Ratepayers and Community Intervenors

Memorandum on Repowering

November 14, 2013

Representatives:

Carol Chock

Irene Weiser

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Introduction

New York's Public Service Commission (PSC) will soon make the decision whether to repower the uneconomic coal-fired Cayuga Operating Plant with natural gas, or instead upgrade the transmission lines to meet the region's electric reliability needs. This is the first time the PSC has considered a repowering proposal and as such the process and decision in this case will set a precedent.

The Ratepayer and Community Intervenors are elected and public officials, organizations, scientists, engineers and other individuals who will bear the rate and environmental impacts of the repowering proposals. At present, our membership includes elected officials from an 8-county region.

We formed this group in response to the massively redacted documents provided to the public regarding the proposals being considered in this case. We wanted a way to attain party status so that we could seek proper public disclosure and continue to participate after the public comment period had ended. Our aim is to ensure process transparency, and protection of ratepayer interests and the environment in this case.

We are concerned that the proceedings in this matter (PSC Case # 12-E-0577) are taking us in a "business as usual" direction - failing to take seriously the climate crisis and the urgent need to end fossil fuel consumption, and operating in a manner characterized by a lack of transparency, back room deals and corporate bailouts that prioritize corporate interests over ratepayer protection. Further, we are concerned that a decision to repower sets a bad precedent and risks destabilizing the competitive market system.

This memo details our specific concerns and recommendations.

Background

In the mid 1950's, NYSEG built the Cayuga Operating Plant (then known as Milliken Station), a two-burner, 306 MW, pulverized coal-fired power plant in Lansing, NY, on the eastern shore of Cayuga Lake. In the 1980s and 90s, NYSEG updated the plant with state-of-the-art environmental controls.

In December 1998, at the onset of New York's energy market deregulation, NYSEG sold Milliken Station along with five other upstate coal-fired generating facilities to AES Eastern Energy, LP, a wholly owned subsidiary of AES Corp. Milliken was renamed AES Cayuga.

In 1998, during NYSEG restructuring proceedings, the PSC indicated knowledge of a load pocket in the Cayuga plant's region, and claimed NYSEG would make transmission upgrades to remedy the problem within the next 10 years at an estimated cost of $35-40 million. (Case #96-E-0891, filing #24, p 4, 18-19, April 24, 1998)

AES Eastern Energy declared bankruptcy in December 2011, indicating the Cayuga and Somerset coal-fired plants had become uneconomic and could not compete with gas-fired plants.

In June 2012, Cayuga and Somerset plants emerged from bankruptcy as Upstate New York Power Producers. The investing bondholder group included J.P. Morgan Investment Management Inc., Carlyle Strategic Partners II, LP and others. The plant was renamed Cayuga Operating Plant at this time.

In July 2012 COP submitted a petition to mothball the Cayuga plant by Jan 16th, 2013. (Case 12-E-0400, July 20, 2012) In response to that request, PSC asked NYSEG and NYISO to conduct a reliability study to determine the impact plant retirement would have. In August, NYSEG reported that the NYISO reliability study indicates that, at present, both coal-fired units need to be available and capable of being committed to maintaining system reliability. NYSEG has noted that reliability concerns center in the Auburn area, during times of peak demand, which total approximately 500 hours per year.

Nucor Steel operates an electric arc furnace-based steel recycling facility in Auburn, and is the largest electric load (60MW) in this NYSEG region.

In December 2013, PSC authorized a Reliability Support Services Agreement (RSSA) negotiated between NYSEG and Cayuga that provides for NYSEG to pay Cayuga monthly fixed charges totaling $29,176,656 over an initial one-year term to enable the uneconomic plant to continue operating to fulfill the region's reliability needs. Following the PSC's September 2013 meeting, the PSC ordered the RSSA agreement to be extended "indefinitely." NYSEG charges ratepayers a monthly surcharge to cover the RSSA costs; Nucor is excluded from these surcharges. PSC has authorized the subsidies provided to

NUCOR to be recovered through allocation of lost revenues to NYSEG ratepayers as well.

In January 2013, in accordance with the Governor's Energy Highway Blueprint, which noted that repowering existing generation facilities (as opposed to retiring and making transmission upgrades) could produce significant benefits in terms of enhanced system reliability, electric market competitiveness, and emissions reductions, the PSC initiated proceedings to Examine Repowering Alternatives to Utility Transmission Reinforcements at the Cayuga (and Dunkirk) Plants. (Case #12-E-0577). They directed NYSEG (and National Grid) to submit proposals for transmission upgrades and to solicit repowering proposals from the Cayuga (and Dunkirk) generating companies, stating that "the criteria to be evaluated must include, but may not be limited to, the reliability, environmental, and customer impacts associated with the repowering and transmission solutions." Both the Energy Highway Blueprint and the PSC's order initiating this repowering case excluded from consideration local economic impacts, such as cuts in school taxes, or jobs. However, a rider in the 2013-14 budget altered the criteria to be considered, asserting "it is in the public interest to develop clean power generation near energy demand to meet the needs of ratepayers, support local and state tax revenue stability, promote economic opportunity, and enhance the state's environment."

In March 2013, Cayuga submitted its proposal, which includes four alternative plans for converting the plant - partially or wholly - to natural gas. In May, NYSEG submitted its plan to close the plant in favor of upgrading the power transmission lines to the Auburn area to ensure reliability needs are met.

PSC favors repowering over transmission upgrades

At the PSC's September 19th meeting, despite acknowledging that the repowering proposals saddled ratepayers with too much market risk, and that transmission upgrades were sufficient to meet reliability needs, DPS staff advised the Commissioners that "there could be a solution that would be in the interest of the ratepayers …and still accommodate repowering."

Staff informed the Commissioners that they would be available to work with COP and NYSEG to help negotiate such a deal, and that they expected the Commission would be able to act on the revised repowering proposal at the December meeting.

As a result, the PSC directed COP and NYSEG to submit "a revised proposal for the repowering of the Cayuga station that meets the reliability, economic development, and environmental benefits… at the least cost to ratepayers."

The implication of staff's statement is that repowering is the pre-determined desired outcome, despite the many factors that rationally favor transmission upgrades as being in the public's best interest. Such a directive raises many questions:

What is the basis for prioritizing repowering and how does it serve the public interest? What are the implications for a deregulated market if ratepayers can be required to bail out uneconomical plants? How was the PSC able to make a determination that repowering is desired when Cayuga has not yet submitted a complete environmental impact analysis – don't they have a responsibility to consider all relevant evidence first? When and how will the public - who will be required to bear the financial and environmental impacts of repowering - be able to review and comment on the new proposal and how will our substantive concerns be addressed?

> *RECOMMENDATION: PSC must conduct a proper public process in a fair and open-minded way, without forcing pre-determined outcomes, and their decision must provide the best possible outcome for the ratepayer and the environment.*

Repowering fails to take environmental issues seriously

Greenhouse Gas Emissions

Choosing repowering over transmission upgrades does not properly take into account the urgent need to reduce ALL greenhouse gas emissions as much as possible. While it is true that burning gas instead of coal cuts carbon-dioxide emissions by half, not burning anything and instead selecting transmission upgrades results in zero emissions.

Further, carbon-dioxide is not the only greenhouse gas to be concerned about. Indeed, over these next crucial 20 years, natural gas (methane) is 86 times more potent a greenhouse gas than carbon-dioxide, and recent studies show the leakage of gas from drilling sites, pipelines and compressor stations contributes significantly to global warming. Why should we be generating any emissions at all, given that there is sufficient power in the region and transmission upgrades alone are sufficient to meet the region's reliability needs?

> *RECOMMENDATION: PSC must prioritize reduction of ALL harmful emissions as much as possible, whenever possible.*

Reduce Consumption, Improve Efficiency

Electricity from the Cayuga Operating Plant is needed for approximately 600 hours per year, during times of peak energy demand, primarily to provide power to the region's largest industrial consumer, Nucor Steel. Nucor operates 24/7 and demands approximately 60MW power. They purchase 10MW (16%) from New York Power Authority - a publicly subsidized power generator.

What attempts have been made to work with Nucor to reduce their consumption on peak demand days? Does Nucor have state-of-the-art co-firing capacity so that the heat that they generate can be captured and converted to electricity, and if not, how can the State assist them in developing this more efficient system?

Further, all consumers can be encouraged to reduce consumption during peak times by re-instituting different rates for peak and off-peak power consumption.

Prior to making a determination that repowering is needed, the PSC should work to reduce consumption and improve energy efficiency.

> *RECOMMENDATION: PSC should prioritize long-term solutions and seize every opportunity to reduce energy consumption and improve efficiency prior to making a decision to repower.*

> *RECOMMENDATION: Make the privilege of purchasing taxpayer subsidized NYPA power contingent on implementation of state-of-the-art energy efficiency practices and when necessary, demand-response compliance.*

Invest in Green Infrastructure

A decision to repower the COP instead of upgrading the transmission lines requires substantial investment - on the order of hundreds of millions of dollars - into a fossil-fuel based solution that will be short-lived as we transition to a renewable energy economy. Even if the cost to repower the COP is comparable to the cost to upgrade the transmission lines, it makes much more financial sense to invest our ratepayer dollars in infrastructure improvements that enhance our grid and that will have lasting value.

> *RECOMMENDATION: PSC should prioritize investment in green infrastructure and only construct new fossil-fuel infrastructure when no other suitable options are feasible.*

Encourage renewable and innovative solutions

This process has been biased against renewable and innovative solutions from the start. The initial request for proposals allowed consideration of only two solutions - transmission upgrades or repowering with natural gas - renewable or alternative solutions were not solicited. Further, bids were only sought from the current providers, NYSEG and COP.

In contrast, California is looking toward innovative solutions. Their Public Utility Corporation has recently committed to investing in energy storage facilities. (see http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M078/K912/78912194.PDF)

> *RECOMMENDATION: PSC's bidding process should be open and in addition to soliciting solutions from conventional energy producers, they should seek renewable energy and other alternative solutions from a broad range of providers even if the PSC does not know of alternative solutions that could satisfy the RFP. This will help stimulate innovation as well as market competition.*

Repowering as corporate bailout that harms ratepayers and destabilizes the competitive market

The goal of deregulation is to protect the ratepayer by increasing market competition. Yet now - when market competition has rendered a 55-year-old power plant bankrupt – under repowering, ratepayers will be forced to pay between $150 million and a half-billion dollars to build a power plant and a14-mile-long gas pipeline that is needed for a mere 600 hours of peak demand operation per year. In contrast, upgrading the transmission lines will cost $50 million, and these upgrades alone are sufficient to address the region's reliability needs.

The PSC's role is to protect the public, yet their desire to "accommodate repowering" amounts to a corporate bailout – a half-billion dollar gift from ratepayers to J.P. Morgan and other Cayuga bondholders, brokered by the PSC. What's more, with 600 hours of guaranteed sales plus the profits Cayuga can make by selling additional power on the open market, it will be the gift that keeps on giving.

The PSC's interference with the competitive free market system by subsidizing uneconomic plants with ratepayer dollars will set a dangerous precedent for other repowering decisions. Will ratepayers be required to bail out the other plants (Dunkirk, Somerset) that have become uneconomic? Further, it risks a slippery-slope destabilization of the market such that ratepayer-subsidized plants will have a competitive advantage over others and soon all generators will be clamoring for ratepayer subsidies.

Last, the October EIA Short Term Energy Report indicates that gas prices are rising to the point that some coal plants may soon become economical again.

> During the first half of 2013…the price of natural gas delivered to electric generators averaged $4.46 per MMBtu, 44 percent higher than the same period last year…. Despite the retirement of coal-fired generating capacity, higher prices for natural gas delivered to electric generators drive a projected 6.1% increase in coal generation this year while natural gas-fired generation falls by 9.8%.
> EIA, October STEO report http://www.eia.gov/forecasts/steo/

What happens when gas becomes uneconomical relative to coal? Will ratepayers have to bail out gas-fired facilities too?

RECOMMENDATION: PSC should avoid interference in the deregulated market and should protect the ratepayer, not corporate interests.

Lack of Transparency and Moreland Commission Findings

Following Superstorm Sandy, the Moreland Commission undertook a comprehensive investigation of the practices of the State's utilities. In their final report they detailed concerns about the PSC's *ex-parte* communications and the marginalizing of the ratepayer over privileged interest groups.

> The Commission learned during the course of its investigation that it is statutorily permissible and common practice for utility company executives, lobbyists and other paid representatives of interested parties to have unfettered access to the PSC Chair and Commissioners without having to disclose details of these conversations, presentation materials or other specifics to the other parties participating in cases before the PSC… Since *ex parte* communications enable one party to influence a decision-maker off-the-record and outside the presence of the other interested parties, it effectively skirts procedural due process.
>
> … Of particular concern to the Commission is that many ratepayers lack the necessary resources to express their opinions and concerns on matters that impact their lives and their pocketbooks… The Commission questions the fairness of allowing one side with virtually unlimited resources total access, while the other side lacks a similar voice.
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> (Moreland Commission on Utility Storm Preparation and Response, Final Report, June 22, 2013, p. 42)

The Moreland Commission's report is consistent with the experience of the Ratepayers and Community Intervenors group, which has filed multiple motions to try to gain access to information in this case. (see http://ratepayersgroup.com/legal.html)

The initial repowering proposals filed by COP were grossly redacted (over 40%), making meaningful public comment virtually impossible. While the PSC has been responsive to FOIL requests, the question remains why the PSC allowed such massive redactions of public documents in the first place. (Note that COP has not yet provided unredacted proposals for the public, despite PSC's order.)

The PSC has been less responsive to other motions for access – they have not provided information on meetings with NYSEG and COP to discuss repowering or other information related to the repowering plan, even though at their September 19th meeting staff indicated that they had spoken with industry and would continue to make themselves available to help the companies develop a revised repowering proposal.

Most recently, with regard to the soon to be submitted revised repowering proposal - instead of facilitating public access to the information, they have asked interested parties to sign a confidentiality agreement in order to view an unredacted version. This is despite the fact that the PSC's Secretary has ruled that previous repowering proposals did not contain trade secrets and must be made public.

> *RECOMMENDATION: PSC must end all ex-parte communications immediately.*
>
> *RECOMMENDATION: PSC must ensure that the public has timely access to all the information the PSC is considering and that they are able to participate equally and meaningfully in advocating for their best interests.*

PSC ad hoc proceedings and Moreland Commission findings

The proceedings in this matter are being conducted in an ad-hoc manner that skirts due process and subjects the ratepayer to significant risk.

Reliability Support Services Agreement (RSSA)

The PSC authorized an agreement requiring ratepayers to pay nearly $30 million in electric surcharges each year to keep the uneconomical power plant operating until a reliability solution is implemented. The RSSA agreement was negotiated between NYSEG and COP and approved by PSC without any independent representation of the public interest, and with no judicial involvement. This RSSA process represents an end-run around rate-proceedings and subjects the public to added costs and increased risks without due process.

No hearing officer or formal proceeding for Repowering

Similarly, this entire ratepayer proceeding, which could cost the ratepayer up to $500 million, is being conducted without independent representation of the public interest (until we stepped in as intervenors), and without an impartial hearing officer to receive motions and weigh claims on their merits.

In contrast, rate-setting cases involve an in-depth review of the overall financial condition of each utility, including all of its revenue, liabilities, debt load, capital structure, labor and fuel costs, capital budget expenditures, and service efficiency. The purpose of this review is to ensure that each utility is earning a fair profit while providing safe and reliable service to customers. Rate-setting cases are either litigated or settled. When litigated, the administrative judge hears evidence presented by the DPS, intervening parties and the subject utility. The administrative judge issues recommendations that the PSC can accept, reject or modify.

Members of our group have formally requested the PSC to provide any policies that distinguish "Rate Proceedings" from "Non-Rate Proceedings" so that we might understand why the repowering proceeding is ensuing without the benefit of due process. Our request for information has been acknowledged and information is pending.

The Moreland Commission's Interim Report (Section 6) discussed that between 1996 and 2006, the PSC often avoided litigating rate proceedings and instead entered into multi-year settlement agreements, without even conducting in-depth reviews. We're relieved to know that PSC has begun conducting rate proceedings again. We wonder if the PSC is similarly avoiding litigated proceedings in favor of the more expeditious settlement proceeding format with regard to RSSA and repowering proceedings.

The Moreland Commission's final report confirms our experience of ad-hoc proceedings and lack of due process for ratepayers:

> The PSC's primary charge is ensuring safe, secure, and reliable access to utility services at just and reasonable rates. Invariably, the PSC must weigh the needs of regulated utilities against the needs of ratepayers. But a problem arises when the judge – i.e., the PSC – hears overwhelmingly from well-funded and professional advocates and economists representing business interests but not from consumer interests. This status quo brings to mind the observation of the late Senator Warren Magnuson (D- WA), who said "all anybody wants in life is an unfair advantage."
>
> But fairness and due process – as there is in judicial proceedings – requires that two sides debate crucial issues involving, in this case, utility rates, modernizing the electric grid, establishing the right level of capital investments, and storm hardening so the State is not penny-wise-and-pound-foolish when the next devastating Hurricane Sandy hits.
>
> Indeed, interviewed stakeholders – such as the American Association of Retired Persons (AARP), the Public Utility Law Project (PULP), and Consumers Union -- questioned the PSC's very capacity to mediate the concerns of the regulated utilities with that of individual ratepayers. These groups expressed alarm about what they regarded as a **complex legal jungle that surrounds the PSC**.
> (Moreland Commission on Utility Storm Preparation and Response, Final Report, June 22, 2013, p. 42, emphasis added.)

RECOMMENDATION: Follow the Moreland Commission recommendations to establish an independent Citizens Utility Board to represent ratepayer interests. Further, we recommend that this Consumer advocate represent the ratepayer in ALL proceedings – whether litigated or negotiated.

Waiting for Transmission Upgrades

The PSC has known about the need to upgrade the NYSEG transmission lines in the COP region since at least 15 years ago, when plans were being made for market deregulation. (Case #96-E-0891, filing #24, April 24, 1998, p. 4, 18-19.) At that time PSC said NYSEG would make transmission upgrades to remedy the problem within the next 10 years, at a then estimated cost of $35-40 million.

Nucor Steel in Auburn, NY, the region's largest energy consumer (60MW) has been greatly concerned about NYSEG's failure to make needed upgrades. An extensive review of the history and problems is provided in Nucor's comment to the PSC concerning the reliability services agreement. (Case #12-E-0400, article 24, Nov. 11, 2012) They express frustration both with NYSEG for failing to make the needed repairs, and with PSC for failing to enforce the order that they do so.

The Interim Moreland Commission report (Jan 2013) shines some light on this situation, explaining how the PSC didn't have the statutory teeth to enforce their own rulings. We are appreciative that this situation has been addressed in the 2013-14 budget and hope that we will soon see improvements as a result.

Concerns remain, however. As noted above, ratepayers are currently being assessed a reliability service surcharge of nearly $30 million per year. The latest order says we will be assessed that amount indefinitely.

Why is the ratepayer being forced to pay for NYSEG's intransigence and PSC's impotence?

And why in the world did PSC remain silent for so long rather than speaking up for the statutory changes they needed to do their job of protecting the ratepayer and ensuring reliable electric supply?

Conclusion

The foregoing review paints a sad portrait of business as usual at the Public Service Commission at a time when new vision is called for. The PSC has a pivotal role to play in setting the course for New York's energy future.

We are appreciative of the Moreland Commission's work on the Utilities Reports. The Cayuga repowering case is a textbook example of why reforms are needed. We are grateful that the Governor has acted swiftly to institute the reforms that were called for in the interim report and we look forward to similar action on the final recommendations.

Along with reforms is the need for a change in organizational culture – one that puts protection of the ratepayer and environment front and center, and looks to new answers to old problems.

We are heartened by the appointment of Audrey Zibelman to chair the PSC, as well as the appointment of Richard Kauffman at NYSERDA. We hope this signals the Administration's interest in seeing New York take its place as the nation's green energy leader.

We caution that short-term economic development goals must not become the driver of energy policy and decision-making. Upstate, indeed, all of NY, can build true green economic development while it transitions from legacy fuels to true renewable energy. Along the way, NYS must implement the Community Transitions Program outlined in the Energy Highway Blueprint, rather than maintain legacy plants under the guise of economic development.

Investing our hard-earned ratepayer dollars in costly fossil-fuel pipelines and power generators that will be obsolete as we transition to a renewable energy economy is a bad investment. It makes more financial sense to invest in infrastructure improvements that enhance our grid and that will have lasting value as we build toward a renewable energy future.

We are confident that as New York makes a commitment to become a leader in renewable energy, lasting economic development will follow. Such commitment would make upstate New York the epicenter of renewable energy production and long-lasting green job development.

Please make New York the leader in responsible energy policy that serves the best interests of the ratepayer, the environment, and future generations.

APPENDIX A

RATEPAYER AND COMMUNITY INTERVENORS MEMBERS
(as of November 14, 2013)

ELECTED AND OTHER PUBLIC OFFICIALS
*Affiliations are listed for identification purposes only. Does not imply municipal support

Carol I. Chock, MRP
County Legislator, District 3
Chair, Planning, Energy and Environmental Quality Committee, *Tompkins County*

Irene Weiser
Councilmember
Town of Caroline
Tompkins County

Dooley Kiefer
County Legislator, District 10
(Village of Lansing and Cayuga Heights)
Tompkins County

Pamela Mackesey
County Legislator, District 1
Tompkins County

Herbert J. Engman
Supervisor
Town of Ithaca
Tompkins County

Elizabeth G. Thomas
Supervisor
Town of Ulysses
Tompkins County

Don Barber
Supervisor
Town of Caroline
Tompkins County

Linda Olshina Lavine
Councilmember
Town of Dryden
Tompkins County

Bonnie Bennett
Mayor
Village of Aurora
Cayuga County

Kathie Arnold
County Legislator, District 16
Cortland County

Robert "Ken" Camera
Council Member, 4th Ward
City of Geneva
Seneca and Ontario Counties

Jude Hartrich
Councilmember
Town of Wales
Erie County

Jane Russell
Supervisor
Town of Pulteney
Steuben County

Kevin Millar
Mayor
Village of Owego
Tioga County

Debra Brock
Councilwoman
Town of Preble
Cortland County

Brian Eden
Chair - Energy Committee,
Tompkins County Environmental Management Council
Tompkins County

Ken Zeserson
Chair, Planning Board
Town of Ulysses
Tompkins County

James Hamilton
Vice-chair, Town of Ithaca Conservation Board
Tompkins County

ORGANIZATIONS

Community Environmental Defense Council, Inc.
Helen Slottje, Esq.
David Slottje, Esq.
Tompkins County

Dryden Resource Awareness Coalition
Dryden Residents
Tompkins County

Concerned Citizens of Ulysses
Ken Zeserson
Tompkins County

SCIENTISTS AND ENGINEERS

*Affiliations are listed for identification purposes only. Does not imply institutional support.

Anthony Ingraffea, PhD, PE
Dwight C. Baum Professor of Engineering; Weiss Presidential Teaching Fellow; President: Physicians, Scientists and Engineers for Healthy Energy
Cornell University
Ithaca, NY
Tompkins County

Robert Howarth, Ph.D.
Howarth & Marino
Environmental Scientists
Cornell University
Ithaca, NY
Tompkins County

Jonathan Licitra
Civil Engineer, Town of Ithaca
Resident of Lansing
Tompkins County

INDIVIDUAL RATEPAYERS

*Affiliations are listed for identification purposes only. Does not imply institutional support.

Elmer Ewing, Ph.D.
Ithaca, NY
Tompkins County

Marie McRae
Freeville, NY
Tompkins County

Joseph Wilson
Ithaca, NY
Tompkins County

Hilary Lambert
Ithaca, NY
Tompkins County

Catherine Wagner
Ithaca, NY
Tompkins County

Sara Hess
Ithaca, NY
Tompkins County

Patricia Dubin
Ithaca, NY
Tompkins County

Judith Pierpont
Freeville, NY
Tompkins County

Kathryn Russell, Ph.D.
Ithaca, NY
Tompkins County

Nancy Miller
Freeville, NY
Tompkins County

Susan Multer
Horseheads, NY
Chemung County

Cornelia Farnum
Brooktondale, NY
Tompkins County

Diane Hofner
Mayville, NY
Chautauqua County

Mitchell Levine
Dryden, NY
Tompkins County

John Dennis
Village of Lansing
Tompkins County

Joanne Cipolla-Dennis
Freeville
Tompkins County

Deborah Cipolla-Dennis
Freeville
Tompkins County

Ruby Max Fury
Spenser, NY
Tioga County

Paul Mazzarella
Executive Director
Ithaca Neighborhood Housing Services*
Ithaca, NY
Tompkins County