STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

COMMENTS OF THE SIERRA CLUB, EARTHJUSTICE AND BUILDING DECARBONIZATION COALITION

In response to the Commission's July 16, 2024 Notice Soliciting Comments, the Sierra Club, Earthjustice and Building Decarbonization Coalition ("Commenters") respectfully submit these comments on the Staff Straw Proposal Regarding Modification of 16 NYCRR Part 230. Commenters applaud the Department of Public Service Staff for proactively addressing the issue of subsidization of new gas interconnections. As Staff recognize, "meeting the economy-wide emissions limits will require reducing the use of natural gas in New York State."[1] The Commission, however, is constrained by statute in the extent to which it can eliminate subsidies for new gas interconnection, due to requirements currently incorporated into the Public Service Law and Transportation Corporations Law. At the same time, current Commission regulations provide incentives for gas interconnection that go beyond those mandated by statute, and Staff appropriately have crafted a straw proposal targeting those extra-statutory incentives. Implementing the recommendations in the Staff Straw Proposal will reduce inappropriate cross-subsidization of new gas customers and promote affordability for existing gas customers. In addition, to further promote equity and affordability, the Commission should: (a) ensure that utility electrification programs target lower-income households that will experience the greatest challenges in exiting the gas system; (b) revisit current depreciation time frames and methods to better align them with expected utilization of any new pipes; and (c) sharply constrain further gas

[1] Staff Straw Proposal Regarding Modification of 16 NYCRR Part 230 at 6–7, NY PSC Case No. 20-G-0131 (July 16, 2024) (hereinafter "Straw Proposal").

system capital investments, especially pipe replacement, which is accelerating an acute gas affordability challenge.

I. Gas System Context

As a category, buildings are the largest source of greenhouse gas emissions in New York State.[2] To cost-effectively decarbonize the building sector, an obvious first step is to stop increasing those emissions by interconnecting new gas customers. Both the City of New York and the State Legislature have recognized the prudence of doing so. New York City passed Local Law 154 in 2021, which rapidly phases out gas from new construction, beginning January 1, 2024 with smaller homes and buildings under seven stories and encompassing all categories of buildings by the end of 2027.[3] The State Legislature followed suit shortly thereafter with the All-Electric Buildings Act, which prohibits municipalities from issuing building permits for new buildings that are not all-electric after December 31, 2025 for new buildings under seven stories, and after December 31, 2028 for new buildings over seven stories.[4]

Despite the important passage of the All-Electric Buildings Act, the Legislature left in place two statutory provisions that continue to hamper the cost-effective decarbonization of New York's buildings. First, it failed to address the utility obligation to serve gas to customers who seek interconnection and are willing to pay relevant interconnection costs. *See* Public Service Law § 31(4) (requiring provision of gas service to any residential applicant in a building not connected to the gas system provided that, if the building is greater than 100 feet from gas

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[2] N.Y. Dep't of Env't Conservation, 2023 Statewide GHG Emissions Report: Summary Report at vi, tbl.ES.3 (Dec. 2023), https://dec.ny.gov/sites/default/files/2023-12/summaryreportnysghgemissionsreport2023.pdf (reporting 2021 New York State GHG emissions by economic sector).

[3] N.Y.C. Dep't of Bldgs., *Local Law 154: Building Electrification*, https://www.nyc.gov/site/buildings/codes/ll154-building-electrification.page (last visited Sept. 12, 2024).

[4] 2023 N.Y. Senate Bill S.4006C, 2021 Assembly Bill A.3006C (Part RR).

transmission, the residential applicant must pay material and installation costs relating to the applicants' proportion of the pipe to be installed). Second, it failed to eliminate the subsidies enshrined in statute for the first 100 feet of main for newly interconnecting customers—the so-called "100-foot rule." *See id.*; Transportation Corporations Law § 12. These provisions together—and the obligation to serve in particular—continue to cripple utility efforts to steer customers away from gas and to implement cost-effective non-pipe alternatives.

Layered on top of these statutory provisions inhibiting the state's transition away from gas, the Commission's current Part 230 regulations provide additional economic incentives for new gas interconnection. Section 230.2(d), for example, entitles residential heating applicants to up to 200 feet of combined gas main and gas service line extensions at no direct cost.[5] Other provisions expand the statutory entitlement, including by allowing pooling of multiple customers' 100 feet of free gas main and by allowing reductions or avoidance of customer surcharges.

Data from local distribution companies ("LDCs") show that, in 2021, gas LDCs across the state spent over $392 million of ratepayer funds connecting new customers while receiving only $50 million in revenue from these new customers.[6] This imbalance is unsustainable, particularly as the gas customer base begins to shrink and subsidies for interconnection are socialized over this shrinking captive customer base.

Commenters applaud Staff for proactively proposing modifications to the Commission's Part 230 regulations to "bring the incentive structure for new gas service more in line with other environmentally sustainable options in the heating and energy market."[7] As the Straw Proposal

[5] 16 NYCRR 230.2(d).
[6] Straw Proposal at 10.
[7] *Id.* at 9.

observes, at this time, "facilitating installation of additional natural gas plant is at odds with the greenhouse gas emissions reduction goals codified in the CLCPA."[8] Consequently, "modification of Part 230 to conform applicant entitlements to gas service extensions with statutory requirements may aid a smooth transition in the natural gas industry and better align the Commission's regulations and LDCs' practices with efforts to achieve the greenhouse gas emission reduction targets set by the Climate Leadership and Community Protection Act (CLCPA)."[9]

II. Comments on Specific Staff Proposals and Questions

Commenters urge the Commission to adopt the recommendations in the Staff Straw Proposal and offer the following additional comments and observations.

Regarding entitlements (Section 230.2), Commenters strongly support harmonizing these with the minimum entitlements prescribed by Public Service Law § 31(4). In particular, all residential entitlements should be the same, whether for heating or non-heating gas customers, and, until such time as the 100-foot rule is eliminated from statute and subsidies for new interconnection can be terminated entirely, Section 230.2 should limit the total residential entitlement to 100 feet of main and service line combined.[10] Non-residential entitlements should also be limited to a total of 100 feet of main and/or service in the public right-of-way, consistent with the statutory minimum requirements. Finally, Commenters support Staff's further clarification that LDCs may not provide additional entitlements beyond those established in the revised Section 230.2.[11]

[8] Straw Proposal at 11.
[9] *Id.* at 1–2.
[10] *See id.* at 14.
[11] *Id.* at 15.

Regarding the recovery of customer surcharges (Section 230.3(a)(1), (2), (4)(ii), (5) & (6)), Commenters concur with Staff that is appropriate to make a number of modifications in line with the minimum entitlements outlined in Public Service Law § 31(4). First, surcharges should reflect "actual" rather than "actual reasonable" costs. Aside from being unfair from a cost causation perspective to foist the risk of unforeseen cost overruns onto existing gas customers, the use of "actual reasonable" costs incentivizes utilities to underestimate costs to facilitate interconnection of new customers. In addition, Commenters support Staff's proposal to eliminate Section 230.3(a)(2), which authorizes a reduction in surcharges by 50%. As Staff appropriately observes, this "essentially provides facilities in excess of the entitlement to applicants at no direct cost,"[12] while passing this cost onto other gas customers. It should be eliminated. Likewise, Commenters support the elimination of Sections 230.3(a)(4)(ii), (a)(5), and (a)(6), which provide for additional reductions in surcharges—and thus an increase in entitlement—beyond what is mandated by Public Service Law § 31(4) and unfairly shift costs from new to existing gas customers.

Regarding the timing of payment for Contributions in Aid of Construction ("CIAC"), Commenters support immediate recovery. As Staff recognizes, "a CIAC calculation that results in a higher upfront cost, which more closely resembles the actual cost of the additional installation costs, will allow applicants to fairly weigh their choice between gas service and other energy options."[13] The surcharge calculation should include all costs that the utility would otherwise seek to recover from existing gas customers, including return, depreciation, taxes, and maintenance.

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[12] Straw Proposal at 18–19.
[13] *Id.* at 22.

Regarding the pooling of entitlements (Section 230.3(a)(3)), Commenters concur with Staff that it is appropriate to end this policy now. Pooling of entitlements is not directly addressed and, therefore, not mandated by Public Service Law § 31(4). At the same time, the policy considerations from the 1980s that originally led to its adoption—that use of gas was more environmentally friendly than use of electricity[14]—no longer carry force now that the catastrophic climate-forcing impacts of methane have become better understood,[15] the New York electric grid has become cleaner, and the adverse impacts of gas appliances on indoor air quality have come to light.[16]

Regarding the depreciation rate for refunds to developers who install service lines and connections prior to actual use (Section 230.5), Commenters concur with Staff that this rate should be modified to better reflect the Commission-approved depreciation rates of these installed facilities.[17] As discussed below, there is an urgent need for the Commission to revisit depreciation rates and schedules in light of changing expectations about the useful service life of gas assets. At this time, it is unclear if this reconsideration of depreciation rates would happen in the generic gas planning docket (20-G-0131) or in individual gas utility long-term plan or rate dockets. Consequently, Commenters recommend that, rather than attempting to establish a calculated methodology applicable to all utilities, the depreciation rate in Section 230.5 be set at the rate in effect for an LDC's relevant plant account, and anticipate that this rate will be changed by a reevaluation of depreciation schedules and rates.

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[14] Straw Proposal at 20.
[15] *See, e.g.*, Int'l Energy Admin., *Methane and Climate Change* (2021), https://www.iea.org/reports/methane-tracker-2021/methane-and-climate-change (noting that the Intergovernmental Panel on Climate Change has indicated a global warming potential for methane between 84 and 87 when considering its impact over a 20-year timeframe, and between 28 and 36 when considering its impact over a 100-year timeframe).
[16] *See, e.g.*, Rocky Mountain Inst., *Gas Stoves: Health and Air Quality Impacts and Solutions* (2020), https://rmi.org/insight/gas-stoves-pollution-health/.
[17] Straw Proposal at 24.

DPS Staff additionally seek input regarding how to ensure that low-income residents continue to have access to low-cost heating sources.[18] This is critically important. Commenters believe that a substantial downsizing of the gas system is integral to any cost-effective approach to building decarbonization in New York.[19] As customers electrify and exit the gas system, the fixed costs of maintaining the system will be spread over fewer accounts, placing upward pressure on gas rates. It is therefore critical to take steps now to ensure that low-income residents are not trapped in a shrinking and increasingly expensive gas system.

To effectively manage the costs of the gas transition, the state must offer economic support to low-income households for both weatherization and electrification (and in some cases pre-weatherization work, such as mold remediation, where necessary for effective weatherization). Revenues from the forthcoming New York Cap-and-Invest program may be appropriate to help support a portion of these costs, and can be used to supplement federal incentives available through the Inflation Reduction Act and administered by NYSERDA.[20]

In addition, the Commission should move quickly to revisit depreciation schedules for new capital investments, to better align them with the expected life and use of any new capital assets. The Straw Proposal highlights "the potential that new gas infrastructure may become a stranded asset before the end of its useful life."[21] Modifying depreciation schedules will help

[18] Straw Proposal at 2.
[19] *See* Michael J. Walsh & Michael E. Bloomberg, Bldg. Decarbonization Coal., *The Future of Gas in New York State* 5 (Mar. 2023), https://buildingdecarb.org/wp-content/uploads/BDC-The-Future-of-Gas-in-NYS.pdf ("[A] well-planned strategic downsizing of gas distribution networks that minimizes stranded assets through state and local-level planning and implementation efforts … is necessary to help individuals and communities end reliance on gas without compromising access to safe, affordable, and reliable energy services."); N.Y. State Climate Action Council, Scoping Plan at 350 (Dec. 2022) (explaining that in order to achieve CLCPA targets, natural gas use must decrease statewide by at least 33% by 2030 and 57% by 2035).
[20] *See, e.g.,* NYSERDA, *Home Energy Efficiency Programs,* https://www.nyserda.ny.gov/All-Programs/Home-Energy-Efficiency-Upgrades (last visited Sept. 12, 2024).
[21] Straw Proposal at 11.

ensure that the costs of long-lived assets are paid for by the customers that actually use and benefit from those assets.

Finally, there is a great need for the Commission to rein in current gas utility capital expenditures, which even with more realistic depreciation time frames are precipitating an impending gas affordability crisis. Depreciating a pipeline investment consistent with its (significantly shortened) actual future utilization is preferable to the status quo of depreciation time frames of eight decades, but better still is to avoid putting that pipeline cost into the rate base in the first instance. As the Climate Action Council stated in their Final Scoping Plan, "greater scrutiny of [traditional pipeline] investments is warranted to minimize the level of stranded assets that make it more expensive to fully decarbonize the fossil natural gas sector."[22] Yet the state's gas distribution utilities continue to pump billions of dollars into pipe replacement and other upgrades to their pipeline systems. This level of investment is unsustainable and must be curtailed.

III. Conclusion

Commenters hope that, in doing its part to eliminate imprudent gas subsidies, the Commission will send a clear signal to the Legislature to take the next, and even more important, step of eliminating the obligation to serve and the 100-foot rule. If and when the Legislature updates customer entitlements and eliminates the obligation to serve and/or the 100-foot rule, Commenters encourage the Commission to reopen this proceeding and make further modifications to Part 230 to conform it with any legislative updates.

[22] Scoping Plan, *supra* note 19, at 351.

Respectfully submitted,

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