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STATE ENVIRONMENTAL LAW

Expert Analysis

New York Green Bank Grows As Clean Energy Funding Source

By
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Nearly seven years after New York Governor Andrew M. Cuomo's 2013 State of the State message, in which he called for the creation of a "bank" that would leverage public dollars with private sector matched money to spur the clean economy, and only about five years after the New York Public Service Commission (PSC) granted the petition of the New York State Energy Research and Development Authority (NYSERDA) to establish and provide the initial capitalization for the New York Green Bank (NYGB), the NYGB has become a significant player in clean energy finance throughout the state.

As the NYGB explains on its website, it works with private sector lenders to provide developers, property owners and property managers, energy companies, and businesses involved in clean energy-related infrastructure projects the opportunity to obtain funding when they are unable to do so from more traditional lenders. Having a working familiarity with the NYGB and its goals and operations may help attorneys best advise their "green" clients on obtaining the financing they need for their operations.

Background

After Cuomo's January 2013 call for the creation of the bank, NYSERDA confirmed the need for such a bank, citing a variety of impediments to the funding of clean energy projects, including bank capital rules, inadequate data on loan and clean energy technology performance, and the state of publicly-traded capital markets for clean energy. NYSERDA found financing market gaps across all segments of the clean energy industry, especially for smaller projects (less than $3 million), long term loans (greater than seven years), and medium credit quality loans for projects that might have solid credit characteristics but still fell outside the band of "institutional investment grade" counterparty credits.

In December 2013, the PSC approved NYSERDA's petition, which it filed in September 2013, seeking the formal creation of the NYGB. The NYGB began operating as a division of NYSERDA in the summer of 2014. The NYGB's stated mission: To accelerate clean energy deployment in New York State by working in collaboration with the private sector to transform financing markets.

Having a working familiarity with the NYGB and its goals and operations may help attorneys best advise their "green" clients on obtaining the financing they need for their operations.

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Investment Categories

The NYGB says that it seeks to fulfill its mission through four investment categories: credit enhancements (including loan loss reserves and guarantees to private sector lenders); warehousing (that is, lending with the intention of aggregating loans for placement/sale in the secondary markets—for example, securitization); direct lending to consumers and businesses and direct investments into projects through debt or equity; and structured products in which the NYGB serves multiple functions in a single, tailored financial arrangement, such as an investment combining a subordinated debt component, an equity investment, and a loan loss reserve component to create a tax equity fund to attract senior debt and tax equity investments by one or more private sector entities.

According to the NYGB, the projects it invests in must use clean energy technologies and must have the potential for energy savings or clean energy generation that will reduce greenhouse gas (GHG) emissions. The sustainable infrastructure products that the NYGB invests in include clean energy generation, energy efficiency, clean transportation, clean energy storage, sustainable agriculture, and sustainable water infrastructure.

The NYGB says that it makes investments at market rates and that it evaluates proposed transactions based on the following factors:

- Credit, financial, and risk/return considerations overall as well as for the NYGB and other participants;
- Expected New York State clean energy outcomes, including the reduction of GHG; and
- Participation by private sector financial entities, including through debt or equity financing or as the expected takeout of an NYGB-sponsored warehouse credit facility at the agreed aggregation level.

The NYGB Portfolio

According to the NYGB's most recent quarterly metrics report, as of the end of its last fiscal quarter (June 30, 2019), the NYGB had made approximately $786.7 million in overall investments in clean energy projects across the state. Those investments, the NYGB determined, supported clean energy projects with a total project cost of between $1.82 and $2.14 billion in the aggregate.

The NYGB said that, cumulatively, it expects its portfolio to result in emissions reductions of between 9.6 and 16.4 million metric tons, equivalent to removing between 139,707 and 164,476 cars from the road for a period of 23 years.

The NYGB closed a wide range of transactions in the second quarter of 2019. They included the NYGB's first investment in controlled environment agriculture (defined by NYSERDA as "a combination of engineering, plant science, and computer managed greenhouse control technologies used to optimize plant growing systems, plant quality, and production efficiency"). In that instance, it made a $6 million construction-to-term loan to a company that builds robotic greenhouses to grow specialty root crop, herb, leafy green and industrial hemp products to distribute directly to retailers, food service companies, restaurants, and customers. The NYGB said that the loan would enable the borrower to complete the construction of a cluster of six robotic greenhouses and related sustainable energy infrastructure located in Sackets Harbor, New York.

During the second quarter, the NYGB also extended a $1 million bridge loan in support of a portfolio of community distributed generation solar projects in the state. The NYGB said that it expects this transaction to support up to 45 megawatts of solar assets in the state, reducing up to 26,500 metric tons of GHG emissions annually.

In another second quarter transaction, the NYGB provided a $15 million credit to an energy services company (ESCO) that provides turnkey design, engineering, procurement, construction, utility management, and maintenance solutions for building energy efficiency (EE) and distributed energy resources (DER) projects. This credit facility will support at least five new EE or DER projects in the state, according to the NYGB.

The NYGB also provided $27.1 million in secondary financing to a company that owns a portfolio of approximately 235,000 residential solar systems that it operates and manages, located in 11 states including New York. Five commercial banks also provided financing in this transaction.

Finding Opportunities

This year, the NYGB reports, it is averaging $74.6 million in commitments per quarter. One way for companies to tap into the NYGB is to review the open solicitations on the NYGB website and various related resources provided by the NYGB.

As of this writing, there are four open solicitations with continuous "due dates."

For instance, in Request for Proposals (RFP) 1, the NYGB invites private sector capital providers and other clean energy industry participants to propose transactions involving the NYGB "that facilitate the financing of clean energy projects in New York State," consistent with the NYGB's mandate, mission, and priorities in addressing financing market gaps and barriers.

RFP 7, which also remains open, is targeted at developers of photovoltaic (PV) solar projects selling to commercial, industrial, and other institutional organizations (C&I) in New York State that plan to use third-party tax equity and that seek back-leveraged financing for projects that:

- Generate revenue by selling net metering credits (or equivalents) to C&I power users under applicable laws, regulations, or administrative proceedings;
- Use "Tier 1" technology;
- Are in an advanced stage of development; and
- Are ground-mounted, canopy-mounted, and non-residential rooftop PV solar projects.

Another open RFP is RFP 8, which the NYGB says is targeted at commercial and multi-family building owners, relevant lenders and investors, and clean energy contractors/service providers focused on those properties seeking to finance the purchase of energy efficiency or renewable energy assets.

Then, there is RFP 10, which the NYGB is targeting at developers or owners of solar PV projects that:

- Are in advanced stages of development;
- Form part of the "Community Distributed Generation Program";
- Are compensated under the "Value of Distributed Energy Resources Phase One Tariff";
- Comply with all applicable provisions established under the "Uniform Business Practices for Distributed Energy Resource Suppliers";
- Generate power using Tier 1 technology;
- Earn revenue by selling volumetric or monetary credits to project members under revenue contracts;
- Are 500 kWac to 5 MWac in size, ground-mounted, canopy-mounted, or non-residential rooftop PV solar projects at a single location; and
- May be paired with an electrical energy storage component.

According to the NYGB's most recent quarterly metrics report, as of the end of its last fiscal quarter (June 30, 2019), the NYGB had made approximately $786.7 million in overall investments in clean energy projects across the state.

The NYGB has stated in its 2019-2020 business plan that it wants to maintain an "active pipeline" of at least $450 million on average during the plan year. As can be seen from this column, there are many opportunities for the financing of green businesses from the NYGB.

An Update

In a column I wrote last year, "So, Where Is the Promised Disclosure Program for Household Cleaning Products?," NYLJ, May 24, 2018, I noted that the New York State Department of Environmental Conservation (NYSDEC) had not finalized the "Draft 2017 Household Cleansing Product Information Disclosure Program Certification Form and Guidance Document" it had released in April 2017. The NYSDEC subsequently finalized the program, which promptly was challenged in court. Last month, the Supreme Court, Albany County, struck down the program, holding that the NYSDEC failed to demonstrate sufficient compliance with the State Administrative Procedure Act. *Household and Commercial Products Ass'n v. New York State Department of Environmental Conservation*, No. 06216-18 (Sup. Ct. Albany Co. Aug. 27, 2019).