

January 20, 2022

VIA ELECTRONIC MAIL

Aida Camacho-Welch
Secretary of the Board
44 South Clinton Ave., 1st Floor
Post Office Box 350
Trenton, NJ 08625-0350
Phone: 609-292-1599
Email: board.secretary@bpu.nj.gov

Re: I/M/O the Implementation of P.L. 2018, c.17 Energy and Water Benchmarking of Commercial Buildings
BPU Docket No. QO21071023

Dear Secretary Camacho-Welch:

The New Jersey Utilities Association (“NJUA”) represents investor-owned utilities (“Utilities”) that provide electric, natural gas, telecommunications, water and wastewater services to residential and business customers throughout the state. In response to the New Jersey Board of Public Utilities’ (“Board”) request for comment on its proposal outlining recommendations for the policy considerations and implementation details related to the 2018 Clean Energy Act’s (“CEA”) Benchmarking Requirement (“Proposal”), NJUA offers these comments on behalf of our members. Each NJUA member participating in this letter reserves the right to submit comments on an individual basis.

Customer Privacy Issues

As an overarching matter, the Utilities are concerned that the release of customer information to third-parties may be violative of customer privacy rules. Before disclosing customer information (including usage information) to a third-party, the Utilities are required to obtain the customer’s consent.¹ Moreover, whenever any individual proprietary information is disclosed, it is required to be used only for the provision of continued electric generation service, electric related service, gas supply service or gas related service to that customer.² Although there are limited exceptions to these rules, such as Utilities disclosing the information to protect a customer from fraud, none of the limited exceptions appear to apply to the disclosure of customer information contemplated by the Proposal. As such, the Utilities request that the Board provide further guidance on this issue, with specific focus on the rules prohibiting the release of customer information without customer consent.

¹ See, N.J.A.C. 14:4-7.8 and N.J.S.A. 48:3-85, et seq.

² See, N.J.S.A. 48:3-85, et seq.

Aqua New Jersey, Inc. • Atlantic City Electric Company • Atlantic City Sewerage Company • Elizabethtown Gas • Gordon’s Corner Water Company • Jersey Central Power & Light, A FirstEnergy Company • Middlesex Water Company • New Jersey American Water • New Jersey Natural Gas • Public Service Electric & Gas Company • Rockland Electric Company • South Jersey Gas • SUEZ • Verizon New Jersey

In keeping with the need to protect customer data privacy, the Utilities also support the proposal that utilities only send aggregated building-level data and further recommends that buildings with four (4) or fewer tenants, except in cases where the building owner is the account holder, also be initially excluded from the “covered buildings” list. Such an exclusion is necessary to ensure no single tenant’s usage can be determined by the building owner, who is not the account holder. This initial exclusion will also allow additional time for consideration and development of program processes related to the provision of customer consent.

Core Concepts

With respect to the proposed definition of commercial buildings, the Utilities agree that using the “commercial building” class as compiled by the New Jersey Division of Taxation is an appropriate place to start. The Utilities submit that the definition must be straightforward and simple to ensure that it is understandable to building owners and operators and to further compliance. Further, while some stakeholders were calling for the list of eligible classes be expanded to also include Multi-family properties, the Utilities respectfully submit that such an expansion would not be appropriate at this time given the challenges with implementation noted within this response.³ The Utilities maintain that it may be reasonable to revisit this decision after more experience is gained from a process and system perspective and there is greater clarity on the customer privacy issues.

The Utilities agree with the concept of a Board generated, annual list of buildings that fall within the definition of “commercial buildings” over 25,000 square feet. The Utilities submit that campuses should be excluded from the “covered buildings” list as applying the definition at the campus level appears to fall outside the legislative requirement. In addition, the inclusion of campuses would create greater challenges from an implementation perspective, adding unnecessary complexities and increasing costs. Further, the 25,000 square foot requirement at the individual building (not campus) level tracks the exact language from the legislation.

The Utilities also agree with the Proposal’s listed buildings that should be excluded from the “covered buildings” list. Moreover, any building with a recent or upcoming renovation or demolition should also be excluded because the information may not be as meaningful if there is a material shift in footprint, construction or usage.

Further, the Proposal is seeking input regarding the potential for an opt-out process. It is critical to understand what opt out provisions may be available for the individual tenants to allow the Utilities to consider how to plan for and implement processes and systems to support the provision of appropriate usage data (and not for a tenant who has opted out) to the building owner. For example, if tenants are able to opt out of being included in the benchmarking, how will the Utilities know which tenants have opted out so as to not include them in the aggregated monthly usage reporting? How will the Utilities know when a tenant is no longer in the space and the new tenant has opted out? Any opt-out process must address the utility requirements to protect customer data privacy. The utility should not be held responsible for managing who opts in or out. Rather that responsibility should remain with the building owner.

³ In addition, Multi-family properties (four or fewer) and apartment buildings are not included in the [Division of Taxation definition](#).

Implementation

The Utilities believe that, operationally, implementation will be extremely challenging and support keeping the benchmarking initiative simple, at least at the beginning. The benchmarking process could then be expanded over time based upon experience and stakeholder feedback. Given the complexity of the types of commercial buildings and varied customer scenarios, an orderly, well-planned rollout and expansion would help minimize costs to customers.

In addition, the Utilities support exploring alternative methods for providing data to building owners, at least initially. This would allow adequate time for the “web services” solution to be further developed, analyzed and sufficiently studied. The Utilities submit that all “web services” requirements, data and costs should be developed, reviewed and understood before the proposed “web services” solution becomes a requirement. For example, there is no set standard for the functionality of the “web services” solution. Web service can be a REST API, a web page or portal for a user to retrieve individual building data, or a place to download a file. The Utilities must have a clear understanding of the minimum standard for functionality of a “web service”.

Moreover, as the Board is aware, there is a separate stakeholder proceeding specifically addressing customer and third-party access to customer data due to the increased deployment of advanced metering infrastructure in New Jersey. Accordingly, the Utilities are concerned that any overly-expeditious deployment of a “web services” solution coming out of this proceeding may ultimately lead to a duplication of efforts and a requirement for utilities to implement multiple, different solutions for data access.

The Utilities have also identified several preliminary implementation issues that require program processes, including requirements that the program administrator and/or building owner will have to address, as follows:

- a. utility data systems are account/service/meter number based and do not identify or match accounts to buildings;
- b. utilities do not necessarily know or have a relationship with the building owner unless the building owner is the account holder;
- c. unscrupulous parties could obtain and misuse customer data, including sensitive customer data, without validation of the building owner;
- d. because accounts might have been created over a period of many years, by many different representatives across different systems, it might be difficult to link all the correct accounts to a given premise;
- e. under the Proposal, there will be a Universal Building Identifier (UBID) number associated with a GIS location used to identify single or multiple buildings to be treated as a single unit. However, depending upon the GIS service utilized by each Company, a building GIS can be the front entrance, center point of the building or other location. The Utilities may have difficulty matching the GIS data to the Company GIS data when the UBID’s GIS is not necessarily the same as that used by the Company. Is there a proposed criteria for matching GIS, address and UBID?
- f. What role will the Utilities have in validating and verifying that person who will be responsible for obtaining the data is actually authorized to submit the data.

With these challenges in mind, the Utilities respectfully submit that the building owner should be required to provide account and/or meter information for all the tenant spaces associated with each UBID for which they are seeking usage information. The building owner should have access to the facility information and is best positioned to identify all accounts to be included in the benchmarking of their building. Furthermore, requiring the building owner to provide the information helps to ensure the entity requesting the information is legitimately entitled to do so, reducing the risk of a bad actor posing as the building owner to obtain confidential customer information.

Costs

Recognizing that the Proposal requires upfront and ongoing administrative support, the Utilities respectfully submit that all incremental operations and maintenance costs not otherwise reflected in rates, including associated utility administrative and Information Technology costs, must be fully recoverable, not just the cost of developing the “web services” as set forth in the Proposal.

Even with automation and the use of a third-party vendor to provide “web services”, the program will require a team of experts who know and understand the system, as well as understand customer data and usage to regularly respond to the inevitable outreach requiring the Utilities to verify, clarify or correct information going into the Portfolio Manager or back to building owner/operators. Cost recovery provisions should allow for the inclusion of all reasonable and prudent incremental administrative costs related to implementing this requirement.

Potential to Require Compliance to Participate in EE Programs

The Proposal includes a recommendation that compliance with these benchmarking requirements should be a pre-requisite for participation in both the Board’s and Utilities’ energy efficiency programs. The Utilities strongly object to this recommendation as it would impose an additional barrier to participation in energy efficiency programs. Given the escalating Clean Energy Act goals, the Board and the Utilities must be focused on eliminating barriers, not creating new ones. Further, the implementation of this recommendation would increase administrative costs of the programs and place an additional burden on trade allies who would need to confirm compliance in advance or risk frustrating a customer who may not be entitled to participate in the program or further delays in the project if the customer must spend time meeting the requirements and proving compliance.

Thank you for providing the opportunity to submit these comments.

Respectfully,



Thomas R. Churchelow, Esq.
President & CEO