

**Susanne DesRoches**

Deputy Director, Infrastructure and Energy  
Mayor's Office of Recovery and Resiliency  
Mayor's Office of Sustainability

(212) 788-7554  
sdesroches@cityhall.nyc.gov

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By email to: [eehpanel@nyserda.ny.gov](mailto:eehpanel@nyserda.ny.gov)

**Re: New York State Climate Action Council –  
Energy Efficiency and Housing Advisory Panel Recommendations**

Dear Members of the Climate Action Council Energy Efficiency and Housing Advisory Panel:

The City of New York (“City”) submits these comments in response to the recommendations presented at the February 4, 2021 Energy Efficiency and Housing Advisory Panel (“Panel”) public engagement session.

### **Introduction**

The City appreciates the opportunity to provide feedback on the Panel’s recommendations. The City recognizes the significant threat that climate change poses to the health and safety of its residents and the State at large, and as such has taken bold steps to increase climate resilience and reduce greenhouse gas emissions (“emissions”), including committing to a just and equitable transition to carbon neutrality by 2050.<sup>1</sup> The City has made significant strides in reducing its emissions, achieving a 23% decrease in City government emissions between 2006 and 2019 and a 15% decrease in Citywide emissions between 2005 and 2019.<sup>2</sup> These goals align with the State’s objectives, as set forth in the Climate Leadership and Community Protection Act (“CLCPA”).<sup>3</sup> Indeed, as Governor Cuomo recently observed, climate change is an “existential threat” and it “cannot be slowed without collective action.”<sup>4</sup>

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<sup>1</sup> *OneNYC 2050: Building a Strong and Fair City A Livable Climate* (issued April 2019) at 5-6, available at <http://onenyc.cityofnewyork.us/strategies/a-livableclimate/> (“OneNYC”).

<sup>2</sup> NYC Mayor’s Office of Sustainability, NYC GHG Inventories, City Government Inventory, available at <https://nyc-ghg-inventory.cusp.nyu.edu/#data>. This inventory is calculated pursuant to the Local Government Operations Protocol.

<sup>3</sup> *See*, L. 2019, Ch. 106.

<sup>4</sup> Governor Andrew M. Cuomo, State of the State Speech, January 11, 2021 at 26:33; available at <https://www.rev.com/blog/transcripts/gov-andrew-cuomo-state-of-the-state-address-transcript-2021>; State of the State Book 2021 (issued January 15, 2021) at 118, available at: [https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/SOTS2021Book\\_Final.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/SOTS2021Book_Final.pdf).

February 19, 2021  
Page 2

The building sector is of particular importance to the City's efforts, as buildings contribute close to 70% of the city's total emissions.<sup>5</sup> To reduce emissions from its building stock, the City now requires benchmarking for all buildings over 25,000 square feet,<sup>6</sup> adopted performance-based stretch energy codes that require new construction be built to the latest energy efficiency standards,<sup>7</sup> significantly expanded technical assistance programs to help building owners implement energy efficiency and related efforts through NYC Accelerator, passed the groundbreaking Climate Mobilization Act, including Local Law 97, which sets emissions caps on large buildings, and joined with 19 other cities in the Net-Zero Buildings Declaration to work toward net-zero energy for all newly constructed buildings by 2030.<sup>8</sup> To lead by example, the City has achieved a 30% reduction from 2005 levels across its portfolio of City-owned buildings.<sup>9</sup> These efforts are continuing and are expected to achieve a 50% reduction in carbon emissions from City-owned buildings and operations by 2030. Ultimately, all City-owned buildings will be carbon neutral.<sup>10</sup>

The City applauds the efforts that the Panel has undertaken so far to assemble the recommendations presented on February 4, 2021. The City offers the following comments on the recommendations.

### Comments

#### **1. The City Strongly Supports Many of the Panel's Initial Recommendations**

Achieving the State's and City's concomitant energy goals will require a multi-faceted approach including regulatory changes, financial support, education, workforce development, and more. The City applauds the Panel for presenting recommendations that contemplate some of the most important factors to achieving deep energy efficiency savings and further decarbonizing the buildings sector through electrification.

The City is a proponent of moving toward more stringent energy codes as the most direct way to achieve emissions reductions and has taken significant steps in this direction. LL 32 requires the New York City Department of Buildings ("NYCDOB") to adopt the New York State Energy Research and Development Authority ("NYSERDA") model stretch code in 2019, and to

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<sup>5</sup> OneNYC, *supra*, at p. 16.

<sup>6</sup> Local Law 84 of 2009 ("LL 84"), as amended by Local Law 133 of 2016 ("LL 133") requires owners of buildings that meet certain criteria (*i.e.* over 25,000 square feet) to measure their annual energy and water consumption for use in benchmarking.

<sup>7</sup> Local Law 32 of 2017 ("LL 32").

<sup>8</sup> OneNYC, *supra*, at 16.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

February 19, 2021

Page 3

adopt a revised stretch code, if available, in 2022. LL 32 also requires NYCDOB to adopt a performance-based energy code in 2025.

The City also applauds the Panel for its recommendation to require benchmarking in large multi-family (“MF”) and commercial and industrial (“CI”) buildings. As the City has learned through its own experiences in implementing LL 84 and LL 133, benchmarking is a critical step in reducing building sector emissions. Indeed, as discussed in further detail below, gathering and analyzing building usage data is the linchpin for energy efficiency deployment activities.

Further, the Panel has properly prioritized energy efficiency and electrification accessibility for low- and moderate-income (“LMI”) residents and other members of disadvantaged communities (“DAC”). This is of great importance to the City, where residential electricity rates are among the highest in the United States.<sup>11</sup> Almost half a million families living in New York City are currently energy cost burdened, spending over the State’s household target for consumer energy bills.<sup>12</sup> Accordingly, in addition to ensuring access to these resources, thoughtful attention must be paid to how investments in building-level measures could exacerbate social vulnerability and affordability issues through increases in rental or housing costs, or potential increases in operating costs and utility bills. The City is also interested in the Panel’s recommendations for community-to-employment pipelines and greater access to energy efficiency financing for LMI residents and within DACs. These opportunities, and others recommended by the Panel, are critical to ensuring an equitable transition to a decarbonized future.

The City also is supportive of recommendations and steps to effectively and equitably transition off of fossil fuels.<sup>13</sup> In his 2021 State of the City Address, Mayor Bill de Blasio announced a ban on fossil fuel connections for new construction buildings by 2030.<sup>14</sup> It is important to send clear requirements and market signals to the buildings sector, and given the close to cost parity between installing gas and efficient electric heating in new construction buildings, it makes sense to start with this subset of buildings. Specific requirements for retrofitting buildings will require additional consideration and analysis to take into account emissions impacts, co-benefits, capital and operating cost implications especially for low-income New Yorkers, and access to low-cost financing.

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<sup>11</sup> United States Bureau of Labor Statistics, Average Energy Prices, New York-Newark-Jersey City, November 2020 (issued December 11, 2020), available at [https://www.bls.gov/regions/new-york-new-jersey/news-release/averageenergyprices\\_newyorkarea.htm#:~:text=The%202020.1%20cents%20per%20kWh,area%20compared%20to%20the%20nation.](https://www.bls.gov/regions/new-york-new-jersey/news-release/averageenergyprices_newyorkarea.htm#:~:text=The%202020.1%20cents%20per%20kWh,area%20compared%20to%20the%20nation.)

<sup>12</sup> OneNYC, *supra*, at p. 13.

<sup>13</sup> The City offers proposed refinements to these recommendations in Section 7, below.

<sup>14</sup> State of the City 2021: Mayor de Blasio Announces A Recovery for All of Us (issued January 28, 2021), available at <https://www1.nyc.gov/office-of-the-mayor/news/062-21/state-the-city-2021-mayor-de-blasio-recovery-all-us.>

February 19, 2021

Page 4

There are several other recommendations advanced by the Panel that will significantly benefit the State's efforts to achieve greater energy efficiency proliferation and increased levels of electrification, including:

- Creating a legal framework for the widespread use of district geothermal systems in urban environments for heating and cooling. The use of these systems will be critical to phasing out reliance on fossil fuels and achieving a decarbonized economy. With appropriate funding mechanisms, these systems can provide low operating costs and grid balancing benefits.
- Adopting an energy/sustainability-focused curriculum in schools. Education regarding energy-related decisions is a critical step in achieving a just transition to a cleaner grid, and such education should begin early.
- Partnerships with community groups and others. Community groups can be key advocates for energy efficiency, so their support can result in a more successful program.
- Technical assistance in understanding options and technologies is critical, and education and outreach will help ensure that cost-effective measures are appropriately deployed.
- Identifying low-cost financing for energy efficiency and electrification as a priority need. It will be difficult for many property owners to afford the improvements that are needed, and inexpensive financing options will be essential to program success.

Taken together, the Panel's recommendations represent significant and important steps toward increasing energy efficiency savings and reducing building sector emissions statewide.

## **2. The Panel Should Encourage Buildings to Package Energy Efficiency Retrofits with Efficient Electrification Where Feasible to Reduce Costs and Peak Demand Impacts**

The City agrees with the Panel's recommendations to pursue both energy efficiency and electrification measures. There are additional benefits, however, when they are implemented at the same time. By first reducing consumption, it allows the building to "right-size" its heating equipment, thereby maximizing cost efficiencies of performing building-level retrofit work at the same time in addition to reducing operating costs and the cost of the heat pump equipment. This type of approach can also help manage peaks that are associated with electrification. Electrification alone (without energy efficiency) has the potential to lead to higher energy bills for customers.

This could be done through a variety of channels, such as recommendations for pairing certain electrification and energy efficiency measures (*e.g.*, electrified heating and new windows), resources to help ensure that heating systems are the appropriate size for the needs of a space, or incentives for bundling energy efficiency and electrification projects.

February 19, 2021

Page 5

When selecting heat pump equipment, it is important that building owners choose equipment that operates efficiently for cold climates. Like other appliances, the Panel should consider setting heat pump efficiency standards to ensure that the benefits of efficient electrification are realized, and to help manage operating costs and grid build out needs. One way to do this would be to determine a minimum coefficient of performance (“COP”) for cold climate heat pumps installed in the State.

The Panel should also examine what tools and programs can support expanding flexible demand response capabilities for buildings to help manage grid stress and reduce peaks, which can potentially reduce operating costs and mitigate supply and infrastructure build out needs

Energy efficiency measures can help alleviate these issues by reducing energy consumption. Demand management goes a step further by allowing the user (or whomever the user allows, for example, such as a utility) to shift energy consumption to off-peak times where feasible. Taken together, these measures can result in reduced energy consumption, lower costs for consumers, minimized environmental impacts, and better grid management.

The Panel should explore policies to bring demand management to scale statewide. Demand management initiatives are a critical but underutilized method to help change energy consumption patterns. The demand management initiatives advanced by the Panel should cover a range of complexity to ensure there are options accessible for all New Yorkers and not just large building owners. One easily implementable option is increased education for tenants and small building owners regarding the potential positive impacts of small and low-cost behavioral changes, such as turning off lights or running appliances at off-peak hours. More complex options that should be explored include designing utility rates that induce reduced demand at peak periods and mandating greater deployment of appliances that can be programmed or controlled through a combination of hardware and software. Thermal storage and battery storage are other examples of building-level technologies that can support demand management.

### **3. The Cost to Consumers Must Be Considered and Mitigated**

As outlined above, the City is strongly supportive of the recommendations of the Panel, many of which are ambitious in their scope. However, the presentation does not include any discussion of the potential costs of these recommendations, their impact on consumers (especially on LMI consumers and those located in DACs), or the source of the funds needed to effectuate them.<sup>15</sup> The Panel should clarify if the expectation is that funding will come from utility rates, the State General Fund, or other sources, and also where bill subsidies for operating costs may be needed. If the funding is expected to come from utility rates, will existing funding, such as the

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<sup>15</sup> The presentation on costs given to the Panel on February 10, 2021 does not provide sufficient information to understand the upfront and annual costs of the recommendations or to evaluate affordability of the recommendations.

February 19, 2021

Page 6

energy efficiency budgets the Public Service Commission (“Commission”) approved in January 2020, be used or will new surcharges be imposed?<sup>16</sup>

Although the City recognizes and supports the need to move forward expeditiously with energy efficiency and electrification efforts in order to achieve the robust targets set forth by the State in the CLCPA<sup>17</sup> and the City’s own goals, the costs of such efforts must be carefully balanced against the potential to exacerbate the already precarious financial situation millions of New Yorkers are experiencing. The COVID-19 pandemic has taken a significant toll on New Yorkers both medically and financially. As of the filing of these comments, the statewide unemployment rate is 8.2%, and New York City’s unemployment rate is 11.4%.<sup>18</sup> Many New Yorkers are struggling to pay their utility bills and are forced to make tradeoffs between paying bills and buying necessities such as food and medications.<sup>19</sup> Indeed, a recent filing by the Public Utility Law Project shows that, as of November 2020, approximately 1,143,412 utility accounts in the State were in arrears totaling \$1,091 million.<sup>20</sup> Although the economy appears to be rebounding, the financial ramifications of the pandemic will likely be felt by New Yorkers for years. Thus, this is a critical time for many New Yorkers, and any steps taken by the State that may increase utility bills must be carefully considered.

Separate from general consumer rate impacts, the cost of energy efficiency and electrification upgrades can be a large obstacle for property owners. Not only do many energy efficiency and electrification measures, such as heat pumps and building retrofits, have significant upfront costs, many also have ongoing operational costs. While effective energy efficiency measures should result in reductions in energy consumption, it is unclear to what extent operating costs could shift if building owners (and by default, tenants) transition from gas-based heating to electric heat pumps. If a building owner or its tenants are unable to afford the ongoing costs

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<sup>16</sup> Case 18-M-0084, In the Matter of a Comprehensive Energy Efficiency Initiative, Order Authorizing Utility Energy Efficiency And Building Electrification Portfolios Through 2025 (issued January 16, 2020) at Appendix A (“January 2020 Order”).

<sup>17</sup> L. 2019, Ch. 106.

<sup>18</sup> New York State Department of Labor, NYS Unemployment Rate Falls to 8.2% in December 2020 (issued January 21, 2020) available at <https://labor.ny.gov/stats/pressreleases/pruistat.shtm#:~:text=In%20December%202020%2C%20the%20statewide,from%205.7%25%20to%205.9%25..>

<sup>19</sup> *See, e.g.* Diana Hernandez, Understanding ‘Energy Insecurity’ and Why it Matters to Health, Soc. Sci. Med. (Oct. 2016), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5114037/>.

<sup>20</sup> Case 20-M-0266, Proceeding on Motion of the Commission Regarding the Effects of COVID-19 on Utility Service, Public Utility Law Project of New York, Inc. Monthly Residential Electric and Gas Utility Customer Arrears Report (filed November 2020).

February 19, 2021  
Page 7

associated with the measures, this effort would be in conflict with other critical policy goals, such as ensuring housing affordability and reducing energy cost burden.

The City urges the Panel to take the following steps with respect to each of its recommendations. First, the Panel should quantify the potential costs associated with each recommendation. To the extent that a recommendation has both upfront and ongoing costs, both should be identified and quantified and where data is not currently available, the Panel should recommend additional analysis. Next, the Panel should identify the intended funding source(s) for each recommendation. If the costs will be borne by utility ratepayers, an analysis of bill impacts should be performed, and that information should inform and, as appropriate, circumscribe the scope of the action to be taken. The analysis should consider base rates, commodity costs, and all surcharges included in bills; an analysis of base rates will not properly convey the total costs to be borne by consumers. Further, the analysis should estimate bills and bill impacts for a period of at least ten years after measures or systems are installed; implementation of many of the recommendations will take time, so it is important to understand bill impacts over an extended period.

The cost impacts of the Panel's recommendations on low-income customers merits additional consideration and analysis, especially if it increases their energy cost burdens. An assessment of this impact is needed and could be used to inform what resources, including bill discounts, could be made available to low-income families.

For recommendations that are intended to be funded by building owners, the Panel should identify potential sources of incentives or cost offsets. It is critical that the Panel look beyond traditional rebate-style incentives, which require building owners to pay for the upgrades upfront. Many building owners – particularly owners of MF buildings and subsidized housing – do not have the capital resources, financing ability, or cash flows needed to afford the upgrades. Creative, new opportunities to reduce the up-front cost burdens of electrification and energy efficiency measures must be identified.

One option that should be explored is further leveraging the role of the Green Bank with respect to electrification and energy efficiency measures. The Green Bank's existing efforts should be expanded to provide favorable financing solutions for electrified equipment and energy efficiency upgrades and retrofits, such as low interest loans and deferred payments, especially for building owners in DACs. Another option to explore is the role that Medicaid/medical insurance may be able to play in paying for energy efficiency retrofits that directly benefit the health and well-being of residents.<sup>21</sup> A third option to consider is the broader use of on-bill financing, where

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<sup>21</sup> Notably, the State has already explored a similar option. Last year, Governor Cuomo announced a pilot program (administered, in part, by NYSERDA) to use Medicaid funds for energy efficiency upgrades to help minimize environmental asthma triggers. *See*, Governor Cuomo Announces Proposal in FY 2020 Executive Budget to Reduce Asthma-Related

February 19, 2021  
Page 8

the building owners would not need to make any up-front payments and the costs are recovered over time via the bill savings from the energy efficiency measures.

The State also should consider enacting a climate action tax credit. The tax credit program could be structured to be similar to a brownfield tax credit but focus on emissions reduction, improving air quality, and bolstering resilience in environmental justice and DACs. This latter emphasis is of particular importance as low-income communities and communities of color are disproportionately impacted by the negative health ramifications of climate change.<sup>22</sup>

The February 4 presentation references a “Clean Water Model” to fund building decarbonization. It is unclear what is meant by a “Clean Water Model,” and the City requests that the Panel provide additional information regarding this option to help stakeholders better understand the recommendation.

As New York continues its transition to a clean energy system, it is imperative that the steps it is taking do not negatively impact the financial situations of its residents – especially as many are struggling to survive and recover from the COVID pandemic. Accordingly, cost considerations must be understood and should be a key factor in the Panel’s recommendations.

#### **4. Greater Emphasis on 1-4 Family Homes is Necessary**

The recommendations include several suggestions for MF and CI buildings, including benchmarking, data disclosure, and lighting upgrades. As buildings are often large energy users, this is an important step in reducing building sector emissions. However, buildings that house 1-4 families represent a significant portion of the State’s building stock.<sup>23</sup> In New York City alone, 1-4 family homes constitute 82% of the buildings and 19% of citywide emissions.<sup>24</sup> Meeting the CLCPA goals will require addressing emissions from this building typology, so there should be a holistic and comprehensive approach to addressing energy efficiency in these buildings, as well as

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Illnesses (issued Jan. 29, 2019), available at <https://www.governor.ny.gov/news/governor-cuomo-announces-proposal-fy-2020-executive-budget-reduce-asthma-related-illnesses>.

<sup>22</sup> United States Environmental Protection Agency, *Climate Change, Health, and Environmental Justice* (May 2016), available at <https://www.cmu.edu/steinbrenner/EPA%20Factsheets/ejhealth-climate-change.pdf>.

<sup>23</sup> There are an estimated 5.3 million single-family homes across New York State. *See*, NYSEDA, 2019 Single-Family Building Assessment (issued October 2019), available at <https://www.nyserda.ny.gov/About/Publications/Building-Stock-and-Potential-Studies/Residential-Building-Stock-Assessment>.

<sup>24</sup> *One City Built to Last Technical Working Group Report* (issued April 21, 2016) at 9, available at [https://www1.nyc.gov/assets/sustainability/downloads/pdf/publications/TWGREport\\_04212016.pdf](https://www1.nyc.gov/assets/sustainability/downloads/pdf/publications/TWGREport_04212016.pdf).

February 19, 2021  
Page 9

identifying opportunities to electrify where feasible. This should include, at a minimum, data gathering, increased incentives, and additional education and technical assistance.

Benchmarking is a critical first step in this endeavor. Although the Panel recommends benchmarking for MF and CI buildings over 10,000 square feet, this misses a sizeable opportunity to acquire information from smaller buildings, which as stated above, comprise the majority of the housing stock. Although the recommendations suggest disclosure at point of sale/lease for single family buildings, this does not resolve the issue for buildings that are not sold for long periods of time. Understanding energy usage is imperative for building owners to make informed decisions regarding appropriate energy efficiency upgrades. As described in further detail below, this information can help develop the scope of the work for service providers and contractors in performing improvements. Moreover, the data is necessary to develop effective policies and strategies to decarbonize buildings in standardized, repeatable ways. The City offers additional suggestions regarding implementing benchmarking at the 1-4 family home level below.

Using the data collected, there should be additional educational and technical resources made available to 1-4 family building owners to assist them in identifying and selecting the most appropriate energy efficiency measures for their properties. This is an extension of the recommendation on slide 15 that states: “[P]rovide technical assistance and resources for building decision-makers, incl. case studies and guidance for key building segments.” It is critical that this assistance extends to smaller buildings as this typology is typically owned by individual entities who may not be aware of the resources available to them.

As part of this greater emphasis on technical assistance and resources, the Panel should also recommend measures that will entice small building owners more proactively to plan and target high-usage equipment replacements (*e.g.* heating, ventilation, and air conditioning systems, water heaters, and washers and dryers) in their buildings. Although many MF and CI owners have planned approaches to equipment replacement, many 1-4 family homeowners tend to wait until the point of equipment failure to make replacements, at which point they are typically made under pressure, often due to concerns for health and safety, to quickly replace the item. This may prevent them from doing adequate research regarding the most efficient option or having sufficient capital to invest in higher efficiency equipment, and thus they resort to in-kind replacement. Therefore, the City recommend that the Panel identify ways to incent building owners to plan for these replacements so they are able to make more informed and more efficient decisions.

To simplify the access to information, there should be a single, online, statewide repository for educational materials and technical assistance, separated by building typology. In an effort to avoid duplication of efforts and confusion, this database should be an expansion of the LMI “customer-facing hub” approved by the Commission in the January 2020 Order.<sup>25</sup> The online repository should build off of the existing resources offered by the NYC Accelerator and NYSERDA. This resource should include: (i) explanations of the types of energy efficiency upgrades available; (ii) the potential upfront and ongoing costs, and where appropriate, payback

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<sup>25</sup> January 2020 Order, *supra*, at pp. 25-26, 36-37.

period of each type of upgrade; (iii) the potential level of emissions that could be avoided by implementing each measure; (iv) information on programs to support access to energy efficiency and electrification measures by LMI customers and residents in DACs, including information on utility low-income assistance programs and other methods of mitigating utility costs; (v) available cost offsets (*e.g.*, incentives, financing); (vi) a list of qualified contractors or companies who are able to perform the work; (vii) cost and energy usage data on completed projects to serve as case studies; and (viii) other pertinent information or resources.

Placing additional focus on the small building sector will lead to significant emissions reductions and help the State achieve the CLCPA goals.

## **5. Access to Data Should be Prioritized**

Access to data remains one of the most significant hurdles on the path to greater deployment of energy efficiency. As the Commission very recently observed, “effective access to useful energy data will play a critical role” in transforming New York’s grid into one that is “cleaner, more resilient, and more affordable.”<sup>26</sup> Although the recommendations discuss benchmarking and energy usage disclosure at the point of sale/lease, the need for data extends much further.

First, as discussed above, there is a significant need for access to data regarding small buildings, such as 1-4 family homes, as well as small CI and mixed-use buildings. Achieving the State’s and City’s concurrent and complementary energy goals will require retrofitting existing buildings of all use types, ages, and sizes. To develop effective strategies to retrofit these buildings, a much deeper understanding of the building stock is necessary. Central to that is understanding how different types of buildings consume energy. These details have been critical to the City’s progress in achieving greenhouse gas emissions reductions and efficiency goals in larger buildings, and similar details are equally as important to achieve emissions reductions and greater efficiencies in smaller buildings.

However, as the City has experienced firsthand in implementing LL 84 and LL 133, traditional benchmarking efforts can be a significant burden on property owners as they are time intensive and may require familiarity with different websites, digital platforms and data entry processes. Therefore, creative and less burdensome solutions for smaller building data gathering should be explored.

The City is optimistic that, in the future, utilities will be able to upload high quality, detailed information collected via advanced metering infrastructure (“AMI”) into the Integrated Energy Data Resource (“IEDR”) recently established by the Commission. However, the need for data from this building subsector exists today, and thus short-term solutions should be explored. The

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<sup>26</sup> Case 20-M-0082, Proceeding on Motion of the Commission Regarding Strategic Use of Energy Related Data, Order Implementing an Integrated Energy Data Resource (issued February 11, 2021) at 1 (“IEDR Order”).

February 19, 2021  
Page 11

Panel should explore with stakeholders the role of the utilities in unlocking energy usage data for these buildings. The State's utilities collect energy usage data from customers every month for billing purposes and already have information that can be useful in identifying energy efficiency needs and potential.

Once it is collected, access to data is critical. To provide technical assistance to a building owner and identify energy efficiency potential and options, there is a need to know not only the usage of the building, but also usage of similar buildings for comparison purposes. As access to capital for energy efficiency measures becomes more widespread, it is likely that financial institutions will require the ability to access building usage data. Moreover, as consumers become more energy-conscious, they will want to know about energy usage when considering rental and purchase options. Access to energy usage data will be critical to greater acceptance and deployment of energy efficiency measures.

The Panel recommends making energy usage information from MF and CI buildings over 10,000 square feet accessible but does not prescribe a manner in which to do so. The City recommends a requirement for large building owners to upload such information to the Environmental Protection Agency Energy Star Portfolio Manager ("Portfolio Manager"), which is widely used by entities requiring benchmarking.

For the small building subsector, the City recommends that the Panel work with stakeholders, including the utilities and NYSERDA, to advance and expedite development of a mechanism by which the utilities can upload small building data to Portfolio Manager on the owners' behalf. The requirement for utilities to undertake this task is already settled, in that the Commission has ordered the utilities to develop such automatic uploading capability.<sup>27</sup> As energy usage data belongs to customers, obtaining customer consent for such data sharing is essential. One option could be to look at an opt-out approach. Such opt-outs should occur on an annual basis via a mailer or electronic notice and should explain what level of information will be accessible (and by whom) to ensure customers are fully informed with respect to how their data may be used.

As a long-term solution, the Panel should work with the Department of Public Service and NYSERDA to better understand how the IEDR can be designed to maximize its usefulness for energy efficiency purposes.<sup>28</sup> As the IEDR is intended to be a statewide, publicly available data repository, it is well-positioned for this purpose. Using the IEDR for such data also will resolve any concerns about data privacy or non-consensual access to data, as the Commission determined that, "access to the IEDR's various tools would be governed by access controls that align with the legitimate needs of each user type while also preventing unwarranted access to information that does not serve those legitimate needs."<sup>29</sup>

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<sup>27</sup> Case 18-M-0084, *supra*, Order Adopting Accelerated Energy Efficiency Targets (issued Dec. 13, 2018) at p. 46 ("Accelerated Energy Efficiency Order").

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at p. 11.

In addition, the Panel should explore mandatory energy usage disclosures during the sale of real estate, where such information is available to the building owner. Similar to disclosures of the presence of asbestos or lead-based paint, understanding energy usage of a building is critical to understanding the extent of retrofits that may be required upon purchase, which can significantly impact the overall cost of the investment. To ensure that buyers are able to make informed decisions, this information should be required to be disclosed at a meaningful time in the sales process in a useful way. Energy usage information also should be disclosed to potential lessees, tenants, cooperative applicants, and others who will be responsible for utility payments. If a lessee/tenant is unaware of potentially high energy bills associated with a unit, he or she will be unable to determine if the unit is truly affordable.

Increasing access to energy usage data is a critical step on the path to greater energy efficiency proliferation and meeting the State and City's goals. It is therefore critical that the Panel prioritize data access in its recommendations.

#### **6. The State Should Shift Away from Reliance on Income-Based Thresholds for Assistance Qualification**

The Panel's presentation includes several suggestions for prioritizing LMI consumers and residents in DACs with respect to energy efficiency. The City applauds the Panel's focus on providing assistance to these customers, which is a critical step in the just and equitable transition to a cleaner grid. However, reliance on income thresholds as the sole qualifier for such activities could be improved.

In New York, energy bill assistance and qualification as an LMI household is tied to an individual's ability to qualify for other social assistance programs (the Home Energy Assistance Program across the State, and a series of programs in New York City and Westchester County). These programs use a household's income to determine benefit qualifications. However, use of income thresholds can, and indeed does, prevent thousands of New Yorkers from receiving needed assistance, as there are many households that do not meet the criteria to be considered LMI, but still may experience high energy cost burdens or disproportionately negative health impacts as a result of their surrounding environment (many New Yorkers experience both).<sup>30</sup> In order to serve the greatest portion of vulnerable consumers, the Panel's recommendations should expand from a strictly income-based qualifier to consider other high-risk factors. In doing so, additional vulnerabilities such as health status, access to healthcare resources, and proximity to areas of higher criterion pollutant emissions rates or known poor air quality can be considered when determining eligibility for incentives and other assistance.

At the same time, it is important that the State not lose sight of the importance of ensuring that those with limited financial means have a dedicated set of resources and programs available

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<sup>30</sup> Energy cost burdens are a function of the amount of energy consumed, the utility electric and/or natural gas rates charged to consumers net of support programs, and the amount of income earned.

to them, regardless of the presence of other risk factors. Therefore, the Panel should continue its work to identify ways to make energy efficiency and electrification more accessible to LMI residents. In addition, the Panel should consider whether it is equitable to use a statewide income threshold for LMI. Given that the cost of living varies widely across the New York State, there must be some discussion as to whether having the same income thresholds to qualify someone as LMI should be the same across the State.

The City understands that there may be implementation concerns surrounding this expansion of eligibility for assistance. However, the Panel is well-situated to work with stakeholders and draw on the resources and expertise needed to establish a solution that will address this critical disconnect between availability of assistance and need to make sure no New Yorkers are left behind.

#### **7. The Panel's Workforce Recommendations Require Additional Refinement**

As discussed in Section 1, above, the City is encouraged by the Panel's focus on energy efficiency and electrification workforce development and education. Thorough and consequential training of the personnel who will design, construct, and manage the technical aspects of the recommendations set forth by the Panel is an important aspect of meeting the State's and City's goals. The City offers the following suggestions for refinement of the workforce-related recommendations.

First, the City cautions against overreliance on pre-recorded online resources for training and educational opportunities. Educational opportunities should be individualized and interactive to the extent possible. Although this may not be possible in the foreseeable future due to the COVID-19 pandemic, training is more effective and engaging when it is done in a dynamic setting.

Next, the Panel should advocate for coordination between statewide and local workforce and economic development agencies (*e.g.*, the New York City Department of Small Business Services). Doing so may help alleviate some burdens on smaller entities by allowing them to leverage statewide resources, and it also will reduce duplication of efforts and potentially create cost savings as entities will be able to collaborate and share information and resources.

Third, providing stable and high-quality jobs to New Yorkers should be a priority. While the Panel recommends use of project labor agreements and prevailing wages for large projects, it is critical that all workers have access to family-supporting, stable jobs. The Panel should involve unions, trade associations, and local businesses in workforce efforts to identify ways to ensure that similar benefits are provided to workers on all types of clean energy projects (*e.g.*, retrofits, building operations, small-scale clean energy generation).

Additionally, the Panel should identify training and educational opportunities for community groups. These groups should be given the resources to not just serve as outreach partners, but also to build their knowledge and skills so that they can providing meaningful assistance to the members of their communities. For example, with proper training, credit unions

and other local financial institutions can offer financing products tailored to energy efficiency or other upgrades. Other community groups may be able to help pair residents with appropriate incentives or assist building owners in reviewing project bids.

Finally, the Panel should consider a more proactive approach with respect to small businesses and Minority- and Women-Owned Business Enterprises (“M/WBE”) When job training and new opportunities arise, the State or other entity tasked with implementation should perform focused outreach to these entities regarding the educational, training, and employment opportunities instead of requiring these entities to seek out such opportunities on their own. These businesses typically suffer from resource constraints and may not have the bandwidth to perform such research on their own. State agencies and authorities should consider how their workforce, incentive, and grant programs may be used or modified to build capacity and increase access to capital for M/WBEs and worker-owned businesses interested in participating in energy efficiency and clean energy opportunities, particularly those in adjacent industries, such as plumbing and roofing.

Additionally, the Panel should recommend specific goals for M/WBEs, and that implementing agencies and authorities develop implementation plans to achieve those goals, in accordance with Article 15-A of the Executive Law. To provide transparency and allow progress to be tracked, NYSERDA should issue public reports detailing the involvement of these and other small businesses. A well-trained and diverse workforce will greatly aid in meeting the State’s and City’s concomitant goals in an equitable manner. The Panel should ensure that it is prioritizing education and job opportunity accessibility in its recommendations.

## **8. Additional Consideration is Needed for Several Policy Recommendations**

The Panel identified many interesting policy suggestions in its presentation. Some of the recommendations warrant further exploration before they are advanced or finalized.

As discussed above, the City strongly supports a move to more stringent, performance-based building codes as a way to reduce fossil fuel consumption across the energy sector, and therefore strongly supports the Panel’s recommendations regarding code and regulation changes. The City is moving toward implementing a performance-based code and encourages the Panel to explore the viability of adopting a similar statewide performance-based code.<sup>31</sup> However, the Panel should consider costs of compliance in its recommendations. It is less expensive to design a new building in a manner that will meet rigorous standards than it is to attempt to retrofit an existing building. Therefore, a phased approach should be considered in which code and regulation changes (both for energy efficiency standards and electrification requirements) apply first to new construction. Over time, as new techniques and technologies are implemented and costs are reduced, the code changes can be expanded to apply to retrofits of existing buildings. It

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<sup>31</sup> It is not clear if this is what was meant by the Panel’s recommendation for a “very efficient” code.

February 19, 2021  
Page 15

is important that the Panel not recommend requirements that would be burdensome and infeasible for property owners, particularly property owners serving LMI customers and in DACs.

The City also supports the Panel's recommendations for statewide appliance efficiency standards for certain products, such as commercial dishwashers and lightbulbs. The City suggests that the Panel expand this recommendation to encompass cold climate heat pumps, as discussed earlier.

The City has some concerns regarding the Panel's recommendation to adopt CLCPA-aligned depreciation rates for gas infrastructure and proposes some refinements and suggestions. Although the City understands the rationale underlying this proposal – avoiding overburdening customers with stranded asset costs – it is critical to look at the short-term impacts of such an action. Shortening service lives and accelerating depreciation recoveries could result in high near-term rate and bill impacts. These types of increases cannot reasonably be absorbed by consumers, especially given the current state of the economy. Instead of recommending the adoption of new depreciation rates at this time, the Panel should commission a study of the impact of modified depreciation rates on rates and bills. These costs should be considered alongside the potential cost impacts identified in Section 2, above, to ensure that the total impacts are comprehensive. The study should examine changes to depreciation factors, the impacts of such changes on reserve deficiencies, and potential strategies to harmonize depreciation rates with State policy goals and mitigate consumer impacts.

Finally, the City underscores the need for an equitable and managed transition away from fossil fuels, which includes consideration of how potential declining throughput and customer base for the gas system could impact costs for those customers that have limited options but to remain, either because they are tenants or do not have the capital reserves sufficient to transition off of gas. An unmanaged transition may further burden New Yorkers with legacy asset costs, and inefficient expenditures for ongoing operations, maintenance, and safety. This is a challenging topic that requires additional analyses and new and innovative thinking, including potential changes to the existing regulatory and business framework for gas and thermal energy more broadly. Resources and efforts must be prioritized for this topic to ensure we realize an equitable and just clean energy transition.

### **Conclusion**

Achieving the CLCPA goals undoubtedly will require a panoply of changes to business operations, heating and cooling systems, building codes, regulation of utilities, and more. The Panel, along with the Climate Action Council and the other Advisory Panels, appropriately have begun to identify the changes that will be needed and how to implement them. The recommendations set forth in the February 4 presentation are an important first step in this process. Equally as important, the Panel – and the Climate Action Council – must understand and consider the costs and ramifications of each recommendation. Achieving a carbon-free future must be accomplished in a manner that ensures the continued economic health of New York and the ability of all New Yorkers to afford shelter, food, medical care, and their utility bills. The Panel and the

February 19, 2021  
Page 16

State will not have accomplished their tasks if their recommendations result in unsustainable increases in consumer costs and energy cost burdens.

The City appreciates the work of the Panel and looks forward to continuing to work with the Panel and other stakeholders to develop cost-effective and successful methods of achieving the very important CLCPA goals. The above comments are intended to help advance this work and frame the refinement and improvement of the recommendations.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Susanne DesRoches". The signature is fluid and cursive, with a long horizontal stroke at the end.

Susanne DesRoches  
Deputy Director, Infrastructure + Energy