



State of New Jersey  
DIVISION OF RATE COUNSEL  
140 EAST FRONT STREET, 4<sup>TH</sup> FL  
P.O. Box 003  
TRENTON, NEW JERSEY 08625

PHIL MURPHY  
*Governor*

SHEILA OLIVER  
*Lt. Governor*

BRIAN O. LIPMAN  
*Director*

January 30, 2023

**Via Electronic Mail**

Carmen Diaz, Acting Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, 3rd Floor, Suite 314  
P.O. Box 350  
Trenton, New Jersey 08625-0350

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

Dear Acting Secretary Diaz:

Please accept for filing the comments of the New Jersey Division of Rate Counsel ("Rate Counsel") concerning the November 28, 2022 Notice ("Notice") by the New Jersey Board of Public Utilities ("Board") seeking comments on the presentation by Board Staff during the Stakeholder Meetings on the Straw Proposal for Benchmarking on December 13, 2022 and January 5, 2023.

Consistent with the March 19, 2020 Order of the Board in I/M/O the New Jersey Board of Public Utilities' Response to the COVID-19 Pandemic for a Temporary Waiver of Requirements for Certain Non-Essential Obligations, BPU Docket No. EO20030254, this communication is being filed electronically with the Secretary of the Board and is being provided to each person on the service list by electronic mail only. No paper copies will follow.

**Please acknowledge receipt of this comment letter. Thank you.**

### **Summary**

As set forth in more detail below, Rate Counsel's comments focus on two areas. First, Rate Counsel is concerned about the administrative costs of the proposed program, such as the aggregation of energy and water use data for building owners by regulated utility staff. Rate Counsel recommends that Staff consider alternative funding sources, particularly any available federal grants or monies, prior to seeking program cost recovery through utility rates. Second, Rate Counsel recommends that data from the benchmarking programs should foster actionable results, yielding benefits in energy efficiency and water conservation. Such results are more likely when the information is valid, accurate and easily and publicly available.

### **Background**

The Clean Energy Act of 2018<sup>1</sup> ("CEA") requires the benchmarking of energy and water use for certain commercial buildings:

No later than five years after the date of enactment of P.L.2018, c.17 (C.48:3-87.8 et al.), 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 using the United States Environmental Protection Agency's (EPA) Portfolio Manager tool.<sup>2</sup>

Furthermore, one of the goals of the 2019 New Jersey Energy Master Plan ("EMP") is to

"Establish transparent benchmarking and energy labeling."<sup>3</sup>

Consistent with this mandate, the Board Staff developed a Straw Proposal for benchmarking energy and water use.<sup>4</sup> On January 7, 2022, the Board issued a revised Notice for

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<sup>1</sup> L. 2018, c. 17, N.J.S.A. 48:3-87.7 et seq.

<sup>2</sup> N.J.S.A. 48:3-87.10(4)(b).

<sup>3</sup> EMP, Goal 3.3.2.

<sup>4</sup> Straw entitled, "In the Matter of the Implementation of P.L. 2018 c.17 Energy and Water Benchmarking of Commercial Buildings," BPU Docket No. QO21071023, dated December 16 2021 and revised January 7, 2022.

a Stakeholder Meeting, held on January 6, 2022, and solicited comments on the Straw Proposal. Rate Counsel and other stakeholders submitted comments in January 2022. Subsequently, on November 28, 2022, the Board published notice of two stakeholder meetings, on December 13, 2022 and January 5, 2023, on Benchmarking Energy and Water Use by Commercial Buildings. Those meetings included a presentation by Board Staff, followed by discussion, of the proposed process for commercial building owners to prepare their submissions using the Energy Star Portfolio Manager developed by the United States Environmental Protection Agency. Rate Counsel submits these comments on those two recent stakeholder meetings.

### **Comments on the Straw Proposal**

As noted above, Rate Counsel's concerns focus on two areas, addressed here.

#### **1. Funding**

Implementing the benchmarking program will require both the utilities and the Board to dedicate additional staff time. This will include tasks such as aggregating data on energy and water use by commercial buildings, processing submissions by commercial building owners, and operating a help desk to answer questions from those undergoing the benchmarking process, as well as employing consultants to implement the program. Rate Counsel concurs that such steps will likely be necessary to implement the program. However, Rate Counsel recommends that Staff explore other funding sources for this benchmarking program, particularly any funding which might be available pursuant to the provisions of the federal Infrastructure Investment and Jobs Act of 2021.<sup>5</sup> Such outside funding will offset any program costs recoverable from ratepayers.

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<sup>5</sup> 117 P.L. 58, 2021.

## **2. Actionable Data**

Rate Counsel agrees that the data provided through the benchmarking programs should be beneficial to energy efficiency and water conservation efforts. The benchmarking data may be used to identify business segments and geographic areas underserved by current energy efficiency and conservation programs. In turn, the benchmarking data may be used to tailor existing programs or develop new programs to reach the underserved markets.

However, the benchmarking outreach plan should extend beyond the currently proposed scope of reporting. During the stakeholder meetings, Board Staff indicated that commercial building tenants will not have access to the benchmarking score, except for the public report the Board plans to publish in approximately five years. The reason for this significant time lag is unclear. If the benchmarking data is to be usable, it should be valid, timely, accurate and easily and publicly available. There should be a balance between protecting individual data and providing the aggregate data more quickly. Tenants should be able to know promptly whether the buildings in which they conduct business use energy and water efficiently. This will enable them to compare the efficiency of their own operational spaces, if they have more than one, and with other businesses. It will also enable interested tenants to engage with building owners on the efficiency of their buildings and possible measures for improvement. This information can assist businesses interested in issues such as sustainability to make their decisions with actionable data in a timely manner.

In addition, assistance should be offered to owners of smaller commercial buildings,<sup>6</sup> to assist them in obtaining the resources needed to improve their standing, such as access to utility energy and water efficiency and conservation programs. Many small businesses lack the capital to invest in new equipment that uses energy and water more efficiently, and lack the expertise to understand and negotiate the various Clean Energy Program incentives available to them.

Respectfully submitted,

Brian O. Lipman  
Director, Division of Rate Counsel

By: /s/ Brian Weeks  
Brian Weeks, Esq.  
Deputy Rate Counsel

c: Stacy Richardson, BPU  
Phil Chao, BPU

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<sup>6</sup> The presentation at the stakeholder meetings indicated that benchmarking will be conducted only on non-exempt commercial buildings that are 25,000 square feet or more in area.