**STATE OF NEW YORK**
**PUBLIC SERVICE COMMISSION**

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| **In the Matter of Implementation of the All-Electric Buildings Act** | **)** **)** **)** | **Case 25-M-0149** |

# COMMENT OF ENVIRONMENTAL DEFENSE FUND ON DEPARTMENT OF PUBLIC SERVICE STAFF WHITE PAPER TO IMPLEMENT THE ALL-ELECTRIC BUILDINGS ACT

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## I. Introduction

The All-Electric Buildings Act, enacted May 3, 2023, directed changes to the State Uniform Fire Prevention and Building Code and State Energy Conservation Construction Code prohibiting the installment of fossil fuel-based equipment for new buildings. The Act phases in restrictions starting January 1, 2026, and applies to all new buildings on January 1, 2029.[1] The law requires that an exemption be applied when "electric service cannot be reasonably provided by the grid" for a new building requesting service.[2] The statute gives the "local electric corporation or municipality" the responsibility of determining when to apply this exemption to new buildings requesting service, but states that the New York Public Service Commission ("NYPSC" or "Commission") "shall determine reasonableness for purposes of this exemption."[3] On February 27, 2025, the Department of Public Service Staff issued a white paper with recommendations to the Commission regarding the reasonableness standard for the exemption.[4] The recommended reasonableness standard in the white paper presents several concerns, including an overly broad threshold—based on an arbitrary metric—that could exempt more new buildings from the Act than is necessary.

Environmental Defense Fund ("EDF") respectfully submits the comments herein regarding the reasonableness standard for the grid capacity exemption to the All-Electric Buildings Act.

[1] All-Electric Buildings Act, 2023 N.Y. Sess. Laws Ch. 56, § 1, 3 [hereinafter AEBA]; N.Y. ENG § 11-104(6)(b); N.Y. EXC § 378(19)(a).

[2] AEBA § 1, 3; N.Y. ENG 11-104(7)(e); N.Y. EXC § 378(19)(f).

[3] *Id.*

[4] *In the Matter of Implementation of the All-Electric Buildings Act*, Case 25-M-0149, Department of Public Service Staff White Paper to Implement the All-Electric Buildings Act (Part RR of Chapter 56 the Laws of 2023) (Feb. 27, 2025) [hereinafter DPS White Paper].

## II. Background

### A. New York State Must Continue to Recognize the Existential Threat of Climate Change and Demonstrate Climate Leadership

Scientific evidence overwhelmingly demonstrates that climate change is causing immediate, devasting impacts, and that these harms will worsen dramatically as greenhouse gas ("GHG") pollution continues to rise. The Intergovernmental Panel on Climate Change ("IPCC") stated in a recent report that "[h]uman influence has warmed the climate at a rate that is unprecedented in at least the last 2000 years."[5] The U.S. Global Change Research Program ("USGRCP") has concluded that "[t]he effects of human-caused climate change are already far-reaching and worsening across every region of the United States."[6] Cutting GHG emissions now is critical because "there is a near-linear relationship" between human-caused GHG emissions and related global warming, meaning that each additional increment of global warming exacerbates changes in extreme weather events.[7] But the Production Gap Report 2021 facilitated by the U.N. Environment Programme has found that "the world's governments plan to produce more than twice the amount of fossil fuels in 2030 than would be consistent with limiting warming to 1.5°C."[8] Preventing the worst impacts of climate change "requires steep and sustained reductions in fossil

[5] INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *Climate Change 2021: The Physical Science Basis: Summary for Policymakers* (2021), at 6, https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf; *see also* INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *Climate Change 2022: Impacts, Adaptation and Vulnerability* (2022), https://www.ipcc.ch/report/ar6/wg2/.

[6] Allison R. Crimmins et al, *Fifth National Climate Assessment*, U.S. GLOB. CHANGE RSCH. PROGRAM, Ch. 1, at 5 (Emily K. Laidlaw et al. eds) (2023), https://nca2023.globalchange.gov/downloads/NCA5_2023_FullReport.pdf.

[7] INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *Climate Change 2021: The Physical Science Basis: Summary for Policymakers* (2021), at 28, https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf.

[8] SEI, IISD, ODI, E3G, & UNEP, THE PRODUCTION GAP REPORT, *Summary of Findings*, at 1, https://productiongap.org/2021report/.

fuel production and use," in addition to measures that reduce production-cycle emissions.[9]

New York State has recognized the existential threat of climate change and the need for rapid climate mitigation and adaptation. The Climate Leadership and Community Protection Act ("CLCPA") directs the state to reduce statewide GHG emissions 40% by 2030 and 85% by 2050 (from 1990 levels) and to achieve economywide net zero emissions by 2050.[10] The CLCPA also established the Climate Action Council and tasked it with developing a Scoping Plan that "shall identify and make recommendations on regulatory measures and other state actions that will ensure the attainment of the statewide greenhouse gas emissions limits."[11] The Scoping Plan establishes recommendations to "put New York on a path toward carbon neutrality while ensuring equity, system reliability, and a just transition from a fossil fuel economy to a robust clean energy economy."[12]

According to the Department of Environmental Conservation's most-recent GHG emissions report, buildings are the single biggest source of GHGs in New York, accounting for 31% of statewide emissions.[13] Most of these emissions result from combustion of fossil fuels in buildings for space heating, cooking, or other appliances. The Scoping Plan contains several recommendations for decarbonizing New York's buildings sector, including updating state codes to "require new construction to be highly efficient, zero-emission, and resilient to the effects of

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[9] *Id.*

[10] Climate Leadership and Community Protection Act, 2019 N.Y. Laws 106, § 2 [hereinafter "CLCPA"]; N.Y. ECL § 75-0103(11), 75-0107(1).

[11] CLCPA § 2; N.Y. ECL § 75-0103(13).

[12] *See* NYS CLIMATE ACTION COUNCIL, *Scoping Plan* at 1 (Dec. 2022), https://climate.ny.gov/-/media/project/climate/files/NYS-Climate-Action-Council-Final-Scoping-Plan-2022.pdf [hereinafter Scoping Plan].

[13] NYS DEP'T ENV'T CONSERVATION, *2024 Statewide GHG Emissions Report*, Summary Report, at vi, tbl. ES.3, https://dec.ny.gov/sites/default/files/2024-12/summaryreportnysghgemissionsreport.pdf (last accessed June 2, 2025).

climate change."[14]

### B. The Commission Must Incorporate the Scoping Plan Recommendations

As stated above, the CLCPA directs the State of New York to reduce statewide GHG emissions 40% by 2030 and 85% by 2050 (from 1990 levels), and to achieve economywide net zero emissions by 2050.[15] The All-Electric Buildings Act was enacted as a direct response to the CLCPA, characterizing its restriction on fossil fuel-based equipment for new buildings as supporting "the goal of zero on-site greenhouse gas emissions" and helping "achieve the state's clean energy and climate agenda, including [the CLCPA]."[16]

The Scoping Plan, finalized in December 2022, was developed through an extensive process of public and stakeholder participation.[17] Agencies should be guided by the Scoping Plan as New York State's pathway for achieving the objectives of the CLCPA. The Plan contains several strategies for building decarbonization, including the adoption of "advanced" zero-emission building codes with an emphasis on applicability to new buildings. The Climate Action Council called on relevant state agencies to ensure, "to the furthest extent feasible," that "all new construction submitted for permitting by affected State entities shall avoid building systems or equipment that can be used for the combustion of fossil fuels[.]"[18] The All-Electric Buildings Act's restriction on fossil fuel-based equipment for new construction represents a meaningful and effective step toward accomplishing this Scoping Plan objective. The NYPSC has a clear legal imperative to reduce greenhouse gas emissions associated with utilities, and should therefore

[14] Scoping Plan at 180.

[15] CLCPA § 2; N.Y. ECL § 75-0107(1).

[16] AEBA § 1, 3; N.Y. ENG 11-104(6)(b); N.Y. EXC § 378(19)(a).

[17] *See generally,* Scoping Plan.

[18] Scoping Plan at 184.

ensure that the reasonableness standard for the grid capacity exemption to the restriction of fossil fuel-based equipment in new buildings is appropriately narrow so as to not undercut the goals of the CLCPA, the Scoping Plan, or the Act.

### C. Department of Public Service Staff White Paper Presents Two Possible Frameworks for the NYPSC Reasonableness Standard

The All-Electric Buildings Act directs changes to state building and energy codes that prohibit fossil fuel-based equipment in new buildings.[19] However, the Act requires that an exemption be applied when "electric service cannot be reasonably provided by the grid."[20] The statute assigns the responsibility of determining when to apply this exemption to utilities, but states that the Commission "shall determine reasonableness for purposes of this exemption."[21] On February 27, 2025, the Department of Public Service ("DPS") Staff issued a white paper recommending to the Commission a reasonableness standard for the electric grid capacity exemption to the restriction on fossil fuel-based equipment in new buildings.

The white paper outlines two potential frameworks for the reasonableness standard and recommends a preferred approach. For the preferred option, Staff proposes an 18-month timeframe to determine reasonableness. Under this standard, the exemption would be deemed reasonable if, "in the estimation of the utility, the timeframe associated with completion of electric system upgrades necessary to serve a building" with full electrification would take more than 18 months longer "than the timeframe associated with the completion of electric system upgrades necessary to serve the same building" through a hybrid fossil and electric system.[22]

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[19] AEBA § 1, 3; N.Y. ENG 11-104(6)(b); N.Y. EXC § 378(19)(a).

[20] AEBA § 1, 3; N.Y. ENG 11-104(7)(e); N.Y. EXC § 378(19)(f).

[21] *Id.*

[22] DPS White Paper at 10.

Staff also present an alternative option in which reasonableness is based on a cost threshold. Under this standard, the cost of the electric system upgrades needed to meet a new customer's service request is used to determine reasonableness. The white paper notes that this option is not preferred because 1) the cost of grid upgrades is only one cost that goes into developers' decision-making, and the Commission does not have jurisdiction over all of the other cost drivers and 2) Staff believes the statutory intent of the law did not create an exemption for customers unwilling to pay for grid upgrades.[23]

For the reasons outlined below, the Commission should reject both pathways as proposed in the white paper and instead direct Staff to develop a framework that more narrowly constrains application of the grid capacity exemption.

## III. Discussion

The primary objective of this proceeding must be to ensure that the Commission's actions are aligned with the CLCPA. To that end, Staff should issue a revised recommendation that includes a narrowly tailored, evidence-based exemption, accompanied by a comprehensive analysis of its potential impacts. The current white paper fails to evaluate how the proposed exemption might impact the state's ability to meet its binding climate mandates. An exemption that is overly broad or insufficiently scrutinized could significantly hinder building decarbonization efforts—particularly in the residential and commercial sectors—thus jeopardizing compliance with the State's GHG reduction and equity requirements. Under the CLCPA, state agencies must take actions consistent with emissions targets, and they must avoid decisions that would disproportionately burden disadvantaged communities.[24] Therefore, Staff has a statutory

[23] DPS White Paper at 8-9.

[24] CLCPA § 7(2)-(3).

obligation to evaluate these potential consequences with the rigor they demand. Moreover, while it is important to provide sufficient time for utilities to modify their tariffs and associated electric service applications to comply with the proposed changes to the building code, this consideration should not come at the expense of a thoughtful and well-reasoned approach. If the Commission were to adopt a reasonableness standard aligned with the Staff white paper, EDF nonetheless urges the Commission to incorporate the modifications outlined below. These recommendations are intended to ensure that any exemptions granted are narrow in scope and do not inadvertently allow agencies or developers to circumvent their obligations under Sections 2, 3, and 7 of the CLCPA. By adopting these adjustments, the Commission can more faithfully fulfill its regulatory responsibilities without hindering progress on state climate goals.

### A. Staff's Proposed Exemption Should Include Analysis of its Expected Impact

To ensure CLCPA compliance, Staff should present evidence demonstrating the anticipated impacts of the proposed 18-month exemption to allow the Commission to make an informed decision. While the paper initially outlines a broader range of 12 to 24 months, it offers no clear explanation as to why 18 months was ultimately chosen as the preferred threshold. The only rationale presented is a vague reference to "Staff's experience with utility construction timeframes" and a generalized intent to balance the upgrade needs of buildings across different sizes and types. This justification overlooks the nuanced factors that can lead to unpredictable and varied building construction and grid upgrade timelines across customer classes and geographic regions that will affect the scale and scope of the exemption's use. Without further support, Staff's recommendation appears arbitrary; a more thorough analysis is needed to enable the Commission to make an informed decision regarding the appropriate exemption threshold.

As part of its impact analysis, Staff may wish to explore the various factors that influence building electrification and construction timelines, allowing it to base its recommendations on real-

world data. For instance, a new high-rise development in a dense urban area will almost certainly have a significantly longer construction schedule than a single-family home in a suburban or rural setting. Geographic factors—such as differing permitting processes, labor availability, and utility capacity between upstate and downstate regions—further complicate the use of a single, rigid timeframe. Establishing an equitable exemption framework will be challenging without a solid understanding of project-specific characteristics. As currently proposed, the exemption is not supported by sufficient relevant data; without any supporting analysis, Staff's recommendation leaves the Commission without the necessary information to assess the exemption's impact on CLCPA compliance.

As discussed in greater detail below, an improved exemption framework should not rely solely on the duration of grid upgrades. Rather, the key question should be whether providing electric service would materially delay project delivery compared to a similar gas connection. This more targeted and evidence-based approach would better reflect the intent of the CLCPA by ensuring that exemptions are granted only when electrification would cause a demonstrable delay—avoiding overly broad exemptions that allow avoidable gas infrastructure expansion based on generalized or arbitrary assumptions.

### B. The Focus on Grid Upgrade Timelines Alone is Misplaced

Even assuming a single timeline for all types of buildings is reasonable and necessary to ensure timely access to utility service, Staff's proposed exemption is not properly tailored to achieve that objective. As it stands, the proposed 18-month threshold creates an arbitrary cut-off that would disqualify a significant number of electrification projects requiring distribution system upgrades. These upgrades—crucial to delivering reliable electric service to new buildings—often take longer than 18 months, yet may still be completed within the overall construction timeline of the building, resulting in minimal or no delay to the customer's interconnection. Instead of relying

on a blanket exception that is based on the date service is requested, the Commission should adopt a two-part analysis before granting any exemption examining: 1) whether all-electric service would extend the customer's interconnection by at least 18 months as compared to receiving electric and gas service; and 2) whether all-electric service would extend the customer's interconnection timeline by at least 18 months beyond their requested date of interconnection.

For example, consider a developer planning to construct a new all-electric apartment complex requiring 1 megawatt (MW) of electric capacity. The project has a planned construction timeline of two years. Upon reviewing the developer's service request, the utility determines that a distribution circuit upgrade is necessary, and that the upgrade will also take approximately two years. Under Staff's proposed exemption, this project would be deemed exempt from the electrification requirement if the all-electric service would take 18 months longer than the combined service—even though the timeline of the upgrade aligns perfectly with the building's overall construction schedule and imposes no delay on the developer's ability to complete the project and connect to the grid. This illustrates how rigid application of the 18-month rule could lead to the unnecessary use of the exemption for projects that would face little to no actual delay in interconnection, frustrating CLCPA compliance without delivering any clear benefit.

Furthermore, while the white paper briefly acknowledges the importance of coordination across other NYPSC proceedings and initiatives, it falls short of aligning with the priorities the Commission and utilities have highlighted in parallel efforts to prepare the grid for electrification, such as the Proactive Planning proceeding.[25] Critically, customer interconnection delays are recognized as being closely tied to grid upgrades in that effort, which often involve multi-year

[25] *In the Matter of Proactive Planning for Upgraded Electric Grid Infrastructure*, Case 24-E-0364, Order Establishing Proactive Planning Proceeding (Aug. 15, 2024).

projects needed to support anticipated electric load, including from building sector demand.[26] If left unchanged, the recommended reasonableness standard would effectively penalize projects that involve such necessary upgrades, even when those upgrades are proceeding on a standard and expected timeline. The result is a policy that could inadvertently hinder the transition to all-electric buildings and contradict the purpose of the statutory exemption.

As discussed earlier, a more effective exemption would focus on the *actual* delay to the customer's interconnection, not the duration of the distribution system upgrade. This would ensure flexibility for customers experiencing real delays, without unnecessarily exempting projects that would have triggered infrastructure upgrades regardless. Ultimately, if the Commission seeks to achieve the targets set by the CLCPA while ensuring fair and practical implementation of electrification requirements, the exemption framework must be grounded in a more nuanced understanding of construction, grid upgrade, and interconnection timelines. This means designing exemptions that reflect genuine barriers to electrification—not just arbitrary thresholds. By doing so, the Commission can support the timely development of electric buildings while maintaining the legal and policy commitments to equitable climate progress**.**

### C. The Commission Should Require Utilities to Ensure Applicants Deploy Load-Modifying Solutions

Before granting any exemption, it is essential that developers and building owners be required to first pursue the use of load modifying solutions to address potential delays in electric service availability. The central aim of the Act is to reduce reliance on fossil fuels and phase out new gas infrastructure, while moving decisively toward an all-electric building future. Permitting decisions must therefore prioritize state-of-the-art, forward-looking technologies that can mitigate

[26] *In the Matter of Proactive Planning for Upgraded Electric Grid Infrastructure*, Case 24-E-0364, National Grid, Con Edison, NYSEG/RG&E Urgent Needs Filings (Mar. 10, 2025).

challenges associated with electric interconnection and capacity constraints, while still advancing climate and equity goals.

Load modifying solutions—such as distributed energy resources ("DERs"), battery storage, demand response, and flexible interconnection solutions—offer a practical and increasingly viable solution to optimizing existing electrical infrastructure. Similarly, building-level mitigation technologies such as high-efficiency heat pumps and enhanced insulation lower overall energy consumption and reduce stress on local grids, particularly during peak heating and cooling periods. By leveraging these solutions, developers can often circumvent the need for costly and time-consuming upstream utility upgrades, thereby accelerating project timelines while maintaining compliance with electrification mandates. These strategies can play a critical role in meeting the objectives of the Act by enabling timely energization without reverting to fossil fuel-based systems. Thus, load modifying solutions should be treated not as optional add-ons, but as baseline requirements for any new construction seeking to qualify for an exemption under the Act.

Moreover, the Commission should clearly state that it is unreasonable for utilities to grant exemptions to customers who have not exhausted feasible mitigation options. Exemptions should only be permitted once utilities have verified that the applicant has implemented feasible available load modifying solutions and avoided inefficient technologies, such as electric resistance heating. The Commission should consider standardizing this verification process to ensure consistency, transparency, and accountability. Utilities should be required to jointly identify modifying solutions that customers must consider and explain why each of those strategies is infeasible in order to qualify for an exemption. This would preserve integrity of the state's climate commitments, avoid unnecessary expansion of gas infrastructure, and support innovation in clean energy deployment.

### D. The Commission Should Determine Circumstances Under Which an Exemption is Never Reasonable

In order to ensure that implementation of the All-Electric Buildings Act is aligned with CLCPA goals, the Commission should define scenarios wherein an exemption to the Act's restriction on fossil fuel-based equipment in new buildings is never reasonable. These circumstances should include any scenario where granting an exemption would result in the expansion of the natural gas distribution systems besides service lines.

The Scoping Plan calls for a transition off the gas system and expansion of the electric grid, noting the near-term need for "fossil natural gas use reductions statewide by at least 33% by 2030 and by 57% by 2035."[27] The Plan projects significant end-use gas decline "[a]s New York's economy becomes more efficient and electrified . . . with reductions ranging from 84-94% by 2050."[28] The Commission has taken several proactive steps to follow the Scoping Plan recommendation, such as ordering the development of long-term plans for gas utilities,[29] initiating the development of a non-pipeline alternative framework,[30] and proposing a modification[31] to 16 NYCRR Part 230 to remove financial incentives that facilitate system growth. Thus, expanding the natural gas distribution system adds to the amount of plant that is likely to become stranded, to the detriment of customers. The Commission should align the reasonableness standard for the

[27] NYS CLIMATE ACTION COUNCIL, *Scoping Plan* (Dec. 2022), at 350, https://climate.ny.gov/-/media/project/climate/files/NYS-Climate-Action-Council-Final-Scoping-Plan-2022.pdf [hereinafter Scoping Plan].

[28] Scoping Plan, Appendix G, at 24.

[29] *Proceeding on the Motion of the Commission in Regard to Gas Planning Procedures*, Case 20-G-0131, Order Adopting Gas System Planning Process (May 12, 2022).

[30] *Proceeding on Motion of the Commission in Regard to Gas Planning Procedures,* Case 20-G-0131, Notice Seeking Further Comments (July 3, 2024).

[31] *Proceeding on Motion of the Commission in Regard to Gas Planning Procedures*, Case 20-G-0131, Staff Straw Proposal Regarding Modification of 16 NYCRR Part 230 at 20 (July 16, 2024).

grid capacity exemption here with its responsibility to facilitate a clean energy transition.

Similarly, the Commission should establish that no exemption should be granted where the customer only requires gas service to serve as a backup to a hybrid heating system where trucked-in fuel could meet comparable capacity. One recent analysis comparing the delivery cost of pipelines against the delivery costs of trucked-in fuels, such as propane, found that the per-customer revenue requirement for a hybrid system built around gas pipelines becomes higher than one built around delivered propane by the mid-2030s, and by 2050 is well more than twice.[32] To avoid locking in long-term investments in the gas distribution system, the reasonableness standard should never exempt a new building from the restriction on fossil fuel equipment if energy needs can be met through more cost-effective solutions.

## IV. Conclusion

Effective implementation of the All-Electric Buildings Act is critical to meeting New York's electrification targets. The standard proposed by Staff would hinder progress on meeting the requirements of the CLCPA by allowing an inappropriately broad application of the exemption to the Act. Though it is important to allow utilities to maintain grid reliability, the Commission can adopt a reasonableness standard that is narrow in scope while ensuring stable grid capacity. The recommended adjustments to the reasonableness standard herein ensure that agencies or developers do not circumvent their obligations under state climate policy and instead facilitate the widespread electrification of New York's buildings sector.

[32] BUILDING DECARBONIZATION COALITION, *The Future of Gas in New York State* at 49 (Mar. 2023), https://buildingdecarb.org/wp-content/uploads/BDC-The-Future-of-Gas-in-NYS.pdf.