



January 20, 2022

VIA ELECTRONIC MAIL (board.secretary@bpu.nj.gov)

Aida Camacho-Welch, Secretary of the Board
Board of Public Utilities
44 S. Clinton Ave., 1st Floor
P.O. Box 350
Trenton, NJ 08625-0350

Re: In the Matter of the Implementation of P.L. 2018, c.17 Energy and Water
Benchmarking of Commercial Buildings

BPU Docket No. QO21071023

Dear Secretary Camacho-Welch:

Please accept these comments on behalf of Public Service Electric and Gas Company ("PSE&G" or the "Company") in response to the Notice of Stakeholder Meeting issued by the New Jersey Board of Public Utilities ("Board" or "BPU") with respect to the New Jersey 2021 Building Energy and Water Benchmarking Straw Proposal.

The Straw Proposal outlines Board Staff's recommendations for the policy considerations and implementation details related to the Clean Energy Act ("CEA") benchmarking requirement. The Company has an interest in the implementation details and policy considerations proposed and respectfully submits the following in response to Staff's request for comments:

Staff requests stakeholder comment on the proposed definition of "commercial buildings."

Staff recommends using the "commercial building" class as defined by the New Jersey Division of Taxation ("Division of Taxation") for tax assessment purposes (property class 4A). The definition includes all buildings used for profit-making purposes. While PSE&G does not object to the use of the proposed definition of "commercial buildings" in this proceeding, PSE&G does not have an ability to identify customers that fit into this category. As such, the Company suggests that the onus be on the commercial property owner to confirm that a given customer meets the requirements to gather this information. Specifically, when submitting a request to the utility, the building owner should provide the customer account number(s) and meter number(s) as unique identifiers for the utility to provide the requested information. Account numbers may change, however meter numbers typically remain constant so requiring commercial property owners provide this information will allow the Company to deliver more accurate information—particularly in situations where there are multiple buildings on the same account, or multiple accounts for one owner.

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

Staff recommends that utilities be required to provide building level data to building owners or their designated representative “to ease the effort to collect the data and to maintain tenant privacy.” The Company has significant concerns with Staff’s proposal to share this customer data. In accordance with privacy regulation and guidance, customer information cannot be disclosed or transferred to a third party without written consent from the customer of record. The relevant regulation prohibits providing any customer information to a third party subject to enumerated exceptions that do not apply to this matter. Therefore, the Company is seeking clarification on this issue—in particular upon what basis and to whom specifically the requested customer information can be provided without consent.

Assuming the Company is compelled to provide customer information, there are a number of issues that must be considered. First, the utility will require the account and meter number of each tenant in order to produce the necessary data. Second, the manner in which the utilities validate that the property owner is concerning, and lastly, consistency with the Board’s current cyber security proceeding¹ is important to resolve any potential conflicts.

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.

Staff recommends that the Board require regulated utilities serving over 50,000 customer accounts in New Jersey to provide aggregated building-level data through web services starting in calendar year 2022. Staff also suggests that the Board allow the utilities to recover the reasonable and prudent costs associated with the information technology costs of implementing web services. Yet, no standards are set forth to define “web services.” Moreover, while the Straw provides for the reasonable recovery of costs associated with IT for the undefined “web services,” it does not account for the incremental O&M that should be provided for upon implementation and on an on-going basis, to support this initiative. This incremental O&M should be included as recoverable since it will be necessary to incur these expenses in order to comply with the mandated requirements.

Staff seeks feedback on how to optimize reporting compliance.

Since the CEA did not authorize the assessment of fines, Staff by its Straw recommends the following:

1. include compliance status in the aforementioned building-level database,
2. send out a warning letter 90 days after the July 1 submission deadline for delinquent reporting,
3. require compliance with benchmarking as a prerequisite for participation in any of the Board’s other programs, as well as utility energy efficiency (“EE”) programs.

PSE&G is concerned that the second recommendation requires additional details regarding the timeliness of requests coming in to the utility for usage information. For example, if a Building owner

¹ BPU Docket No. AO16030196

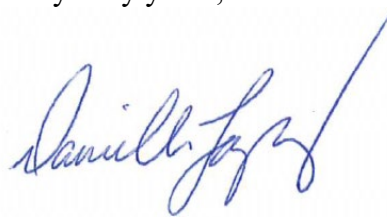
sends a request to the utility for usage information close to the July deadline with incomplete or limited account information/account identifiers, there may be a delay in the utility providing such data.

PSE&G is concerned that the third recommendation noted above creates an undue burden on the EE programs, unfairly punishes building owners, tenants, and utilities for issues that may be beyond their control. For example, there is no consideration in the Straw as to the timeline when requests for information are made. There is also not enough of a connection between the benchmarking requirement and the EE programs to justify prohibiting customers from participating in the EE programs they themselves have funded. This is an arbitrary punishment that is not only unfair to customers who have contributed to funding the programs but is contrary to the CEA's overall goal for buildings. Because building owners—who frequently are not the same as the utility customer of record—are responsible for compliance, the penalty to prohibit customers from participating in EE programs if the building they occupy is not benchmarked, punishes the individual customers within the building who may not be responsible for the non-compliance. Further, utilities and their customers who are not building owners will not know whether the building has been benchmarked.

With respect to CEA incentives and penalties, utility targets are built upon the market potential study that included, among other things, significant potential from the commercial existing building sector. Utilities should therefore not be prohibited from serving these customers, who are a critical part of the utility's potential program participants. If utilities are penalized for non-compliance, such as is proposed in the Straw, their ability to comply with other CEA requirements, including achieving the established utility targets and quantitative performance indicators (QPIs), will be undermined.

Additionally, customer participation in EE programs is tracked based on their own account, in most cases, and not based on any aggregate building information that could be tracked. Compliance regarding certain program designs, such as EE products programs, would also be particularly difficult to fairly enforce because tracking is not as granular and other programs where rebates are received retroactively would be unfair to customers who do not know they are ineligible and purchase a product anticipating a rebate.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Danielle Lopez", with a long, sweeping flourish extending upwards and to the right.

Danielle Lopez