



New Jersey Coalition of Automotive Retailers
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Chairman: Michael P. DiFeo
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January 19, 2022

Ms. Aida Camacho-Welch,
Secretary to the Board
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350

**RE: IN THE MATTER OF THE IMPLEMENTATION OF
P.L. 2018, C. 17, ENERGY AND WATER BENCHMARKING
OF COMMERCIAL BUILDINGS DOCKET NO. Q021071023**

Dear Ms. Camacho-Welch:

The New Jersey Coalition of Automotive Retailers (*NJ CAR*) is the Statewide trade association that represents New Jersey's 500+ franchised new car and truck dealers who directly employ or support nearly 70,000 jobs in New Jersey and significantly drives the State's economy with \$34.6 billion in sales and \$1.73 billion in tax revenue. This retail network provides consumers with price competition, as well as ready access to warranty, recall and general maintenance. These community leaders have also been tasked with leading the effort to help the State meet its ambitious goal of selling more than 330,000 electric vehicles (*EVs*) by 2025 and millions more by 2035.

New Jersey's neighborhood new car and truck dealers support the effort to improve the uses of New Jersey's energy and water resources. NJ CAR appreciates the opportunity to comment on the straw proposal presented in the Board of Public Utilities (*BPU*) Docket No. **Q021071023**, which seeks to promote market-driven increases in energy efficiency for commercial buildings.

The genesis of the straw proposal is the 2019 New Jersey Energy Master Plan Goal 3.3.2 ("*Establish transparent benchmarking and energy labeling*") and the New Jersey's Clean Energy Act of 2018 (*CEA*) requirement for the benchmarking of commercial buildings by May 23, 2023. The CEA provides:

No later than five years after the date of enactment of P.L. 2018, c. 17 (*C.48:3-87.8, et al.*), the board shall require the owner or operator of each commercial building over 25,000 square feet in the State to benchmark energy and water use for the prior calendar year using

the United States Environmental Protection Agency's Portfolio Manager Tool.

In its presentation on January 6, 2022, BPU identified four benefits of benchmarking:

1. Raising awareness of building energy efficiency;
2. Racking trends and setting efficiency targets;
3. Prioritizing efficiency projects across portfolios of buildings; and
4. Creating opportunities to highlight appropriate incentive programs.

BPU explained that a building owner's entries into the EPA's on-line Portfolio Manager Tool will produce an Output Report that will compare benchmarks against the EPA's national database of buildings. BPU plans to have a help desk assist with the Portfolio Manager and provide building owners with information about energy efficiency programs. BPU believes that benchmarking allows commercial building owners and operators to measure and analyze their respective facilities' energy and water use, compare their performance to similar buildings which may help them determine how to reduce their respective building's energy use and costs.

According to BPU's presentation, benchmarking has been required in 38 municipalities across the country, the majority being in California, with six municipalities using benchmarking.

In support of its request for stakeholder feedback on the straw proposal, BPU offers a list of 12 questions for consideration. Below follow NJ CAR's responses categorized by subject matter.

COVERED BUILDINGS

1. Staff requests stakeholder comment on the proposed definition of "commercial buildings."
2. Staff seeks stakeholder feedback on which buildings should be excluded from the covered buildings list, how campuses should be treated, and why.
3. Staff recommends an appeal process to have buildings removed from the covered buildings list and seeks stakeholder feedback on the criteria for granting appeals.

Currently, BPU staff recommends defining "commercial" as any building used for profit-making purposes as defined by the Division of Taxation for tax assessments as Class 4A. The straw proposal proposes excluding buildings such as those that are: industrial; multi-family residential; single-family residential; public schools; federal; county and municipal; religious facilities; newly constructed or newly demolished.

Recognizing that some commercial buildings are part of a campus setting with more than one building, BPU staff asks if the definition should include commercial campuses where the sum of all the buildings exceeds 25,000 square feet or a sole building on the campus exceeds 25,000 square feet. Finally, BPU staff asks for recommendations on an appeal process to remove buildings from the covered buildings list.

NJ CAR franchised auto dealers believe that the straw proposal's definition of "commercial buildings" should exclude buildings controlled by franchise agreements. As franchisees, franchised auto dealers are bound by the contractual requirements demanded by the franchisors under the franchise agreements. Franchisor supervision over franchisees includes topics generally including facilities, service operations, signs, advertisements, and major details of daily operations.

In addition, these contractual franchise obligations of local franchised auto dealers exist irrespective of the sum of the franchise buildings in the local neighborhood or the size of any sole building. If the definition of "commercial buildings" cannot be changed because of taxation issues, then the straw proposal should expand the list of excluded buildings to add buildings that are part of a franchised agreement. BPU should exclude all franchised buildings to ensure an evenhanded application across all franchised auto dealerships. Once a decision has been made on what buildings should be excluded, a detailed appeal process should be created for any facility that disagrees with its classification.

DATA ACCESS, CYBERSECURITY

4. Staff requests stakeholder feedback about the proposed data access approach, privacy, and cybersecurity concerns about building owners and building operators accessing tenant data, and eligibility requirements for opt-outs based on privacy and cybersecurity concerns.
5. Staff requests stakeholder comment on the utility implementation of data access and web services and other available options that would be secure and efficient and would streamline data upload for building owners/operators.

This straw proposal requires that a building owner obtain all their tenants' utility data. In addition, regulated utilities must provide anonymized building-level data to protect building owners. Staff recommends that utilities aggregate the data up to the building-level and provide it to the building owner.

In either circumstance, this provision contemplates a landlord-tenant relationship which is not applicable to franchised auto dealers. **As a result, NJ CAR franchised auto dealers believe that this provision is equally inappropriate for franchised auto dealerships and repeats the recommendation that franchised auto dealerships be exempt from benchmarking.**

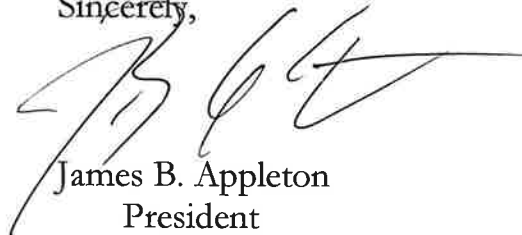
SOCIALIZING THE BENCHMARK REQUIREMENT

6. Staff seeks stakeholder feedback on best strategies and recommended approaches for outreach to ensure that all commercial building owners and operators are **aware of the benchmarking requirement and its benefits**.
7. Staff seeks stakeholder feedback about what **training content, media, and platforms** would be useful to provide building owners and operators, as well as for any other entities.
8. Staff recommends developing a Portfolio Manager **certification program** with the assistance of New Jersey Institute of Technology's ("NJIT's") Center for Building Knowledge and seeks feedback on how it might be implemented.
9. Staff seeks stakeholder feedback on a **public reporting approach** that takes into account public awareness and transparency goals, privacy considerations, and minimization of cybersecurity risk.
10. Staff seeks feedback on how to **optimize reporting compliance**.
11. Staff seeks suggestions about how to design the benchmarking program so as to potentially be able to **expand in future years** (*e.g., by accommodating additional buildings, etc.*) and form the foundation for future efforts in increasing energy efficiency in buildings.
12. Staff seeks comments on **additional elements** of the benchmarking program that would maximize its benefits.

BPU's straw proposal contemplates creating opportunities for public awareness campaigns and for opportunities that will allow participants to better engage in efforts to promote energy and water efficiency. To be clear, New Jersey's neighborhood new car and truck dealers support the efforts to improve the uses of New Jersey's energy and water resources. This benchmarking proposal, however, is overly broad in its definition of "commercial buildings" and should be narrowed to include those buildings whose business operations are not proscribed by franchise agreements.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "JBA", is written over the typed name and title.

James B. Appleton
President

JBA:md