

January 20, 2022

Aida Camacho-Welch

Secretary of the Board
New Jersey Board of Public Utilities
44 South Clinton Avenue, 1st Floor
P.O. Box 350
Trenton, NJ 08625

**RE: IN THE MATTER OF THE IMPLEMENTATION OF P.L. 2018, c.17 ENERGY AND WATER
BENCHMARKING OF COMMERCIAL BUILDINGS Docket No. QO21071023**

Dear Secretary Camacho-Welch,

Thank you for this opportunity to provide comments on the New Jersey Board of Public Utilities' ("BPU's") Building Benchmarking Policy Proposal as released for comment on December 16, 2021 and subsequently reviewed during the Stakeholder Meeting on January 6, 2022.

Bright Power is a premier provider of energy and water management services for real estate owners, investors, and operators. We enhance building performance, simplify building operations, and contribute to a healthier environment. In New Jersey, Bright Power has completed numerous energy audits, energy efficiency retrofits, green certifications, and solar installations for multifamily and commercial properties. In addition, Bright Power is actively benchmarking over 100,000 buildings across the country, helping building owners comply with municipal and state regulations, lender requirements, and most importantly, their internal sustainability goals.

Bright Power strongly supports the implementation of a statewide benchmarking program for commercial properties. However, the inclusion of multifamily properties on the list of covered commercial buildings is a vital step towards improving the performance and affordability of these buildings for both residents and owners.

Thank you for the opportunity to participate in this important planning for statewide benchmarking and please reach out with any questions you may have. See our comments on the following pages.

Sincerely,



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STAKEHOLDER QUESTION #1: *Staff requests stakeholder comment on the proposed definition of “commercial buildings” above.*

Bright Power recognizes that the Clean Energy Act of 2018 requires the BPU to implement a benchmarking requirement for commercial properties. However, the Act does not specify a definition for commercial properties and the BPU should not rely on the NJ Division of Taxation to determine the definition of a commercial building. The BPU should instead define covered properties as having at least one commercial meter and/or rate class. This would allow the BPU to mitigate the legal risk associated with Clean Energy Act compliance, and facilitate the inclusion of properties operated as commercial businesses but not recognized as such in the Division of Taxation rules, particularly with regard to multifamily buildings.

Multifamily properties are often maintained, owned and operated by commercial entities, and would therefore reap the same benefits from mandated annual benchmarking as offices and retail properties. Asset managers in the multifamily sector oversee enormous portfolios of properties located across the country, and we have seen that they nearly always give more consideration to retrofit opportunities for properties that are already required to benchmark.

Including multifamily properties on the Covered Buildings List also offers significant benefits to the BPU’s broader emissions goals. Multifamily is one of the most underserved sectors in the state with regards to energy efficiency. The New Jersey Clean Energy Program struggled to attract multifamily properties for its old programs, and now the utilities are facing similar challenges. By mandating multifamily benchmarking, the state will have access to crucial data to inform better offerings for this important sector, which is particularly important for low income multifamily. Over two dozen jurisdictions have successfully included multifamily in their benchmarking ordinances, the state of New Jersey should join their ranks and include multifamily as well.

STAKEHOLDER QUESTION #2: *Staff seeks stakeholder feedback on which buildings should be excluded from the covered buildings list, how campuses should be treated, and why.*

Bright Power recommends using tax parcels as the identifier for the property instead of creating a UBID. By using the tax parcel instead of the UBID as proposed, properties could submit multiple tax parcels as a campus (except for condos) if they share meters, and most other properties could avoid a submission as a campus. Even though tax parcels are administered on the local level, we still strongly believe that creating additional identification numbers through UBID would allow for more potential miscommunication than using tax parcels. Additionally, this proposal reduces the number of properties that would need to be submitted as campuses.

If the BPU decides to retain the UBID proposal as written, we suggest that the UBID design aligns with the methodology the utilities will be required to use for aggregating data and how covered properties will be required to submit their data.

STAKEHOLDER QUESTION #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.

New York City's benchmarking ordinance requires buildings to have had a Certificate of Occupancy and/or a Temporary Certificate of Occupancy for the entire calendar year reported. Demolition permits that remove a Certificate of Occupancy are used to justify exclusion from benchmarking. We recommend the BPU implement the same rule.

Bright Power strongly supports the proposal to include properties undergoing a sale on the Covered Buildings List, and we suggest the BPU require utilities to provide data regardless of any upcoming ownership change.

STAKEHOLDER QUESTION #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.*

Bright Power recommends that the Covered Buildings List is public for building owners and others to reference. The list should include both street addresses and tax IDs. Using a tax ID as well as a street address can help minimize confusion for properties with many street addresses.

Bright Power opposes the opt out procedure for single tenant buildings. We understand that the BPU is concerned about privacy for tenants, however, there will be too many buildings using this option to avoid compliance. For example, there are numerous self-storage facilities across the state that, as the single tenant, would be able to opt out and could represent thousands of square footage that the BPU will not be able to benchmark. This problem will disproportionately impact suburban communities where buildings are more likely to have just a single tenant.

The straw proposal suggests that users "grant the BPU read access" to their data in ENERGY STAR Portfolio Manager. Bright Power strongly recommends that the BPU adopt a snapshot approach to reporting, rather than requesting continuous access to a property's Portfolio Manager report. We've seen first hand that continuous access creates confusion for property owners that are using the tool to comply with benchmarking requirements from multiple entities. For instance, many owners report benchmarking data to lenders throughout the year. Using a specific snapshot report submission removes this possible confusion.

STAKEHOLDER QUESTION #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.*

Bright Power recommends that the utilities provide tenant data aggregated at the same level as required for creating the Covered Buildings List. For example, some utilities provide data based on service address, but a single covered building entity may include multiple service addresses. This can force a campus set up in ENERGY STAR Portfolio Manager simply because of a misalignment of definition of "building" between the Covered Building List and the utility.



Bright Power also suggests requiring utilities to report data with dates based on when energy was used, rather than the date billed.

We advise the BPU to be aware that the latest utility data sharing in ENERGY STAR Portfolio Manager makes connections that share data monthly throughout the year after the initial connection is established. Best practices from utilities outside NJ should be examined and shared as a model for New Jersey utilities that have to implement updates for adherence to this regulation. This single connection request also helps ensure uniform data across reporting periods, as well as eases the burden on buildings for compliance.

STAKEHOLDER QUESTION #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.*

Bright Power strongly supports the BPU's outreach plan.

STAKEHOLDER QUESTION #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*

Bright Power appreciates the thought the BPU has given to the training strategy, and we suggest a single website for all program requirements, FAQs, and other training.

STAKEHOLDER QUESTION #8: *Staff recommends developing such 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.*

Bright Power recommends the BPU use existing credentials to apply to report submission, instead of paying to fund a new program with NJIT. Most other jurisdictions require credentials that vendors already possess, like Registered Architect, Certified Energy Manager (CEM), and Professional Engineer (PE).

In addition, we suggest using the email associated with the ENERGY STAR Portfolio Manager account for any submission communication to ensure it goes to the correct point of contact, which may not be the building owner.

STAKEHOLDER QUESTION #10: *Staff seeks feedback on how to optimize reporting compliance.*

Bright Power has observed with other jurisdictions that the ability to levy fines is a key contributor to compliance. If the BPU does not have the ability to levy fines and penalties, we suggest the BPU explore other penalties. In New York City, properties that are not compliant with benchmarking and audit rules are at risk of losing the ability to pull permits. We've seen that this consequence is oftentimes even more effective than a monetary fine at encouraging compliance. This is a strategy the BPU should consider for benchmarking non-compliance in New Jersey.



STAKEHOLDER QUESTION #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.*

We urge the BPU to include multifamily in its initial implementation of the Benchmarking requirement, as recommended by several other stakeholders.

In the event this modification is not made, we strongly advise the BPU to avoid a “pilot” approach to a benchmarking mandate, and devise a clear timeline for expansion of the mandate to include multifamily that will be communicated at the same time as initial launch. Numerous other jurisdictions have seen first-hand how compliance rates suffer when the rules for future compliance are not clearly communicated at the outset.

