New York Chapter
Association of Energy Engineers

Comment on Proposed Rules for a new section 103-14 to Chapter 100 of Title 1 of the Rules of the City of New York to establish procedures for reporting on and complying with annual greenhouse gas emissions (Local Law 97). Submitted 11-14-2022.

The NY Chapter of the Association of Energy Engineers, the city's longest standing professional group dedicated to education and professional development around energy efficiency and alternative energies, is supportive of NYC LL 97 and is pleased to have the opportunity to comment on the NYC DOB Proposed Rules for implementing the law. Our membership includes many professionals who have been involved in filings under the city's energy laws for many years and as such are most – although not exclusively -- concerned about various calculational and reporting methods and their impacts.

1. **Calculation of Emissions, sect. (d)4: Sources of Data for Energy Use and Square Footage by Use Type.** At present, the sources for energy usage, occupancy types and associated square footages are not specified in the proposed Rules. ***We urge that the Rules clearly specify use of ESPM energy data and property types/square footage,*** with adjustments allowed as specified in this section or as may be specified in future rules. This will provide a consistent and traceable data chain recorded in city filings.

   We well recognize that there are underlying uncertainties in the ESPM data as developed and reported, in particular and has been noted in past proceedings, difficulties in establishing gross square footage and occupancy type square footages. This makes precision difficult and consistency in the data chain all the more important. Development of the building's profile should be specifically linked to procedures under ESPM, as has already been initiated with use of ESPM Property Types. Adjustments from year-to-year should be clearly documented. ***We recommend that a standard-format log and logging procedure be established and included in these Rules for recording any annual changes in Property Types and their floor areas and the basis of such changes to the data.*** Even with such provision, this data should be subject to audit and penalty to avoid manipulation that would falsely increase a carbon emission cap, as we believe is allowed for in the law, sect 28.320.6.5 False Statements.

2. **TOU rate**. The calculation described, sect. (d)3(iii)(c)(1-5), is relatively complex. We understand that this is due in part to the absence of publicly available data from the NYISO and may be resolved in the future. Nevertheless, for present purposes and until such time as the necessary data is directly available, the complexity suggests that a consultant would be required to use this option. Many buildings that would most benefit from this option, ie – multifamily buildings with a large portion of off-peak or secondary peak electricity, are in a poor position to afford the necessary expertise and are therefore differentially treated under the regulation.

   Secondly, the complexity of the calculation suggests a high likelihood of errors and/or inconsistent results from different consultants. Who will check consultants' calculations?

To address these issues related to the complexity of this calculation, ***we suggest that the necessary hourly values be published by DOB along with a calculational spreadsheet mandated for use*** by consultants for the specific filing periods covered by their individual reports. This would be simpler and more straightforward for consultants and provide for more consistent and checkable outcome values.

We also note the inconsistency that this TOU calculation relies on real-time actual data, while the non-TOU Electricity Emissions Factor is based on a projection of grid assets and input mix. This may represent a disincentive to use the TOU option in reporting.

3. **Campus-style Systems.** Here, again, we find the required calculation unnecessarily complex for the intended outcome. It is unclear to us why calculation of a GHG Coefficient is required and to what purpose it will be applied. A campus, just like any individual building, can more simply be treated as a "black box" into which there are energy inputs. The energy inputs are purchased energy (with any on-site renewables treated per the separate provisions for same), each type of which has its particular GHG coefficient as established elsewhere in the rules; exports, if any, should be credited at the grid coefficient. We do not see the purpose of having a Campus-Coefficient computed and it only adds to the calculation and filing costs. Maybe we are missing something? Far more important, and not addressed by the proposed rules, is the method for establishing the occupancy use-types across a campus, although presumably this has already been addressed and established under Local Law 84 rules and the Rules should specifically point to conformity with LL 84 rules and procedures whenever possible. ***We urge a review and simplification of this section along the lines suggested above.***

   Moreover, there remain ambiguities in the criteria for establishing occupancy use-type. If method(s) for establishing the occupancy use-type is already included in the Law or Rule or other referenced procedure (eg - as under LL84), we request clarification from the City, indicating such language and its location.

4. **Electricity Emissions Factor (EEF).** We note that the Electricity Emission Factor is based on substantial greening of the grid by specified times. This is recognized by DOB and the Advisory Group and is based on best-estimate projections of compliance with NYS law. We also understand that setting the EEFs low provides an incentive for electrification, which is a desired policy goal. We believe that the EEFs are set too low based on over-optimism regarding evolution of the grid and that, as a result, some investment may go to electrification (such as by heat pump projects) that might have better gone to, say, energy efficiency or renewable biofuel projects as equally viable ways to bring down a site's GHG emissions. ***We suggest smaller increments in reducing the EEF, thus equalizing the investment playing field among available technologies*** but we recognize the state and city policy objective here.

5. **Other Fuel Emissions Factors:** We note that other non-carbon fuels are under development, such as Green Natural Gas (eg – anaerobic digestion of organic waste), Green Hydrogen (catalysis by wind or solar electricity) or other bio-fuels/bio-fuel mixes that would be available via existing pipeline or means of distribution other than electricity. These are focus of significant interest and investment by governmental entities at various levels and of at least

one local utility. While provision exists, in section (d)3(c), to bring forward additional carbon coefficients, in light of the strong developmental interests (similar to the projections of a green grid, albeit without the force of law), ***we strongly suggest that a process be specified in these Rules for the development of carbon coefficients for at least the alternatives mentioned above, concluding with specific factors to be published by a date-certain***. This would result in a more consistent, orderly process and unitary outcome than as presently allowed for by individual consultant calculation/submission and would also help make such potential solutions available to those subject to compliance who cannot afford sophisticated engineering consultants and analyses.

We further note that a District Steam factor is specified. We recommend that this factor be coordinated with the District Steam factor used by ESPM and, to the greatest extent possible a single factor be developed for use both within ESPM and for LL97 reporting.

6. **Unequal Sectoral Burdens.** This is not a comment on the Proposed Rules so much as a comment on the Law and its implementation. In so far as multifamily buildings have a higher percentage of fossil fuels in their energy mix, compared to commercial and institutional properties, they bear a higher burden under the law. Programming should be developed for this sector, in particular for high-fuel buildings that do not incorporate affordable housing. It may or may not be appropriate to recognize the need for such support and possible mechanisms/programs to be developed in these Rules.

Respectfully submitted 11-14-22 on behalf of the AEE-NY Board of Directors, by working group members,

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