



January 20, 2022

Aida Camacho-Welch
Secretary of the Board

Posted via <https://publicaccess.bpu.state.nj.us/>

RE: ENERGY & WATER BENCHMARKING IMPLEMENTATION STRAW PROPOSAL

Docket No. QO21071023

Dear Secretary Camacho-Welch,

Thank you for this opportunity to comment on the Building Benchmarking Policy Proposal and Implementation Outline ("Straw Proposal") as released for comment on December 16, 2021 and subsequently reviewed during the Stakeholder Meeting of January 6, 2022.

MaGrann Associates is a New Jersey based engineering and sustainability consulting company actively engaged in energy assessment and retrofit design for existing multifamily and institutional buildings under a variety of programs and mandates. Our experience includes benchmarking services through ENERGY STAR Portfolio Manager and HUD Utility Allowance Studies, a long history of implementing energy efficiency incentive programs in New Jersey, and more recently supporting compliance services under emerging Building Energy Performance standards in Washington DC, Philadelphia and New York.

We applaud the BPU for taking this initiative and believe that implementation of a benchmarking requirement across the commercial buildings sector, *including multifamily properties* that meet specific size and configuration thresholds, is a critical and necessary step towards improving the performance and affordability of these buildings for both residents and property owners.

Our responses to the questions in the Straw Proposal follow. Thank you for this opportunity for input and we look forward to the participating further.

Sincerely,

A handwritten signature in blue ink that reads 'Ben Adams'.

Ben Adams
Vice President, Program Development

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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.*

The straw appears to be adopting an unnecessarily narrow definition, with the implication that "apartments" are not included because they are "residential" while the straw is aimed at "commercial". Yet more than 90% of new and existing multifamily properties are rental properties that would meet the definition of "commercial buildings" on the basis of both ownership and often the presence of a commercial electric or gas meter.

Additionally, the [International Building Code](#) (IBC), which applies to commercial construction, defines its scope as including "all buildings except detached one- and two-family dwellings and townhouses up to three stories". Note that townhouses are defined as "A single-family dwelling unit constructed in a group of three or more attached units in which each unit extends from the foundation to the roof and with open space on at least two sides" (referred to as "Multi-Single" in applicable NJCEP programs), such that most typical New Jersey multifamily configurations would meet the IBC definition.

We also know from experience that benchmarking opens the door to awareness and action when it comes to energy upgrade opportunities, especially in the multifamily sector where the split incentive and lack of data are considered to be significant barriers. The significance of this opportunity is amplified by the fact that multifamily buildings are an extremely common housing type in New Jersey. The 2018 [American Community Survey](#) identifies over 3.7 million NJ housing units in the multifamily sector. Of these, almost 400,000 units are in buildings of 20 or more units (approximately equivalent to the 20,000 sq.ft. threshold proposed by the Straw).

The potential for energy savings in existing multifamily buildings is significant. An [October 2020 report](#) by ACEEE notes that high consumption multifamily units have the potential to reduce usage by 17% nationally and in excess of 22% when assessed and treated through a comprehensive approach.

Perhaps most compelling, the introduction to the straw notes that inclusion of multifamily buildings is effectively a standard practice when it comes to setting benchmarking policy. In its October, 2021 study "[Comparison of U.S. Commercial Building Energy Benchmarking and Transparency Policies](#)", The Institute for Market Transformation lists 43 benchmarking ordinances and initiatives around the country, with 32 of them (or three quarters) specifically *including multifamily buildings* in the mandate.

With regard to campuses, this question has particular relevance to multifamily properties. While a simple size threshold (such as the proposed 20,000 sq.ft.) may work for single buildings, New Jersey has a significant number of large low rise properties comprising hundreds of units across tens or even hundreds of buildings. In some cases, centralized commercial scale systems such as steam boilers are providing heat to multiple buildings. However, some of the building configurations may comprise fewer units and less total square footage than other buildings, and may fall under any arbitrary threshold. Since this may be true of other commercial and institutional properties as well, we suggest considering the combination of a single building size

threshold with an aggregate size threshold (e.g. 20,000 sq.ft. for any single building OR 50,000 sq.ft. in aggregate).

For multifamily, a unit count threshold may provide a useful alternative. The IMT study referenced above cites unit thresholds ranging from 5 to 50. However, an aggregate threshold may still be needed to ensure that some buildings in the same campus are not unintentionally excluded.

Finally, note that Section II.B. Covered Buildings List Development includes a reference to “the responsible party for doing the benchmarking, such as a condominium association”, implying that condominiums would be included. While it is not clear that is the intent of this reference, we strongly advise against making a distinction between “condominium” (i.e. ownership) and “apartment” (i.e. rental) buildings in any application of the benchmarking mandate to multifamily.

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 criteria examples cited in the Straw seem reasonable. In addition, special circumstances related to the pandemic may be appropriate to consider.

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.*

Access to energy usage data is critical to accurate benchmarking and is a particularly significant barrier in the multifamily sector. Including multifamily in this benchmarking mandate may act as a much needed catalyst to addressing the many issues involved in a process that is already inconsistent and cumbersome – another important reason why multifamily should not be excluded.

The unreasonably complex steps currently required to secure tenant permissions to access utility usage data hinder the timely and accurate development of retrofit projects, limit eligibility for incentives or reduce the value of those incentives, increase costs and generally act as a substantial barrier to achieving the potential for energy, health & safety, comfort and cost reduction benefits, particularly for LMI multifamily renters.

In our experience, residents rarely if ever object to the sharing of energy data for the purposes of evaluating and implementing energy retrofit projects. Rather, the difficulty of obtaining a high response rate for resident permissions resides in the process itself.

Even when permissions are obtained, utilities are often hampered in providing the data by query processes that are manual and time consuming. Additionally, the accuracy of the data, especially when aggregated,

is often compromised by disparities in associating meter numbers with specific units and common areas without on-site investigation.

Property usage reported only in aggregate can include the incorrect or incomplete data (i.e. not including all the “right” meters or erroneously including “wrong” meters). This has profound implications for benchmarking, and illustrates the need for validation. Who should incur the cost burden of making sure the right meters are delivering the right data – a process that needs explicit coordination between the utility and building owner?

Given these complexities, it is important that alternative solutions not be intentionally or unintentionally ruled out. For example, dedicated on-site technology solutions that can provide accurate and secure consumption data can be implemented through a one time investment or subscription to a third party service, provided there is no restriction on the placement of an additional metering device.

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.*

There is a robust industry of private sector engineering and sustainability consultants already engaged with multifamily and other commercial property owners to provide energy analysis, retro-commissioning, project design, retrofit implementation and M&V services. As demonstrated in other jurisdictions such as those mentioned previously, these companies can act as an effective vehicle for both outreach and education. Property owners rely on this kind of support to stay aware of, and help interpret and implement, their obligations across a range of voluntary or mandatory compliance standards and programs, including in New Jersey.

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.*

Training and certification should recognize existing credentials that adequately cover commercial energy analysis, disaggregation and modeling (PE, CEM, etc.), as well as industry standard tools such as those promulgated by ASHRAE. We also recommend including an industry standard, or at least a standardized process, for data verification so as to ensure the issue of data quality is adequately addressed (see #5 above). Training and certification does not always address this important step.

Note that trainings, as well as requirements for credentials, should be aimed primarily at the established industry of third party consultants typically hired by property owners or operators to assist in performing benchmarking and related tasks. Many building owners and operators are

simply not resourced to assume this burden in house, while outside expertise is capable of doing so more efficiently, more accurately, and with the capability to help interpret and respond to the benchmarking results.

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.*

The potential for incurring penalties is a powerful and possibly essential motivator, even if implemented after a grace period or on a ramp-up timeline to provide the market with a reasonable period for education and preparation.

However, we do not support "requiring compliance with benchmarking as a prerequisite for participation in any of the Board's other programs, as well as utility energy efficiency programs." The BPU should only take actions that reduce or remove barriers to participation in voluntary EE programs, not create new ones. Associating a "good action" with punishment for a "bad" one will only be counter-productive. Please don't do this!

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 strongly urge the BPU to include multifamily in its initial implementation of the Benchmarking requirement, as discussed above and recommended by numerous stakeholders. In the event this modification is not made, a timeline for expansion of the mandate to multifamily should be established and communicated at the same time as the initial launch so that the sector is aware and prepared.

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

We would welcome the opportunity to contribute to any further discussions regarding inclusion of multifamily housing in the NJ Benchmarking Straw and its subsequent implementation.

Thank you again.