

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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**Proceeding on Motion of the Commission to  
Implement the Requirements of the Utility  
Thermal Energy Network and Jobs Act**

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**Case 22-M-0429**

**COMMENTS OF  
THE CITY OF NEW YORK  
ON  
STAFF PROPOSAL FOR INITIAL  
UTILITY THERMAL ENERGY NETWORK RULES**

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**PRELIMINARY STATEMENT**

As required by the Thermal Networks Act,<sup>1</sup> the New York State Public Service Commission (“Commission”) is now in the process of adopting rules for thermal energy utilities. The City of New York (“City”) offers these comments on the rules proposed by Department of Public Service Staff (“Staff”).<sup>2</sup>

The Commission has extensive experience in regulating the provision of utility service, and it should promulgate rules for thermal energy service that are based upon this experience. While some of the rules propounded by Staff are reasonable, others have the potential to adversely impact thermal energy customers. For example, the City agrees that opportunities to develop thermal energy networks should be broad and not limited to existing regulated gas utilities. However, creating an absolute prohibition against lightly regulating thermal energy utilities has the potential to unnecessarily increase the costs of thermal energy service and unduly burden thermal energy customers. Additionally, exempting homeowners’ associations from Commission oversight is not appropriate.

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<sup>1</sup> Public Service Law (“PSL”) § 66-t(1).

<sup>2</sup> Case 22-M-0429, Proceeding on Motion of the Commission to Implement the Requirements of the Utility Thermal Energy Network and Jobs Act, Staff Proposal for Initial Utility Thermal Energy Network Rules (filed February 20, 2024) (“Staff Proposal”).

For the reasons set forth herein, the City respectfully recommends that the Commission not approve the Staff Proposal and either promulgate modified versions of the rules or direct Staff to develop a revised proposal.

### **BACKGROUND**

In accordance with the Climate Leadership and Community Protection Act (“CLCPA”), the City and State of New York have begun to evaluate and implement emissions-free technologies that facilitate decarbonization of heating and hot water systems. For example, in December 2021, the New York City Council passed Int. No. 51-A of 2018 (which became Local Law No. 2 of 2022) to establish a demonstration program for district-scale geothermal systems. In July 2022, the State Legislature expanded the Public Service Law to establish thermal energy service as a regulated utility service.<sup>3</sup> The Legislature found that “[t]hermal energy networks have the potential to decarbonize buildings at the community and utility scale and help achieve the goals of the CLCPA.”<sup>4</sup>

Newly enacted PSL § 66-t(1) requires the Commission to promulgate rules and regulations for thermal energy service, and the Legislature provided guidance as to the scope and nature of the rules. PSL § 66-t(1) specifies that the rules be designed to: (1) create fair access to thermal markets that are consistent with the goals of the CLCPA; (2) exempt small-scale thermal systems; (3) promote employment opportunities for utility workers who will be adversely impacted by the transition away from fossil fuels; and (4) encourage private developers to participate in the thermal energy markets and compete against utilities and each other. There can be no question that the

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<sup>3</sup> L 2022, ch 375, commonly known as the Thermal Energy Network and Jobs Act (“Thermal Networks Act”).

<sup>4</sup> *Id.* at § 2(3).

Legislature’s primary focus was on customers—ensuring they are protected and maximizing their ability to benefit from thermal energy service.

### **COMMENTS**

The City and State have prioritized reducing greenhouse gas emissions from the combustion of fossil fuels. The need to focus such efforts on emissions from buildings is without dispute, which is why the development of alternative energy sources to heat and cool buildings, such as thermal energy networks, is crucial to meeting City and State emissions reduction goals.

The Commission’s regulatory regimes for electric, gas, steam, and water systems have been successful in ensuring that such systems are operated safely and reliably. The Commission should build on its long experience in establishing a regulatory regime for thermal systems so that they, too, can be operated safely and reliably at rates that are not burdensome to customers. Moreover, the Commission should use this as an opportunity to prioritize efficiency and ease of entry for both developers and customers to limit any unintended regulatory barriers to uptake and implementation. While the Staff Proposal includes several examples of Commission regulations and exemptions, the precedent appears to be misinterpreted or misapplied.

### **POINT I**

#### **THE REGULATIONS SHOULD CREATE FAIR MARKET ACCESS AND ENCOURAGE COMPETITION**

Pursuant to the Thermal Networks Act, the Commission is required to develop rules that create fair market access and encourage third-party participation and competition.<sup>5</sup> From the City’s perspective, providing fair market access is a hallmark of competition. Indeed, from the mid-1990s, when the Commission first introduced competition into the electric industry in New

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<sup>5</sup> PSL § 66-t(1)(a), 66-t(4).

York, to the present, the Commission has continually strived to ensure that all market participants have fair access so that customers can benefit from the lower costs achieved through competitive forces. In this matter, Staff noted that “creating fair market access could also encourage third party participation and competition.”<sup>6</sup>

The Commission’s long-standing preference for competition over vertically-integrated development of energy resources and competitive processes over unilateral utility actions should apply to thermal energy services.<sup>7</sup> Inasmuch as there is no proof that utilities can provide thermal energy services more efficiently, reliably, safely, or at lower costs than other providers, the Commission should allow market principles to govern and qualified entities to compete against utilities to provide thermal energy services. As they have in the electric and gas industries, such principles should produce more cost-effective projects.

Regarding fair market access, allowing private developers to participate can lead to faster uptake and project development at lower costs because private developers can typically move faster and are more responsive to customers. Also, private developers tend to have lower overheads than utilities and maximize efficiencies to reduce development and operational costs. They further tend to embrace and employ new technologies and processes and adapt to changing circumstances more quickly than utilities.

However, allowing broad access to the development of thermal energy networks must be subject to certain minimum requirements and continuously monitored. There is an inherent risk

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<sup>6</sup> Staff Proposal at 18.

<sup>7</sup> See Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Order Denying Petitions Seeking to Amend Contract with Renewable Energy Projects (issued October 12, 2023) at 39, 48 (“CES Order”); Cases 94-E-0952, *et al.*, In the Matter of Competitive Opportunities Regarding Electric Service, Opinion and Order Regarding Competitive Opportunities for Electric Service, Opinion No. 96-12 (issued May 20, 1996).

in allowing entities with no relevant expertise (and which may be undercapitalized) to own and operate systems that will provide an essential service (*i.e.*, heating).

The City recommends that the Commission establish eligibility standards, such as experience in installing heating and cooling or plumbing systems and with larger-scale projects.<sup>8</sup> The Commission also should require proof of creditworthiness and the ability to cover the up-front costs of the development, operation, and continuing maintenance of thermal systems.<sup>9</sup> These recommendations are in line with the Legislature’s directive within the Thermal Networks Act to use “well trained, highly skilled craft persons.”<sup>10</sup> While this directive relates to the labor personnel rather than the developer, it would be counterintuitive to have strict labor qualifications in place without first setting such qualifications for the developers, themselves. To ensure that the customers of thermal energy networks receive safe and adequate service, both the developers and the employees of thermal utilities should meet minimum competency standards.

Because State and City policy prioritize the expansion of zero emission energy sources, including thermal networks, the Commission’s regulatory framework should prioritize efficiency and ease of entry for both eligible developers and customers, to ensure regulation does not act as a barrier for uptake and implementation.

Separately, Staff asserts that it would not be appropriate to apply lightened regulation to thermal energy networks because there is no division between wholesale and retail service as there

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<sup>8</sup> For example, a developer whose sole experience is repairing plumbing or doing bathroom renovations in single-family homes may not be qualified to construct or operate a thermal energy network. In contrast, a plumbing company that has completed water system extensions and plumbed large commercial buildings or factories likely would be qualified.

<sup>9</sup> As a comparable example, the New York Independent System Operator, Inc. has established “qualified developer” requirements for entities seeking to develop certain transmission projects. *See* NYISO Open Access Transmission Tariff, Attachment Y, Section 31.4.4.1.1.

<sup>10</sup> Thermal Networks Act at § 2(12)(c).

is in the electric and gas industries.<sup>11</sup> This assertion is misplaced. The Commission applies lightened regulation to competitive entities where customers are not captive to a single utility and there are multiple options available.<sup>12</sup> For thermal energy networks, if there are choices available to customers—such as installing heat pumps and fully electrifying a home—there is no reason to impose heavy regulation on the thermal energy provider.

Heavy regulation requires extensive compliance and reporting, which in turn adds costs to the provision of thermal service. The Commission should balance the benefits and burdens of heavy regulation, as it has done in the electric industry, and avoid imposing heavy regulation where it is not necessary to protect customers. The City respectfully submits that the Commission should develop a lightened regulatory regime akin to the regime applied to competitive electric corporations and allow thermal networks providers who can demonstrate their customers are not captive to use that regime. As with electric corporations, safety, customer protection, and other similar rules should apply equally to heavily and lightly regulated thermal energy providers.

## **POINT II**

### **THE PROPOSED SMALL-SCALE NETWORK EXEMPTION CRITERIA MISAPPLIES COMMISSION PRECEDENT**

In its discussion of potential small-scale thermal energy network exemptions, the Staff Proposal presented several instances where the Commission has exempted entities from regulation. The Staff Proposal recommended that two types of small-scale thermal energy networks be exempt

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<sup>11</sup> Staff Proposal at 9.

<sup>12</sup> *See, e.g., Case 09-G-0490, Joint Petition of Alliance Energy Transmissions, LLC and Seneca Power Partners, L.P. for a Declaratory Ruling Regarding the Transfer of Pipeline Under Section 70, and Related Relief, Declaratory Ruling on Review of a Transfer Transaction and Order Providing for Lightened Regulation (issued November 17, 2009) at 4 (“entities providing utility services on a competitive basis do not require the degree of regulatory scrutiny applied to monopoly suppliers.”)*

from Commission oversight: (1) thermal energy provided in a campus-style environment; and (2) thermal energy provided through a network owned by a homeowners association and/or building owners.<sup>13</sup> Staff did not support an exemption for municipally-owned thermal energy networks, asserting that the exemption for municipally-owned water systems have accompanying regulations related to safety and quality, which have not yet been developed for thermal energy networks.

The City respectfully disagrees with the Staff Proposal. The Commission should not exempt systems owned by a homeowners' association or similar entity, but it should exempt municipally-owned systems.

Most homeowners' associations and similar entities do not have the technical knowledge and experience, nor the financial resources, to properly operate and maintain thermal energy networks. Because the members of such associations will rely on such systems for heating and cooling—essential services to maintain their health and welfare, they should not be left with no recourse and no avenue of redress if the systems are not maintained or if the operator seeks to impose exorbitant and unjust charges. The Commission should incentivize homeowners' associations to contract with qualified developers and thermal service providers to support operation and maintenance of thermal systems serving multiple households, and the Commission's regulatory structure will not do that if homeowners' associations are exempt from regulation. Instead, creating a high bar to identify reliable and well-resourced developers and service providers, and regulations that make it most efficient and cost-effective for homeowners' associations to work with those qualified developers and service providers will be most protective of households.

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<sup>13</sup> Staff Proposal at 15.

The Commission has ample experience with similar situations—small water companies that are mis-managed, or not managed at all, where customers either do not have access to safe, clean drinking water, and/or where the costs of inadequate maintenance or needed repairs will make rates unduly burdensome. The Commission and Staff routinely step in during such situations to protect customers and ensure that essential service is continued.

Thermal networks owned and operated by homeowners' associations could be lightly regulated to reduce the burdens and costs on the associations, but they should not be exempt from the Commission's oversight. Especially considering the newness of and uncertainties associated with thermal energy service (*i.e.*, because such systems do not exist elsewhere, there are no resources for homeowners' associations to turn to or rely upon), it would not be in customers' interests to provide no Commission oversight whatsoever.

In contrast, municipally-owned water systems have been exempt from Commission regulation for decades. The leaders of municipalities and municipal systems are answerable to their constituents and can be removed as warranted. The municipal systems are operated by trained professional who are available 24 hours a day, 365 days a year. Moreover, municipal systems have the ability to raise or borrow funds as needed to maintain, expand, and repair their systems and can recover those expenditures over an extended period of time, reducing financial impacts on the customers.

Within New York City, the Department of Environmental Protection ("DEP") has been operating a water system that serves about nine million people with high quality drinking water every day. DEP has been performing its duties as a water utility for many decades without any Commission involvement and without jeopardizing public health, welfare, or safety. Given its experience and expertise, as well as that of the many other municipal water systems across the

State, there is no merit to Staff's assertion that the City or other municipalities would be incapable of safely or reliably operating a thermal energy network without Commission oversight.

Further, it bears mention that in the situations described above involving small water companies, one of the first actions taken by Staff to resolve the problems is to ascertain whether the system could be taken over by an adjacent municipal water system. Indeed, both the Commission and Staff have long recognized the merits and benefits of municipal systems over small, privately-owned systems. That the municipal systems are not regulated by the Commission has never been an impediment to this approach.

As to the size of the systems, it is not yet proven that a large-scale thermal energy network that does not rely on a fossil-fueled generating facility for the thermal energy is technically or economically viable. Accordingly, it is most likely that any thermal system being developed in the foreseeable future will be a small-scale system. The City respectfully recommends that the Commission treat thermal energy systems similarly to water systems and exempt any small-scale system from its oversight if the system is being developed by a municipality.

A final comment is warranted regarding safety. The City agrees that safety is of the utmost importance. Municipalities are far more prepared and capable of ensuring safety than homeowners' associations, and there is far more scrutiny on municipalities, generally, than on the boards of homeowners' associations. The Staff Proposal noted a concern for the lack of safety and quality regulations in place for thermal energy networks,<sup>14</sup> which only underscores the importance of ensuring that any exempt entity will not have a problem maintaining both safety and quality absent such regulations. Accordingly, the Staff Proposal's focus on concerns with municipal

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<sup>14</sup> Staff Proposal at 15.

systems but lack of concern about safety of systems owners by homeowners' associations is not rational or reasonable, and it is not consistent with prior real-world experience.

### POINT III

#### **THE COMMISSION SHOULD ESTABLISH MINIMUM STANDARDS TO PROTECT CUSTOMERS AND THE PUBLIC**

In addition to the requirements within the Thermal Networks Act, Staff requests input on additional topic areas, including: (1) customer billing and protections; (2) metering requirements; (3) safety; (4) designation of operational roles and responsibilities; and (5) operational standards.<sup>15</sup> Generally, it is important to establish minimum standards to ensure the overall protection of customers and the public. Staff seems to acknowledge this in other sections of the Proposal, noting the absence but importance of safety and service quality regulations. The City agrees that safety is of the utmost importance. As noted above, it is crucial that any entity owning and operating a thermal energy network is able to do so safely, adequately, and reliably.

The Commission should establish customer billing and service protections for thermal energy network customers, akin to those already established for other customers. For example, residential energy customers are protected under the Home Energy Fair Practices Act (“HEFPA”), which provides comprehensive protections related to application for service, customer billing, terminations of service, payment, and complaint procedures.<sup>16</sup> The Commission has also established Uniform Business Practices (“UBP”) for energy service companies.<sup>17</sup>

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<sup>15</sup> Staff Proposal at 19-20.

<sup>16</sup> 16 NYCRR Parts 11 and 12.

<sup>17</sup> *See generally* Chapter 416 of the Laws of 2010; Case 98-M-1343, In the Matter of Retail Access Business Rules, Order Implementing Chapter 416 of the Laws of 2010 (issued December 17, 2010).

The Commission has the authority to adopt similar rules and protections for thermal energy providers and their customers, and it should exercise that authority. Rather than attempt to create new requirements and policies, the Commission should adapt the HEFPA and UBP requirements, regulations, and rules for thermal service. From a customer protection perspective, the provision of thermal service should not be materially different from the provision of electric, gas, or water service, so it would be appropriate to apply the same standards and protections.

Additionally, the Commission has long recognized the need to establish regulations and rules governing safety. Here, the Commission should enact minimum safety standards. In this instance, the Commission can base such standards on the regulations and rules that apply to steam service as steam service is similar to the thermal service contemplated in this matter. To the extent the Commission exempts any thermal energy provider from other aspects of its regulatory oversight, it should carve out compliance with safety standard, and such standards should apply equally to all owners and operators of thermal energy networks.

## CONCLUSION

The City supports the State’s efforts to assess the viability and cost-effectiveness of carbon-free thermal energy networks as a means to decrease the reliance on fossil fuels and reduce greenhouse gas emissions from buildings. To ensure that such networks are able to adequately, reliably, resiliently, affordably, and safely service the needs of different types of customers, the Commission will need to establish a proper regulatory regime. Such a regime should promote and encourage third-party participation and competition, while ensuring that participating entities have the proper qualifications to run networks that will provide essential services. This regime must also ensure that smaller networks are not disincentivized by way of costly, heavy regulation and that heavy regulation does not impede customer or developer uptake or market entry.

The Staff Proposal provides a partial basis for developing such regulations, and certain proposals can be improved to better facilitate the growth of thermal systems. The City respectfully requests that the Commission adopt the alternative proposals recommended herein when developing the rules and regulations for utility thermal energy networks.

Respectfully submitted,

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