STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

COMMENTS OF MULTIPLE INTERVENORS ON STAFF STRAW PROPOSAL REGARDING MODIFICATION OF 16 NYCRR PART 230

Dated: September 19, 2024

MULTIPLE INTERVENORS
540 BROADWAY, P.O. BOX 22222
ALBANY, NEW YORK 12201-2222

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PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of approximately 55 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits its Comments in response to the "Staff Straw Proposal Regarding Modification of 16 NYCRR Part 230" ("Straw Proposal"), filed by New York State Department of Public Service Staff ("Staff") on July 16, 2024, in Case 20-G-0131, *Proceeding on Motion of the Commission in Regard to Gas Planning Procedures*. Multiple Intervenors' Comments are submitted in accordance with the Notice Soliciting Comments and the Notice Extending Initial Comment Period issued on July 16 and September 13, 2024, respectively, by the New York State Public Service Commission ("Commission"). For the reasons set forth herein, the proposals advanced by Staff in the Straw Proposal should be rejected or modified in a number of respects, at least with respect to large non-residential customers.

Multiple Intervenors members support reasonable efforts to reduce greenhouse gas emissions, including those related to the consumption of natural gas. That noted, Multiple Intervenors members currently depend on natural gas service that is reliable and affordable to heat their facilities, which can measure in the tens of thousands, hundreds of thousands, or even millions of square feet in size. Importantly, many members also utilize gas for process applications for which alternatives to gas simply are not viable at this time. For such members, the absence of reliable and affordable gas service would result in the reduction of operations in New York and the expansion of operations in other states and/or countries.

In its Straw Proposal, Staff advances numerous proposed modifications to Part 230 of the Commission's Rules and Regulations, all of which are intended to render the initiation and/or the expansion of natural gas service by customers more expensive, apparently in the hope that such cost increases would lead to (i) a reduction in gas consumption and/or (ii) an increase in the adoption rate for alternate technologies. As applied to large non-residential customers, however, such modifications could have grave consequences and contribute to and accelerate the ongoing exodus of manufacturing and other operations, capital investments, jobs, and economic activity out of New York State.[1] Accordingly, for the reasons set forth herein, Multiple Intervenors urges that the Straw Proposal be rejected or modified in certain important respects. To the extent the Straw Proposal is not modified, the Commission should encourage gas utilities to utilize economic development grants and/or discounts to attract or retain load that otherwise might be lost to New York State due to implementation of the Straw Proposal.

POINT I

THE STAFF PROPOSAL IS PREMISED ON A FLAWED PERCEPTION OF THE ENERGY CHOICES AVAILABLE TO LARGE NON-RESIDENTIAL CUSTOMERS

In introducing a series of modifications to the Commission's longstanding rules and regulations pertaining to natural gas service, Staff sets forth its perspective as follows:

> Customers choose to use natural gas for a variety of end uses, including space heating, water heating, cooking, clothes dryers, and industrial processes. Customers can choose to use other energy sources, including electricity, for many, if not all of these end uses.

[1] Such potential consequences are not addressed, at all, in the Straw Proposal. It appears that Staff simply reviewed Part 230 of the Commission's Rules and Regulations and attempted to identify and advance potential modifications thereto that would have the effect of increasing the cost of gas service extensions to customers. Needless to say, the potential consequences of Staff's Straw Proposal must be considered.

(Straw Proposal at 8.) That perspective is flawed in several respects, at least with respect to large non-residential customers.

Initially, lest there be any confusion, there are numerous industrial processes for which viable alternatives to natural gas do not exist at this time. For instance, the chemical industry requires gas as a raw material for numerous, important base chemicals. Gas also is essential for numerous processes outside of the broad chemical industry, including, *inter alia*, the manufacture of glass, bricks, paper, cement, steel, and alumina. Thus, there are a myriad of industrial processes for which electricity is not a viable technological alternative to gas at this time. Ignoring this reality only contributes to unrealistic expectations as to how quickly the State may be able to significantly reduce reliance on gas.

Second, even where electricity or a different technology is technologically capable of being utilized in a manufacturing process in lieu of natural gas, it sometimes is grossly uneconomic to do so. Staff (and other parties) should not equate, or conflate, technological feasibility with economic feasibility. Moreover, major manufacturers conducting business in New York are well aware of mounting electricity costs in the State, including annual double-digit delivery rate increases being granted to electric utilities and a myriad of programs and initiatives that customers are and will be forced to fund through higher delivery rates, bill surcharges, and commodity prices. Rising electricity costs render electrification efforts more expensive and less attractive. The State should not expect customers to aggressively adopt electrification measures during a period of rapidly rising electricity costs, especially when future financial obligations being imposed on electric customers are expected to be even more exorbitant.

Third, even if, *arguendo*, relying on electrification measures – such as electric boilers – were economically feasible, in some instances there is inadequate capacity on the electric system to accommodate substantially increased demand. Given the space and the needs of industrial facilities, for instance, use of electric boilers could increase electric demand at individual facilities by tens or even hundreds of megawatts, potentially exceeding the capability of the utility's electric system to serve customers in a particular region.

Fourth, Staff's apparent view that the only choice for customers is between natural gas and other technologies, is unduly narrow, at least with respect to large non-residential customers. In advancing proposed modifications to Commission regulations, Staff assumes that if the initiation and/or the expansion of natural gas service becomes more expensive, customers will choose to rely on other energy sources, such as electricity. Significantly, however, large non-residential customers also have the option of moving production, capital investments, and jobs from New York to other states and countries – an option that unfortunately is being exercised all too frequently, and one that may become more prevalent if energy costs in the State continue to escalate from current levels.[2]

Thus, while Multiple Intervenors understands that one of Staff's primary motivations in advancing its proposed modifications to Commission regulations is to discourage and lessen reliance on natural gas in furtherance of certain Climate Leadership and Community Protection Act ("CLCPA") objectives, there are numerous unintended (but foreseeable) consequences that could arise if those modifications are adopted as proposed, at least with

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[2] In some regions of the State, due to inadequate gas infrastructure, the unavailability of gas leads to increased oil consumption by large non-residential customers. Staff should be aware that, for some large non-residential customers, the primary in-state alternative to gas is not electrification but, rather, consuming more oil.

respect to large non-residential customers. The remainder of Multiple Intervenors' Comments address the specific modifications advanced in the Staff Straw Proposal.

POINT II

MULTIPLE INTERVENORS' RESPONSES TO SPECIFIC MODIFICATIONS TO COMMISSION REGULATIONS PROPOSED BY STAFF

Multiple Intervenors hereby responds to the specific modifications to Part 230 of the Commission's Rules and Regulations proposed by Staff. For ease of review, Multiple Intervenors' responses track the order of the modifications proposed in the Straw Proposal. Additionally, Multiple Intervenors focuses herein on the potential modification of regulations applicable to gas service to large non-residential customers; it advocates no positions as to whether or how the Commission's existing regulations should be modified with respect to gas service to residential and small non-residential customers.

Section 230.1 – Defining "Appurtenant Facilities"

In the Straw Proposal, Staff acknowledges that: "The lack of a definition for 'appurtenant facilities' as it relates to the [local distribution company]'s and applicant's obligations under Part 230 have not created difficulties in the past." (Straw Proposal at 12.) Staff nevertheless seeks to define "appurtenant facilities" in the interests of uniformity and to further the goals of the CLCPA. (*Id.*) Multiple Intervenors does not advance any specific objections to Staff's proposal to define "appurtenant facilities" as "any objects, devices, or other accessories necessary to the adequate provision of gas service to a customer, specifically related to the portion of mains and/or service line to be installed to provide service to an applicant for new gas service." (*See id.*) That noted, if Staff's intent is to narrow the definition of "appurtenant facilities" compared to how such facilities have been treated in the past in an effort to render the initiation or the expansion of natural gas service to large non-residential customers more expensive, the proposed definition could run counter to the public interest and should be rejected or modified.

Unlike residential service connections that generally are similar in nature, there is much greater variance in the facilities needed to effectuate new or expanded gas service to large non-residential customers. Consequently, attempting to implement a "one-size-fits-all" definition of appurtenant facilities to large non-residential customers could be unduly restrictive. As indicated, *supra*, rendering the initiation or expansion of gas service more expensive for large non-residential customers does not necessarily result in an increased reliance on alternative technologies; rather, it also could mean that new or expanded business operations, capital investments, and job additions do not happen, or they occur in another state or country.[3] The Commission should avoid modifying its regulations in a manner that is unduly restrictive for utilities seeking to provide gas service to large non-residential customers desiring such service and/or is otherwise self-defeating in terms of the State's economic development objectives.

<u>Section 230.2 – Entitlements</u>

For non-residential customers, the Commission's regulations currently provide, without direct cost, 100 feet of main extension and any amount of service line in the public right-of-way or up to the private property line. Staff recommends changing this entitlement to be "no more than a total of 100 feet of main and/or service line located in the public right-of-way, and appurtenant facilities." (Straw Proposal at 15.) In the case of large non-residential customers, this proposed modification could be counterproductive. Large non-residential customers, such as

[3] The leakage of greenhouse gas emissions from New York to other states and countries is of limited or no environmental value and could come at tremendous cost to the State's economy.

manufacturers, tend to operate spacious facilities that may require more than 100 total feet of main and/or service lines to effectuate a new gas service or expansion of an existing gas service. In some cases, depending on the cost, the customer may elect to bear the increased expense that would result from adoption of Staff's proposed modification. In cases where the customer requires gas service and alternatives thereto are not viable and/or economic, it is highly unlikely that Staff's proposed modification would result in the use of alternative technologies. Rather, if the cost is too high, the customer simply will elect not to initiate or expand service at the location and may elect to do so at a different location, potentially in another state or country. In that event, the New York gas utility's service territory will not experience increased economic activity, capital investments, and jobs. Additionally, gas delivery rates to other customers would not benefit from a potential increase in deliveries over which the utility's fixed costs could be spread.

Multiple Intervenors recognizes that Staff and the Commission desire reduced reliance on natural gas in New York. The Commission already is mandating implementation or expansion of customer-funded programs that subsidize/incentivize electrification to facilitate such an outcome. That noted, the Commission should exercise caution before approving proposals that, if adopted, could significantly increase the cost of new and/or expanded gas service to the point where desired economic activity does not occur in the State.[4]

Section 230.3 – Surcharge Requirements

In the Straw Proposal, Staff proposes that instead of customers being required to pay the "actual reasonable costs" for certain service extensions, they instead should be required

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[4] In this regard, if the proposed modifications are adopted, the State's utilities should be accorded sufficient flexibility to address economic development opportunities, and threats, related to the cost of gas service in the State. Absent such flexibility, Staff's proposed modifications would be self-defeating from an economic development perspective.

to pay for the "actual cost" of the materials and installation of the portion of the work in excess of the entitlement. (Straw Proposal at 17-18.) In support of its proposal, Staff asserts that "two significant issues require consideration here: (1) consistency with the cost causation principle that costs should be borne by customers for whose benefit the costs are incurred; and (2) consistency with the greenhouse gas emission reduction goals established by the CLCPA." (*Id.* at 17.) Multiple Intervenors agrees that costs should be borne by customers for whose benefit the costs are incurred, but has a concern with Staff's proposed modifications.

The calculation of costs to impose on customers requiring a gas service extension should not be driven solely by the CLCPA; there are practical considerations that should be taken into account. For instance, under the existing regulation, "actual reasonable costs" imposes a limitation on utility recoveries, *i.e.*, the utility is ineligible to recover costs that are unreasonable. Customers, large and small, already face a daunting challenge when their utilities seek to recover connection costs that are exorbitant and frequently subject to upward adjustments. Staff's proposed elimination of the word "reasonable" in the regulation would expose customers to potentially much higher costs, with no recourse to dispute the unfair imposition of costs by their utilities. It is disappointing that Staff would propose that utilities need not be limited to a reasonableness standard in imposing costs on customers.

Moreover, large non-residential customers contemplating a new business location or expansion of an existing business location with a need for gas service often require a large measure of cost certainty. Under the current "actual reasonable costs" standard, utilities typically provide cost estimates to customers that reasonably can be relied upon for service extensions. If, *arguendo*, the current regulation is modified to require the imposition of the utility's actual costs – which presumably only can be calculated after the work is completed – customers would be left without any cost certainty whatsoever and, once again, could be encouraged to shift their planned operations to another state or country where the cost of initiating or expanding gas service is more predictable and less costly.

Staff also seeks input on whether the Commission's existing regulation allowing gas utilities to recover the cost of service extensions via surcharge over ten years should be modified. Staff proclaims that there are three options: (1) require the customer to pay the entire cost when the facilities are installed; (2) require customers to pay the cost over no more than five years; or (3) maintain the status quo. (*Id.*) Staff does not identify any problems in the Straw Proposal with respect to how the existing regulation has operated in the past (*see id.* at 21), nor does it advance any compelling rationale for modifying it. Multiple Intervenors advocates that the Commission leave this part of the current regulation unchanged. If, *arguendo*, the Commission elects to modify the regulation, it should allow the cost of service extensions to be recovered via surcharge over at least five years. There is no rational basis for requiring customers to pay 100% of the cost of a service extension upon its completion, without the option of a gradual payment via surcharge. To adopt such a requirement could further encourage large non-residential customers to open or expand operations elsewhere.

Finally, the existing regulation has long provided that such surcharges "shall be reduced by 50 percent of adjusted gas revenues, but the credit shall not exceed the amount of the surcharge …." Such credits are intended to recognize that the service extension results in incremental revenues for the gas utility, thereby benefiting other customers by expanding the base over which the utility's fixed costs can be recovered. Staff's proposed modifications, on the other hand, ignore these economic considerations in an effort to render gas extensions less economic, apparently in the hopes of further encouraging customers to implement alternatives to natural gas.

Staff does not explain why the existing credit mechanism is unfair or otherwise undesirable. As asserted, *supra*, large non-residential customers have other choices and, to the extent alternatives to gas are technologically and/or economically infeasible, increasing the cost of gas service serves only to encourage such customers to take their businesses elsewhere. Proposals that increase the cost of gas service to businesses desiring such service, if adopted, can result in numerous consequences, including, *inter alia*, harming State and local economies and causing gas delivery rates to the remaining (often captive) customers to rise.

Section 230.5 – Installation Before Service is Required

Multiple Intervenors does not advocate any positions with respect to the potential modification of this existing regulation, which pertains to the depreciation rate applied to deposits for service extensions for applicants who do not immediately desire service, primarily developers.

CONCLUSION

For the reasons set forth herein, Multiple Intervenors urges the Commission to rule on the modifications to existing regulations proposed by Staff in the Straw Proposal in a manner consistent with these Comments, at least with respect to the application of those potential modifications to large non-residential customers. Additionally, the State's gas utilities should be accorded sufficient flexibility to utilize economic development grants in instances where application of modified regulations could result in the loss of economic activity within the State.

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Albany, New York

Respectfully submitted,

Michael B. Mager

Michael B. Mager, Esq.
Counsel
Multiple Intervenors
540 Broadway, P.O. Box 22222
Albany, New York 12201-2222