STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

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

STAFF STRAW PROPOSAL REGARDING MODIFICATION OF 16 NYCRR PART 230

(Filed July 16, 2024)

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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INTRODUCTION

In its Order Adopting Gas System Planning Process in this proceeding, the Commission recognized that issues raised regarding extension of gas service to new natural gas customers may require the Commission to modify Title 16 of the New York Code of Rules and Regulations (NYCRR) Part 230 and related utility tariffs. Part 230 sets forth the rights, requirements, and responsibilities of utilities and applicants for gas service. This includes applicants' "entitlement" to certain amounts of gas main and/or service line extension and the installation of appurtenant facilities at no direct cost to the applicant. Part 230 also describes how gas utilities, also referred to as Local Distribution Companies (LDCs), can calculate charges to applicants for extensions beyond those provided at no direct cost. The existing Part 230 and other state and local policies have supported the use of gas for heating in place of other, more polluting fuels, such as oil and coal. However, gas combustion is a significant source of greenhouse gas emissions. Thus, as discussed in further detail below, 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).

In this Straw Proposal, Staff presents possible modifications to, and poses questions to stakeholders regarding, specific provisions of Part 230. With regard to 16 NYCRR §230.1, Staff proposes to add a definition for "appurtenant facilities" as that term is used in connection to entitlements. With regard to 16 NYCRR §230.2, Staff proposes to conform entitlements to statutory requirements. With regard to 16 NYCRR §230.3, Staff proposes to modify the conditions governing LDCs' charges for additional facilities in excess statutory entitlements so that they do not further incentivize the extension of gas service versus other energy options. With regard to 16 NYCRR §230.5, Staff proposes to update the depreciation rate used in the calculation of refunds of deposits that may be due to non-residing applicants for service. Additionally, Staff seeks input from stakeholders regarding how to ensure that, even with changes to Part 230, low-income residents continue to have access to low cost heating sources. In addition to identifying recommendations and areas for comment throughout the proposal, the Appendix to this document provides a comprehensive list for readers' convenience. Once Staff receives feedback from the LDCs and interested stakeholders on this Straw Proposal, Staff anticipates proposing a rulemaking modifying Part 230.

BACKGROUND

The current regulations contained in Part 230 expand upon two statutes that obligate LDCs to extend gas service to an applicant located within 100 feet of existent gas infrastructure at no direct cost to the applicant. The obligation in each statute, Public Service Law (PSL) §31(4) and Transportation

Corporation Law (TCL) §12, is colloquially known as the "100-foot rule." The 100-foot rule creates two requirements. First, the 100-foot rule obligates an LDC to provide gas service to an applicant within 100 feet of existing gas main. Second, the 100-foot rule requires that the LDC provide a certain portion of facilities necessary for the extension of service at no direct cost to the applicant, referred to here as an "entitlement." These facilities generally include approximately 100 feet of additional gas mains and/or service line, service connections, and other facilities necessary for service. Rather than charge an applicant for the costs of installing the facilities to which the applicant is entitled, the LDC adds those costs to its rate base and, thus, recovers them from all its existing customers. The statutes set the minimum entitlement, which Part 230 and the LDCs' tariffs have augmented.

The TCL has included the 100-foot rule in various forms since at least 1890, when it was provided for in §65 before being moved to its current location in §12.[1] Before 1981, the TCL applied the 100-foot rule to all applicants, both residential and non-residential, providing that:

> Upon written application of the owner or occupant of any building within one hundred feet of any main of a gas corporation or gas and electric corporation, or a line of an electric corporation or gas and electric corporation, appropriate to the service requested, and … payment by him of all money due from him to the corporation, it shall supply gas or electricity as may be required for lighting such building … provided that no such corporation shall be required to lay service pipes or wires for the purpose of supplying gas or electric light to any applicant … unless the applicant, if required, shall deposit in advance with the

[1] TCL §65, Laws of N.Y. January 6, 1890, ch. 566, Art. VI, (amended 1909).

> corporation a sum of money sufficient to pay the cost of his proportion of the pipe, conduit, duct or wire required to be installed, and the expense of the installation of such portion.[2]

The TCL obligated LDCs to supply service to applicants within 100 feet of existent gas supply main in a public right of way, regardless of possible gas supply issues.[3] This entitled applicants to 100 feet of new mains and/or service line installations from existent gas mains up to the applicant's private property line at no direct cost to the applicant.[4] Through their tariffs, which the Commission approved, LDCs expanded this entitlement by extending service lines on applicants' private property at no direct cost to the applicants.[5] In this way, LDCs, with Commission approval, shifted more of the costs of expanding the gas distribution system off of individual applicants and into each LDC's rate base, facilitating system expansion.

In 1981, the New York State Legislature passed the Home Energy Fair Practices Act (HEFPA), which incorporated the

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[2] TCL §12, Laws of N.Y. May 17, 1965, ch. 189, §1, (amended 1981).

[3] This obligation to applicants is balanced by PSL §§ 66(2-a) and 66-a, which allow the Commission to allocate gas supply in certain circumstances to protect public health. Case No. 7487, Application of Edward P. Stevenson against Baldwinsville Light and Heat Company, asking that its gas main be extended to furnish his residence with natural gas, Commission Determination (decided September 30, 1920).

[4] Consolidated Edison Company of New York, Inc. v. City of New Rochelle, 140 A.D.2d 125, N.Y.S.2d 521 (1988).

[5] In 1966, The Brooklyn Union Gas Co. provided for up to 50 feet of service pipe on an applicant's private property at no direct charge. Jaffe Plumbing & Heating Co. v. The Brooklyn Union Gas Co., 51 Misc. 2d 1083, 275 N.Y.S.2d 24 (Sup. Ct. 1966), aff'd, 29 A.D.2d 1052, 290 N.Y.S.2d 1022 (1968), aff'd, 26 N.Y.2d 851, 258 N.E.2d 93 (1970).

100-foot rule for residential customers into the PSL as §31(4) and amended TCL §12 to limit its applicability to non-residential applicants.[6] PSL §31(4) provides:

> In the case of any application for service to a building which is not supplied with electricity or gas, a utility corporation or municipality shall be obligated to provide service to such a building, provided however, that the commission may require applicants for service to buildings located in excess of one hundred feet from gas or electric transmission lines to pay or agree in writing to pay material and installation costs relating to the applicant's proportion of the pipe, conduit, duct or wire, or other facilities to be installed.

PSL §31(4) augmented the 100-foot rule for residential applicants, entitling them to at least 100 feet of facility extension up to the served building instead of just up to the applicant's private property line. This means that PSL §31(4) allows a residential applicant for gas service whose building is within 100 feet of a gas main to take service at no direct cost to themself. Similar to TCL §12, PSL §31(4) sets the minimum obligation and entitlement for residential applicants, but does not prevent LDCs from providing further benefits to applicants and seeking Commission authorization to recover the costs of that provision from existing customers.

In 1986, the Commission adopted the current version of Part 230.[7] As discussed further below, the provisions in the

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[6] The Legislature modified TCL §12 by adding "except in the case of an application for residential utility service pursuant to article two of the public service law". Laws of N.Y. 1981, ch. 713, §10.

[7] Case 10866, Proceeding on motion of the Commission as to the Rules and Regulations regarding the Installation of Mains, Service Pipes, Connections and Facilities by Gas Corporations, Memorandum and Resolution (issued May 28, 1986).

current version of Part 230 provide some applicants with entitlements in excess of those required by the TCL and PSL. For example, §230.2(d) provides residential heating applicants with an entitlement of up to 200 feet of combined gas main and gas service line extensions at no direct cost.[8] These provisions and other policies supporting the extension of gas facilities have benefited New Yorkers by helping to shift heating from fuels such as oil and coal to natural gas, decreasing particulate and other emissions in residential areas.[9]

More recently, by adopting the CLCPA, New York has set aggressive targets for state-wide decarbonization by establishing blanket greenhouse gas emission reduction targets and a schedule for achieving them.[10] Specifically, the CLCPA establishes an economy-wide emissions limit of 15 percent of 1990 emissions levels by 2050, which equates to 61.47 million metric tons of CO_2.[11] Gas combustion by residential and commercial end-users results in about 44.58 million metric tons of CO_2 annually.[12] This amount, which does not reflect emissions from gas consumption by industrial end-users, is over 72 percent of the maximum economy-wide target in 2050. While the CLCPA does not specify emissions reduction requirements for the gas

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[8] 16 NYCRR §230.2(d).

[9] See Case 12-G-0297, Proceeding on Motion of the Commission to Examine Policies Regarding the Expansion of Natural Gas Service, Order Instituting Proceeding and Establishing Further Procedures (issued November 30, 2012), p. 4.

[10] CLCPA §2, Chapter 106 of the Laws of 2019; N.Y. Envtl. Conserv. Law §75-0107(1).

[11] 6 NYCRR §496.4.

[12] NYSERDA, Patterns and Trends: New York State Agency Profiles, 2004-2018 Final Report (May 2022), at A-2. https://www.nyserda.ny.gov/-/media/Project/Nyserda/Files/Publications/Energy-Analysis/2004-2018-PattensAndTrends-EEA.pdf

distribution systems in New York State, meeting the economy-wide emissions limits will require reducing the use of natural gas in New York State, making this transition essential. At a minimum, this will require changing the incentives related to gas extensions to new customers. This aim is also consistent with the Utility Thermal Energy Network and Jobs Act, where the Legislature called for development of utility thermal energy networks to address the need for scalable approaches to electrify buildings and reduce reliance on gas distribution infrastructure.[13] The Commission is working to facilitate the development of thermal energy network pilot projects and develop rules consistent with the Utility Thermal Energy Network and Jobs Act, all in order to help enable building electrification as a substitute for expanding gas service.[14]

The CLCPA established the Climate Action Council and charged it with "outlining the recommendations for attaining ... net zero emissions in all sectors of the economy."[15] On December 19, 2022, the New York State Climate Action Council released its latest Scoping Plan.[16] The Scoping Plan states that "emission reductions are needed from all sectors of the economy to achieve the goals and requirements of the [CLCPA]."[17] The

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[13] Chapter 375 of the Laws of 2022.

[14] Case 22-M-0429, Commission Proceeding to Implement the Requirements of the Utility Thermal Energy Network and Jobs Act, Order on Developing Thermal Energy Networks Pursuant to the Utility Thermal Energy Network and Jobs Act (issued September 15, 2022).

[15] CLCPA §2.

[16] New York State Climate Action Council. 2022. "New York State Climate Action Council Scoping Plan" (Scoping Plan). The Scoping Plan's recommendations are intended to inform the State Energy Planning Board's adoption of a state energy plan, which has yet to occur. See, ECL §75-0103(11).

[17] Scoping Plan, p. 46.

Scoping Plan outlines strategies for downsizing and decarbonizing the gas system, stating that natural gas use must decrease statewide by at least 33 percent by 2030 and by 57 percent by 2035.[18] The Scoping Plan also acknowledges the need for further analysis and policy development to manage the strategic downsizing and decarbonization of the natural gas system as the transition to greater electrification proceeds.[19] The Scoping Plan will inform the New York State Energy Planning Board's adoption of an updated State Energy Plan in accordance with section 6-104 of the Energy Law.[20] This Straw Proposal helps to meet the need for policy development in this area.

STAFF RECOMMENDATIONS & QUESTIONS FOR STAKEHOLDERS

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. The present 100-foot rule incentivizes new gas connections by reducing the upfront costs of new gas service for customers. It was extended through regulation following the passage of the Home Energy Fair Practices Act in the early 1980s, which was informally referred to as the New York utility consumer bill of rights. And it has persisted as State policy sought to encourage the use of gas as an alternative to more heavily-emitting fuels, such as coal and oil.

By relieving customers of the need to individually pay all or a significant portion of the upfront costs of connecting

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[18] Scoping Plan, p. 350.

[19] Scoping Plan, pp. 350-351.

[20] Scoping Plan, p. 52; Environmental Conservation Law §75-0103(11).

to the natural gas distribution system, this incentive increased the number of customers choosing new gas service. Gas utilities in New York State have been adding approximately 30,000 new customers per year in recent years, in a combination of new construction and customers converting from other heating fuels.[21] From the perspective of the utilities, especially those that provide only gas service, expanding natural gas infrastructure and service to new customers adds to rate base.

In the context of the heating market overall, the 100-foot rule gives extension of new gas service an advantage when potential applicants compare the option of gas for heating to other options. Further, as new applicants receive gas service, gas infrastructure expands, presumably moving closer to more potential utility service applicants, which in turn would extend the incentive to still more potential customers because closer gas infrastructure would translate to larger portions of new extension costs being covered by the 100-foot rule, thus compounding the issue. For these reasons, Staff proposes amending the 100-foot rule and other provisions within Part 230 to bring the incentive structure for new gas service more in line with other environmentally sustainable options in the heating and energy market, and to bring the incentive to further expand gas infrastructure more in line with CLCPA emission targets. Collectively, these outcomes are in line with achievement of CLCPA emissions limits and the Scoping Plan's goals.

In its Order Adopting Gas System Planning Process (Gas Planning Order), the Commission directed LDCs to provide a

[21] Case 20-G-0131, Modernized Gas Planning Process: Costs of Extending Service to New Customers (filed August 10, 2022).

report on costs of extending service to new customers.[22] The LDCs jointly filed this report, including data on each LDC's number of gas service line installations for new customers, average lengths and costs, and the number of new customers attached per year.[23] These data show, for instance, that in 2021 statewide LDCs spent just over $392 million of ratepayer funds to attach new customers, and collected about $50 million in revenues from those new customers. The time required for a simple payback for those customer connection costs varies across LDCs owing, among other things, to the rates charged to customers. Based on 2021 data, the statewide average payback duration was about 7.7 years.[24] It is clear the entitlements meaningfully defray the upfront costs of choosing gas service over other energy options even if the cost of the entitlements resulting from the 100-foot rule do not generally exceed the revenues received from new gas customers after just a few years.

These entitlements have the effect of inducing customers to choose natural gas over other options, including electrification. Until fairly recently, the State had promoted the use of natural gas by mass market customers as a cleaner alternative to heating oil and coal-fired electricity,[25] but the

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[22] Case 20-G-0131, Order Instituting Proceeding (issued March 19, 2020).

[23] Case 20-G-0131, Modernized Gas Planning Process: Costs of Extending Service to New Customers (filed August 10, 2022).

[24] The payback time required is approximately 3.6 years for Consolidated Edison Company of New York, Inc., 5.8 years for Liberty Utilities (St. Lawrence Gas) Corp., and 14.8 years for National Fuel Gas Distribution Corporation based on 2021 data. These approximate payback periods are reflective of the differences in rates each company charges, among other differences in each utility's then-effective rate plan.

[25] See Case 12-G-0297, supra, Order Instituting Proceeding and Establishing Further Procedures (issued November 30, 2012), p. 4.

CLCPA's adoption in 2019 – alongside the growing availability of more efficient electric substitutes – has shifted State policy priorities. Now, facilitating installation of additional natural gas plant is at odds with the greenhouse gas emissions reduction goals codified in the CLCPA. Given the mismatch between the deadline for hitting those emissions reduction goals and the long service life of natural gas plant, the entitlements under Part 230 are also at odds with concerns regarding the potential that new gas infrastructure may become a stranded asset before the end of its useful life. Therefore, it is reasonable to pursue modifications to Part 230 at this time.

Section 230.1 - Defining "Appurtenant Facilities"

In addition to main and service line, applicants for gas service also require the installation of what PSL §31(4) terms "other facilities." In a similar manner, the existing version of §230.2 requires utilities to provide applicants with "appurtenant facilities" and states that applicants may be required to pay for the portion of appurtenant facilities in addition to the portion "the corporation is required to install without charge." However, the definitions provision of Part 230 (16 NYCRR §230.1) neither provides a meaning for the term "appurtenant facilities" – despite its use throughout the part, nor expands upon its meaning in the rest of Part 230.

The memorandum of adoption of the current version of Part 230 provides little assistance, noting that appurtenant facilities refers generally to "facilities necessary to provide service."[26] Even with this spare guidance, appurtenant facilities could mean virtually anything connected to the main and service line necessary to provide adequate service to the

[26] Case 10866, supra, Memorandum and Resolution (issued May 28, 1986).

customer including meters,[27] regulators, sensing lines to a regulator, vent lines, and even facilities that only function in extraordinary circumstances.

The lack of a definition for "appurtenant facilities" as it relates to the LDC's and applicant's obligations under Part 230 have not created difficulties in the past. However, Staff proposes defining appurtenant facilities in 16 NYCRR §230.1 for clarity, uniformity among the LDCs, and to further the goals of the CLCPA. Specifically, Staff proposes 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." Additionally, Staff seeks comment on the extent to which individually distinct facilities (valves, meters, regulators) can be necessary for specific footages of service or main line, so as to ensure that any final definition of "appurtenant facilities" relate only to the entitled portion of the gas connection.

Section 230.2 – Entitlements

Sixteen NYCRR §230.2 specifies the entitlements LDCs are obligated to provide to applicants for new gas service based on the applicant's status as a residential non-heating, residential heating, or non-residential customer. Residential non-heating applicants are entitled to:

> (1) the material and installation costs relating to up to 100 feet of main, service line measured from the centerline of the public right-of-way (or the main if it is

[27] TCL §16 precludes an LDC from "directly or indirectly charg[ing] or collect[ing] rent on its gas meters." Additionally, PSL §65(6) prohibits an LDC from "mak[ing] or impos[ing] an additional charge or fee for service or for the installation of apparatus or the use of apparatus installed…."

> closer to the customer and development will be limited to one side of the right-of-way for at least 10 years), service connections and appurtenant facilities, but not less than 100 feet of main (if necessary) plus the length of service line necessary to reach the edge of the public right-of-way; and
> (2) the amounts paid to governmental authorities for permits to do the work required and all paving charges that are legally imposed by any governmental authority for the repair or replacement of any street or sidewalk disturbed in the course of such installation.[28]

Residential heating applicants are entitled to:

> (1) the material and installation costs relating to:
> (i) up to 100 feet of main and appurtenant facilities; and
> (ii) up to 100 feet of service line measured from the centerline of the public right-of-way (or the main if it is closer to the customer and development will be limited to one side of the right-of-way for at least 10 years), service connections and appurtenant facilities; but not less than the length of service line necessary to reach the edge of the public right-of-way; and
> (2) the amounts legally imposed by governmental authorities for obtaining required work permits and for repairing or replacing disturbed pavement.[29]

Finally, non-residential applicants are entitled to:

> (1) the material and installation costs relating to:
> (i) up to 100 feet of main and appurtenant facilities; and
> (ii) any service line, service connections and appurtenant facilities located in the public right-of-way; and

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[28] 16 NYCRR §230.2(c).

[29] 16 NYCRR §230.2(b).

> (2) the amounts legally imposed by governmental authorities for obtaining required work permits and for repairing or replacing disturbed pavement.[30]

Section 230.2 also specifies that these entitlements are the minimum facilities the LDCs must provide at no direct charge to applicants for residential service and firm, nondual-fuel non-residential service, and that LDCs may provide additional facilities at no direct charge if cost-justified.[31]

Staff recommends providing all residential applicants, whether for heating or non-heating service, with the same entitlement. As provided above, §230.2(d)(1) currently directs LDCs to provide residential heating applicants with both 100 feet of main and 100 feet of service line at no direct charge. This differs from non-heating applicants, who receive up to 100 feet of main or service line in total. In effect, this means that residential heating customers are entitled to up to 200 feet of total gas piping and appurtenant facilities under the current regulations. This doubles the entitlements residential heating applicants receive when compared to the only explicit entitlement provided in PSL §31(4).

Therefore, Staff recommends changing the entitlements for residential heating applicants to be 100 feet of main and service line combined. Because the residential non-heating classification already entitles applicants to 100 feet of main and service line, this could take the form of creating a new, general residential applicant category that entitles the residential applicant to up to total of 100 feet of main and service line combined, and any appurtenant facilities.

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[30] 16 NYCRR §230.2(d).

[31] 16 NYCRR §230.2(f).

For non-residential applicants, §230.2(e)(1) provides 100 feet of main extension and any amount of service line in the public right-of-way or up to the private property line. In effect, this means that non-residential applicants could obtain a service extension which requires an LDC to construct 100 feet of main piping before having to install an indeterminant amount of service piping in the right-of-way. Therefore, Staff recommends changing the entitlement for the non-residential applicant 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.

Additionally, Staff recommends specifying that LDCs may not provide more than the entitlements set forth in §230.2. This would preclude the LDCs from adding the cost of additional facilities beyond the entitlements to rate base. Applicants would still be able to receive service from LDCs if further than 100 feet from an existing main, so long as the applicant bears the cost of the installation of facilities in addition to those included in the entitlements. As noted above, PSL §31(4) obligates utilities to provide only 100 feet of service to a building and provides the Commission with discretion to extend this entitlement beyond 100 feet. Staff thus believes that these proposed modifications are consistent with the statutory language.

Staff seeks comments from the utilities on the extent to which these proposed modifications would impact their revenues and expenses due to providing less entitled footage to applicants, while applicants who still seek connections would be contributing more to the upfront costs through Contributions in Aid of Construction (CIACs). Additionally, utilities should provide an understanding of any tax implications of Staff's proposed modifications including, but not limited to, the impact

on a utility's income taxes due to additional "gifted" plant paid for directly by applicants. Staff further seeks information from the utilities on the costs these modifications would impose on new customers. Each gas utility should provide the average cost per foot of installation of a new service line and a medium pressure (60 psig) main extension performed over the last five years, to provide an approximate total cost for an average new natural gas customer (residential and commercial provided separately) who only receives 100 feet total of main and service line in accordance with Staff's proposal in this document. This provided data would allow Staff, the utilities, and interested stakeholders to calculate the approximate total cost for the average new natural gas applicant. It would also allow the calculation of the changes in costs for new natural gas applicants who would, under Staff's proposal, receive 100 feet total of main and service line in accordance with Staff's proposal in this document.

Section 230.3 – Surcharge Requirements

The PSL and TCL do not specify that applicants must pay any required CIAC prior to installation of the facilities. In the absence of such a requirement, 16 NYCRR §230.3 currently allows LDCs to recover the CIAC from new customers over time through a surcharge. Section 230.3 generally provides limits on how an LDC can impose such surcharges. Most of the provisions apply to surcharges for the installation of additional main, with surcharges for service lines and connections left to utility tariffs.[32] Unlike the statutory provisions for entitlements, as noted above, neither the PSL nor the TCL address how LDCs can charge new customers for the materials and installation costs of the portion of facilities in excess of the

[32] 16 NYCRR §230.3(b).

entitlement. As a result, there is more flexibility for the Commission to modify these provisions and also more room for input from stakeholders.

Section 230.3(a)(1) limits surcharges to 20 percent of the actual reasonable cost per year for four-inch-diameter or lower, low pressure distribution mains, or two-inch-diameter or lower, high pressure distribution mains. For the installation of a larger main than those stated above, LDCs can only surcharge 20 percent of *estimated* (as opposed to actual) reasonable cost of a four-inch main, unless the estimated consumption of the proposed customer(s) requires the installation of a larger-sized main, in which event the surcharge shall not exceed 20 percent per year of the actual reasonable cost of such main installation.

Notably, "actual reasonable cost" in this context is distinct from "actual cost." It means the LDC's costs for installation in similar, general circumstances. The actual costs of a main extension would include variances in the actual cost the LDC will spend to extend service, such as removal of an unanticipated obstruction. This results in more predictable and standard costs for farther service extensions for most applicants, but also requires current customers to potentially absorb the cost of more expensive variances in installation costs for new customers. Two significant issues require consideration here: (1) consistency with the cost causation principle that costs should be borne by customers for whose benefit those costs are incurred; and (2) consistency with the greenhouse gas emission reduction goals established by the CLCPA.

Consideration of these issues informs Staff's recommended changes to Section 230.3(a)(1). Specifically, Staff recommends modifying §230.3(a)(1) such that, instead of charging

applicants "actual reasonable costs" for service extensions, applicants for gas service should pay for the actual cost incurred by the LDC for the materials and installation of the portion in excess of the entitlement. Having applicants pay for the actual costs of their service extension would allow for the system-wide costs of gas service extensions to be more proportionally allocated to those specific customers. Another benefit of requiring LDCs to base the CIAC to install additional mains on the actual cost of the applicant's installation is that there would not be a need for the categorizations of different diameters of pipe or pressures.

Staff seeks stakeholder comments on whether to continue to allow LDCs to recover the costs of facilities in excess of entitlements through surcharges or require that applicants pay any required CIAC when the facilities are installed. There are three options. First, require that applicants pay any required CIAC up front. Second, require that new customers pay any required CIAC over the course of five years, which approximates the current limitation of the surcharge to 20 percent of actual cost per year. Third, maintain the current limitation in 16 NYCRR §230.3(a)(4)(iii), which requires that any surcharges cease after ten years. This would also maintain the status quo allowing LDCs the flexibility to require surcharges lasting between five and ten years.

The next provision, 16 NYCRR §230.3(a)(2), states that "[t]he surcharges shall be reduced by 50 percent of adjusted gas revenues, but the credit shall not exceed the amount of the surcharge as determined above." As discussed above, Staff proposes to modify Part 230 to reduce the regulation's incentives for new gas service compared to applicants' other energy options. Therefore, Staff proposes revoking §230.3(a)(2)

as it essentially provides facilities in excess of the entitlement to applicants at no direct cost.

Section 230.3(a)(3) provides the methodology by which LDCs shall revise surcharges to reflect additional applicants taking service along the same main extension. An LDC cannot receive a total surcharge amount from multiple new gas customers served by a main extension that exceeds the applicable surcharge amount for that main. An LDC shall also "reasonably [allocate the surcharge] among the customers being served from the main extension, taking into account the portion of mains and appurtenant facilities which the corporation is required to provide without charge to each customer served from such facilities."[33] In effect, this provision allows for gas applicants to pool their 100-foot entitlements as a per-customer entitlement such that multiple new gas customers served by the same main extension are entitled to 100 feet of gas mains multiplied by the number of applicants. For example, an LDC extending mains to a development of ten applicants would provide 1000 feet of mains extension at no direct cost to the applicants.

This policy was adopted by the Commission not because PSL §31(4) expressly or implicitly requires it, but on policy grounds and because it falls within the broad range of interpretations available. Specifically, in 1986, the Commission explained that "[i]t is obviously good public policy, at a minimum, to grant by regulation the same right to applicants for residential service whose buildings are located beyond 100 feet from the nearest main as the Legislature has

[33] 16 NYCRR §230.3(a)(3).

granted by statute to those whose buildings are located 100 feet or less from such mains."[34]

In 1986 and for years thereafter, the pooling of extension entitlements aligned with policy priorities, which included environmental concerns that caused the Commission to incentivize gas service, as discussed above. However, now that electric solutions have become cost-effective and electricity generation has become cleaner, this sort of incentive for gas system expansion is at odds with the CLCPA's overarching call for reductions of greenhouse gas-emitting activities. Further, maintaining that incentive heightens the risk of stranding gas system assets that follows indirectly from the CLCPA's emission-reduction mandate. For this reason, Staff proposes for the Commission to end its policy of pooling extension entitlements. Accordingly, Staff seeks input from stakeholders regarding whether to continue to allow applicants to pool entitlements. Stakeholders should provide specific and concrete examples of impacts and risks of retaining, modifying, or removing the ability of applicants to pool entitlements.

The next proposed modification relates to Section 230.3(a)(4), which provides three conditions where surcharges shall cease. First, §230.3(a)(4)(i) requires the LDC to cease the surcharge when enough new customers are being served by a particular segment of main extension, even if they begin to take service at different times, such that their collective entitlement exceeds the footage of the segment in question. This is a natural extension of §230.3(a)(3)'s per-customer entitlement and, therefore, would be subject to revision to align with any changes to §230.3(a)(3).

[34] Case 10866, <u>supra</u>, Memorandum and Resolution (issued May 28, 1986), p. 8.

Second, §230.3(a)(4)(iii) requires LDCs to cease surcharges after ten years. In Staff's experience, LDCs can surcharge 20 percent of the cost of the extension in each year, which would allow recovery of the entire cost within five years. Additionally, LDCs usually collect delinquent surcharge payments within five years. Staff is not aware of any examples of the costs of an extension remaining unrecovered after the related surcharge has been in existence for ten years, even without timely payment. As discussed above, Staff seeks stakeholder input on whether to require new applicants to pay any required CIACs up front or continue to allow new customers to pay CIACs through a surcharge over five or ten years.

Section 230.3(a)(4)(ii) together with §230.3(a)(6) prevents surcharges for main extensions when total adjusted gas revenue from the customers served from that extension equal or exceed 40 percent of the cost of the non-entitled portion of the extension for any two consecutive calendar years, or when LDCs estimate applicants' adjusted gas revenue will do so. Similar to Staff's recommendation with regard to §230.3(a)(2) discussed above, Staff recommends revoking §§ 230.3(a)(4)(ii) and (a)(6) as these provisions serve to provide applicants with facilities beyond the statutory entitlement at no direct cost to the applicant.

Finally, Staff recommends revoking §230.3(a)(5), which requires LDCs refund gas customers for any surcharge within five years if those customers' total adjusted gas revenues exceed the carrying cost of the main extension serving them. Similar to the above provisions, which reduce or terminate surcharges, this provision refunds any surcharges or contributions new gas customers have made, providing another incentive towards new gas service using funds recovered from LDCs' rate bases.

In addition to the above recommended modifications, Staff also seeks input regarding the methodology(ies) to be used to calculate surcharges. While §230.3 provides limitations on how LDCs can surcharge gas service applicants for additional main extensions that they are not entitled to, it does not explain how the LDCs should calculate these surcharges apart from specifying that return, depreciation, taxes, and maintenance be included in the calculation.[35] Further, the LDCs' ability to surcharge for service line extensions is left entirely to a utility's tariff.[36] This calculation of surcharges plays a role in ensuring that LDCs do not provide unwarranted incentives to applicants for gas service, inducing applicants to choose gas service over other energy options. Any calculation that provides lower upfront costs or lower costs for the surcharge overall will incentivize new gas service. Conversely, 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.

Staff does not have specific recommendations for surcharge methodology at this time as this issue has been largely left to utilities' tariffs. As such, Staff seeks input from the LDCs and other stakeholders to understand what CIAC calculation methodologies the LDCs currently use and ways to standardize or improve those methodologies. To further Staff's and stakeholders understanding of the LDCs' current practices, Staff will convene a technical conference at which the LDCs can present their existing methodologies and respond to questions. Based on this conference, Staff, the Commission, the LDCs, and

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[35] 16 NYCRR §230.3(a)(1).

[36] 16 NYCRR §230.3(b).

other interested stakeholders, could explore the viability of a standardized surcharge calculation methodology to be added to Part 230. A standardized surcharge calculation methodology would allow the Commission to have more direct visibility into any incentives driving new gas service and provide clarity to customers regarding the costs of extending new gas service.

Section 230.5 – Installation Before Service is Required

The final section in Part 230 that Staff seeks to address is 16 NYCRR §230.5:

> Whenever a gas corporation installs service lines, service connections or appurtenant facilities at the request of an applicant who does not immediately desire service, the applicant shall bear the entire reasonable expense of providing, placing and constructing such facilities but shall be entitled to a refund whenever gas service is begun for such part of the expense as the corporation is herein before required to assume. The refund shall be the cost of the service lines and appurtenances, less depreciation at the rate of three percent per year.

This provision mainly applies to developers who deposit money with a utility in the context of obtaining new service connections. Section 230.5 is interpreted to require the utility to refund the developer on a pro-rata basis as new utility customers take service. The deposit is intended to incentivize performance by the developer and protect ratepayers from utility investments on behalf of an applicant that does not produce reasonably compensatory revenues.

The relevant portion of this provision is the depreciation rate that utilities must subtract from the refund, currently set at three percent per year. This blanket depreciation rate may not reflect the Commission-approved depreciation rate of the installed facilities necessary for these service extensions. Such a discrepancy artificially

incentivizes developers, or other applicants who do not immediately desire service, to have LDCs install additional gas extensions because the reduction to the refund does not accurately reflect the utility's losses in facility depreciation.

Instead of a blanket depreciation rate, Staff recommends changing the depreciation figure in §230.5 to better reflect Commission-approved depreciation rates of these installed facilities. Staff invites comment on how gas depreciation rates in this section should be set. The rate could be the depreciation rate in effect for a LDC's relevant plant account. Conversely, the depreciation rate could be a calculated methodology applied across all utilities. Similar to the other recommended changes in this proposal, Staff's intent with this change is to align incentives for new gas service extensions more fairly with other utility options by more accurately reflecting the actual costs of gas infrastructure to applicants.

Additional Questions

Staff recognizes that the changes to Part 230 discussed above may increase the upfront costs for gas service, which otherwise may be the least expensive heating source for new, low-income applicants in certain circumstances. Accordingly, Staff seeks stakeholder input on how these changes can coincide with ongoing electrification programs to allow for prospective applicants for gas service to consider more environmentally sustainable energy sources.

Staff also recognizes that implementation of the All Electric Buildings Act (Act) will affect requests for gas service.[37] In particular, the deadlines and exceptions

[37] Chapter 56 of the Laws of 2023, Part RR.

established in that Act will affect decisions about buildings that had already been slated for construction, buildings that potentially qualify for an exception under the Act, and existing buildings located close to commercial buildings that qualify for an exception. Staff seeks stakeholder input on situations that deserve special attention to ensure that changes to Part 230 will not interact with the Act's implementation in problematic ways.

Finally, Staff notes that, given the GHG emission reduction targets of the CLCPA, authorizing and facilitating continued extensions of the natural gas system could invite the installation of future stranded assets and require the utilities to incur avoidable costs. However, Staff also recognizes that implementing changes to Part 230 could impact currently planned, but not yet constructed, projects. Accordingly, Staff seeks stakeholder input on the potential impacts of modifying Part 230 on planned developments, including affordable housing, and strategies to address such impacts.

CONCLUSION

These recommended changes to 16 NYCRR Part 230 and areas for further comment and input intend to balance the need to reduce new gas service extensions in furtherance of the Climate Action Council's Scoping Plan and the CLCPA's emissions goals, with statutory requirements and applicants' need for affordable service. Staff seeks stakeholder input with how these changes can coincide with ongoing electrification programs to allow for prospective utility applicants to consider more environmentally sustainable utility service. Staff looks forward to the continued engagement of all interested stakeholders regarding this Straw Proposal. Once stakeholders have had the opportunity to provide comments on this Straw

Proposal, Staff anticipates drafting specific modifications to Part 230 through the process required by the State Administrative Procedures Act. Stakeholders would have an additional opportunity to comment on those proposed modifications to Part 230 before the Commission could adopt, reject, or modify them, in whole or in part.

LIST OF RECOMMENDATIONS AND AREAS WHERE STAFF SEEKS COMMENT

1. Staff proposes amending the 100-foot rule and other provisions within Part 230 to bring the incentive structure for new gas service more in line with other more environmentally sustainable options in the heating and energy market, and to bring the incentive to further expand gas infrastructure more in line with CLCPA emissions targets. (Page 9)

2. Staff proposes defining appurtenant facilities in 16 NYCRR §230.1 for clarity, uniformity among the LDCs, and to further the goals of the CLCPA. Specifically, Staff proposes 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." Additionally, Staff seeks further comment on the extent to which individually distinct facilities (valves, meters, regulators) can be necessary for specific footages of service or main line, so as to ensure that any final definition of "appurtenant facilities" relate only to the entitled portion of the gas connection. (Page 12)

3. Staff recommends providing all residential applicants, whether for heating or non-heating service, with the same entitlement. (Page 14)

4. Staff recommends changing the entitlements for all residential applicants to be 100 feet of main and service line combined. (Page 14)

5. Staff recommends changing the entitlement for the non-residential applicants to be no more than the total of 100 feet of mains and/or service line located in the public right-of-way and appurtenant facilities. (Page 15)

6. Staff recommends specifying that LDCs may not provide more than the entitlements set forth in §230.2. In other words, the LDCs must charge applicants for any facilities installed in excess of the entitlements set forth in §230.2. (Page 15)

7. Staff seeks comments from the utilities on the extent to which these proposed modifications would impact their revenues and expenses due to providing less entitled footage to applicants, while applicants who still seek connections would be contributing more to the upfront costs through

Contributions in Aid of Construction (CIACs). Additionally, utilities should provide an understanding of any tax implications of Staff's proposed modifications including, but not limited to, the impact on a utility's income taxes due to additional "gifted" plant paid for directly by applicants. (Page 15-16)

8. Staff seeks information from the utilities on the costs these modifications would impose on new customers. Each gas utility should provide the average cost per foot of installation of a new service line and a medium pressure (60 psig) main extension performed over the last five years, to provide an approximate total cost for an average new natural gas customer (residential and commercial provided separately) who only receives 100 feet total of main and service line in accordance with Staff's proposal in this document. (Page 16)

9. Staff recommends modifying §230.3(a)(1) such that, instead of charging applicants "actual reasonable costs" for service extensions, applicants for gas service should pay for the actual cost incurred by the LDC for the materials and installation of the portion in excess of the entitlement. (Page 17-18)

10. Staff seeks stakeholder comments on whether to continue to allow LDCs to recover the costs of facilities in excess of entitlement through surcharges or require that applicants pay any required CIAC when the facilities are installed. There are three options. First, require that applicants pay any required CIAC up front. Second, require that new customers pay any required CIAC over the course of five years, which approximates the current limitation of the surcharge to 20 percent of actual cost per year. Third, maintain the current limitation in 16 NYCRR §230.3(a)(4)(iii), which requires that any surcharges cease after ten years. This would also maintain the status quo allowing LDCs the flexibility to require surcharges lasting between five and ten years. (Page 18)

11. Staff proposes revoking §230.3(a)(2) as it provides facilities in excess of the entitlement to applicants at no direct cost to the applicant. (Page 18-19)

12. Staff seeks input from stakeholders regarding whether to continue to allow applicants to pool entitlements. Stakeholders should provide specific and concrete examples of impacts and risks of retaining, modifying, or removing the ability of applicants to pool entitlements. (Page 20)

13. Staff recommends revoking §§ 230.3(a)(4)(ii) and (a)(6) as these provisions provide applicants with facilities beyond the statutory entitlement at no direct cost to the applicant. (Page 21)

14. Staff recommends revoking §230.3(a)(5), which requires LDCs refund gas customers for any surcharge within five years if those customers' total adjusted gas revenues exceed the carrying cost of the main extension serving them. (Page 21)

15. Staff also seeks input regarding the methodology(ies) to be used to calculate surcharges. (Page 22)

16. Staff seeks input from the LDCs and other stakeholders to understand what CIAC calculation methodologies the LDCs currently use and ways to standardize or improve those methodologies. (Page 22)

17. Staff recommends changing the depreciation figure in §230.5 to better reflect Commission-approved depreciation rates of these installed facilities. Staff invites comment on how gas depreciation rates in this section should be set. (Page 24)

18. Staff seeks stakeholder input on how these changes can coincide with ongoing electrification programs to allow for prospective applicants for gas service to consider more environmentally sustainable energy sources. (Page 24)

19. Staff seeks stakeholder input on situations that deserve special attention to ensure that changes to Part 230 will not interact with the Act's implementation in problematic ways. (Page 25)

20. Staff seeks stakeholder input on the potential impacts of modifying Part 230 on planned developments, including affordable housing, and strategies to address such impacts. (Page 25)