK PUBLIC SERVICE COMMISSION CASE 03-E-0188 – Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard. ORDER REGARDING RETAIL RENEWABLE PORTFOLIO STANDARD, September 24, 2004 section V, A (d) (pp. 23-24)

emissions. An EPS should be designed ultimately to reduce customer bills, stimulate State economic development, and create jobs for New Yorkers.”² [emphasis added]

RGGI: New York’s regulations implementing the RGGI program state that “The proceeds of the CO₂ Allowance Auctions will be used by the Authority to promote and implement programs for energy efficiency, **renewable or non-carbon emitting technologies, and innovative carbon emissions abatement technologies with significant carbon reduction potential.**”³ [emphasis added]

Comments submitted by Jared Snyder of the NYS Department of Environmental Conservation in support of the use of RGGI funds for the Green Bank capitalization (which is not under PSC’s jurisdiction and not part of this proceeding) repeatedly refer to the State’s goal of reducing emissions of greenhouse gas emissions that cause climate change. This should be an explicit goal of the Green Bank and a required performance evaluation metric, to the extent practicable.

Governance

The petition states that “NYSERDA will establish an Advisory Committee, which will include experts in the field, to review the plans for and operations of the Green Bank and provide advice and counsel on best practices for the activities of the Green Bank.” While the petition does not elaborate on what “experts in the field” means, a NYSERDA representative at the October 15th technical conference stated that the advisory committee will be comprised of “market participants.” NYPIRG reiterates the concern we raised at the technical conference that since public funding is being used to launch the Green Bank, such an Advisory Committee should include representatives from the public interest arena, including environmental groups, consumer advocates, environmental justice groups, and clean energy advocates. NYPIRG concurs with comments and recommendations submitted by Environmental Advocates of New York concerning transparency and accountability.

Public Review Process

The PSC conducted a full public review and prepared an Environmental Impact Statement on the adoption and implementation of both the RPS and the EEPs in New York State. The basic purpose of SEQRA is to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time. The repurposing of \$143.5 million in uncommitted funds from EEPs and RPS to the Green Bank would be considered an action under SEQRA.⁴ Unless the Green Bank incorporates the goals and objectives and eligibility guidelines developed through the EEPs and RPS orders, we believe repurposing these funds will require the PSC to comply with SEQRA by preparing a Supplemental Environmental Impact Statement. (A separate public review process should be established for the repurposing of the RGGI funds, which is outside the purview of the PSC.)

² Case 07-M-0548 – Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard, Order Instituting Proceeding (issued May 16, 2007).

³ 21 NYCRR Part 507.4(d)

⁴ 6 NYCRR Part 617.2(b).

Future Funding

The petition identifies \$210.3 million in funding sources for the initial capitalization of the Green Bank, and states that “NYSERDA will request additional funds for the Green Bank through a subsequent PSC petition, likely to be combined with additional RGGI funds, to meet the Governor’s \$1 billion capitalization goal for the Green Bank.” NYPIRG joins Sierra Club, NRDC, Pace, and others in emphasizing the importance of the Green Bank as an additional tool to supplement these programs, not to replace them. We are very concerned where this money will come from and the potential impact it might have on the state’s other clean energy programs. We endorse the comments of Environmental Advocates of New York, which requests more information about potential future funding sources and amounts and recommends thorough evaluation and public review of the potential impacts of removing funding from other clean energy programs.

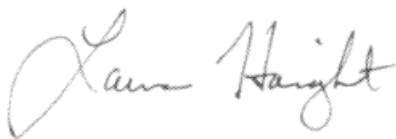
2. ENERGY EFFICIENCY PORTFOLIO STANDARD: Case 07-M-0548

NYPIRG endorses the comments submitted by NRDC and Pace, et al. in support of program improvements to help meet the EEPS “15 by 15” target. We also support their recommendation that the PSC extend the EEPS and set a new target to reduce forecasted electricity consumption an additional 10% by 2020 and 20% by 2025. Energy efficiency is the cleanest, most cost-effective approach to addressing our energy needs, and therefore should be our highest priority. However there are barriers to achieving these goals that are beyond the purview of the PSC and must be pursued through other forums. We strongly agree with NRDC and Pace’s comments that the state needs to do a much better job of communicating information to the public regarding the implementation of energy efficiency measures.

3. RETAIL RENEWABLE PORTFOLIO STANDARD: Case 03-E-0188

NYPIRG concurs with comments submitted by many of the parties that NYSERDA should hold regularly scheduled Main Tier procurement solicitations on an annual or semiannual basis, if not more frequently, with firm and transparent deadlines. More frequent solicitations combined with other program improvements would help bring the state closer to its goal of 30% renewable energy by 2015. We endorse the recommendations of the Sierra Club and NRDC and Pace et al. with regard to other improvements to the RPS program. NYPIRG supports the NYSERDA petition to allocate additional funding of \$54 million per year for the NY-Sun program in 2014 and 2015. Finally, NYPIRG concurs with comments submitted by Sierra Club, NRDC and Pace et al., and others for extending the RPS with long term targets of 40% renewable energy by 2020 and 50% by 2025.

Respectfully submitted,



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