Comments to the New York City Department of Buildings

Re: Proposed Rule 103-14 on Procedures for Reporting on and Complying with Annual Greenhouse Gas Emissions

Submitted via rules.cityofnewyork.us and dobrules@buildings.nyc.gov

November 14, 2022

Dear Acting Commissioner Vilenchik,

Urban Green Council, Association for Energy Affordability (AEA), Natural Resources Defense Council (NRDC), New York League of Conservation Voters (NYLCV) and the Regional Plan Association (RPA) strongly support the Department's proposed rules for Local Law 97.

These proposed rules are practical, comprehensive and forward-looking. They answer many remaining questions about the law's requirements through 2050, align with New York State climate mandates, and help incentivize building electrification as a way to reduce carbon. Our organizations applaud the Department for the robust stakeholder process that informed this outcome.

Local Law 97 is a transformational law and the centerpiece of New York City's climate strategy for buildings, which make up two-thirds of citywide carbon emissions. Successful implementation means ensuring the law remains ambitious, equitable and effective, ultimately cutting carbon emissions through efficiency and electrification in New York City buildings.

Our comments below underscore where the proposed rules align with that aim. We also offer recommendations on some technical issues and areas for additional clarification, as well as potential measures to further strengthen Local Law 97 in future policy development.

A. The proposed rules strengthen the law's metrics and maintain its impact.

After substantial input from the Local Law 97 Advisory Board and Working Groups, the proposed rules refine many details of the law's metrics and compliance requirements. In particular, our organizations strongly support the following proposals.

1. *A greener 2030 carbon coefficient for electricity that will help spur electrification.*

The proposed rules set a carbon coefficient for electricity for 2030 to 2034 that is 50 percent lower – and cleaner – than the first compliance period. This new, lower coefficient reflects the

significant clean energy coming to NYC in the years ahead with the New York State CLCPA mandate to reach 70 percent renewable electricity by 2030 and approval of Tier 4 projects. This change will help incentivize more buildings to lower carbon emissions through electrification.

2. *Adjusted 2030 emissions limits to maintain the law's intended impact.*

When Local Law 97 was designed, about 75 percent of covered buildings were over the 2030 caps. With the new 2030 electricity carbon coefficient, the previous 2030 building limits no longer meet that criteria. The new proposed emissions limits for each property type preserve the initial design of the law, with about 75 percent of buildings over the limits and required to take some kind of action to get in compliance by 2030.

3. *60 property types from EPA's Portfolio Manager that enable better-tailored caps.*

EPA's Energy Star Portfolio Manager – the leading tool for tracking building energy use – includes many property types based on the wide variation in energy use among buildings. In place of the law's 10 NYC Building Code occupancy groupings, the 60 new property types in the proposed rules enable carbon caps that are better suited to the range of activities in buildings. That's particularly important for spaces with inherently higher-than-average energy use, like grocery stores and data centers, which currently fall in much broader categories.

4. *A zero-emissions requirement for 2050 that shifts LL97 to carbon neutrality.*

The proposed zero-emissions requirement starting in 2050 goes beyond LL97's original 80 percent carbon reduction by 2050 and demonstrates the city's long-term commitment to carbon neutrality. The move aligns LL97 with the State CLCPA requirement to achieve net-zero emissions across all sectors and sends a strong message that the City is aligning with the global movement to limit warming from climate change to no more than 1.5°C.

B. Certain technical aspects require additional guidance and clarification.

The proposed rules offer necessary clarity on many technical details, like time-of-use electricity carbon accounting, deductions for clean distributed energy resources, and methodologies for calculating emissions across campus properties with complex energy systems. With the first compliance year rapidly approaching, these details will help building owners continue moving from planning to action.

As the Department continues the rulemaking process and turns to bulletins, notices and other guidance, we encourage further attention to additional technical details, including the following:

- **Carbon neutral requirements**: We strongly support the shift to carbon neutral (or net-zero) requirements for 2050 to align with State policy, but the current proposal should be more specific. Since the GHG limits from 2035 to 2050 appear to be based on the linear path to zero emissions, additional detail is necessary on how this standard will apply in practice to drive emission reductions in alignment with international standards and science-based approaches to limit global warming to 1.5°C. In particular, the Department should clarify the need for mechanisms to address those "last mile" buildings emissions.

- **Thermal storage**: LL97 appropriately defines clean distributed energy resources to include thermal energy storage systems, which can yield significant environmental

benefit by shifting electricity loads to off-peak times. The proposed deductions for energy storage cover only electric batteries. The law specifically requires the Department to develop rules for electric storage, but it also more broadly requires a deduction based on the calculated output of an onsite thermal storage system. The Department should provide a method for translating thermal energy storage into net equivalent electricity for the purpose of this deduction (a straightforward conversion well understood by HVAC engineers).

- **GHG limits for 2024 to 2029**: The proposed re-mapping of the law's 10 GHG limits across 60 new property types for the first compliance period yields carbon caps that are better tailored to building activity. But because the exercise is constrained by the existing 10 GHG limits, some limits may not adequately match energy intensity in some property types, like data centers and financial offices. Additional clarity on the methodology behind these limits would help inform the market.

- **Time-of-use electricity coefficient**: Because there is no published real-time marginal grid carbon coefficient yet, the proposed rules include significant detail on a price-based calculation to derive that number. Given the complexity of the calculation, we encourage the City to work with NYSERDA, the NYISO or other appropriate entities to provide a centralized, official calculation based on the proposed methodology.

- **District steam coefficient:** The proposed coefficient for district steam differs somewhat from Con Edison's long-term steam system planning. Additional clarity on the methodology behind that number and how Con Edison's decarbonization progress may affect that coefficient in future would help inform the market.

C. Two future steps can ensure Local Law 97 drives building decarbonization.

Beyond the specifics of these proposed rules, many stakeholders are concerned about the role of renewable energy credits (RECs) and how they might impact the goals of Local Law 97. Our organizations support the necessary first step of limiting RECs to offsetting electricity emissions. But as recent analysis from Urban Green Council shows, the current framework risks allowing far too many buildings to meet their 2030 caps through the purchase of RECs, with minimal or even no building improvements.

Local Law 97 is the critical policy lever we have to spur retrofits in large, existing buildings. State and city climate and clean energy planning and achievement of targets depend on significant improvements in building efficiency over time so that our energy demand matches our renewable power supply. And without in-building work, we won't see the local air pollution benefits that come from reducing and eliminating fossil fuels burned for heating and hot water. Money spent on LL97 compliance outside of building upgrades won't support local jobs, including the NYC architects, engineers, contractors, electricians, plumbers and other trades professionals carrying out retrofits.

Policy solutions to this challenge must be balanced, equitable and data-based, affording flexibility over time while driving significant building decarbonization. We are glad that the Department is working with NYSERDA to study the potential need for and impact of further limits on RECs.

With these considerations in mind, our organizations offer a dual approach – by whatever legal pathway is appropriate – for future policy development to ensure the law mobilizes building retrofits:

1. Place additional reasonable limits on compliance through RECs; and

2. Develop a new option to make an alternate compliance payment into an Equitable Buildings Fund for approved and additional efficiency and electrification upgrades in designated affordable housing in New York City.

With proper pricing and guardrails, this dual approach would keep more compliance dollars—and potential penalty dollars—in New York City's buildings, while helping those most in need of support. It would also afford building owners flexibility to plan work over time, including for the early years of Local Law 97 when there will be no RECs on the market at all. Perhaps most importantly, this approach would ensure the law drives the building improvements—and related jobs and health and comfort benefits—New York City needs.

New York would not be the first city to pursue this option. The Equitable Emissions Investment Fund created as part of Boston's building performance law (BERDO 2.0) does just this, and is a helpful precedent to follow.

--

Ultimately, Proposed Rule 103-14 is a major step forward and our organizations thank the Department for its leadership on Local Law 97. We look forward to continued engagement on additional subjects to ensure full and effective implementation of this groundbreaking law.

Sincerely,

Chris Halfnight
Senior Director, Research and Policy
Urban Green Council

Martha Sickles
Consultant
Association for Energy Affordability

Alia Soomro
Deputy Director, New York City Policy
New York League of Conservation Voters

Donna De Costanzo
Eastern Regional Director, Climate & Clean Energy Program
Natural Resources Defense Council

Dale Bryk
Senior Fellow for Energy and Environment
Regional Plan Association

Urban Green Council is a nonprofit focused on decarbonizing buildings for healthy and resilient communities.

The Association for Energy Affordability (AEA) is dedicated to achieving energy efficiency in new and existing buildings to foster and maintain affordable and healthy housing and communities, especially those of low-income.

Natural Resources Defense Council (NRDC) is an environmental nonprofit that has been advocating for clean energy policies and programs in New York for more than 50 years.

New York League of Conservation Voters (NYLCV) is the only statewide environmental organization in New York that fights for clean water, clean air, renewable energy and open space through political action.

The Regional Plan Association (RPA) is an independent non-profit civic organization that develops and promotes ideas to improve the economic health, environmental resiliency, and quality of life of the New York metropolitan area.