STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 20-G-0131 – Proceeding on Motion of the Commission in Regard to Gas Planning Procedures

REPLY COMMENTS OF ALLIANCE FOR A GREEN ECONOMY, BUILDING DECARBONIZATION COALITION, EARTHJUSTICE, ENVIRONMENTAL DEFENSE FUND, NATURAL RESOURCES DEFENSE COUNCIL, NEW YORK LAWYERS FOR THE PUBLIC INTEREST, NEW YORKERS FOR CLEAN POWER, REWIRING AMERICA, SIERRA CLUB, AND WE ACT FOR ENVIRONMENTAL JUSTICE REGARDING STAFF'S PROPOSED MODIFICATIONS TO 16 NYCRR PART 230

Alliance for a Green Economy, Building Decarbonization Coalition, Earthjustice, Environmental Defense Fund, Natural Resources Defense Council, New York Lawyers for the Public Interest, New Yorkers for Clean Power, Rewiring America, Sierra Club, and WE ACT for Environmental Justice ("Commenters") respectfully submit these brief reply comments in response to two of the recommendations by parties that are inconsistent with the updated statutory text. These comments should not be regarded as an endorsement of the lawfulness or appropriateness of other requested modifications to Staff's proposed regulatory changes to 16 NYCRR Part 230.

First, several utilities requested that, rather than charging new customers the actual costs associated with providing gas service, utilities would instead charge an average historic cost or a predetermined fixed cost and cost per foot.[1] Those commenters contend that such an approach is administratively simpler because it does not require truing up costs post-installation and is preferable for new customers because they have certainty in advance about the cost of interconnecting with gas.

[1] *See, e.g.*, ConEd Initial Comments at 3; National Grid Initial Comments at 7-8; NYSEG & RGE Initial Comments at 4.

As an initial matter, whatever the policy merits of this approach, it is inconsistent with the governing statutory language in P.S.L. § 31(4-a), which beginning in December requires applicants for gas service "to pay or agree in writing to pay material and installation costs relating to the pipe or other facilities to be installed to enable service to the applicant." This statutory language specifically references the costs "relating to the pipe or other facilities" to "enable service to the applicant"—costs specific to the applicant. It conspicuously omits any mention of average or historic costs, and such language may not be read into the statute.

Further, even if the utilities' requested approach was based on a permissible interpretation of the statute, Commenters strongly disagree with the utilities regarding the policy rationale for using historic average costs. The purpose of the statute was to eliminate the current subsidy from existing customers to new customers electing to take gas service, requiring those new customers to pay the full costs associated with their interconnection and bear associated risks around potential cost escalation. An approach based on historic average costs or a fixed cost per foot thwarts this legislative intent. At minimum, it shifts all of the risk that an installation proves more complicated than anticipated and that actual costs exceed historic average costs away from the new customer and onto existing customers. At worst, utilities may be incentivized to lowball historic average costs to increase the attractiveness for potential customers of interconnecting to the gas system. In either case, it undermines the protections the legislature sought to afford to existing gas customers.

If the Commission ultimately were to authorize utilities to use a formulaic approach rather than actual costs, Commenters request that utilities be required to regularly and transparently demonstrate the ongoing accuracy and appropriateness of their calculations, which must be based on recent actual average costs. Utilities should be required to publicly report the data used as the basis for their historic average cost calculations, the actual costs of new interconnections, the average cost of those new interconnections, and the delta between actual and average historical costs to ensure that charges to new customers reflect, as closely as possible, the intent of the legislature.

Second and separately, Corning requests an exemption from the proposed Part 230 regulations for gas-only LDCs "to account for the distinct operational and economic challenges of rural service territories."[2] While Commenters strongly disagree with the policy rationales offered by Corning for such an exception, it is unnecessary for the Commission to engage with those policy rationales because Corning's proposed exception is directly proscribed by the controlling statutory text. The Commission lacks discretion to create an exception to the plain statutory language.

Thank you for your consideration.

Respectfully submitted:

Alliance for a Green Economy
Building Decarbonization Coalition
Earthjustice
Environmental Defense Fund
Natural Resources Defense Council
New York Lawyers for the Public Interest
New Yorkers for Clean Power
Rewiring America
Sierra Club
WE ACT for Environmental Justice

[2] Corning Natural Gas Corporation Initial Comments at 2.