Testimony and Comments of New York Communities for Change to Mayor Adams and the New York City Department of Buildings
October 24, 2023

[this testimony will be condensed into 3 minutes of verbal testimony for the hearing, as directed]

Summary & Introduction

My name is Pete Sikora and I am the Climate & Inequality Campaigns Director for New York Communities for Change (NYCC). NYCC is a community-based group organizing in predominantly middle and lower income Black and Latino communities in New York City and on Long Island for economic, social and climate justice. I was a member of the City's Advisory Council for Local Law 97, appointed by the City Council.

NYCC was deeply involved in the campaign to win enactment of Local Law 97, which the real estate lobby and its allies bitterly resisted. Since 2019, the real estate lobby shifted its focus to weakening the law through lax enforcement and implementation. For our part, along with other organizations, we have continued to educate and mobilize New Yorkers to push for full implementation and enforcement.

Local Law 97 is the world's most-important city-level climate and jobs law. Energy efficiency leads to lower utility bills, which particularly benefits our membership. Local Law 97 is on track to create tens of thousands of jobs this decade in design, renovation and construction.

Already, the energy efficiency industry is booming. Firms in the design, assessment and engineering field that are market leaders in New York are getting a flood of work. New products and services, such as software and advanced building controls, are coming onto the market. In large part due to Local Law 97, New York City reportedly leads the nation in new clean energy jobs. Simply googling the law or a quick scan of social media gives a sense of the major economic activity that is beginning to ramp up. As increased renovation and hands-on upgrade work begins, our members will disproportionately benefit because the city's unemployment and underemployment rates are higher in our members' communities; more hiring helps counter the disemployment generated by ongoing and historic discrimination, and pushes up wages and benefits.

The law is also exceeding the city's expectations. As of 2022 data, half the buildings that were above the 2024-2029 limits when the law passed in 2019 have reduced their pollution below the cap. Two years before the 2024 limits go into effect, only 10% of buildings were still above the initial limit. Local Law 97 is on its way to a spectacular success. It is great to see.

Now, just as it is becoming clear the law is on track to achieving far-reaching success, Mayor Adams has proposed to take New York City backwards at the behest of the real estate lobby.

Mayor Adams' proposed rule would create two large loopholes in the law that landlords could choose to exploit to avoid cutting pollution, which in turn would mean less job creation and higher utility bills. It is outrageous and irresponsible.

The letter, spirit and intent of the law is to reduce climate-heating pollution, which in turn creates jobs and lowers utility bills through energy efficiency. The loopholes introduced in these draft rules improperly stretch the regulatory discretion granted to Mayor Adams for rule-making by allowing building owners to pollute far beyond the pollution limits set in the law.

The real estate industry are Mayor Adams' top campaign donors. We know he personally takes calls from their CEOs. His top former staff and other associates are currently or have been employed by them.

Now, Mayor Adams has embraced the Real Estate Board of New York's (REBNY) agenda to roll back Local Law 97, New York City's landmark climate and jobs law. They wanted a 2 year delay? They got it. They wanted the option to buy Renewable Energy Credits (RECs) instead of cutting pollution? They got it.

In particular, these rules contain two enormous proposed giveaways:

1. **Two Year Delay Program** - Building owners have had five years since the law's enactment in April 2019 to reduce their properties' pollution below initially loose emissions caps. Under these rules, they would be allowed 2 more years (or possibly more depending on when they submit an application). They would not be responsible for the pollution cuts they were mandated to make in 2024 and 2025. As a condition of receiving their two year delay, these owners would have to promise to follow the law in the future and submit a plan to do so. The Administration has touted the submission of a plan as a valuable "compliance path" or "glide path". Yet this proposed delay program would simply reward owners who stuck their heads in the sand and refused to clean up their highly-polluting buildings. The owners whose buildings are still so polluting that they are over the 2024-2029 limits would never be obligated to make the pollution cuts mandated under the law for 2024 and 2025. They'd get a free pass for at least two years. These initial limits are not hard to meet (absent truly unusual circumstances for which the law's adjustment or other defined make sense). Indeed, these buildings tend to be exactly the types of buildings that can save the most money through simple, low-cost energy efficiency improvements. Many haven't implemented even the most basic low cost/high payoff energy efficiency upgrades. In total, these buildings pollute hundreds of thousands of tons of CO_2 equivalent yearly above the 2024-2029 pollution limits. It is most likely that the Department of Buildings, an understaffed, overwhelmed department, will be unable to effectively review compliance plans, resulting in rubber-stamp approvals. Indeed, the entire exercise would be an increase in the very sort of inefficient paperwork the Mayor claims to oppose. The Administration can easily fix this delay program by requiring landlords to cut more pollution after their delay to make up for the pollution cuts they did not make during the delay period. For example, a

lower pollution limit for 2026 - 2029 for buildings that get a delay for 2024 and 2025 would be easily achievable for those owners, since even if they've stalled so far, they could implement any projects needed in time. Owners should not be rewarded for dragging their feet. Patching the delay program to require larger cuts to make up for the increased pollution during the delay period would ensure that pollution is reduced in the amounts that the law specifies, and therefore ensure job creation and lower utility bills. Owners could join such a delay program voluntarily, but would not simply be rewarded for failing to meet the law's easy initial limits. They should not receive a free pass for polluting above the law's pollution limits for two or more years.

2. **Renewable Energy Credit "Buy Out" Loophole** - Under the law and previous rule, purchasing Renewable Energy Credits in place of pollution reductions is limited to covering pollution generated from electricity use and RECs only from projects that interconnect into the city's electric grid. However, these limits are far too loose: the CHPE project alone, which is under construction and is projected to be operational in 2026, will generate a flood of RECs eligible for purchase as a substitute for pollution cuts. Indeed, there will be more RECs flooding the market than the total volume of pollution cuts required by the law before 2030. Landlords will be able to buy whatever amount of RECs they desire in place of pollution reductions from 2026-2029. Even after 2030, when the pollution limits greatly tighten, about 50% of the pollution cut under the law could be offset by REC purchases. While RECs are currently limited to offsetting pollution generated by electricity use, that is such a large part of almost any building's pollution that REC purchases could cover *all* the pollution cuts required under the law for huge swathes of large buildings. Local Law 97's Advisory Council recommended RECs be further limited to offsetting only up to 30% of the pollution by which a building is over its pollution limit. With such a tight limit, no landlords could simply buy RECs and call it a day. Yet the Advisory Council's consensus recommendation was rejected by the Mayor, who is only limiting RECs for buildings that opt for the delay program. While future REC prices are unknown, RECs are very likely to be attractive to landlords through the law's 2030 limit. After 2030, RECs could also be priced at a level that makes them an attractive substitute for investments in energy efficiency to cut pollution. If building owners chose to buy RECs instead of investing in energy efficiency upgrades, New York will lose tens of thousands of jobs and utility bill reductions across the city. If landlords buy RECs in substantial quantities in place of pollution cuts the city and state will not meet the pollution reductions of the state's climate law, NYC's own law that sets overall GHG pollution reduction targets, or the Paris Climate Agreement. The city (and state) would not achieve the minimal pollution reductions needed to stave off global catastrophe. It is not acceptable to gamble in such a manner on unknown future REC prices. Under these rules, at a minimum landlords will know that it will be possible that RECs could be a complete "buy out" option in place of investment in their buildings in the future. Therefore, they will be less likely to upgrade to high energy efficiency, knowing that it will be likely that before 2030 they could purchase RECs and that post-2030 there would also be a large chance that REC purchases would also be an attractive option for

them. The Advisory Council's consensus recommendation should be adopted to ensure that landlords can't buy out of their obligations to cut pollution from their properties.

If these rules stand, building owners could choose one of two large loopholes: a two year delay or REC purchases in place of pollution reductions. They can use one of two options to evade their social and legal responsibility to cut pollution. The law would be severely weakened.

When they are challenged on these loopholes, the Mayor and the Administration try to use the law's complexity to confuse New Yorkers. And there's already plenty of fear and confusion among a subset of building owners thanks to the real estate lobby and its various front groups scaremongering and outright lies about the law. Mayor Adams could have countered this effort, but it now appears that he agrees with it. Local Law 97 is a complicated law. Many regulations are being set, as well. The Administration's representatives hide behind this complexity with misleading talk points to divert attention from the basic problems with the Mayor's proposed rules. Yet no amount of doubletalk can cover up plain reality: this rule would grant landlords an option of a two year delay or a buy-out loophole.

If this rule is adopted as proposed, the city could lose hundreds of thousands of tons of pollution cuts; thousands of jobs; and lower utility bills under the delay program. ***Moreover, these proposed rules signal that the Mayor will also weaken the 2030 pollution limits.*** We do not know when further rules for 2030 will be promulgated, but if this rule is not amended as proposed above, it would be logical for landlords to assume that a re-elected Mayor Adams would opt, at a minimum, to allow a similar two year delay in the law's 2030 requirements.

If the city delays the 2030 requirements, then New York would lose millions of tons of pollution reductions and many more jobs, as well as utility bill savings. Depending on future REC prices under the proposed rule, we could also lose up to about half of the law's pollution reductions, and therefore, about half of the jobs.

Tens of thousands of jobs are now at serious risk, along with lower utility bills and cleaner air. We urge the Administration to reconsider these rules, and detail our objections below.

Further, Detailed Comments

The Proposed Two Year Delay Program Would Permit Hundreds of Thousands of Tons More Pollution Per Year

Building owners are obligated to cut a total of about 800,000 tons of CO2 equivalent pollution per year under the 2024-2029 caps, according to the Urban Green Council. The law's pollution limit tightens in 2030 and aggregate pollution reductions grow to about 5 million tons per year (or about 40% cuts overall). These are the minimum pace and depth of pollution cuts by 2030 needed to avoid global catastrophe. These pollution reduction targets are reflected in city and state law, as well as the Paris Climate Agreement. The city and state are obligated by their laws

to achieve these pollution reductions. Local Law 97 makes it real for NYC's top source of pollution by setting enforceable, specific limit building by building. It represents a paradigm shift: no longer can landlords treat the air as an open sewer for pollution from their building.

As of the most recent public data, which covers 2022, the percent of buildings that were over the initial limit dropped from 20% when the law was passed in 2019 to about 10%. That is major progress. However, a substantial number of owners remaining are ignoring the law.

Now, such owners will see a delay as their path, and many will hope or even reasonably assume that the city will grant them further delays in the future. *Thus, we estimate that hundreds of thousands of tons of pollution cuts per year in 2024 and 2025 that should be made would be waived away if this rule is adopted.* Delays may also extend into 2026 or later, depending on when landlords submit their proposed plans and the department's implementation of this rule as proposed.

A two year delay on cuts may not sound to some like a long period of time, but the plain fact is that after decades of failure to reduce pollution, society is now on the verge of global catastrophe. We can't rely on a "glide path" anymore, like we could have if cuts had begun in the 1980s when the science and threat became crystal clear. Now, rapid pollution cuts are necessary.

Local Law 97 closely follows the path of pollution cuts needed in aggregate to give the world a 50/50 shot at avoiding a grim fate. A two year delay - and possibly more - costs two out of the seven full years remaining to 2030. And there is no room left for delay. All of our time has already slipped away as politicians and corporate leaders, influenced by profit motivations and large campaign donations, failed to act.

As a result, we have no margin left. New York City must rapidly stop polluting, now. Thankfully, in the process we can build a more-fair society with many more good, union jobs and lower energy bills. *Mayor de Blasio and the previous Council deserve enormous credit for enacting the law and beginning its implementation.*

Buildings over the 2024 limits (as of the most recent public data) run from massive Class A Manhattan skyscrapers to poorly-managed and poorly-maintained outer borough co-ops and condos. Most of these properties are barely over the 2024 limit. They would not need to do a lot of work to get under it. And since many of them haven't done basic energy efficiency work, they stand to save money doing so. While these very polluting buildings are a small percentage of the buildings covered by Local Law 97 overall, they are the city's most-energy wasteful, most polluting properties. Absent unusual circumstances that do occur but are outliers, none of these owners should get a free pass as this proposal would hand to them.

The Proposed Two Year Delay Would Cause Landlords to Reduce Energy Efficiency Work

On its face, the proposed delay program contradicts the purpose, letter and spirit of Local Law 97 by arbitrarily allowing these landlords and owners to receive an exemption from pollution reduction requirements in 2024 and 2025, and possibly later. Promising to follow the law and other laws in the future and submitting some sort of plan on paper is not a reasonable use of the Administration's discretion in implementing the law.

Commissioner and Chief Climate Officer Aggarwala insists on the Administration's behalf that the delay program imposes a "legally binding contract" on owners to follow the law. But the law is… law. Building owners are *already obligated* to follow the law. By allowing landlords to get a two-year delay in return for promising to follow law and submitting a plan, the Administration simply concedes that Local Law 97 does not, in practice, apply for at least 2024 and 2025 for any building owner that chooses to enter the delay program.

The Administration anticipates that a large number of owners will choose this proposed delay. We agree: if an owner has not taken action to this point, they are heaving a sigh of relief, because Mayor Adams is proposing to hand them a get out of jail free card. There will surely be at least several hundred applications to such a program from the owners of the city's top polluters. Perhaps thousands of applications.

Working people and people of color - NYCC's membership - do not get such gentle treatment. Our members do not get an option to decide that any given law does not apply to them. The Mayor is quite eager to break up homeless encampments, arrest mango-selling immigrants and punish turnstile jumpers. He enforces laws against poor people, who do not have the political and economic power of building owners. *When it comes to property owners - some of them billionaires like Douglas Durst whose buildings are over the 2024-2029 pollution limits - our big-talking "tough on crime" Mayor becomes a meek kitten.*

Many of the owners who will opt for this program if it is adopted are not properly managing their buildings. They are the types of owners who shove everything the city obligates them to do to the side as much as possible. Giving them two more years and making them submit a plan is unlikely to modify their behavior for the positive. Rather, they will tell their lawyers to just submit whatever they think will mollify the department. This program, if adopted with no modifications, would send them a clear message: keep delaying and the city will look the other way.

The city's proposed rules don't even clarify that if these owners don't cut pollution in the future, then they will be penalized, either retrospectively for their two year or long delay period, or in the future. Rather, the rule punts on these decisions. It does not commit that if these owners do not achieve pollution reductions, then they will be penalized.

Indeed, the rule creates a mediation program even before penalties are assessed. Yet owners are already able to challenge any penalties in the city's administrative process. This rule proposes to add a wholly new program in DOB to reduce or eliminate ("mediate") fines. Again, a mediated process with individual owners even before they are assessed penalties for breaking the law, and then they can challenge those penalties in the city's administrative process, which

itself includes protections for people's rights, is not the loving treatment that poor people of color get from the city.

Why is Mayor Adams giving building owners - including the billionaire owners with massive power spending big money to oppose the law - kid glove treatment? While there are many responsible owners who strive to follow laws, all too many landlords and owners only respond to enforcement action and financial pressure. They will see the city's unwillingness to penalize them as a validation of their resistance. Why wouldn't owners assume they'll get more free passes?

The Administration's Core Argument in Support of Its Proposed Delay Program Does Not Make Sense

The main arguments justifying this delay program offered by the Administration's staff do not add up. The Mayor's contention is that owners should not be assessed penalties because any fines paid would or could take away from funds that would go to upgrading buildings. The Mayor and his representatives also darkly hint, but do not outright state, that penalties could endanger the affordability of the affected buildings.

It is nonsense.

In fact, the 2024-2029 fines would be small even for buildings who did nothing at all to reduce their energy waste and comply with the law. If a building chooses to do nothing to comply with the law, which is quite unreasonable, and it does not reduce its potential fines at all, the typical fine in residential ranges around $150 per unit[1]. These are not hefty or overly punitive penalties. They are akin to a parking ticket. The city should not mislead that these fines are in some manner crippling or unreasonable. Paying a penalty in the range of $150 per unit will not alter a large building's finances or affordability. It would not take away from any funds that might otherwise be devoted to energy efficiency projects.

Absent unusual circumstances that are being taken into account by the good faith definitions in the uncontroversial parts of these rules and/or the later rulemaking on adjustments, any owner making a good faith effort would achieve the 2024-2029 limits. Over the years, we have asked several reliable experts and practitioners whether an owner making a good faith effort could achieve these limits. The answer is clear: it can take 2-3 years to implement these sorts of projects at the outside, but no owner making a good faith effort even a year after the law passed

[1] Most of the buildings who are so polluting that they are over this high limit are only over it by a small amount. It is easy to plug buildings into available public data. For example, NYCC uses the nifty Building Energy Exchange Penalty Calculator. We then do an internet search for those buildings to get an estimate of the number of units for residential properties. Streeteasy or another site typically has a number of units in the building, which we can verify as a reasonable estimate on a street view of the building. One can divide total penalties by such an estimate of total units to get a per unit fine. They are small, per unit.

could or should have missed the upcoming 2024 deadline (barring some unusual, case-specific circumstances).

COVID is not a legitimate excuse, either, as the Administration has asserted. The city did not shutter the real estate and construction industry. Most of the city kept working through the emergency. Even if owners lost a full year or even two years to COVID - which they should not have - then they still had most of 2019 through 2024 to implement.

The law was enacted by the Council in April of 2019. The 2024-2029 limit is precisely defined in the statute. We have heard some landlords complain that their pollution limit was unclear to them, but in fact the 2024-2029 limits were written into the statute (and did not depend on rule-making or the DOB) Building owners were required to follow very clear and precise limits. By the time it is 2024, they will have had five years to achieve these loose limits, which are so high that at the time of the law's passage only 20% of owners were over them (and in the most recent data for 2022, half of owners who were over their limit have come into compliance "early").

Absent unusual circumstances which are accounted for through the law, there is no excuse for a building to have failed to cut its pollution to achieve the 2024 - 2029 pollution limits. This delay program is arbitrary and unjustified. In fact, penalties are specified in the statute and the Mayor neither should nor does have the power to decide to waive them. This proposal simply rewards a powerful constituency that donated large sums to the Mayor's election campaign and is now similarly donating large sums to his re-election.

The Proposed Two Year Delay Program Will Devolve Into a Paperwork Exercise

The administrative challenge of this complex program is also too steep given the Mayor's budget cuts, mismanagement and turmoil in the Department of Buildings. The Department overall is massively understaffed. Approximately 23% of positions were unfilled at the end of 2023. The Mayor has already implemented budget cuts and is imposing 15% more cuts. He has also imposed a hiring freeze.

The Mayor clearly wants landlords treated leniently, so staff will feel pressure to sweep concerns under the rug. This program will almost certainly not be able to effectively evaluate the proposed plans. It will likely devolve into an exercise session of wielding a rubber-stamp as overwhelmed staffers have no option but to approve anything other than blatantly, obviously incorrect paperwork landlords put in front of them. The mediation program for potentially reduced penalties will face similar pressures.

We are also deeply concerned by the ongoing culture of corruption that Adams is furthering. Mayor Adams' first Building Department commissioner is indicted for bribery. The Department has long had problems with corruption. It is the type of corruption that can seep deep into a city's infrastructure and induce fear within the most diligent workforce. We are concerned that

any program that has overworked staff tasked, at least in theory, with evaluating complex plans is a recipe for disaster.

The law itself is premised on results. It is very simple in that respect. Building owners are obligated to report their pollution[2]. Their compliance or non-compliance is based on a long-standing reporting system that almost all buildings follow. Experts view the reporting system as fundamentally sound. But under this proposed program, the law's results-oriented metrics will be thrown out the window for at least two years. In their place will come large numbers of proposed plans from owners submitted to avoid paying penalties and receive official dispensation for failing to cut pollution for two years or more.

In this proposed rule, the administration has defined a series of good faith conditions over which there is no controversy under which a building owner should reasonably be granted some or full consideration. The law included discretion for the Administration to take account for unusual situations, which exist. ("adjustments" to a building's pollution limit and other guidance) The delay program, however, simply allows for delay, in practice giving a waiver over 2 years of pollution, or more, as an option. It subverts the law's metrics and penalty formula of $268 per ton over a building's limit.

The core of the delay program requires landlords to submit a plan for their building to achieve the law's future metrics. Even if intentions are noble to make this a serious process, in practice the Adams Administration has struggled to meet deadlines and issue rules in a timely manner.

While the Department's staff devoted to this area was able to impressively manage a complex Advisory Council process and subsequently issue regulations required by the law to be issued at the end of 2022, these superhuman civil servants are seriously overstrained. For example, this set of rules could and should have been proposed shortly after the last major set of rules, issued in December 2022. The Department promised repeatedly that these rules would be issued in the Summer. (and they could and should have been issued earlier) In fact, they were proposed in September. We suspect there was considerable internal debate over some of these provisions before the Mayor and/or his top staff made a final call on the proposal. Other complex rule making on several topics looms.

These proposed rules also task the Department with creating a mediation program for potential penalties, which itself could become another vehicle for lower or delayed penalties as overwhelmed staff can't oversee or manage the processes they are tasked with. In theory, such a mediation program could work out whether a landlord should be assessed full penalties, but in practice, the Department will be overwhelmed and landlords will know consultants and lawyers who can get them more favorable results.

---

[2] These reports are difficult to game. Moreover, a fraudulent report is a serious violation that many professionals are unwilling to risk. It's possible to change the numbers a bit at the margins, but effectively this system is a reasonable basis for enforcement. As we understand it, these reports are not easy to game and the payoff would be small while the risks of submitting a fraudulent report are significant.

The mediation program adds an additional step in penalty determination that is favorable to landlords. The straightforward procedure in the law is penalty assessment followed by the usual process: landlords facing a penalty could challenge it in OATH, the city's system for resolving administrative disputes. Instead, an understaffed and overstrained Department proposes to conjure up a mediation program. And these mediations could then be challenged. The result of this two step process, if implemented, would be that landlords would be less concerned that they will ever face penalties, and therefore less inclined to make the energy efficiency upgrades necessary to slash pollution, create jobs and cut utility bills. We do not believe this mediation program follows the law. It creates a new, unnecessary procedure that will be exploited by building owners that subverts enforcement.

Adding a review of potentially thousands of complex plans while continuing to implement the laws and issue further complex and necessary rules and stand up a mediation program are bridges too far. The plans will be a paperwork exercise, not a serious evaluation. If this proposal goes through, this part of the law will unfortunately become like the auditing requirements under previous law: owners who chose to do so will hire someone to submit paperwork to jump through the bureaucratic hoops that the delay and mediation programs would set into place.

It is quite difficult to see how this process will deliver the increased compliance that the Administration argues will result from granting delays. In fact, landlords will see a two year or more delay as a harbinger of more delays to come. It will encourage them in a belief that the law will never be applied to them. New York City landlords tend to listen only to financial incentives or penalties. To get them to take the law seriously, the city needs to enforce it seriously. That means issuing financial penalties, on time.

The Proposed Two Year Delay Program Can Be Fixed With a Simple Patch

If the Mayor amends the rules with the simple fix we are proposing as a patch on the delay program, New Yorkers would get the law's intended benefits: lower pollution, economic development and jobs from energy efficiency upgrades, as well as lower utility bills. Or, if landlords failed to follow the law, they would properly pay penalties. Our proposed amendment would be a meaningful change in the delay program, and convert it into an optional path that would be an unwarranted giveaway. It would simply shift some cuts into a new time period. The city would get the same level of pollution reductions overall.

Importantly, such a change would signal to landlords that even if a future delay program is put into place for 2030, it would not let them off the hook. As a result, they couldn't reasonably assume - as these rules encourage - that the city's future policy for 2030 will mirror this 2 or more year delay in 2024 requirements. We urge Mayor Adams to amend the rule in such a manner.[3]

[3] We also note the Guarini Center's comments, which urge public disclosure of information on the participants in any delay program. We agree. This data and these building's plans should be publicly disclosed.

The Administration has slow-walked Local Law 97 and has repeatedly made clear that issuing fines - that is, enforcing the law - is deeply unpalatable. After years of telling landlords it didn't want to assess any fines, now the Mayor is formally proposing at least an optional two year delay. Instead of this giveaway, he should amend his proposal to ensure that the city does not arbitrarily give up the benefits of the law for effectively nothing in return.

The REC Loophole Is Very Large

The Champlain Hudson Power Express and other projects will generate a flood of RECs starting in 2026. To be more precise: CHPE is currently under construction and on track to be in service in the Spring of 2026, bringing hydropower from Canada[4]. This transmission project will lead to about 10.4 million RECs interconnecting into Zone J, as estimated by NYSERDA[5].

Clean Path is another large transmission project. It will bring renewable power from Upstate New York into Zone J. While it is less advanced in the process than CHPE[6], Clean Path has also secured state approval. The project will deliver about 7.9 million RECs interconnecting into Zone J[7]. Clean Path is slated to be in service in the late 2020s. Together, those two projects will deliver about 18.3 million RECs interconnected into Zone J.

These are enough RECs to cover all the pollution reductions required from all buildings prior to 2030. In other words, once CHPE is on-line, building owners could buy enough RECs to entirely offset the need to reduce pollution from their properties.[8]

---

[4] CHPE statement https://chpexpress.com/news/champlain-hudson-power-express-announces-contractor-selection-process-complete/ and discussions with company representatives

[5] See NYSERDA Tier 4 petition at p.31 https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7b53E0EA24-8E90-43A3-8E59-987592006F2D%7d

[6] Although we had previously opposed it, preferring a different approach to transmission of renewables into New York City, NYCC now supports the CHPE project. See our statement on the project at https://docs.google.com/document/d/1cXa3KJcwvd78B5Eeef2wUz0MWFghtfRJdvKdwgtfIKU/edit?usp=sharing

[7] CHPE statement https://chpexpress.com/news/champlain-hudson-power-express-announces-contractor-selection-process-complete/ and discussions with company representatives

[8] There are also very substantial offshore wind projects in the development and construction pipeline off Long Island: the South Fork Wind Farm, Beacon Wind, Sunrise Wind, Empire Wind 1 and Empire Wind 2. Together, these projects represent over 4,300 megawatts. And more transmission on Long Island and in the Atlantic Ocean and Long Island Sound will go along with these projects. There are also many solar projects under construction in Upstate New York.

Recently, the PSC rejected a bid by renewable developers to increase the funds devoted to their projects from utility bills. As a result, it appears likely that many developers will exercise options to walk away from their large-scale projects. We view this as a major failure by Governor Hochul to ensure projects are completed in a timely and minimally disruptive and chaotic process. However, walking away would trigger a rebidding process in which the state will be heavily incentivized to quickly rebid projects in a competitive

After 2030, under the proposed rule, if building owners buy RECs in place of upgrading their buildings, then according to analysis from the Urban Green Council when pollution limits greatly tighten, building owners could use RECs to substitute for about 50% of the pollution reductions required under the law.[9]

- Half of the climate-heating pollution that building owners are obligated to eliminate under the law could be offset by REC purchases.
- One-quarter of multi-family buildings would not need to do anything to cut their pollution through 2035. They could buy RECs instead.
- Two-third of commercial buildings would not need to do anything to cut their pollution through 2035. They could buy RECs instead.
- 40% of the climate-heating pollution from multi-family buildings could be offset through REC purchases.
- 85% of the climate-heating pollution from commercial buildings could be offset by REC purchases.

Note: commercial buildings use more electricity as opposed to residential buildings, in large part since people don't use so much hot water in office buildings. As a result, the REC loophole the Mayor is seeking in these rules benefits office building owners especially, since RECs would be allowed to be applied to all of the buildings pollution generated from its use of electricity from the grid. But also RECs could swallow up a very large proportion of pollution reductions from residential buildings.

The Tight REC Limit As Recommended by the Advisory Council Must Be Adopted Or The Law Could Be Gutted

Unless a tight, additional REC limit is put into place, many landlords will buy out of making pollution reductions, which will lead to less energy efficiency investments and therefore fewer jobs and higher utility bills. *Under this proposed rule, future REC prices, which are unknown at this time and the city does not control, are the critical variable that will drive buildings owners' decisions.* It is quite likely that RECs will be very attractive as a compliance mechanism between 2026, when CHPE comes online, and 2030. If this rule is not amended, buildings over the pollution limit whose owners choose not to enter the delay program, will have a strong incentive to buy RECs in place of cutting pollution. A very substantial proportion of those owners will purchase RECs in place of pollution reductions, if this rule is not amended.

---

process, and enter into new contracts. (presumably with stronger protections to ensure project completion)

Even if all the projects listed above and other potential projects are all rebid, some set of huge transmission, wind and solar will be built in time for 2030. In the end, it is still extremely likely that CHPE in particular, which is already well into construction, is completed. As a result, there will be a flood of RECs. And currently, CHPE is on track to be operating in 2026, triggering the flood.

[9] https://www.urbangreencouncil.org/content/news/ll97-recs-balancing-flexibility-and-decarbonization

In 2030, the law's limits tighten and its formula changes. As a result, RECs become less attractive as an option for landlords instead of investments in their buildings for the post-2030 limit. However, if REC prices are low enough to make them an attractive alternative to upgrades, then a large proportion of owners will buy RECs instead of making upgrades for the 2030-2034 limit. Those limits are where the rubber hits the road. Thus, if RECs become a potent substitute, the negative effects of REC purchases by large numbers of landlords would be much larger.

While NYC does not hold the power to set REC prices, it does hold the power to limit their use to meet this law. Under the proposed rule about 50% of the pollution reductions that are required by the law post-2030 could be satisfied by purchasing RECs. In raw terms, it could cost millions of tons of CO2 equivalent pollution cuts per year. (half of the law's roughly 5 million tons per year of cuts in 2030). That would be a disaster.

The Local Law 97 Advisory Council reached consensus on recommendations for many regulations for the law. The Council included experts and practitioners, unions, and advocacy groups, including NYCC. The Advisory Council proposed that REC purchases be limited to offsetting only up to 30% of the pollution by which a building is over its pollution limit. That proposed limit was recommended in addition to limiting RECs to only those from projects interconnecting into the city's electric grid, as in the law's text, and only to pollution generated by a buildings pollution limit, as set by rule and then also set into the law. 26 Councilmembers also wrote to Mayor Adams to urge adoption of this limit.

Mayor Adams' Administration promised repeatedly to set a further REC limit into place. Many of us recall the last administrative hearing on the previous major set of rules. Hundreds of New Yorkers urged the Administration to fully implement and enforce the law. In multiple media outlets and in verbal and social media statements, representatives agreed that further REC limits would be set in this particular rule-making. It is highly unfortunate that the only further limit proposed to be set in this rule-making is for buildings entering voluntarily into the two year delay program. Only those owners would be prohibited from making REC purchases in place of pollution reductions.

The Administration's own one pager illuminates the problem, even as it tries to minimize it. Previous to this rule-making, the Administration repeatedly explained that it was conducting a study of the potential impact of RECs[10]. If some sort of serious study or analysis was conducted, beyond this cursory one-pager, it has not been made public. Regardless, every professional in this area knows that assuming CHPE is built - and it is currently under construction - there will be a flood of RECs. REC prices are unclear and won't be set until such time (and are not under the city's control). In the Administration's one-pager, it presents various possibilities for REC

[10] See amNY Oct 17, 2022 for an example of the many statements by the Administration to this effect: "Our rulemaking process will continue to be informed by careful study by the Department's Bureau of Sustainability along with close collaboration with our partner agencies, the Climate Advisory Board, the Local law 97 Working Groups and also with State government officials."

prices, which confirms that 2024-2029 REC prices appear likely to be low enough to be attractive to landlords as a substitute for either pollution reduction projects or paying penalties. And after 2030, REC prices may also be low enough.

DEC Commissioner and Chief Climate Officer Aggarwala has repeatedly dismissed the importance of RECs. He minimizes their importance to Councilmembers, advocates and the media. The Mayor's communications staff also take a similar approach. They imply that RECs are so marginal, the issue is almost beneath serious consideration.

That is not the case.

However, if that were the case, then why not simply follow the Advisory Council's recommended limit, which would eliminate any worry that RECs could swallow any proportion of the law's pollution reductions?

How to limit RECs is not a marginal question: RECs are potentially a loophole that could swallow much or most of the law. In these proposed rules, failing to set a REC limit gives landlords an option other than the delay program if their buildings are such high polluters that they are over the 2024 limit: they can buy RECs as soon as they are available in 2026.

The signal post-2030 is also dangerous: landlords will know there will be a chance that they could purchase RECs in place of pollution reductions. As a result, building owners will be less likely to undertake the large-scale energy efficiency improvements the law seeks to induce with the 2030-2034 pollution limits.

The REC Loophole Is An Especially Large Giveaway to Billionaire Commercial Building Owners

When the Council finalized its legislation with the Mayor's office, NYCC was - like many deeply involved groups - given a final 24 hour period to offer comments on the near-final draft. We strongly urged the Council to set a tight REC limit if it was to allow their use at all. Our proposed REC limit was functionally equivalent to the REC limit the Advisory Council recommended, years later. REBNY and various REBNY affiliates wanted a loose limit. The final law effectively kicked everything to rule-making. And here we are.

Since the law passed, REBNY's position has been that RECs ought to be limited to projects interconnecting into Zone J, the city's electrical grid and only to pollution generated by electricity. Now, this rule gives them exactly what they've pushed for, with the exception that buildings in the delay program cannot use RECs.

As a result, a building such as One Bryant Park, currently owned by Durst, will be able to buy RECs instead of reducing its pollution or paying a financial penalty for violating the law's 2024-2029 limits. (Durst is also angling for other giveaways in future rule-making on cogeneration, density and other topics).

The Durst Organization's owner, billionaire Douglas Durst, is the Chairman of REBNY. The Durst Organization also employs the Mayor's former Chief of Staff and political fixer, Frank Carone. The Durst Organization denies that Carone works on this topic and instead is limited to "business strategy"[11]. But of course, someone like Carone knows how to exert his influence on City Hall in a manner that evades the spirit and perhaps also the letter of the city's laws. Moreover, Durst himself can and presumably has picked up the phone to talk to the Mayor directly. Most of all, the Mayor himself is very well aware of Carone's latest venture and who he works for, which was also reported in *The New York Times* and other outlets. He is extremely close with Carone, a longtime ally and advisor.

The real estate industry also has many other influence channels to the Mayor and his top staff. Carone working for Durst is just one of many. The Mayor's first Buildings Department Commissioner, Eric Ulrich, is now under indictment for bribery. *Federal, state and local law enforcement should put this issue area and its nexus of power, money, corruption and a revolving door as well as favors to the real estate lobby under a microscope.*

We urge Mayor Adams to adopt the Advisory Council's proposed Renewable Energy Credit (REC) limit of only up to 30% of the pollution by which any given building is over its pollution cap. A tight limit would foreclose the likelihood that a substantial proportion of buildings breaking the 2024-2029 limit exclusively buy RECs to comply with the law and the lower likelihood, but even more problematic situation post 2030 where if REC prices are low enough, a huge swathe of energy efficiency investments would be canceled.

Conclusion: Local Law 97's Requirements Are Fair and Achievable. Mayor Adams Must Drop His Proposed Rules Giveaways to the Real Estate Lobby

Local Law 97 is a monumental achievement. It was enacted over the bitter objections of the real estate lobby, which continues to attempt to gut the law. Mayor Adams was elected with extensive financial support from developers, owners, large real estate entities, and others. REBNY and some of its largest members continue to fill the Mayor's campaign coffers.

Mayor Adams must fully implement and enforce Local Law 97, not defer to the real estate lobby. The law's limits are fair and achievable. In unusual circumstances, there is proper discretion to adjust a building owner's requirements to ensure that whatever cuts they are obligated to make are fair and achievable.

In fact, many building owners will save money net of their financing costs through the energy efficiency projects the law induces. NYCC and allies have documented many specific examples of buildings covered by Local Law 97 that have already been upgraded to meet the law's post 2035 standards. They are all saving money.

[11] https://hellgatenyc.com/carone-get-the-money

The law's limits are not some liberal, greenie fantasy gone wrong, as some of its most lurid and fact-challenged opponents such as Vickie Palladino suggest. In reality, buildings are already complying with the 2024-2029 limits. The law is succeeding beyond expectations. The lies and deceptions from the real estate lobby's well-funded disinfo efforts about Local Law 97 are meant to panic building owners. On close inspection, they fall apart. New York City is covered in buildings wasting staggering sums on energy waste, which could be eliminated. Local Law 97 induces buildings to do just that. It will further affordability by reducing energy bills.

The stakes are high in the regulatory decisions over Local Law 97. New York City is far ahead of New York state. New York City is also the national leader and a global leader. It is no exaggeration: the world is watching.

Tens of thousands of jobs, massive pollution cuts and lower utility bills throughout the city are at stake. These positive benefits are especially important to working people in communities of color, who get hurt substantially worse by job cuts, pollution increases, and higher utility bills. Mayor Adams must take New York City forward, not backwards. We urge the Administration to heed the recommendations in this and other comments and side with working New Yorkers, not real estate interests.

Note: We have also signed onto comments in this proceeding submitted by Earthjustice and other organizations.