

Comments of Rockland Electric Company on the  
Notice of the New Jersey Board of Public Utilities dated December 16, 2022  
Docket No. QO21071023

Executive Summary

On December 16, 2022, the Staff of the New Jersey Board of Public Utilities (“BPU”) issued a “Building Benchmarking Policy Proposal and Implementation Outline” (“Straw Proposal”). Staff issued the Straw Proposal to comply with the New Jersey Clean Energy Act (“CEA”), which provides:

No later than five years after the date of enactment of P. L.2018, c.17 (C.48:3-87.8 et al.) [by May 23, 2023], 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 [2022] using the United States Environmental Protection Agency's Portfolio Manager tool.<sup>1</sup>

Subsequently, on January 6, 2022, BPU Staff presented a webinar on the Straw Proposal, which provided further clarifications and recommendations.<sup>2</sup>

Rockland Electric Company (“RECO” or the “Company”) supports New Jersey’s clean energy goals and encourages their implementation in a manner that provides the greatest benefits, while also minimizing the corresponding cost impacts, to all customer classes. Recognizing that utility involvement will be critical in achieving the State’s clean energy goals, the Company welcomes the opportunity to play a central role, and believes these goals are most achievable with the appropriate regulatory framework and program support.

Through its New York affiliate, Orange and Rockland Utilities, Inc. (“O&R”), the Company has first-hand experience implementing the benchmarking of building energy usage. Putting information into the hands of customers and developers enables individuals and businesses to make informed decisions about their energy needs and goals. However, in offering access to customer data, the BPU must adopt appropriate privacy standards for the protection of individual usage data. In New York, the New York Public Service Commission (“NYPSC”) has approved,<sup>3</sup> and O&R uses, a benchmarking policy that protects customer privacy through the aggregation of building data. The policy, discussed in more detail below, strikes the appropriate balance between protecting individual customer privacy and meeting the needs of business and building owners, who increasingly require benchmarking data for their own benchmarking purposes or to comply with local building laws. The NYPSC also requires that participating building owners comply with a short set of terms of conditions that establish conditions for the building owner’s usage of customers’ aggregated data. In addition, the building owner or its authorized agent must supply metering data to the utility in order to benchmark energy usage.

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<sup>1</sup> P.L. 2018, c. 17 codified at *N.J.S.A.* 48:3-87.10(b)

<sup>2</sup> BPU Webinar Power Point (January 6, 2022).

<sup>3</sup> See Joint Utility Aggregated Whole Building Data Terms and Conditions, *In the Matter of Distributed System Implementation Plans*, Case 16-M-0441 *et al* (June 28, 2019) (“Terms and Conditions”) available at <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={3D63FDC6-3564-49FE-A6C1-FA8E583F6BC5}>

For the above reasons and drawing upon the experience and lessons learned of O&R, RECO responds to the questions posed in the Straw Proposal and offers the following Comments.<sup>4</sup>

### Comments

**Stakeholder Question #1: Staff requests stakeholder comment on the proposed definition of "commercial buildings."**

**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.**

With regard to Stakeholder Question #1, to clarify the definition of "commercial buildings" the Straw Proposal recommends using the "commercial building" class as defined by the New Jersey Division of Taxation (property class 4A). The Straw Proposal also recommends including State, county, municipal, and public school buildings within the definition of "commercial building," and notes the BPU has started setting up the benchmarking of State-owned buildings over 25,000 square feet. The Straw Proposal also notes that the BPU offers the Local Government Energy Audit ("LGEA") program through which participating entities benchmark using Portfolio Manager. The Straw Proposal recommends that building owners and operators in excluded classes may voluntarily benchmark with the State.<sup>5</sup>

The Company does not object to the proposed definition of "commercial buildings." RECO believes, however, that the success and cost efficiency of the benchmarking proposal require that the building owner submit meter number data for each specific customer within the building to the utility, and that the responsibility for timely reporting correct meter number data be placed solely on the building owner. This is necessary because currently utility account and premises information does not always match up perfectly with building addresses or building tax records. The utility should not be required to either monitor the activities of the building owner, or verify the accuracy of metering data submitted by the building owner. Allocating these responsibilities to the utility will add unnecessary costs to the utilities, and ultimately to customers.

With regard to Stakeholder Question #2, the Straw Proposal inquires whether a building owner should benchmark a campus with two or more buildings if (a) the total square footage of the buildings exceeds 25,000 square feet or (b) just one of the buildings exceeds 25,000 square feet. In addition, the Straw Proposal recommends that if a building is newly constructed or demolished in a given reporting year, the building should not be included in the covered buildings list. However, if a building is sold during a given reporting year, the new owner would be obligated to benchmark that building.<sup>6</sup>

The Company recommends that in a campus setting, any reporting requirement be limited to buildings with a total square footage exceeding 25,000 square feet. The Company recommends such an individual building requirement because reporting energy usage data for an entire campus of buildings will not provide meaningful energy usage data. Excluding campus-wide data also conforms to the language of the

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<sup>4</sup> In its Comments, the Company has grouped together questions with related topics.

<sup>5</sup> Straw Proposal at p. 5.

<sup>6</sup> Straw Proposal at p. 6.

CEA. The CEA state states that the BPU “shall require the owner or operator of each commercial *building* over 25,000 square feet in the State to benchmark energy and water use.” (emphasis added).<sup>7</sup> By using the term “building” rather than “buildings,” the CEA signified its intention that metering data reporting be performed on an individual building rather than by campus-wide basis. The Company agrees with the Straw Proposal’s recommendation to exclude buildings that are newly constructed or demolished in a given reporting year. To be meaningful, the data should be for the entire year of energy usage. The Company also agrees that new building owners have the responsibility for metering the building, who should be required to report metering 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.**

The Straw Proposal recommends that building owners be able to appeal to have their buildings removed from the covered buildings list in certain situations for good cause (*e.g.*, size falls below the threshold, the building is unoccupied, or the building is foreclosed) and with the provision of supporting evidence (*e.g.*, architectural drawings).<sup>8</sup>

The Company agrees that there should be an appeal process, but does not take a position on the process itself. However, the utility should not be required to participate in the appeal process in any way. Requiring any participation by the utility unnecessarily will result in additional costs for utility customers.

**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.**

With regard to Stakeholder Question #4, the Straw Proposal recommends that building owners complete a Portfolio Manager annual energy usage data submission related to data for the prior calendar year by July 1. Within the first quarter of every year, Staff would issue a covered buildings list for the prior calendar year and send notice to building owners of their benchmarking obligation. The building owners would bear the responsibility of notifying all applicable building operators of their respective buildings. The building owners and operators, as applicable, would then have three months to fulfill their submission obligations in Portfolio Manager. The building owner will send a data access request to the utility, and the utility will compile the data for all customers at the given building. The owner will receive one year of monthly building-level data.

Staff does not anticipate privacy or cybersecurity issues regarding the access to and disclosure of tenants' data. Staff notes that aggregating data for all utility customers at the building level limits the ability of the building owner to isolate the data for an individual tenant. At the stakeholder meeting on January 6, BPU Staff recommended that the benchmarking program would “allow” a building owner to opt-out of

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<sup>7</sup> P.L. 2018, c. 17 codified at *N.J.S.A.* 48:3-87.10(b).

<sup>8</sup> *Id.*

the reporting requirement if the building had four or fewer tenants or if the building has one tenant who consumes more than 50% of the building's total energy (*i.e.*, 4/50 standard).<sup>9</sup>

With regard to Stakeholder Question #4, the Company supports the principle that customers control sharing their individual data. Customer specific information, including energy usage information, should not be disclosed to third parties without the customer's consent. Consent processes are complex and nuanced, and the BPU should carefully evaluate the variety of ways customers may consent to the sharing of their information. Standardization of these requirements for third parties will reassure customers when they authorize access to their data that the appropriate protections are in place.

The Straw Proposal states that the building level data will be summed up, or aggregated, so that individual customer information will not be disclosed. Specifically, the Straw Proposal states that "Staff does not anticipate privacy or cybersecurity issues regarding the access to and disclosure of tenants' data."<sup>10</sup> Aggregated data must be subject to a privacy standard prior to disclosure. During the stakeholder webinar, a 4/50 standard was proposed.<sup>11</sup> A privacy standard should be mandatory, with application of that standard not subject to the building owner's option. A privacy standard is critical to maintaining customer confidence and engagement in the clean energy future. The Company supports the BPU's adoption of the 4/50 standard, which strikes a reasonable balance between customer privacy and the need for building energy usage information.

Once the building data passes the privacy standard, the Company also recommends that the BPU implement a feature of the New York benchmarking program whereby the utility only provides energy usage if the building owner or its authorized agent sign a "Terms and Conditions" document setting out the conditions under which the customer data is provided.<sup>12</sup> The Terms and Conditions document requires the building owner to agree:

- only to use the whole building energy use data for the purposes of building benchmarking, identifying energy efficiency projects, and energy management, including REV initiatives;
- not disclose whole building energy use data except for the purposes of building benchmarking, identifying energy efficiency projects, and energy management initiatives;
- take appropriate administrative, technical, and physical safeguards to protect the whole building data from any unauthorized use or disclosure;
- not use the whole building energy use data for a secondary commercial purpose not related to the authorized purpose without first obtaining consent from the customer(s) to be targeted for such commercial purpose;
- destroy any whole building energy use data that is no longer necessary for the purpose for which it was transferred; and
- not permit access to the whole building data by anyone that has not agreed to abide by

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<sup>9</sup> The 4/50 standard was adopted in New York to protect tenants' privacy when aggregated building data is provided to a building owner or its agent.

<sup>10</sup> Straw Proposal at p. 7.

<sup>11</sup> BPU Webinar Power Point (January 6, 2022) at p. 13.

<sup>12</sup> See Terms and Conditions at p. 3.

the data was provided by the Utility.<sup>13</sup>

The Company recommends that the BPU re-examine its conclusion that no cyber security issues are raised regarding the access to and disclosure of tenants' data. Whether those issues are raised depends on how data is accessed and shared with third parties.

**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.**

With regard to Stakeholder Question #5, the Straw Proposal recommends that after the utilities provide aggregated building-level data, the steps for a building owner to obtain the data from the applicable utility are as follows:

1. The building owner establishes an account with the utility and submits its building information, such as address and UBID; and
2. The utility maps all tenant accounts and meters in the building and returns the list to the building owner for confirmation.<sup>14</sup>

The Straw Proposal recommends that the utility “confirm the tenant/meter list, and the utility calculates the aggregated data and returns it to the building owner.”<sup>15</sup> Then, using Portfolio Manager, the building owner or building operator assigns one or multiple meters to a building, where a meter could represent: (i) the type of utility service, such as electricity, natural gas, fuel oil, or water, (ii) a sub-meter, or (iii) a site-generated utility, such as solar or water well. The Straw Proposal recommends three methods to enter the monthly utility data into a meter: (i) manually type each month of data, (ii) upload a properly formatted spreadsheet, or (iii) have the utility or a third-party service provider automate the data feed to Portfolio Manager through an XML data standard called “web services.”<sup>16</sup>

The Straw Proposal recommends that the BPU require regulated utilities serving over 50,000 customer accounts in New Jersey to provide aggregated building-level data through web services starting in the calendar year 2022. Staff proposes this threshold to include all regulated electric, natural gas and larger water utilities, but to exclude smaller water utilities to not impose an undue financial burden. All other regulated utilities would still be required to provide aggregated building-level data to the building owner or its respective building operator, but they could do it through a spreadsheet. The Straw Proposal further recommends that the utilities provide this data by early 2023, several months before the first submission deadline. The Straw Proposal “suggests” that the BPU allow the utilities to recover the “reasonable and prudent costs associated with the information technology costs of implementing web services.” At the

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<sup>13</sup> *Id.*

<sup>14</sup> Straw Proposal at p. 7.

<sup>15</sup> *Id.*

<sup>16</sup> Straw Proposal at pp. 7-8.

stakeholder meeting on January 6, BPU Staff recommended that the utility implement “web services” that would allow “secure data transfers among building owner, utility and EPA.”<sup>17</sup>

Regarding Stakeholder Question #5, the Company disagrees with the proposal that the utility “confirm” the tenant/meter list before calculating aggregated data. Utility data systems are account/service/meter number based and do not identify or match accounts to buildings. Utilities do not necessarily know or have a relationship with the building owner unless the building owner is the account holder. Additionally, the building owner should be responsible for providing accurate tenant and meter number information. As noted above, the responsibility for compliance should fall solely on the building owner to avoid unnecessary costs to the utility and ultimately to utility customers.

Regarding web access, the web access proposal confuses who is responsible for reporting accurate information in Portfolio Manager. Initially, the Straw Proposal outlines a process where the building owner has the obligation to enter accurate data into Portfolio Manager. The “web services” proposal appears to shift the obligation to the utility. The Straw Proposal does not explain or support why utility customers should have the obligation to build software in order to relieve the building owner from the obligation of entering accurate data into Portfolio Manager. Development of “web services” is also further complicated if there is an expectation that they be standardized among the utilities, and whether the utilities would be required to provide training for the use of the web services. The Company believes that these and other privacy, cost, and cyber security issues must be examined thoroughly before the utilities are required to develop such software. The Company recommends that any proposal to implement web access be delayed until stakeholders and the BPU are able to examine thoroughly the issues raised in the Straw Proposal to require the utilities to develop web services.

The Straw Proposal’s recommendation that data be entered into Portfolio Manager using “web services” beginning July 1, 2023 should also to be re-examined. For example, the Straw Proposal envisions that the BPU will resolve policy issues in 2022. Developing web services would extend that timeline beyond July 1, 2023, even assuming resolution of the policies governing the web services in 2022. Implementing web services requires that the utility retain a software developer, and then develop and test the software, all of which will take many months. In order to reach its July 1, 2023 goal, the BPU should re-examine its proposal to require that the utilities develop web services until that proposal has been thoroughly vetted.

The Company is concerned that the Straw Proposal “suggests” that the BPU allow the utilities to recover the “reasonable and prudent costs associated with the information technology costs of implementing web services.” The technology required to develop the Company’s Information Technology and billing software will be significant and must be recoverable. The Straw Proposal also includes significant additional activities by the Company’s Staff to implement the benchmarking initiative. The CEA acknowledges, and the Board has acknowledged, that the utilities are entitled to recover the costs of the BPU initiatives required by the CEA.<sup>18</sup> Therefore, utilities are entitled to recovery of the incremental

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<sup>17</sup> Straw Proposal at p. 8.

<sup>18</sup> See, e.g., 48:3-87.11(e); 48:3-87.10 (a); Order, *In the Matter of A Solar Successor Incentive Program Pursuant to P.L. 2018, c.17*, BPU Docket No. QO20020184 (July 28, 2022).

operational costs of this new initiative, in addition to the incremental costs of the Information Technology costs that will be incurred.

**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.**

**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.**

**Stakeholder Question #8: Staff recommends developing such a Portfolio Manager certification program with the assistance of New Jersey Institute of Technology's ("NJ/T's") Center for Building Knowledge and seeks feedback on how it might be implemented.**

With regard to Stakeholder Question #6, the Straw Proposal recommends training on both the benchmarking program requirements and Portfolio Manager. Staff proposes a one-year lead time prior to the first submission to provide such training. According to the Straw Proposal, BPU Staff intends to communicate with various stakeholder organizations, including municipalities, chambers of commerce, industry associations, and real estate associations. Staff plans to send e-mails to and hold workshops with individual building owners represented by these organizations. With guidance from the stakeholder organizations, Staff would tailor the messaging to the audience, accounting for different building uses, language, and resources of the building owners.<sup>19</sup>

The Company believes that training will be required, particularly if the BPU implements web services. The Company agrees with the Straw Proposal's recommendation that the outreach and training be performed by BPU Staff. However, the Straw Proposal also suggests that there be "guidance from the utility organizations." As in the past, the Company is committed to being an integral party to the BPU's various CEA initiatives. The Company supports these outreach and training proposals with the caveat that utilities be allowed to recover on a timely basis the costs of additional outreach, training, and guidance activities.

With regard to Stakeholder Question #7, the Straw Proposal recommends that the building owner may designate a third-party, such as their property manager, to complete the Portfolio Manager submission. In addition, the Straw Proposal suggests that New Jersey offer a certification for Portfolio Manager and benchmarking.

In New York, the benchmarking program provides for the entry of data by authorized agents of the owner, such as the property manager. The Company agrees that an authorized agent of the owner

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<sup>19</sup> Straw Proposal at p. 9.

should be able to enter data, and the Company does not object to a certification program.

With regard to Stakeholder Question #8, the Straw Proposal recommends that the State maintain a customer relationship management ("CRM") system to store the benchmarking data, track the submission status of each building, and communicate with the building owners. Given the estimate of covered buildings, which ranges from 15,000 to 40,000 depending on how "commercial" is defined, using a CRM system is imperative, as such a system will automate benchmarking program management. BPU Staff seeks to implement a CRM system at least half a year prior to the first benchmarking filing deadline. Upon implementation, the CRM would send out postal mailings or e-mails about the benchmarking program to each building owner on the covered buildings list. Training workshops and on-demand videos located on BPU's forthcoming benchmarking website would explain the benchmarking requirements and provide training on Portfolio Manager. The CRM would automatically send out e-mails to building owners for submission deadlines, submission errors, late warnings, summary analyses, and promotion of applicable energy efficiency programs. The CRM would also be automatically updated to include the latest covered buildings list and Portfolio Manager data.<sup>20</sup>

The Company does not object to the State of New Jersey implementing and operating a State CRM system. However, any incremental cost to the utility of the State CRM system should be recoverable by the utility.

**Stakeholder Question #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.**

Public reporting of building benchmarking data should balance the interest of tenants and buildings in their right to privacy with the potential to further the clean energy goals by increased building efficiency and electrification efforts. Prior to establishing a reporting approach, the needs and concerns of various stakeholders could be vetted through a collaborative working group. Any public reporting approach established must also consider the proposed Terms and Conditions discussed in Question 4 above, which were developed to protect customer privacy.

**Stakeholder Question #10 : Staff seeks feedback on how to optimize reporting compliance.**

With regard to Stakeholder Questions #10, the Straw Proposal recommends that incomplete, incorrect, late, or missing Portfolio Manager submissions be deemed non-compliant. The Straw Proposal notes that the CEA does not authorize the issuance of fines for non-compliance. It recommends the benchmarking program include a database that automatically sends a warning letter

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<sup>20</sup> Straw Proposal at p. 9.



90 days after the July 1 submission deadline for non-compliant reporting. The Straw Proposal also recommends that compliance be a prerequisite for participation in any of the BPU's other programs, as well as utility energy efficiency programs.<sup>21</sup>

With regard to Stakeholder Question #10, the Company strongly objects to the use of participation in utility energy efficiency programs as a lever to obtain building owner compliance. Removing a building owner's ability to participate in those programs should not be imposed as a fine if the utilities, and the State, are to meet the goals of the CEA. The Company notes that the BPU has the statutory ability to level fines,<sup>22</sup> and recommends that the BPU use that authority to compel compliance.

The Company supports the use of a State database to issue warning letters.

**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.**

**Stakeholder Question #12: Staff seeks comments on additional elements of the benchmarking program that would maximize its benefits.**

With regard to Stakeholder Questions #11 and #12, the Company recommends that the BPU incorporate the features of the New York benchmarking program as referenced in the preceding paragraphs. The Company's recommendation is based on O&R's experience in implementing benchmarking in New York.

The Company also recommends, as noted above, that the BPU re-examine its timeline for implementing the benchmarking program on July 1, 2023, and re-examine its recommendation to require the utilities to implement "web services."

### Conclusion

The Company appreciates the opportunity to comment on the Straw Proposal, and requests that the BPU accept its recommendations and comments.

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<sup>21</sup> Straw Proposal at p. 11.

<sup>22</sup> *N.J.S.A.* 48:2-42