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VIA ELECTRONIC MAIL ONLY

Carmen D. Diaz, Acting Secretary
New Jersey Board of Public Utilities
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Post Office Box 350
Trenton, New Jersey 08625-0350
Board.secretary@bpu.nj.gov

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

Docket No. QO21071023

Dear Acting Secretary Diaz:

On November 28, 2022, the New Jersey Board of Public Utilities (“BPU” or “Board”) staff (“Staff”) issued a notice “In the Matter of the Implementation of P.L. 2018, c.17 – Energy and Water Benchmarking of Commercial Buildings” in Docket No. QO21071023 (“Benchmarking Notice”). The Benchmarking Notice established two identical virtual stakeholder meetings to be held on December 13, 2022, and January 5, 2023, regarding the procedures for owners and operators of commercial buildings larger than 25,000 square feet that are located in New Jersey to meet their reporting and other obligations under the New Jersey Building Energy and Water Benchmarking Program (“Program”). The notice also established a comment deadline of January 30, 2023. Jersey Central Power & Light Company (“JCP&L” or the “Company”) appreciates the opportunity to comment on the Benchmarking Notice and stakeholder meetings. The Company hopes that the Board will find JCP&L’s comments and suggestions helpful as it considers this important topic.

I. Background:

On May 23, 2018, Governor Murphy signed the Clean Energy Act into law as L. 2018, c. 17,¹ which mandated benchmarking energy and water use for the prior calendar year using the United States Environmental Protection Agency’s Portfolio Manager tool for certain buildings over 25,000 square feet. Staff issued the Building Benchmarking Policy Proposal and Implementation Outline on December 12, 2021, which was followed by a stakeholder meeting and

¹ N.J.S.A. 48:3-87.8 et al.

comment period. On September 7, 2022, the Board issued an order that set forth requirements for benchmarking energy and water usage of buildings in excess of 25,000 square feet and commenced a series of stakeholder meetings.² On November 28, 2022, the Board issued the Benchmarking Notice establishing two stakeholder meetings for building owners.

II. Comments:

JCP&L generally supports the Board’s efforts to implement benchmarking of energy and water usage for commercial buildings in excess of 25,000 square feet. The Company agrees with the Benchmarking Order that benchmarking is an important factor in reducing wasted energy and promoting energy efficiency.

A. During the December 13, 2022 stakeholder meeting, in response to a question from the New Jersey Apartment Association regarding building out a voluntary pathway for building owners of buildings less than 25,000 square feet to obtain data and be able to engage in benchmarking, Staff responded that “[w]e have spoken with utilities and we have let them know that we want this data access service to be available to all comers, so they will be providing the service to anybody who approaches them to get the aggregated building level data.”

JCP&L wishes to clarify that Staff’s comment was not intended to require regulated electric distribution companies (“EDCs”) to implement benchmarking of buildings that are 25,000 square feet or less (“Non-Covered Buildings”). The Benchmarking Order is limited to requiring utilities to provide benchmarking data for Covered Buildings.³ Specifically, the Benchmarking Order expressly states that “Staff is also not proposing to expand the Covered Buildings definition to include buildings with a smaller square foot threshold than 25,000 square feet, as such expansion would stretch beyond the scope of the statutory mandate. N.J.S.A. 48:3-87.10.”⁴ JCP&L agrees.

Extending benchmarking to Non-Covered Buildings would greatly increase the number of potential buildings and building owners that will seek benchmarking data and would require an additional buildout of systems, staff, and increased time and process to implement. As discussed in more detail below, since the Benchmarking Order does not establish requirements or guidance for Non-Covered buildings, a number of significant issues would need to be considered and addressed through an additional order(s) and/or process prior to requiring utilities to implement

² *In The Matter of the Implementation of P.L. 2018, c.17 – Energy and Water Benchmarking of Commercial Buildings*, Docket No. QO21071023, at p. 1 (Sept. 2022) (“Benchmarking Order”).

³ The Benchmarking Order sets forth how the Covered Building List is to be established and what buildings shall be excepted. Generally, Covered Buildings include commercial buildings in excess of 25,000 square feet. *See id.* at 26-27, 34. The Benchmarking Order provides a narrow exception to allow the optional benchmarking of smaller buildings that a part of a campus that includes “Covered Buildings”: “[a]s long as a building owner submits information regarding the Covered Buildings on its campus to Portfolio Manager, the building owner may *use its discretion in including or excluding campus non-Covered Buildings* (i.e., buildings with 25,000 square feet or less) as part of its Portfolio Manager reporting. The Board encourages building owners to benchmark all campus buildings, regardless of size, to generate a meaningful representation of campus’s energy and water usage.” *Id.* at 34 (emphasis added).

⁴ *Id.* at 25.

benchmarking for these buildings, *e.g.*, cost recovery, identification of property, authenticating building owners that are entitled to the data, timing, etc.

The Benchmarking Order directed “all regulated electric, natural gas, and water utilities in New Jersey to provide aggregated building-level data to owners of *Covered Buildings* [. . .].”⁵ The Benchmarking Order further stated that “[t]he Board **HEREBY DIRECTS** the regulated utilities to file for cost recovery of the reasonable and prudent costs of implementing the *Benchmarking Requirement*, which may include establishing, operating, and maintaining data aggregation and data access services, for the Board to evaluate in future base rate case proceedings.”⁶ Because the Benchmarking Order only applies to Covered Buildings and buildings that are 25,000 square feet or less are not Covered Buildings, they are not subject to the “Benchmarking Requirement”. Thus, cost recovery for EDCs providing benchmarking data to Non-Covered Buildings is not expressly allowed under the Benchmarking Order.

The Benchmarking Order provides that Staff is responsible for identifying Covered Buildings⁷ and that the Board will notify the lawful building owners of the estimated 15,000-40,000⁸ Covered Buildings of their benchmarking obligation.⁹ Specifically, “Staff agrees that building owners’ authenticity must be validated and that utilities are not best positioned to verify that the person requesting data is indeed the building owner.”¹⁰ The Benchmarking Order does not address the identification of the properties or the identification of lawful building owners for Non-Covered Buildings. JCP&L fully agrees with the Benchmarking Order that EDCs are not in the best position to identify the authenticity of the building owners, nor are they in the best position to verify the precise location of the properties. Accordingly, since the Benchmarking Order clearly delegates the responsibilities of authenticating buildings and buildings owners to Staff, and because expanding Benchmarking to Non-Covered Buildings is not contemplated in the scope of the order, JCP&L may not be expected to authenticate either buildings or building owners.

B. During the December 13, 2022 Stakeholder Meeting when explaining how building owners will request aggregated building-level data from a regulated utility, Staff explained that the building owner will need to set up a virtual meter that represents the whole building and then go to the utility and request the data as a single virtual meter. What the utility will then do is “look at their customer database and try to identify all of the meters and customers that are associated to that building [...]. [Utilities will] do their best to come up with a list of matches and then provide that list to [the Building Owner] [...].” “[O]ut of this list of say 20 customers, does that [list] represent the tenants in your building?” Staff further explained that the

⁵ *Id.* at 35-36 (emphasis added).

⁶ *Id.* at 38 (emphasis added).

⁷ “The Board **HEREBY DIRECTS** Staff to develop the Covered Buildings list, to be updated annually, utilizing the MOD-IV database.” *Id.* at 34

⁸ *Id.* at 16.

⁹ *See id.* at 30.

¹⁰ *Id.* at 13.

building owner then has to confirm that the list represents the tenants in their building. Towards the end of the meeting in response to a question on privacy, Staff indicated that customer names will always be kept confidential except for the building owner.

JCP&L seeks clarification of Staff's comments, specifically as to whether it is Staff's intention that EDCs provide Building Owners with a list of customer names such that they may confirm their tenants. The Benchmarking Order provides that "Staff recommends that Staff work with the utilities to develop a matching process that leads to confirmation that the meter IDs for a particular building are correct and all meters for a particular building are accounted for."¹¹ JCP&L did not understand this direction to mean that EDCs will be required to provide customer names to building owners. This requirement would appear to violate the privacy provisions of N.J.S.A. 48:3-85(b). JCP&L recommends additional process to clarify the expectations of how this verification is to occur in line with applicable privacy laws.

C. During the December 13, 2022 Stakeholder Meeting, when discussing the application of the 4/50 rule, Staff stated that: "[i]f there is one tenant that exceeds more than 50% of the usage [...] you only have to seek out a consent from that large energy user [...]."

JCP&L seeks to clarify this comment and specifically that if the 4/50 rule is violated, the building owner must obtain consent form from *each* tenant. Under the Benchmarking Order, the 4/50 rule is violated "if there are fewer than four tenants in a particular building or if one tenant exceeds 50% of the energy consumption or water usage in a given building, then the building owner shall request *each* tenant's written consent to allow the applicable utility to provide energy and water data to the building owner."¹²

To satisfy applicable privacy laws, it is imperative to clarify that the only information that JCP&L is required to give a building owner regarding a violation of the 4/50 rule is notice that the rule has been violated and that the building owner must now provide the Company with consent from each tenant. Thus, JCP&L should not be placed in a situation where it is asked to identify and provide customer information to a building owner in order to allow the building owner to obtain consent from any specific tenant, for example where one tenant exceeds 50% of the building usage.

D. Implementation Issues that Would Benefit from Further Direction from Staff:

Several issues were raised in the stakeholder meetings where additional guidance from Staff would be helpful to ensure timely development and implementation of benchmarking data access. First, although there has been discussion regarding net energy metered accounts, it remains unclear how off-site renewable energy sources such as solar should be accounted for in

¹¹ *Id.* at 17.

¹² *Id.* at 11 (emphasis added); *see also id.* 13, 36.

benchmarking data. Specifically, where the EDC is aware of usage offsets for tenants participating in community solar, however, the solar asset is not located on the premise of the Covered Building.

It would also be helpful to develop a process by which Staff will provide EDCs with a list of Covered Buildings and authenticated building owners. Providing EDCs with this information early on would help them timely and adequately identify Covered Buildings, which may assist with quantifying and controlling costs. Simply stated, without some idea of the actual number of Covered Buildings in each EDC's territory, EDCs may not have the full picture of system needs and have to otherwise plan and build systems sized to the maximum potential number of requesters.

Finally, JCP&L asks for clarification of the expectation that EDCs will provide building owners with "continuous monthly meter data for a calendar year for every tenant in that building, even if there is a change in the tenant occupying the building space to which that meter is associated or a change in building ownership, subject to the 4/50 rule."¹³ Specifically, JCP&L seeks to clarify that EDCs are not being asked to provide any individual tenant data and only aggregated data for benchmarking.¹⁴ It is also unclear whether EDCs are required to provide monthly aggregated data once annually or on a monthly basis over the course of each year. If the Board intends to require monthly submissions from each EDC, this will require additional process and costs to verify that there have been no changes with regard to building ownership or the 4/50 rule each month.

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JCP&L again thanks the Board for the opportunity to provide these comments. If you have any questions, please do not hesitate to contact me.

Very truly yours,



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¹³ *Id.* at 35.

¹⁴ The Benchmarking Order clearly states that to harmonize the statutory requirements EDCs are "required to provide aggregated building-level data to owners of Covered Buildings [. . .] [u]tility data aggregated at the building level will have the effect of anonymizing the energy data collected in each building with four or more tenants, as there will be no attribution of actual energy per tenant energy consumption." *Id.* at 35-36.