The New York Energy Consumers Council Inc.'s Comments to Draft Rule 103-14

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").

In general, NYECC appreciates the detail and scope of the LL97 Rule. The draft document explains the reporting process for common complex potential reporting issues, such as what buildings should do that share tax lots, or the compliance process for new construction buildings, or those being repositioned. More importantly, property type corrections were made for alignment with Energy Star Portfolio Manager and GHG coefficients were provided for calendar years 2030 through 2034. Lastly, initial methodologies for GHG coefficient calculations for district / campus systems and utility electricity based on time of use ("TOU") were presented.

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 alignment across similarly intended building energy efficiency local laws and statewide GHG emissions reduction efforts.

Revised building emission factors for property types for each compliance period.

NYECC strongly supports the revised emissions limits designated to Energy Star Portfolio Manager ("ESPM") property types from the original Building Code occupancy types. This revision helps realignment with the energy benchmarking and building label local laws that already rely on best practices presented by Energy Star.

We understand the methodology utilized to achieve the same aggregate environmental benefit established within the original Building Code occupancy type-based emission factors are consistent with the new ESPM property type emission factors. However, we have the following concerns:

1. There are buildings that will experience further reduced GHG emission limits for the 2024 through 2029 compliance period than originally intended due to the property type emission factor reductions. It is unclear that the rulemaking effort permits the further reduction of any emission factors which should have been treated as the back stops for each property type based on their remapping. Instead, this could be remedied by further reductions for the 2030 compliance and beyond that were not previously published.

2. The emissions limit factor for laboratories increases from the 2024 compliance period to the 2030 compliance period under the LL97 Rule. Additional review by the DOB should be provided to further increase the 2024 emission factor value if the original NYC Building occupancy groups was determined to be overly aggressive during the remapping effort.
3. The emissions limit factor for financial office occupancy types do not align with the actual energy usage on Trading Floors. Energy data associated with Trading Floors are approximately 3 times that of typical office occupancy types.

Furthermore, we recommend the following transparent clarifications be addressed to ensure building owners have a clear understanding of what their baseline GHG emissions are and what the appropriate GHG emissions limits should be for their building.

1. A minimum threshold for property type designation in an office building needs to be established. It is common for multi-floor tenants to have significant food preparation and/ or kitchen area, server room, etc. This could be accomplished using fixed Square Footage or Feet ("SF"), % of total building SF, or based on intensity of usage.

2. If a space is not filed in the Certificate of Occupancy as a certain property type, a clarification should be provided to establish acceptable methodologies for designating property types properly, such as a professional engineer (PE) assessment.

3. It is common for buildings with mixed ESPM property uses to rely on building services from shared Mechanical Equipment Room ("MER") and back-of-house spaces. Additional guidance needs to be provided for building owners to understand how to appropriately categorize these spaces.

4. Guidance needs to be provided for energy consumption related to uses outside of a "building's exterior surfaces of the enclosing fixed walls" common place in commercial real estate, such as electric signage and amenity spaces.

Established 2030 through 2034 GHG coefficients for energy sources.

NYECC supports reduced GHG coefficients for utility electricity and steam energy sources for 2030 through 2034. We recommend further consideration be applied for Con Edison steam's GHG coefficient to align the reduction with their long-range plan for decarbonization (a 10% reduction in lieu of the 4% reduction).

We recommend additional guidance for GHG coefficients for years beyond 2035 to reflect the New York State Renewable Portfolio Standard's goal of a 100% emissions free grid by 2040. There are other municipalities that have provided a complete representation of what the roadmap will look like for decarbonization of the electrical grid through 2050, such as Boston's Building Emissions Reduction and Disclosure Ordinance[1] (BERDO), 2.0 which leverages an

[1] https://www.bostom.gov/departments/environment/building-emissions-reduction-and-disclosure

analysis for emissions factor reduction and which is documented in the "Boston Building Emissions Performance Standard – Technical Methods Overview[2]."

GHG coefficient methodology for district / campus systems and time of use (TOU) GHG coefficient for utility electricity.

NYECC strongly supports the new methodologies related to district /campus energy systems. This approach provides clear guidance for how a building owner can accurately allocate GHG emissions from central "campus energy resources" to covered buildings receiving services.

Further, we support allowing buildings served by a shared energy service, including a shared campus energy resource such as chilled water or steam, to demonstrate compliance using an aggregated building emissions calculation. The additional flexibility resulting from this approach facilitates strategic implementation of emissions reduction measures. For buildings served by a shared energy service, we recommend extending this approach beyond 2029 and clarifying that shared energy services include shared campus energy resources.

NYECC is very concerned with the Time of Use ("TOU") methodology, which has already been acknowledged as overly complex by the DOB. We foresee tremendous potential for building owners to execute these calculations incorrectly, and the difficulty for the DOB to successfully audit these reports without published TOU emissions rates. We would support the DOB retaining either a third-party consultant or an academic institution to calculate and publish these values.

Emissions limit deduction clarifications for Renewable Energy Credits and for on-site clean distributed energy resources.

NYECC recommends necessary refinement for qualifying Renewable Energy Credits ("RECs") that can be utilized for emissions limit reductions.

There was no specific mention of Tier 4 RECs either in the original legislation, or in the implementation rules, which is creating market confusion. As Tier 4 RECs do comply with the requirements of the original legislation, to avoid market confusion, please include a statement that all Tier 4 RECs are available for compliance with Local Law 97 mandates.

Further analysis needs to be provided for on-site clean energy resources that are being used for both the host building and energy export to the grid. Project economics for implementing on-site clean Distributed Energy Resources ("DERs") improve when they are oversized to be leveraged by the building and contribute to the reliability and resiliency of the grid. The LL97 Rule appears to prohibit that rational and sound approach.

Additionally, there is mixed signaling from the Mayor's Office of Resiliency and Sustainability where it has been said that the proposed rule would allow building owners to utilize deductions

[2] https://www.boston.gov/sites/default/files/file/2021/02/Boston_Performance_Standard_Technical_Methods_2021-02-18_20-013.pdf

associated with clean DERs whether the RECs associated with the on-site asset are owned or not.

Other Concerns

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

1. Facilitating a further alignment across Local Laws 84, 87, 95 and 97. This should start with the Gross Square Feet (GSF) calculation methodology.

2. The proposed rules state that the law provides for potential penalty reduction for building owners who demonstrate "good faith efforts." Criteria for "good faith efforts" and how building owners can demonstrate such criteria is paramount for building owners approving capital projects today for GHG emission reductions that will be realized in 2030.

3. Although the electrical grid is on a path towards decarbonization today, many buildings will still face immense challenges to reduce their emissions solely through energy efficiency measures and electrification measures in the immediate future. We ask the City to maintain its consideration for innovative approaches to reduce and remove on-site GHG emissions until the electric grid has achieved the 70% renewable energy generation goal to help buildings to comply using all technologies available.

4. Existing on-site, high efficiency, low emissions, distributed generation including Combined Heat and Power (CHP) systems should continue to be supported by LL97 for the following reasons:
    - CHP provides valuable resiliency to the grid during this uncertain/transitional time. Early retirement of these recently installed assets decreases the "flexibility" of the grid in the event that the City/State grid decarbonization goals are not met in a timely fashion. Additionally, there are CHP systems currently in operation that support local grids at peak.
    - Up until recently, building owners were encouraged to invest in these systems, where feasible, to aid in resiliency and sustainability. Even as recently as February 2020, NYSERDA was promoting CHP via incentives and educational documents.
    - Leaving these valuable assets stranded is a waste both from an embodied carbon standpoint as well as an economic standpoint. LL97 current stance on CHP will ultimately disincentivize building owners from taking similar risks on future efficiency technologies.

NYECC suggests a reasonable allowable phase out period for CHP emissions through the end of the first compliance period (2030) that does not penalize owners of CHP systems any more than the carbon emissions associated with the electricity produced by the CHP system based on the electric grid emissions factors. A reasonable phase out period will contribute to future risk taking by building owners and others on developing efficiency technologies in the future.