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The New York Energy Consumers Council Inc.'s Testimony -- October 24, 2023

## The New York Energy Consumers Council Inc. to The New York City Department of Buildings on Proposed Rule concerning Annual Greenhouse Gas (GHG) Emissions Limits for Buildings – LL97.

The New York Energy Consumers Council, Inc. (“NYECC”) and its predecessor organizations have represented the energy interests of commercial property owners and managers in New York City before State agencies for more than 70 years. NYECC also continues to represent institutions such as hospitals, colleges, governmental agencies, financial institutions, and real estate organizations. NYECC’s membership includes landmark member properties such as 7 World Trade Center and Rockefeller Center.

NYECC appreciates this opportunity to comment upon the Draft Rule to add a new section 103-14 to Chapter 100 of Title 1 of the Rules of the City of New York (“LL97 Rule”), which was released by the New York City Department of Buildings (“DOB”) to establish the procedures for reporting on and complying with annual greenhouse gas (“GHG”) emissions for certain buildings covered by New York City’s Local Law 97 (“LL97”).

NYECC applauds these steps forward to clarify methodologies for future GHG emissions reporting. However, NYECC has the following reasonable concerns and recommendations to avoid market confusion and improve the proposed Rule’s effectiveness.

### Defining “Good Faith Effort”

NYECC strongly supports the “good faith” approach which will avoid penalizing “good actors” interested in decarbonization for their building. However, we do have the following concerns lingering related to its current definition and how it can be utilized:

1. The proposed rule intentionally only addresses the “2024-2029 compliance period.” There is reference to subsequent guidance for future compliance periods, however building owners who are currently developing decarbonization plans today need this information today to complement 5-year and 10-year capital planning efforts.

2. There is reference to requiring an electric utility certificate or approved load letter as part of the available “electric readiness” option to document the building is attempting to implement their decarbonization plan. We recommend striking this requirement since the building owner will be beholden to the electric utilities’ approval process, which may experience additional delays with an increased volume of these requests related to LL97 compliance. The other required documentation noted, along with documented attempts to coordinate with the electric utility, should be considered as a revision.
3. Decarbonization plans currently must be submitted no later than May 1, 2025. We encourage the DOB to adjust this requirement to provide a 24-month period from the Rules amendment date to provide a time period required for building owners to not only identify their plan, but also address capital planning needs and coordination with all jurisdictions with authority for their implementation strategy.

### **Defining “Beneficial Electrification”**

NYECC strongly supports the concept behind the “beneficial electrification” pathway, rewarding early adapters for transitioning their fossil fuel based system to efficient electric-based heating systems. We believe in order for the approach to fully realize its potential the following should be clarified in the final rule:

1. How “beneficial electrification savings” are applied from one calendar year to another requires clarification in the Rule to ensure building owners who implement these strategies are permitted to claim and distribute these GHG savings across their future compliance periods.
2. The equipment list and requirements for minimum efficiency are oriented towards air-source heating equipment. Although we appreciate the “equipment and systems not listed” clause, we believe further guidance should be provided for the following equipment applicable today:
  - a. Cooling-only equipment installed to displace gas/ district steam absorption chillers and steam turbine chillers.
  - b. Water-source heat pumps, including heat recovery chillers, utilizing thermal sources other than gas/district steam.
3. Although beneficial electrification applicability is retroactive to 2021 in the draft rule, we would like to see this benefit extended back further to when LL 97 was enacted in 2019 so building owners who undertook early electrification that meet the definitions of the Rule can also receive this credit.

### **Other Concerns**

Finally, NYECC would like to underscore the importance of having the following topics be addressed in the near future:

1. As we increasingly approach the first compliance period, we would like to underscore the importance of permitting a carbon trading framework for a portfolio of buildings owned by the same entity. This will encourage sites to maximize their decarbonization potential and “over-perform” while addressing other buildings within the portfolio that have major implementation feasibility obstacles.

2. We strongly recommend prioritized focus for existing cogeneration systems as part of the next Rule making effort. The NYISO has indicated potential shortfalls with clean energy generation capacity that will not fill the void of simple cycle generation plants in the short-term. Existing cogeneration plants that demonstrate higher annual fuel conversion efficiency (FCE) should not be penalized until it is clear the electrical grid has decarbonized substantially. Under the rules, distributed energy resources (DER) are compared to the average emissions from the grid. In practicality, it should be assessed based on the emission of the actual grid power generator it is displacing. The average emissions from the overall grid are likely much lower than the grid generator that will actually be displaced by the DER. Therefore, the methodology proposed significantly diminishes the value of DER such as cogeneration, forcing owners to shutdown such systems to the detriment of the environment and the reliability of the grid. Existing DER should be afforded the same or similar differential emissions credit as natural gas fuel cells.
3. How to demonstrate LL97 compliance for the first compliance year, whether it be Energy Star Portfolio Manager or DOB NOW, needs to be identified as various building owners are making their best efforts to document building energy use and space typologies.

Very truly yours,

A handwritten signature in black ink that reads "Diana Sweeney". The signature is written in a cursive, flowing style.

Diana Sweeney  
Executive Director  
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