



October 24, 2023

Transmitted Electronically via Email

New York City Department of Buildings
Office of the General Counsel
280 Broadway Room/Floor: 7th Floor
New York, NY 10007

Re: “Annual Greenhouse Gas (GHG) emissions Limits for Buildings.” Proposed Rules for Article 320 Compliance and Penalty Framework and Article 321 Compliance and Penalty Framework.

To Whom It May Concern,

Bloom Energy appreciates the opportunity to submit the following comments in response to the New York City Department of Buildings (DOB) proposed rules regarding the calculation of penalties under Local Law 97 and amendments thereto. Bloom Energy very much supports the decarbonization of buildings, which are the source of over forty percent of all greenhouse gas emissions. Nevertheless, to the extent that a law and regulation that was generally intended to apply to the buildings sector is instead applied to distributed energy resources (DERs) it is very important to avoid the inadvertent consequence of higher GHG and air pollutant emissions from the electric sector.

Consistency with the Law

Section 9 of the proposed rulemaking¹ appears to be factually inconsistent with the enacted law. This section states that fuel cells that were installed prior to January 19, 2023, shall be measured in accordance with a differential emissions calculation that is set forth in Table 103-14.1 of the proposed regulation. However, the law states that fuel cells that “*commence operation prior to the later of January 1, 2023 or the promulgation of such rules, shall be credited compared to the electricity grid marginal emissions factor published in the most recent New York State Energy Research and Development (NYSERDA) Authority Renewable Energy Standard program impact evaluation.*”² While the proposal appears to be plainly inconsistent with the letter of the law, it is less clear at this time how the proposed methodology does or

¹ New York City Department of Buildings Proposed Rule-LL97. <https://rules.cityofnewyork.us/wp-content/uploads/2023/09/Proposed-Rule-LL97-Article-320-Penalty-Framework-9-7-23-with-certs.pdf>.

² Local Law 95 of 2020 https://www.nyc.gov/assets/buildings/local_laws/ll95of2020.pdf

does not comport with the terms of LL97 and the amendments thereto in terms of its substantive impact on emissions calculations. As a result our comment on this specific provision at this time is that the Department should seek to establish a grid emissions intensity figure that is as close as possible to the emissions intensity of the generator that will be displaced by the deployment of a distributed energy resource. We believe this to have been the intent of the amendments embodied in Local Law 95 and Local Law 147 and are hopeful that DOB will help the fuel cell industry and its customers understand the real life practical implications of the proposed rule on project emissions profiles and the impact of the resulting penalty calculations on project economics.

Marginal Emissions

Regardless of whether the proposed methodology applies to new or existing fuel cell projects, the “annual average marginal grid coefficients” against which the Department of Buildings appears to be proposing for purposes of comparing fuel cells, as set forth in proposed Table 103-14.1, appear to be far different from, and lower than, actual marginal grid coefficients - both now and in the foreseeable future.

To put them into context, the marginal grid coefficients set forth in Table 103-14.1 that the Department of Buildings plans to use only five (5) years from now for the purpose of calculating emissions from fuel cells is over 70% lower than the lowest marginal emissions rate in the whole country today³. Our concern is that the use of a grid coefficient that does not reflect the reality of NYC’s grid, today or in 2029, will have the effect of making grid delivered electricity appear to be cleaner than it actually is and for DER delivered electricity to appear to be dirtier than it actually is. This disconnect from actual conditions will in turn cause building owners and others to choose an option that appears to be “cleaner” from the perspective of the DOB regulations when in fact that choice will simply cause higher-emitting marginal fossil plants – too many of which are in already overburdened communities – to run more often than they otherwise would.

Solving the Problem

We believe that the way to address the risk of inadvertent consequences in the electric sector is to account for the emissions of on-site DERs such as fuel cells in a way that as closely as possible matches the actual impact that those DERs have on the operations of the electric grid. We look forward to working with the

³ The EPA publishes non-baseload output emissions rates that represent marginal emissions within eGRID subregions. Environmental Protection Agency. Emissions & Generation Resource Integrated Database (eGrid2021). <https://www.epa.gov/egrid>



Department of Buildings to ensure that the letter and the spirit of Local Law 97 and its amendment are carried out so that NYC buildings can be decarbonized without inadvertently increasing GHG and air pollution emissions in the electric sector.

Thank you for the opportunity to provide input during the Department's rulemaking process.

Sincerely,

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