



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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CLEAN ENERGY

IN THE MATTER OF THE IMPLEMENTATION OF P.L. 2018, C.17 – ENERGY AND WATER BENCHMARKING OF COMMERCIAL BUILDINGS	)	ORDER
	)	
	)	DOCKET NO. QO21071023
	)	
IN THE MATTER OF THE WAIVER REQUEST OF ROCKLAND ELECTRIC COMPANY	)	DOCKET NO. QO23040213
	)	
	)	

**Parties of Record:**

**Brian O. Lipman, Esq., Director**, New Jersey Division of Rate Counsel  
**Margaret Comes, Esq., Associate Counsel**, Rockland Electric Company

BY THE BOARD:<sup>1</sup>

By this Order, the New Jersey Board of Public Utilities (“Board”) considers a petition filed by Rockland Electric Company (“RECO” or “Petitioner”) seeking a waiver for a fixed period of time of the requirement in the Board’s Order of September 7, 2022 that regulated electric and natural gas utilities with over 50,000 customer accounts implement data access using the United States Environmental Protection Agency’s (“EPA’s”) web-based energy benchmarking data access service (“Web Services”) by August 1, 2023 (“Petition”).<sup>2</sup>

**BACKGROUND**

On May 23, 2018, Governor Phil Murphy signed the Clean Energy Act into law as L. 2018, c. 17 (“Clean Energy Act of 2018” or “CEA”).<sup>3</sup> The CEA mandated the following (“Benchmarking Requirement”):

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

<sup>1</sup> Commissioner Marian Abdou did not participate.

<sup>2</sup> In re the Implementation of P.L. 2018, c. 17 – Energy and Water Benchmarking of Commercial Buildings, BPU Docket No. QO21071023, Order dated September 7, 2022 (“September 2022 Benchmarking Order”).

<sup>3</sup> N.J.S.A. 48:3-87.8 et seq.

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 Portfolio Manager tool.<sup>4</sup>

Additionally, Goal 3.3.2 of the 2019 New Jersey Energy Master Plan ("EMP") is to "Establish transparent benchmarking and energy labeling."<sup>5</sup> As noted in the EMP, building energy use benchmarking is a critical factor in reducing wasted energy and promoting market-driven increases in energy efficiency ("EE"). Generally speaking, benchmarking enables building owners and operators of buildings over 25,000 square feet (such building owners, "Building Owners" and such operators, "Operators") to measure and analyze their facilities' energy (all sources and fuels) and water use and compare performance to that of similar commercial buildings.<sup>6</sup> Building Owners and Operators can then assess opportunities for performance improvements that reduce their respective buildings' energy use and costs.

Through the September 2022 Benchmarking Order, the Board directed all regulated electric, natural gas, and water utilities in New Jersey to provide aggregated building-level data to Building Owners and Operators for buildings covered by the Benchmarking Requirement ("Covered Buildings").<sup>7</sup> The September 2022 Benchmarking Order indicated that each utility would provide such data in accordance with the provisions of a guidance document that it creates ("Guidance Document").<sup>8</sup> For purposes of providing uniformity and consistency across utilities, the Guidance Document would appear substantially in the form of a template document upon which the utilities and Staff agreed.<sup>9</sup> Substantively, each Guidance Document would describe the terms of use of the aggregated building-level data that the Building Owners would receive from that particular utility, upon the utility's receipt of an Owner's request for the data ("Terms of Use"),<sup>10</sup> and subject to the 4/50 rule.<sup>11</sup> The Board also directed the utilities providing data access services to offer benchmarking webpages through which Building Owners may submit forms requesting aggregated building-level data ("Data Access Request Forms") and may download form letters that the utility provides ("Consent Letters") to their respective tenants.<sup>12</sup> Building Owners would

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<sup>4</sup> N.J.S.A. 48:3-87.10(b). See also <https://www.energystar.gov/buildings/tools-and-resources/portfolio-manager-0>.

<sup>5</sup> 2019 New Jersey Energy Master Plan: Pathway to 2050, Goal 3.3.2, at 150–151, available at [https://nj.gov/emp/docs/pdf/2020\\_NJBPU\\_EMP.pdf](https://nj.gov/emp/docs/pdf/2020_NJBPU_EMP.pdf).

<sup>6</sup> Specifically, Board staff ("Staff") interprets "energy" as including, but not limited to, grid-electricity, natural gas, fuel oil, propane, photovoltaic solar, thermal solar, wind, hydropower, geothermal, and biomass.

<sup>7</sup> September 2022 Benchmarking Order, supra note 1 at 35-36. As outlined in the September 2022 Benchmarking Order, under the 4/50 rule, utility 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 consumption per tenant. *Id.* at 29.

<sup>8</sup> *Id.* at 12.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 11, 12. Under the "4/50 rule," if there are fewer than four (4) tenants in a particular building, or if one tenant exceeds 50% of the energy consumption or water usage in a given building, then the Owner is required to request each tenant's written consent to allow the applicable utility to provide energy and water data to that Owner. *Id.* at 11.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 13.

then use these Consent Letters which would enable each tenant to provided their consent or deny permission for the utility to release their data as part of the aggregated data that the utility would provide to the Building Owner for benchmarking purposes.<sup>13</sup> The Board directed the regulated electric and natural gas utilities with over 50,000 customer accounts to provide the data access services, specifically, aggregated building-level data provided to Building Owners, using either the Portfolio Manager Spreadsheet Template or the Web Services data access method, beginning on August 1, 2023 for the first reporting year, which runs from January 1, 2022 to December 31, 2022 (“First Reporting Year”).<sup>14</sup> The Board directed all other regulated utilities to provide data access services using the Portfolio Manager Spreadsheet Template by August 1, 2023 for the First Reporting Year.

## **RECO’S PETITION**

RECO is a public utility engaged in the distribution of electricity and the provision of electric basic generation service for residential, commercial, and industrial purposes within the state of New Jersey. RECO is a wholly-owned subsidiary of Orange and Rockland Utilities, Inc. (“Orange and Rockland” or “O&R”) and is an affiliate of Consolidated Edison Company of New York, Inc. (“Con Edison”). RECO provides electric distribution service to approximately 75,000 customers in an area of New Jersey which extends from eastern Bergen County at the Hudson River to western Passaic County and small communities in Sussex County, New Jersey.

On March 24, 2023, RECO filed the Petition seeking a determination that RECO may be granted a waiver from having a platform that allows for Web Services to be available to its New Jersey customers by August 1, 2023 (“Waiver”).<sup>15</sup> RECO advocated that the grant of such Waiver will enable RECO to prevent ratepayer funds from being spent on duplicative benchmarking services.

In its Petition, RECO explained that its affiliate, Con Edison, is in the process of completing a \$1 billion upgrade project to convert its multiple customer billing systems into a single platform, the Oracle Customer Care and Billing (“CC&B”) platform. RECO explained that the use of the CC&B platform will enable all Con Edison customers, including customers of its affiliates, such as RECO’s customers, to access Web Services. With respect to the roll-out of the CC&B platform to its customers, Con Edison expects this platform to be fully operational in 2023. Con Edison further anticipates offering Web Services to all of its customers via the CC& B platform within the first one to two years following the CC&B platform’s launch.

The Waiver RECO sought is not one for a complete exemption of the Board’s Benchmarking Requirement. Rather, RECO sought a Waiver of the specific Benchmarking Requirement to have Web Services in place by August 1, 2023.

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<sup>13</sup> Id.

<sup>14</sup> Id. at 17. As described in the September 2022 Benchmarking Order, “Portfolio Manager Spreadsheet Template” refers to the EPA’s standard spreadsheet template developed for use with Portfolio Manager. Id. at 14. “Web Services” refers to EPA Portfolio Manager Web Services, which is a data programming tool that facilitates the safe and secure exchange of data between the Portfolio Manager database and either a data provider (e.g., a utility) or a data consumer (e.g., a third-party energy services company). Id. at 14 – 15.

<sup>15</sup> Petition at 2.

There are two (2) reasons RECO provides as rationale for granting the Waiver sought, and why RECO believes this Waiver is cost-effective for its customers. First, as stated in the Direct Testimony of Philip Madnick that was filed as a component of the Petition, RECO committed to making available to its New Jersey customers by August 1, 2023 an interim manual-entry spreadsheet template process (“Manual Template Process”) that is similar to the Portfolio Manager Spreadsheet Template.<sup>16</sup> The Manual Template Process will enable all of RECO’s New Jersey customers to benchmark beginning on August 1, 2023. The Petition explained that RECO’s parent corporation, O&R, currently offers this Manual Template Process to its New York service territory customers.<sup>17</sup> The Petition noted that this Manual Template Process offers a benchmarking service to these New York customers that is “identical” to the Portfolio Manager Spreadsheet Template process that the Board requires electric and gas utilities serving 50,000 accounts or fewer (“Small Utilities”) to use by August 1, 2023 for the First Reporting Year.<sup>18</sup> Essentially, RECO indicated that the Manual Template Process will enable its New Jersey customers to upload benchmarking data into EPA’s Portfolio Manager platform during the First Reporting Year. Moreover, RECO argued that due to having a 75,000 customer base, the analogy between RECO and the Small Utilities is appropriate.<sup>19</sup>

Second, RECO committed to offering Web Services to customers in its New Jersey service area when it becomes available through the CC&B platform.<sup>20</sup> Because Con Edison is rolling out the CC&B platform to all of its customers – including RECO’s New Jersey customers – within two (2) years of its 2023 launch, RECO’s New Jersey customers will have access to this platform, and therefore to Web Services, shortly. As RECO explained, due to the CC&B platform offering Web Services to its New Jersey customers, if RECO were required to abide by the terms of the September 2022 Benchmarking Order, it would need to purchase and roll out to its New Jersey customers by August 1, 2023 an additional benchmarking platform that allows for Web Services access (“Other Benchmarking Platform”). RECO argued that, if it were to purchase the Other Benchmarking Platform by the Board’s required implementation date of August 1, 2023, RECO would be spending ratepayer funds on a product that would be functionally duplicative of the Web Services product that will be offered through the CC&B platform.

On June 21, 2023, the New Jersey Division of Rate Counsel (“Rate Counsel”) filed comments (“Rate Counsel’s Comments”). In its comments, Rate Counsel indicated that it does not oppose RECO’s Petition because Rate Counsel believe that RECO’s customer base, when compared to the other regulated utilities, is more similarly situated with the smaller regulated utilities that are exempt from the Web Services requirement, even though RECO provides electric distribution services in New Jersey to approximately 75,000 customers in New Jersey, which is not within the 50,000 Small Utilities customer count threshold. Rate Counsel agreed that ratepayer funds should not be expended on imprudent and duplicative efforts for RECO customers, as RECO’s New Jersey customer base is closely akin to that of a Small Utility. Rate Counsel also requested that the Board set a deadline of August 1, 2024, one year from the September 2022 Benchmarking Order-mandated deadline of August 1, 2023, to provide Web Services, for RECO to implement

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<sup>16</sup> Petition at 14 [Direct Testimony of Philip Madnick, at 2-3 (“Madnick Testimony”)]. Philip Madnick is the Section Manager of Customer Energy Services at O&R, and is responsible for RECO’s energy efficiency programs. Madnick Testimony at 1.

<sup>17</sup> Madnick Testimony at 1.

<sup>18</sup> *Id.* at 3; September 2022 Benchmarking Order at 17.

<sup>19</sup> Madnick Testimony at 3.

<sup>20</sup> Madnick Testimony at 2.

the CC&B system for its New Jersey customers. Additionally, Rate Counsel suggested that, if RECO is unable to meet the August 1, 2024 deadline, then RECO should provide an update to the Board by July 1, 2024 with an estimated completion date and explanation of why they would be unable to meet the August 1, 2024 deadline for their New Jersey customers.

On June 22, 2023, RECO submitted its reply to Rate Counsel's Comments ("RECO's Reply"), stating that RECO will add Web Services for data access after the CC&B platform is fully operational. RECO explained that it currently anticipates the CC&B platform to be operational in fourth quarter 2023, with Web Services beginning its integration into the CC&B platform in 2024. Additionally, RECO stated that a 12-month building and testing period would be required for Web Services to be fully operational. RECO explained that due to this requisite 12-month building and testing period, RECO's Web Services will not be operational by August 1, 2024. RECO requested that the Board establish a deadline of May 1, 2025 for its implementation of Web Service, a date which is 60 days prior to the July 1, 2025 submission deadline for the third reporting year, which runs from January 1, 2024 – December 31, 2024 ("Third Reporting Year"). RECO further proposed that it submit quarterly updates on the status of implementation of Web Services to both Staff and Rate Counsel, commencing in the fourth quarter 2024.

### **DISCUSSION AND FINDINGS**

After reviewing and considering RECO's Petition, the Board seeks to balance its requirement for RECO to offer Web Services by August 1, 2023 against RECO's providing its New Jersey customers the ability to benchmark through their use of the Portfolio Manager Spreadsheet Template, until such time as those customers receive the CC&B platform. The Board also considers RECO's argument to analogize itself to Small Utilities, including the multiple other factors associated with such request, against the benchmarking reporting obligations for all of the other electric and gas utilities serving over 50,000 customers. Ultimately, the Board **HEREBY FINDS** RECO's request for a Waiver to be reasonable for the following reasons.

First, the Board recognizes that Con Edison is currently converting its multiple customer billing systems into a consolidated customer billing platform, which will enable Web Services for RECO customers within one to two years. The Board **HEREBY FINDS** that approval of RECO's request would not relieve RECO of its obligation to provide Web Services to its customers, but would allow RECO to offer Web Services according to a different schedule compared to large investor-owned utilities.

Second, the Board acknowledges that allowing RECO to delay its provision of data access services using Web Services will have some impact on Building Owners in RECO's New Jersey service territory because to access data services, they will have to use the Manual Template Process, a format similar to the Portfolio Manager Spreadsheet Template, rather than use a more automated Web Services approach. The Board recognizes that this could place burdens on certain RECO commercial customers. However, given that the size of RECO's customer base is similar to utilities in New Jersey that the Board is already allowing to provide data access services using the Portfolio Manager Spreadsheet Template by August 1, 2023, the Board **HEREBY FINDS** that there are a relatively small number of large commercial buildings subject to the Benchmarking Requirement in RECO's service territory, compared to the service territories of other investor-owned utilities. The Board, upon balancing the impacts to large commercial buildings against the benefits of RECO being analogized to a Small Utility, **HEREBY FURTHER FINDS** that the advantages of such an analogy weigh heavier in the balance and therefore in RECO's favor.

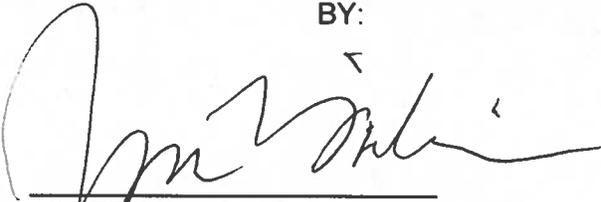
Third, the Board **HEREBY FINDS** that requiring RECO to implement Web Services by August 1, 2023 in the context of O&R's broader initiative to do so in the near future via the CC&B platform would result in duplicative and imprudent expenditure of ratepayer funds.

After weighing of all of these considerations, the Board concludes that RECO's request for a Waiver of the Benchmarking Requirement is reasonable and **HEREBY GRANTS** RECO's request for a waiver of the August 1, 2023 deadline for providing Web Services. The Board also **HEREBY DIRECTS** that, until it implements Web Services, RECO will provide benchmarking data access services to its New Jersey customers using the Portfolio Manager Spreadsheet Template as set out in the September 2022 Benchmarking Order for Small Utilities. Based on RECO's anticipated implementation timeline and the September 2022 Benchmarking Order's July 1 submission deadline for building owners in the second and subsequent reporting years, the Board **HEREBY DIRECTS** RECO to provide Web Services to its New Jersey customers by May 1, 2025, which is 60 days prior to the submission deadline for the Third Reporting Year. The Board also **HEREBY DIRECTS** RECO to submit quarterly reports on the first day of each quarter to both Staff and Rate Counsel on the status of implementing RECO's Web Services for its New Jersey customers during the Third Reporting Year, commencing with the first of such reports being submitted on the first day of fourth quarter 2024. The Board's granting of RECO's Petition shall not relieve RECO of any of its other obligations under the September 2022 Benchmarking Order.

The effective date of this Order is July 19, 2023.

DATED: July 12, 2023

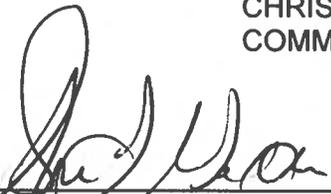
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ATTEST:   
\_\_\_\_\_  
SHERRIL L. GOLDEN  
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.

IN THE MATTER OF THE IMPLEMENTATION OF P.L. 2018, C.17 – ENERGY AND WATER  
BENCHMARKING OF COMMERCIAL BUILDINGS, DOCKET NO. QO23040213

IN THE MATTER OF THE WAIVER REQUEST OF ROCKLAND ELECTRIC COMPANY,  
DOCKET NO. QO23040213

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