



and analyze their facilities' energy (all sources and fuels<sup>4</sup>) and water use and compare performance to that of similar buildings. Owners and operators can then assess opportunities for performance improvements that reduce their buildings' energy use and costs.

While the CEA directs the New Jersey Board of Public Utilities ("Board" or "BPU") to establish a Benchmarking Requirement and imposes a continuing obligation to benchmark each commercial building over 25,000 square feet, it does not provide guidance on a number of key topics and implementation details, which Board Staff ("Staff") identified as necessary to effectuate a benchmarking program. This Order outlines Staff's recommendations on the elements of the benchmarking program – which include defining and developing a list of buildings covered by the Benchmarking Requirement ("Covered Buildings"), providing secure and efficient data access using the United States Environmental Protection Agency's ("EPA's") Portfolio Manager tool, conducting outreach to building owners and operators ("building owners"), public reporting, and incentivizing compliance. The Order is divided into sections on the "Stakeholder Process" with stakeholder comment summaries and Staff responses, "Staff Recommendations," and the Board's "Discussion and Findings."

## **2. STAKEHOLDER PROCESS**

Staff released the "Building Benchmarking Policy Proposal and Implementation Outline" ("Straw Proposal") for public comment on December 16, 2021.

After proper public notice,<sup>5</sup> Staff held a public stakeholder meeting on January 6, 2022 to present the Straw Proposal to the public and solicit feedback.<sup>6</sup> Staff extended the deadline for written comments from the original comment deadline date of January 13, 2022 and accepted comments through January 20, 2022, based on a request from the New Jersey Utilities Association.<sup>7</sup>

Stakeholders' comments and Staff's responses are organized below according to the twelve (12) questions posed in the Straw Proposal.

### **List of Commenters and Their Abbreviations**

- Bright Power
- Building Owners and Managers Association ("BOMA")
- Calico Energy ("Calico")
- Energy Efficiency Alliance of NJ ("EEA-NJ")

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<sup>4</sup> Specifically, Board 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>5</sup> Notice of Stakeholder Meeting, In the Matter of the Implementation of L. 2018, c. 17 – Energy and Water Benchmarking of Commercial Buildings, Docket No. QO2107123 (December 6, 2021, revised January 7, 2022) ("Notice of Stakeholder Meeting, January 7, 2022"), [https://www.nj.gov/bpu/pdf/publicnotice/Benchmarking%20-%20Notice%20-%20Dec%2016%202021\\_tn.pdf](https://www.nj.gov/bpu/pdf/publicnotice/Benchmarking%20-%20Notice%20-%20Dec%2016%202021_tn.pdf).

<sup>6</sup> Stakeholder Meeting Slides: "NJ Building Energy and Water Benchmarking, Public Stakeholder Meeting, Docket Number: QO21071023 (January 6, 2022)," <https://www.bpu.state.nj.us/bpu/pdf/publicnotice/NJ%20Benchmarking%20Stakeholder%20Meeting%20PT.pdf>.

<sup>7</sup> Notice of Stakeholder Meeting, January 7, 2022, at 2.

- Healthcare Association of NJ (“HCANJ”)
- MaGrann Associates (“MaGrann”)
- Commercial Real Estate Development Association, NJ Chapter, f/k/a the National Association for Industrial and Office Parks (“NAIOP”)
- Natural Resources Defense Council (“NRDC”)
- Northeast Energy Efficiency Partnerships (“NEEP”)
- NJ Builders Association (“NJ Builders”)
- NJ Coalition of Automotive Retailers (“NJ CAR”)
- NJ Division of Rate Counsel (“Rate Counsel”)
- NJ Realtors
- NJ Utilities Association (“NJUA”)
- Public Service Electric and Gas Company (“PSE&G”)
- ReVireo
- Rockland Electric Company (“RECO”)
- South Jersey Industries (Elizabethtown Gas Company and South Jersey Gas Company) (“SJI”)
- Utility Advantage LLC (“Utility Advantage”)
- Willdan Group, Inc. (“Willdan”)

#### **Additional Abbreviations**

- American Society of Heating, Refrigeration, and Air-Conditioning Engineers (“ASHRAE”)
- Commercial Property Assessed Clean Energy (“C-PACE”)
- Customer Relationship Management (“CRM”)
- Leadership in Energy and Environmental Design (“LEED”)
- New Jersey Property Tax System database (“MOD-IV”)
- New Jersey’s Clean Energy Program (“NJCEP”)

#### **2.1 Question #1: Staff requests stakeholder comment on the proposed definition of “commercial buildings.”**

##### **2.1.1 Comments Received:**

Many stakeholders commented on whether multi-family residential buildings should be included in the definition of commercial buildings. Several stakeholders (NJ Realtors, NJ Builders, PSE&G, RECO, and SJI) supported the narrow definition presented in the Straw Proposal, i.e., including the tax assessment property classification of commercial (class 4A) but excluding apartments (class 4C). Other stakeholders (MaGrann, NEEP, Calico, Bright Power, ReVireo, NRDC, and EEA-NJ) advocated for including multi-family dwellings and apartments based on the importance of including low- and moderate-income (“LMI”) renters and affordable housing in EE programs and the fact that large real estate investment firms run many large apartment buildings for commercial purposes. NEEP and NJUA recommended initially excluding multi-family residential properties until the benchmarking program becomes more established. MaGrann commented that “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.”

Several stakeholders (NEEP, NRDC, Willdan, and Utility Advantage) recommended that public buildings and public schools should be included to demonstrate that the government is taking a leading role with respect to EE.

Regarding non-profit buildings, NRDC pointed out that the some of the largest emitters – “colleges, universities, and professional schools; general medical and surgical hospitals” – while often classified as non-profit organizations, should nevertheless be included.

NRDC suggested that multi-family dwellings and apartments, government buildings, public school property, and non-profit buildings could be granted less onerous compliance requirements and additional forms of support relative to better-resourced commercial building owners.

Bright Power recommended that, instead of using the tax assessment classifications, commercial buildings should be defined by the presence of at least one commercial meter on the building and/or a rate class designation of “commercial” within certain areas of the building.

### **2.1.2 Staff Response to Comments - Question #1:**

The comments about the definition of commercial buildings fall into four topics.

- i. Using tax records or utility meter types to identify commercial buildings – Staff views property tax classification records as a reliable and implementable data source because tax classification records from the New Jersey Division of Taxation (“Division of Taxation”) generally remain constant regarding building types as buildings are bought and sold. Staff does not recommend utilizing meter types to delineate commercial buildings due to the additional complexity, costs, and potential inconsistency across utility<sup>8</sup> territories associated with this approach.
- ii. Whether to include schools, government, and non-profits – Staff recommends that the Board establish the Covered Buildings list based on the property classes that the Division of Taxation uses to define building types.<sup>9</sup> The classes distinguish between real property subject to taxation versus real property exempt from taxation.<sup>10</sup>

Staff interprets the term “commercial building” in the CEA as not inclusive of tax-exempt properties (including public schools, non-profit schools, and government) for purposes of benchmarking as commerce is not generally or primarily occurring at these locations. Therefore, Staff does not recommend including non-profit schools and federal, county, and local government buildings in the Covered Buildings list. However, NJCEP currently offers a free energy benchmarking program, as well as free benchmarking assistance, through the Local Government Energy Audit (“LGEA”) program, which sets up Portfolio Manager accounts for participating building owners. Both of these voluntary options can help eligible entities that are not otherwise required to benchmark under the CEA to establish Portfolio Manager accounts and begin benchmarking their properties.

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<sup>8</sup> As used herein, the term “utility” shall refer to an electric, natural gas, or water utility company, as applicable.

<sup>9</sup> N.J.A.C. 18:12-2.2.

<sup>10</sup> Specifically, the classes subject to taxation are vacant land (class 1), residential (class 2), farm property (classes 3A and 3B), commercial (class 4A), industrial (class 4B), apartments (class 4C), railroad (classes 5A and 5b), personal property telephone (class 6A), and petroleum refineries (class 6B). The classes exempt from taxation are public schools (class 15A), non-profit schools (class 15B), public property, including federal, state, county, and local government property (class 15C), churches (class 15D), cemeteries (class 15E), and other real property exempt from taxation (class 15F).

While Staff interprets the CEA as not requiring government / public property (class 15C) to benchmark, the State nonetheless plans to lead by example in benchmarking its buildings in the same manner that commercial building owners do. Staff therefore recommends that State buildings over 25,000 square feet have Portfolio Manager accounts and follow BPU Division of State Energy Services protocols for linking accounts and reporting energy use intensity (“EUI”). Recognizing that government facilities often do not meet the criteria for an Energy Star Score, EUI will be the common reporting mechanism for performance tracking and reporting purposes.

- iii. Whether to include multi-family residential – Staff recommends that, in addition to commercial properties (class 4A) and state properties (class 15C), apartment properties (class 4C) over 25,000 square feet should be required to benchmark. The Division of Taxation defines class 4C as apartments designed for the use and enjoyment of five (5) families or more (i.e., multi-family apartments).<sup>11</sup> Staff recommends including class 4C because, as noted in stakeholder comments, multi-family properties are typically commercial enterprises where the lease of individual apartments is the commercial activity that takes place in those buildings. Further, multi-family properties, as large users of energy with tremendous potential to save energy and water and reduce waste of such resources, are eligible for commercial and industrial (“C&I”) EE incentives offered by the utilities and NJCEP. In addition, facilitating adoption of cost-effective energy conservation measures in multi-family apartments – with the attendant benefits of reduced energy bills and energy burdens, reduced greenhouse gas emissions, improved indoor air quality and health, and increased comfort – serves renters, including, but not limited to, LMI renters and affordable housing residents. The recommended treatment of multi-family apartments is consistent with the BPU’s equity policies, the EMP’s goals of prioritizing energy efficiency programs in LMI and environmental justice communities (e.g., Goal 6.1.3), and the State’s commitment to a stronger and more energy equitable New Jersey.
- iv. Condominiums – Staff recommends not including condominiums in the Covered Buildings list. While condominiums are residential properties (class 2), they are located in a different tax classification category than apartments (class 4C).<sup>12</sup> The condominium form of ownership differs from the typical apartment building that generally is owned and operated as a commercial enterprise involving the lease of individual apartments on a “for profit” basis. With condominiums, in contrast, the form of ownership of individual units is effectuated under a master deed, which provides for individual ownership by one or more owners per individual unit, with each unit owner holding an undivided interest in common elements appurtenant to each such unit.<sup>13</sup> Due to this ownership structure, unlike apartments, in a condominium building, there is no single building owner and generally no commercial activity at the property. Furthermore, most condominiums’ operating entities are non-profit associations rather than commercial enterprises. Staff views the typical apartment building as a commercial building as described above. In contrast, Staff views condominiums, with their different ownership structure and general non-commercial operation, as distinguishable from apartments where the apartment building itself is the commercial business.

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<sup>11</sup> N.J.A.C. 18:12-2.2(g).

<sup>12</sup> N.J.A.C. 18:12-2.2(b).

<sup>13</sup> N.J.S.A. 46:8B-3.

## **2.2 Staff seeks stakeholder feedback on which buildings should be excluded from the Covered Buildings list, how campuses should be treated, and why.**

### **2.2.1 Comments Received:**

A few stakeholders (HCANJ, NJ CAR, and NJ Builders) asked to exclude certain specific building uses from the Covered Buildings list. HCANJ asked if healthcare facilities and buildings constructed using LEED standards could be excluded from benchmarking obligations. NJ CAR pointed out that, since auto dealers, as franchisees, are contractually bound to operate their dealerships according to corporate standards, they therefore have little control over energy and water efficiency in their respective buildings and should be excluded. In addition, NJ Builders recommended excluding parking garages and requested clarification about whether mixed-use buildings should benchmark.

NJUA commented that campuses should be excluded from the Covered Buildings list because applying the definition at the campus level appears to fall outside the legislative requirement. In addition, NJUA argued that including campuses would create greater challenges from an implementation perspective, adding unnecessary complexities and increasing costs. NJUA commented that, if campuses are included, the 25,000 square feet requirement should be applied at the individual building (not campus) level as this approach tracks the exact language from the legislation. On the other hand, MaGrann and ReVireo commented that the inclusion of a campus should be defined by the sum of square footage of all buildings on the campus as opposed to a single building because campuses generally have a single central heating, ventilation, and air conditioning (“HVAC”) system.

### **2.2.2 Staff Response to Comments - Question #2:**

Staff recommends relying on a simple, straightforward approach to identifying commercial buildings – namely, including all buildings that fall under the tax classification “class 4A – commercial” and “4C – apartments.” While the State’s tax assessment database, MOD-IV, includes subcategories for business uses (e.g., healthcare facilities, office, and retail) within class 4, this information cannot be relied upon because these uses are not always reported. Therefore, Staff recommends identifying commercial buildings based on their inclusion in classes 4A and 4C regardless of the building’s specific business use(s).

Because LEED buildings may already have achieved higher EE performance than New Jersey building and energy codes require, Staff recommends including LEED buildings so that their performance is reflected in state-level EE performance metrics and can be compared to other buildings. By obtaining these LEED buildings’ benchmarking data, Staff can analyze the buildings’ design features, construction and operating costs, and energy performance. Performance data from these LEED buildings will assist in informing design of future EE programs and related programs.

By relying on MOD-IV, BPU would not be able to identify in a cost-effective manner whether a building tenant or owner is a franchisee. Therefore, Staff does not recommend exemptions for franchise operators of commercial buildings, regardless of whether they own or rent a commercial building.

For parking garages, there are two scenarios to consider: (i) stand-alone garages and (ii) attached parking garages. A stand-alone garage, where parking is the sole property use, is a recognized

property type in Portfolio Manager and therefore is eligible for an Energy Star Score.<sup>14</sup> Staff recommends that stand-alone parking garages over 25,000 square feet be required to benchmark. Staff recommends that Covered Buildings with attached parking garages whose square footages collectively total over 25,000 square feet also be required to benchmark. For these attached parking garages, Portfolio Manager prompts the user to enter information about the garage's square footage and will model the energy consumption of the garage separately from the other commercial building to which it is affixed. For eligible property types, the Energy Star Score is based only on the water and energy consumption of the commercial building to which the garage is attached, without taking into account the water and energy consumption of the parking garage itself.

For mixed-use buildings – that is, buildings with concurrent commercial and residential uses – Staff clarifies that covered mixed-use buildings classified as “class 4A – commercial” or “4C – apartments,” should benchmark. Portfolio Manager has specific rules for calculating the Energy Star Score for mixed-use buildings.<sup>15</sup>

The CEA does not mention campuses. EPA defines a campus as a single property with multiple buildings.<sup>16</sup> Staff recommends applying the 25,000 square feet requirement at the individual building (not campus) level per the plain language of the CEA, as it calls for benchmarking of “each commercial building over 25,000 square feet.” Specifically, all buildings on a campus that have a square footage of over 25,000 square feet will be required to benchmark. Staff has considered that the operation of a building exceeding 25,000 square feet (i.e., a Covered Building) on a campus may be linked with the operation of other nearby buildings on that campus through a common master meter, shared HVAC system, or shared building management control system. Portfolio Manager is capable of modeling campuses using a hierarchy of “parent property” (the group of buildings, collectively) and “child properties” (the individual buildings within the parent property). Taking these points together, Staff recommends that, when a building owner owns one or more buildings over 25,000 square feet on a particular campus, the Board should direct that building owner to submit at a minimum all of the Covered Buildings for benchmarking in Portfolio Manager. A building owner may additionally include non-Covered Buildings (i.e., buildings with 25,000 square feet or less) as part of its Portfolio Manager reporting. Staff encourages building owners to include non-Covered Buildings as part of its reporting to generate a meaningful representation of campus operations. For example, an owner of multiple buildings on a campus may include all buildings on the entire campus in its Portfolio Manager submission. Alternatively, that owner may elect to report on Covered Buildings only. As long as a building owner submits information regarding the Covered Buildings on its campus to Portfolio Manager, Staff recommends that the building owner may use its discretion in including or excluding campus non-

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<sup>14</sup> The Energy Star score is based on a scale of 1 to 100, with 100 being the highest score. A building is compared to other buildings with a similar business use, such as office, hotel, or retail. See US Environmental Protection Agency, Energy Star, “Property Types Eligible to Receive a 1-100 ENERGY STAR Score,” [https://www.energystar.gov/buildings/benchmark/understand\\_metrics/property\\_types/eligible\\_for\\_score](https://www.energystar.gov/buildings/benchmark/understand_metrics/property_types/eligible_for_score).

<sup>15</sup> U.S. Environmental Protection Agency, “Portfolio Manager Glossary”, <https://portfoliomanager.energystar.gov/pm/glossary>.

<sup>16</sup> U.S. Environmental Protection Agency, “How to Benchmark a Campus”, <https://www.energystar.gov/buildings/tools-and-resources/how-benchmark-campus>.

Covered Buildings as part of its Portfolio Manager reporting.<sup>17</sup>

## **2.3 Staff recommends an appeal process to have buildings removed from the Covered Buildings list and seeks stakeholder feedback on criteria for granting appeals.**

### **2.3.1 Comments Received:**

Staff received multiple comments about the rules for exempting buildings that are new, sold, renovated, or demolished. With respect to what should be considered a “new” building, Willdan recommended that “newly constructed” refer only to buildings that have been initially occupied during the twelve (12) months of the benchmarking period. Bright Power referenced New York City’s benchmarking ordinance, which requires a Certificate of Occupancy and/or a Temporary Certificate of Occupancy for the entire calendar year reported. In addition, Willdan and Bright Power recommended that building owners submit proof of a demolition permit, which removes a Certificate of Occupancy, to apply for a benchmarking exemption. NJUA commented that any building with a recent or upcoming renovation should be exempted because the information may not be as meaningful if there is a material shift in the building’s footprint, construction, or usage type.

Other stakeholders commented on the process for granting appeals or exemptions. RECO argued that the utilities should not take on any responsibility (or costs) to verify the condition or status of a building. Calico and NJ CAR commented that the process should be transparent and clearly documented. MaGrann stated that “special circumstances related to the pandemic may be appropriate to consider.”

Bright Power strongly supported the Straw Proposal’s inclusion of properties undergoing a sale in the Covered Buildings list and suggested that the BPU require utilities to provide data on these buildings, regardless of any ownership change.

### **2.3.2 Staff Response to Comments - Question #3:**

Staff agrees that a new building should be operated for a full calendar year before the owner should benchmark. While BPU does not have ready access to Certificates of Occupancy across New Jersey, the State’s tax assessment database, MOD-IV, includes the year-built for each building. Therefore, the Covered Buildings list can be filtered to only include buildings built in the year prior to the applicable reporting year.<sup>18</sup> In addition, BPU does not have an easy way to track demolition permits across New Jersey. Staff recommends that building owners may apply to have their demolished buildings removed from the Covered Buildings list, with the submission of a certificate of approval for demolition.

For building additions and property sales, Staff recommends that owners must still benchmark. In Portfolio Manager, the user can enter the date of completion of the addition and the resulting incremental increase in building square footage. The benchmarking metrics in Portfolio Manager are then adjusted accordingly. While a new owner is not responsible for the building’s

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<sup>17</sup> When a campus property is managed as a whole, EPA recommends that benchmarking is done at the campus level rather than the building level. Individual buildings with a sub-meter on the campus can still be tracked within Portfolio Manager, where they are recorded as child properties within the campus. Staff notes that, in addition to calculating a EUI performance metric for all buildings, Portfolio Manager will provide an Energy Star Score for five types of campuses: (i) K-12 schools, (ii) multi-family housing, (iii) hotels, (iv) senior living facilities, and (v) hospitals.

<sup>18</sup> A “reporting year,” similar to a calendar year, runs from January 1 to December 31 of a given year.

performance prior to its sale, an important aspect of benchmarking is tracking year-by-year building performance. If BPU were to exempt new owners of already-existing buildings, there would be gaps in the annual data for those buildings. As for the impact of the COVID pandemic, Portfolio Manager allows for adjustments in occupancy and operating conditions and therefore can still generate the benchmarking metrics for such buildings.

Staff agrees with RECO's comment that the utilities should not bear responsibility for verifying any of the building conditions. To request a benchmarking exemption, the building owner would need to initiate an application for an exemption through an application form to be provided by the benchmarking program and provide evidence for the type of exemption sought.

Staff agrees that the policy and administrative rules governing benchmarking exemption requests should be accessible and unambiguous. Staff recommends drafting such rules and staffing a CRM team with responsibility to process exemption requests with respect to these rules, with Staff oversight.

In response to Bright Power's comment that the utilities provide data regardless of any ownership change, Staff agrees and recommends that the utilities 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 ownership of the building. The 4/50 rule, as described below in Section 2.4.2, will still apply.

## **2.4 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.**

### **2.4.1 Comments Received:**

SJI and NJUA cited New Jersey law and regulations to point out that customers must consent before the utility can release data to a third party. SJI noted that N.J.A.C. 14:4-7.8 states in pertinent part:

(a) Customer information shall not be disclosed, sold or transferred to a third party without the affirmative written consent of the customer or alternative Board-approved consent methodology, except pursuant to N.J.A.C. 14:4-2.3, or under certain conditions, for example, a third-party performing services directly for a TPS [third-party service] under a binding confidentiality agreement.

SJI also noted that N.J.S.A. 48:3-85 states in pertinent part:

b. (1) Except as provided in paragraph (2) of this subsection, an electric power supplier, a gas supplier, an electric public utility, and a gas public utility shall not disclose, sell, or transfer individual proprietary information, including, but not limited to, a customer's name, address, telephone number, energy usage, and electric power payment history, to a third party without the consent of the customer.

...

(3) Whenever any individual proprietary information is disclosed, sold, or transferred, pursuant to paragraph (1) or paragraph (2) of this subsection, it shall be used only for the provision of continued electric generation

service, electric-related service, gas supply service, or gas-related service to that customer. In the case of a transfer or sale of a business, customer consent shall not be required for the transfer of customer proprietary information to the subsequent owner of the business for maintaining the continuation of such services.

NEEP, citing other states' approaches, recommended requiring utilities to provide the tenants' data aggregated up to the building level and noted that utility-generated aggregated data "can strike the right balance between data sharing and privacy concerns." NEEP recommended that, if the number of tenants in a building is fewer than four or if one tenant accounts for more than 50% of the energy use of a particular building, the building owner must ask for consent from the tenant(s). While NJ Realtors supported the same thresholds of fewer than four tenants or more than 50% of the energy in a particular building, they proposed that the building owner may opt-out of benchmarking altogether. NRDC recommended opt-outs only for buildings with two or fewer tenants. Bright Power opposed an opt-out procedure for single-tenant buildings, arguing that too many buildings, such as storage warehouses, would be removed, particularly in suburban areas.

Given the complexity and security issues involved in collecting tenants' utility data, several commenters (Calico, NRDC, NEEP) stated their support for the utilities to aggregate data for the building owners. Several commenters (EEA-NJ, RECO, Calico, and MaGrann) recommended adopting an industry standard or a standardized process for data access and verification. RECO, in particular, recommended that New Jersey adopt standards similar to those used in New York's benchmarking program, in which "Terms and Conditions" exist for the use of the aggregated data.

NJUA asked, if tenants are able to opt out of benchmarking, how the utilities would know which tenants opted out, so as to not include them in aggregated monthly usage reporting.

PSE&G, in referencing N.J.A.C. 14:4-7.8, expressed its uneasiness regarding property owner validation, stating that "the manner in which the utilities validate that the property owner [is the actual owner] is concerning" and that "consistency with the Board's current cyber security proceeding is important to resolve any potential conflicts."

RECO and PSE&G suggested procedures to create an efficient, cost effective, and secure process to match tenants/customers to a building. RECO and PSE&G commented that building owners should submit meter number data for each specific customer within the building to the utility. Specifically, when submitting a request to the utility, RECO and PSE&G stated that the building owner, who should have access to the facility information and is best positioned to identify all accounts to be included in the benchmarking of their building, should provide the customer account number(s) and meter number(s) as unique identifiers in order for the utility to provide the requested information. RECO and PSE&G asserted that requiring the building owner to provide the information would help ensure that the entity requesting the information is authorized to do so, reducing the risk of a bad actor posing as the building owner to obtain confidential customer information.

NRDC commented that the benchmarking program should distinguish building owners and operators from other users of customer energy data. They cited the BPU's Advanced Metering Infrastructure ("AMI") proceedings, where building owners may access aggregated data that contains no individual information.

ReVireo noted that, in some municipalities, since water is only billed quarterly, monthly data may not exist.

#### **2.4.2 Staff Response to Comments - Question #4:**

##### *Data Aggregation*

Data aggregation is the sum of energy or water consumption for all the tenants within a building. Generally speaking, a data aggregation rule defines the conditions when there is a significant risk that individual tenant consumption may be revealed or statistically derived from the aggregated data for a particular building. Individual tenant consumption is effectively anonymized if there are multiple tenants in a building and no one tenant consumes a large proportion of the total amount of energy or water used in that building.

Staff agrees with SJI and NJUA that New Jersey law and regulations require customers to consent before utilities can provide identifiable proprietary customer data to a third party. In the Straw Proposal, Staff recommended that regulated utilities serving over 50,000 customer accounts in New Jersey provide aggregated building-level data to building owners for the limited purpose of benchmarking as required by the CEA.<sup>19</sup> Staff recognizes that data aggregation is necessary to ensure the anonymization of individual tenant consumption data. Therefore, Staff recommends that all regulated utilities should provide aggregated building-level data to building owners for the purpose of implementing the Benchmarking Requirement.

With regard to establishing a data aggregation rule for New Jersey, the comments focused on two topics: (i) the threshold number of tenants needed for the data aggregation rule and (ii) whether the building owners would be exempted from benchmarking or would be required to seek tenant consent to obtain the data if the data aggregation rule is not satisfied. A lower tenant count threshold, such as a building with only two tenants, as NRDC noted, could compromise the consumer protections of N.J.A.C. 14:4-7.8 because statistical modeling and analysis of the data may reveal an individual tenant's energy use. The United States Department of Energy ("DOE") reports that a threshold tenant count of four or five tenants is commonly used.<sup>20</sup> Staff concurs with Bright Power in that too many buildings would be exempted as to make the Benchmarking Requirement ineffective if building owners were automatically exempted from benchmarking if their building does not satisfy the data aggregation rule.

Therefore, based on the above, Staff proposes the "4/50 rule." Under the 4/50 rule, 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.<sup>21</sup>

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<sup>19</sup> As noted in the Straw Proposal, regulated utilities serving over 50,000 customer accounts currently include: Atlantic City Electric Company, Elizabethtown Gas Company, Jersey Central Power & Light Company, New Jersey Natural Gas Company, Public Service Electric & Gas Company, Rockland Electric Company, South Jersey Gas Company, and the larger water utilities, including Aqua New Jersey, Middlesex Water Company, New Jersey American Water Company, and SUEZ Water New Jersey.

<sup>20</sup> United States Department of Energy, Energy Data Accelerator – Guide to Data Access and Utility Customer Confidentiality (2016).

<sup>21</sup> For a discussion of what occurs if a tenant withholds consent to such disclosure, see infra, Section

Regulated water utilities are not subject to N.J.A.C. 14:4-7.8, and buildings typically have a single master water meter where the building owner is the water utility customer. Staff recommends that the 4/50 rule nevertheless apply to water data when any portion of the building is tenant-occupied to more readily facilitate following and implementing the 4/50 rule.

Staff concurs with Calico, NRDC, and NEEP that the utilities are best-positioned to aggregate the data to the building level from customer-level data. The utilities already have the consumption data, addresses, and meter IDs with respect to energy and water usage in each building.

Staff recommends that each utility create a guidance document, substantially in the form of a template document upon which the utilities and Staff have agreed, describing the terms of use for the aggregated building-level data that the building owners would receive from each of their applicable utilities upon request of the data (“Terms of Use”). The Terms of Use would be applicable to building owners, comparable to that which New York uses, as RECO suggested, but would also consider best practices from other benchmarking jurisdictions. The Terms of Use would include the following minimum requirements relating to data collected:

- The aggregated data can only be used for benchmarking purposes;
- The aggregated data shall be handled with standard security practices used for utility customer data;
- The aggregated data shall only be shared with the building owner and the building owner’s designated agents, including the building operator, the EPA, and the BPU, including any BPU partners or representatives assisting BPU with respect to this data; and
- The aggregated data shall be destroyed, to the extent technically practicable, upon the earlier to occur of (i) the owner’s submission of the data to Portfolio Manager or (ii) one year from the date the owner receives the data from the applicable utility.

Several comments addressed the processes for validating the building owners and their representatives, as well as matching meters and customers at the Covered Building. To address these concerns, Staff recommends the following process for utilities to provide aggregated building-level data to building owners via a spreadsheet or directly to Portfolio Manager through an automated data feed, as described further in Section 2.4.3.

- 1) Every year, the building owner of a Covered Building shall receive a notification from the Board that their property is a Covered Building;
- 2) The building owner may request an exemption from benchmarking their building through an application form that the benchmarking program provides, if that building owner’s building meets any of the exemption conditions discussed in Section 2.3.2;
- 3) If the building owner does not seek an exemption, the owner submits a form requesting aggregated building-level data (“Data Access Request Form”) to all applicable utilities providing service to the building. The utilities identify the meters in the building through a process that Staff and the utilities collaboratively will develop; and
- 4) The utility then applies the 4/50 rule and notifies the owner whether the 4/50 rule is satisfied:
  - a) If the 4/50 rule is satisfied, the utility aggregates the data and provides it to the building owner or Portfolio Manager via one of the data access methods described in Section 2.4.3.

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2.4.2(4)(b).

- b) If the building fails the 4/50 rule, the utility notifies the building owner, and the building owner requests the consent of each tenant through use of a form letter (“Consent Letter”) that the utility provides to the building owner. The building owner next provides this Consent Letter to its tenants. Each tenant then completes the Consent Letter, either providing their consent or denying permission for the utility to release their data as part of the aggregated data that the utility will provide to the building owner for benchmarking purposes. The building owner then returns as a group all of the completed Consent Letters to the utility. The utility then provides the aggregated data for the consenting tenants to the building owner or Portfolio Manager.

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. Therefore, Staff recommends that the Data Access Request Form include a certification of building ownership or the owner’s consent for an authorized agent to request the data.

Staff recommends that Staff work with the utilities to establish the Data Access Request Form and Consent Letter and finalize any outstanding details of the statewide procedure for data aggregation.

NJUA’s concern about who to include in the aggregated monthly usage reporting is addressed in the last step in the processes described above, where the building owner submits the Consent Letters to its tenants, and which, when completed, will contain these tenants’ responses – positive, negative, or non-responsive – to the utility.

As for ReVireo’s question regarding quarterly water data reporting, Staff does not anticipate a problem because Portfolio Manager allows for meter data to be entered in customizable time periods – that is, in monthly, quarterly, annually, and other, irregular periods. Staff notes that, while Portfolio Manager accepts custom time periods, when possible, the aggregated data is best supplied as monthly data, beginning on the first day of a given month. Having the data time-aligned to the same monthly start date facilitates analysis across the entire portfolio of commercial buildings.

### *Unregulated Utilities*

Staff recommends that Staff conduct outreach and hold workshops with those utilities that the BPU does not regulate about the Benchmarking Requirement to encourage them to follow the same data aggregation process outlined above that applies to regulated utilities. These utilities may include smaller water utilities, municipal water utilities, municipal electric utilities, and delivered fuel companies (i.e., fuel oil, propane, and biomass).

Staff recommends the following process for building owners with Covered Buildings served by unregulated utilities:

- 1) Every year, the building owner of a Covered Building shall receive a notification from the Board that their property is a Covered Building;<sup>22</sup>
- 2) The building owner may request an exemption from benchmarking their building through an application form that the benchmarking program provides, if that building owner’s building meets any of the exemption conditions discussed in Section 2.3.2;

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<sup>22</sup> The Covered Buildings list will be regenerated every year. Buildings permanently exempted in prior years will no longer appear on the Covered Buildings list.

- 3) If the building owner does not seek an exemption, the owner must request aggregated building-level data by using the benchmarking program's Data Access Request Form and providing it to the applicable unregulated utility serving the building.
- 4) If the unregulated utility does not identify the meters in the building based on the to-be-developed process that will be applicable to the regulated utilities, or if that unregulated utility does not utilize the 4/50 rule and notify the building owner whether the 4/50 rule is satisfied, the building owner then requests the consent of each tenant through use of the benchmarking program's Consent Letter. Each tenant then completes the Consent Letter, either providing their consent or denying permission for the utility to release their data. The building owner then returns as a group all of the completed Consent Letters to the utility. The utility then provides the individual data for the consenting tenants to the building owner.
- 5) The building owner manually enters all of the data that is available for their building into Portfolio Manager.
- 6) If the unregulated utility refuses to provide individual data even with consent from the tenants, the building owner may seek an exemption from the Benchmarking Requirement.

### **2.4.3 Comments Received:**

Staff defines "data access" as the method by which a utility provides aggregated building-level energy and water data to building owners. Building owners' choices about how to submit their buildings' data to Portfolio Manager – whether uploading data relating to particular buildings for the first time or updating data submissions for existing buildings – depend on the data access method that the utility offers.

#### *Manual Entry*

Building owners may enter data manually to Portfolio Manager to create a profile for a particular building or may update data for a building one meter at a time.

#### *Portfolio Manager Spreadsheet Template*

A utility may provide aggregated building-level data to a building owner through EPA's standard spreadsheet template developed for use with Portfolio Manager ("Portfolio Manager Spreadsheet Template"). The building owner can then upload the data from the spreadsheet to create or update individual or multiple meters at once.

#### *Web Services*

A utility may fulfill a building owner's request that the utility import data for the owner's building directly into the owner's Portfolio Manager account via "Web Services" or engage a third-party vendor to provide this service.<sup>23</sup> 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.,

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<sup>23</sup> U.S. Environmental Protection Agency, "How to Get Utility Data into Portfolio Manager," <https://www.energystar.gov/buildings/tools-and-resources/how-get-data-portfolio-manager>.

a third-party energy services company).<sup>24</sup> Many utilities across the country offer Web Services to meet local benchmarking laws or to facilitate peak demand management.<sup>25</sup>

The comments received on data access and Web Services focused on four topics: (i) the process to match customers/tenants/meters to a building, (ii) who should be responsible for the matching process, taking into account privacy and data security, (iii) how to best implement Web Services, and (iv) who should pay for the matching process and for Web Services.

On the issue of matching customer accounts to buildings, MaGrann pointed out that mismatched or missing meters can have a profound impact on the data evidencing the total energy consumption of a particular building. They recommended that BPU consider an alternative approach in which a special meter that sums all the regular meters is installed in the building at no charge to the building owner, but the cost of which the utility would collect from ratepayers. Calico suggested a statewide system for building owners to submit data requests to avoid complications for owners who have buildings in multiple utility territories. They also recommended that such a statewide system should not require the utilities to modify their customer databases.

RECO and PSE&G commented that it is the responsibility of the building owner to provide the account and meter number of each tenant prior to a utility producing the building-level data. These companies noted that, since the utilities do not have a relationship with the building owner, it is not easy for the utilities to match building data to the building itself. PSE&G commented that “the manner in which the utilities validate that the property owner [is the actual owner] is concerning, and lastly, consistency with the BPU’s current cyber security proceeding is important to resolve any potential conflicts.”

NJUA, SJI, and PSE&G commented that term “Web Services” needs further clarification. Until a particular Web Services solution is sufficiently considered and vetted, they recommended that an alternative to Web Services be used initially. NJUA pointed out that “there is a separate stakeholder proceeding specifically addressing customer and third-party access to customer data due to the increased deployment of advanced metering infrastructure in New Jersey. Accordingly, the Utilities are concerned that any overly-expeditious deployment of a “Web Services solution” resulting from this proceeding may ultimately lead to a duplication of efforts and a requirement for Utilities to implement multiple, different solutions for data access. In contrast, ReVireo stated that they “strongly support requiring the utilities to provide aggregated building-level data through Web Services starting in calendar year 2022. This is critical to successful implementation.”

Regarding data specifications, EEA-NJ recommended that the utility data be aligned with calendar monthly energy usage dates (i.e., total energy from the first day of a month to the last day of a month) and not billing dates because the various utilities use different billing dates and, as result, customers’ billing dates across the utilities will not align. Bright Power commented that BPU should “be aware that the latest utility data sharing in ENERGY STAR Portfolio Manager makes connections that share data monthly throughout the year after the initial connection is established. Best practices from utilities outside NJ should be examined and shared as a model for New Jersey utilities that have to implement updates for adherence to this regulation. This single connection

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<sup>24</sup> U.S. Environmental Protection Agency, “Use Web Services to Exchange Data with Portfolio Manager,” [https://www.energystar.gov/buildings/resources\\_audience/service\\_product\\_providers/existing\\_buildings/benchmarking\\_clients/use\\_pm\\_web\\_services](https://www.energystar.gov/buildings/resources_audience/service_product_providers/existing_buildings/benchmarking_clients/use_pm_web_services).

<sup>25</sup> U.S., Environmental Protection Agency, “ENERGY STAR Portfolio Manager Web Services,” [https://www.energystar.gov/buildings/resources\\_audience/utilities\\_program\\_sponsors/pm\\_web\\_servs](https://www.energystar.gov/buildings/resources_audience/utilities_program_sponsors/pm_web_servs).

request also helps ensure uniform data across reporting periods, as well as eases the burden on buildings for compliance.”

As for the cost of implementing Web Services, NJUA, SJI, PSE&G, and RECO asserted that, in addition to the initial implementation cost, all incremental operations and maintenance costs not otherwise reflected in rates must be fully recoverable.

#### **2.4.4 Staff Response to Comments - Question #5:**

Staff does not recommend adopting MaGrann’s recommendation to have a dedicated master meter installed just to provide building-level data for benchmarking. Given that the estimate of Covered Buildings in New Jersey is approximately 15,000 to 40,000 buildings, the cost and time to install so many meters appears to be prohibitive. Staff also appreciates that ratepayers across the state, particularly owners of single family residences, as a matter of fairness, should not be required to bear an additional cost burden relating to the cost of these additional meters that would be located at commercial buildings.

Staff acknowledges that Calico’s suggestion to have a single statewide system to access data is beneficial to building owners who have buildings in multiple utility territories. However, setting up a single statewide system would require BPU to acquire data from all utilities, large and small, regulated and unregulated. Given the small customer base of unregulated utilities, Staff does not recommend incurring the cost to set up such a system.

In the Straw Proposal, Staff recommended that regulated utilities serving over 50,000 customer accounts in New Jersey provide aggregated building-level data through Portfolio Manager Web Services, starting in calendar year 2022. The rationale for the cutoff at 50,000 customer accounts was to include all of the investor-owned electric and gas utility companies, as well as the largest water utility companies, based on Staff’s assessment that the cost to implement Web Services could be burdensome to smaller regulated water utilities. Staff continues to recommend that the electric and gas utility companies serving over 50,000 customers provide aggregated building-level data through Web Services.

Following review of comments, Staff no longer recommends requiring regulated water utilities serving over 50,000 customer accounts to utilize Web Services. The cost of implementing Web Services may be unnecessary for the regulated water utilities serving over 50,000 customer accounts given the limited data to be provided to accommodate the benchmarking program. In order to balance considerations of cost-effectiveness and ratepayer impacts, Staff recommends instead requiring water utilities to provide aggregated building-level water consumption data to building owners upon request using the Portfolio Manager Spreadsheet Template. As noted above, the large majority of commercial buildings over 25,000 square feet have a single master water meter, where the customer is the building owner. In these cases, the building owner already has the water utility data and may manually enter the 12 months of data into Portfolio Manager.

Staff also acknowledges the need to have standard data aggregation and access processes across all regulated utilities in the state that are required to provide access to building-level data to ensure that building owners receive accurate and complete data. These standards should accomplish the following objectives:

- i. Establish a process to match customers/accounts/meters to buildings;
- ii. Time-align data by each calendar month;

- iii. Not require modification of utility customer databases; and
- iv. Specify that the data may only be used for benchmarking purposes and only be shared among the utility, and the building owner, BPU, EPA, and their respective agents.

Staff does not agree with RECO and PSE&G's suggestion that the building owner provide all the meter IDs to a utility to confirm the accuracy of these meter IDs. It would be impractical for an owner of a large multi-family building to enter each building unit to read the meter IDs for that unit and to confirm that the meter IDs match what the utility has on record.

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.

As for the timing of implementing data access services (i.e., providing aggregated building-level data to building owners through either the Portfolio Manager Spreadsheet Template or Web Services data access method), Staff maintains that, for a successful program launch, data access services should be implemented from the benchmarking program's start. Given the timing of the establishment of the Benchmarking Requirement, Staff recommends requiring the regulated electric and gas utilities serving over 50,000 customer accounts to implement data access services utilizing Web Services by August 1, 2023 for the first reporting year, January 2022 to December 2022 ("First Reporting Year"), and delaying building owners' initial data submission deadline to October 1, 2023. Staff recommends requiring all other regulated utilities to implement data access services using the Portfolio Manager Spreadsheet Template by August 1, 2023 for the First Reporting Year and delaying building owners' data submission deadline for the First Reporting Year to October 1, 2023.

Staff recommends July 1 as the data submission deadline in subsequent reporting years. Staff shall coordinate with the utilities to implement data access services and Web Services in a consistent manner across their territories.

Given the existing number of benchmarking jurisdictions across the country, Staff points out that there are established third-party service providers who can integrate Web Services with utility customer databases and set up the data access procedures.

Staff recommends that the Board evaluate cost recovery of implementing, operating, and maintaining data access services and Web Services solutions for benchmarking purposes in future base rate case proceedings. Staff's rationale for this is that there may be synergies between Web Services and other web service applications – in particular, peak demand management. Peak demand management is another application of web services where interval data, gathered in increments ranging from 15 minute to one hour, is shared between the utility and the customer to manage energy demand. Synergies may be available where the same third-party vendor sets up and operates web services for both benchmarking and peak demand management.

Last, Staff concurs with Bright Power's recommendation to examine the best practice to access Portfolio Manager Data. Portfolio Manager Data may be accessed in two ways – by "Data Request" or "Property Sharing." For a Data Request, Staff notifies the building owner through e-mail that a reporting deadline is pending. The owner then logs in to Portfolio Manager, completes a report, and clicks on the "submit" button to send the completed report to Staff. The advantage of the Data Request approach is that the building owner may obtain a single, time-stamped

snapshot of the report at the time that they submit the report, as proof that they met the submission deadline. For Property Sharing, the building owner grants access to Staff to view (but not edit) the building data at any time. The advantage of the Property Sharing approach is that the help desk (see Section 3, infra) can access the data to help the property owner resolve any initial data input issues and thereby increase compliance from the outset. Staff recommends Property Sharing as the method for BPU to access Portfolio Manager Data to best support the building owners at program launch.

**2.5 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.**

**2.5.1 Comments Received:**

Overall, stakeholders offered favorable comments about the proposed outreach plan beginning one year prior to the first submission deadline for commercial building owners and operators. This outreach would consist of stakeholder meetings, e-mail communications, and workshops for individual building owners. It would also include tailored messaging to each audience, with guidance from stakeholder organizations. Stakeholders acknowledged the importance of outreach and training to implement the benchmarking requirement.

Stakeholders recommended organizations and entities that would be effective in conducting outreach. Calico and Willdan suggested utilizing building owner associations and facility management associations to communicate benchmarking objectives and protocols. MaGrann and Utility Advantage suggested using engineering and sustainability consultants.

Calico and NEEP suggested competitions and challenge programs as an outreach method. NEEP also suggested using individualized scorecards to engage and communicate with building owners, as well as establishing local energy committees.

Rate Counsel suggested that the benchmarking outreach to building owners include assistance for owners of low-ranking buildings to obtain resources needed to improve their standing.

RECO also noted that the utilities should be allowed to recover the costs of additional outreach, training, and guidance activities.

RECO concurred with the Straw Proposal's recommendation that the State maintain a CRM system to store the benchmarking data, track the submission status of each building, and communicate with building owners. The company also advised that any incremental cost a utility incurs as a result of having to use the State CRM system should be recoverable by that utility.

**2.5.2 Staff Response to Comments - Question #6:**

Staff appreciates the support for the outreach plan and the suggestions stakeholders made regarding such plan. Staff will consider outreach to the organizations that these stakeholders recommended. Staff will explore the implementation of outreach tools, such as competitions, challenge programs, scorecards, and local energy committees. Staff agrees with Rate Counsel's suggestion that outreach should include targeted messaging to assist buildings that are energy and water inefficient/have low-ranking benchmarking scores in improving their energy and water efficiency.

Staff will specify and implement a CRM system for the benchmarking program. The CRM system should not affect utility operating costs other than to increase program participation and data access requests. Staff plans on funding the CRM system through a grant from the DOE's State Energy Program. If costs materialize, Staff recommends that any incurred expenditures pertaining to administration and/or management of data access requests be examined in future base rate case proceedings.

Staff does not agree with RECO's suggestion to recover the cost from ratepayers to provide additional outreach, training, and guidance activities. BPU plans on conducting outreach and training about the benchmarking program and Portfolio Manager. Staff recommends that utilities be eligible to seek cost recovery for a data access service, which would include activities to verify the identity of building owners and to interact with building owners to ensure that meters and customers are properly matched to the correct, respective buildings, through their respective base case filings.

**2.6 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.**

**2.6.1 Comments Received:**

Bright Power, NEEP, and Calico recommended establishing a single, centralized website that would provide resources such as benchmarking program information, educational materials, answers to FAQs, and links to individual utility support webpages. NEEP referenced existing websites that cities such as Boston and Philadelphia utilize, which also provide education on EE upgrades. Calico cited best practices such as step-by-step user guides and in-person or virtual training webinars. Willdan stated that step-by-step instructions with screenshots would assist with customer enrollment.

New Jersey Realtors offered to work with BPU to develop and hold educational sessions open to the general public at such time that these sessions begin.

RECO agreed with the Straw Proposal's recommendation that building owners may designate a third party to complete Portfolio Manager submissions.

**2.6.2 Staff Response to Comments - Question #7:**

Staff will work with one of BPU's partner organizations, including, but not limited to, the New Jersey Institute of Technology, to develop a training website which will include benchmarking program information, training modules, and FAQs. Staff will consider stakeholders' suggestions for website content.

Staff plans to develop and hold benchmarking educational sessions with industry groups and will work with New Jersey Realtors to identify organizations that would help reach commercial building owners and to develop customized content.

**2.7 Staff recommends developing a Portfolio Manager Certification program with the assistance of New Jersey Institute of Technology's Center for Building Knowledge and seeks feedback on how it might be implemented.**

**2.7.1 Comments Received:**

Bright Power and EEA-NJ advocated for the use of existing recognized credentials rather than a new Portfolio Manager certification program ("Certification Program"). Bright Power noted that other jurisdictions require credentials, such as Registered Architect, Certified Energy Manager ("CEM"), and Professional Engineer ("PE"). EEA-NJ stated that investing in established nationally recognized certifications would provide more expansive workforce funding opportunities for training facilities and more career opportunities for certification candidates.

RECO stated that it does not object to a certification program. MaGrann did not explicitly oppose the Certification Program but expressed that training and certification should recognize existing credentials, such as PE and CEM, which adequately cover commercial energy analysis, disaggregation, and modeling, as well as industry standard tools such as those promoted by ASHRAE. MaGrann also noted that trainings and requirements for credentials should be aimed primarily at third-party consultants typically hired by property owners or operators to assist in performing benchmarking and related tasks, arguing that many building owners and operators lack the resources to perform these tasks in-house and that outside expertise is more competent in doing so.

Willdan commented "that the terminology be clearly defined so that it does not imply that the Portfolio Manager certification is equivalent to a building earning an Energy Star certification."

**2.7.2 Staff Response to Comments - Question #8:**

Staff recommends that the building owner may designate a third party to complete Portfolio Manager submissions. The person completing the Portfolio Manager submissions need not be a NJ Certified Benchmarking, which is the designation that a person would receive as a result of successfully completing the Certification Program. As Bright Power and EEA-NJ suggested, other existing credentials can signal to the building owner the ability of a party to complete a Portfolio Manager submission. However, the intent of the Certification Program will be to create a pool of professionals knowledgeable specifically about Portfolio Manager and New Jersey's benchmarking program who may be hired by building owners lacking the personnel, resources, skills, or time to complete their Portfolio Manager submissions. Larger commercial real estate firms typically have staff who are already trained on Portfolio Manager.

Staff recommends that, to receive the designation of "NJ Certified Benchmarking," candidates for the Certification Program must pass an online exam. Candidates for the NJ Certified Benchmarking designation will not be required to take the BPU-sponsored training prior to taking the exam. The exam will cover Portfolio Manager and the specifics of New Jersey's benchmarking program. Any candidate who takes the exam and passes it will become certified. NJ Certified Benchmarking will be listed on BPU's benchmarking website along with their credentials, including other certifications with regard to HVAC and energy audit and management, to promote and advertise their benchmarking services to others in need of benchmarking assistance.

With regard to Willdan's comment to clarify definitions, Staff will use the term "NJ Certified Benchmarking" and not "Portfolio Manager Certification" to describe those who have successfully passed the benchmarking test. For a building whose Energy Star Score is greater than 75 under

the Portfolio Manager system, the owner of that building may apply to EPA to receive Energy Star Building Certification.

**2.8 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.**

**2.8.1 Comments Received:**

Calico, NRDC, Utility Advantage, and Willdan supported a building-level database on a public website on which Energy Star Benchmark Scores and other metrics, such as EUI and annual energy trends, would be posted. Calico added that a building-level database with EUI and Energy Star Scores do not pose privacy or cybersecurity risks.

Besides the building-level database, NRDC recommended producing an annual program report, creating an interactive map, and adopting the poster-on-the-building disclosure approach.<sup>26</sup> NRDC also recommended that the annual program report and building-level database be pursued in the first year of the benchmarking program while the poster-on-the-building approach be a part of benchmarking program compliance once building owners have had adequate time to benchmark their buildings. Utility Advantage supported displaying Energy Star Scores publicly and making their disclosure available in transactions to allow higher-performance buildings to receive premium valuations. Calico noted the State might consider future policies around transactional disclosure of buildings or unit-level energy costs.

BOMA and NAIOP recommended requiring third-party certification for Energy Star Building Labels. The organizations did not support publicly displaying benchmarking scores, asserting that Energy Star Scores are often misunderstood or misinterpreted by the general public. The organizations suggested that the building-level database should be an opt-in choice and that the program report should include information in the aggregate, with specific buildings identified only if the owners agree. NJ Realtors did not support the transactional disclosure of energy benchmarking reports, arguing that such disclosures could increase difficulty in selling or leasing certain commercial buildings in the state.

RECO recommended forming a collaborative working group to verify the needs and concerns of various stakeholders prior to establishing a reporting approach. The company stated that the public reporting approach must consider the proposed Terms and Conditions discussed in Question #4 regarding the protection of customer privacy.

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<sup>26</sup> Poster-on-the-building disclosure is the posting of a building's energy performance, which may include its Energy Star Rating, on a poster near the main entrance of a building. Chicago and New York City are the only jurisdictions utilizing this disclosure type. For example, Chicago requires a placard of a covered building's Energy Star Rating to be posted in a prominent location and shared at the time the property is listed for sale or lease. New York City requires disclosure of the a covered building's Energy Star Rating and its associated energy efficiency grade in a conspicuous location near each public entrance to the building within 30 days after the owner obtains an energy efficiency grade from the New York City Department of Buildings.

### 2.8.2 Staff Response to Comments - Question #9:

Staff appreciates the stakeholder feedback on reporting and disclosure and will take these recommendations into consideration, particularly regarding privacy and cybersecurity, when developing the public reporting and disclosure approaches.

Goal 3.3.2 of New Jersey's EMP is the establishment of "transparent benchmarking and energy labeling." The provision of energy usage and cost information to current and prospective tenants of a particular building will better inform their leasing and property operation decisions, thus enabling a more transparent market. Staff believes that while tenants may not be building owners or building operators, they will benefit from understanding how their building's energy usage compares to other peer tenants located in similar property types. In addition, Staff believes that access to such information makes the commercial real estate market more transparent. Potential property buyers will be able to better evaluate the operational costs and capital expenditures on infrastructure upgrades of a prospective property. Last, public disclosure facilitates connecting building owners with EE service providers. EE service providers could leverage the results of the public benchmarking reporting to approach owners of low-performing buildings to offer solutions that leverage NJCEP and utility EE programs.

Staff interprets EMP Goal 3.3.2 as supporting public access to information. Other jurisdictions with benchmarking laws post either a searchable table similar to a spreadsheet or an interactive geographic information system ("GIS").<sup>27</sup> If a table format is used, each row would represent a particular building, and each column would have building-level data applicable to that particular building. Such data, for instance, would include items such as each building's name, address, square footage, reporting status, and energy and water performance metrics. If an interactive GIS format is used, users would go to a map, find a particular covered building on the map, and click on that building to reveal a summary report with the same data as would be contained in a table, if table format were used.

While Staff does not concur with RECO's recommendation for a collaborative working group to vet the public reporting of benchmarking data, Staff instead recommends a public stakeholder meeting to solicit feedback on public reporting of benchmarking data, including the format of and variables reported, such as in a building-level database and/or poster-on-the-building disclosure.

Staff concurs with NRDC's recommendation to publish an annual program report. Almost all other benchmarking jurisdictions publish an annual program report to provide summary statistics, discuss benchmarking program achievements and opportunities, and announce program changes.

Staff concurs with BOMA's and NAIOP's recommendation of requiring third-party certification for Energy Star Building Certification for Buildings. The CEA only mandates that building owners of Covered Buildings benchmark with Energy Star Portfolio Manager. If a building achieves an Energy Star Score greater than 75, it is the owner's prerogative to obtain third-party verification

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<sup>27</sup> Examples of searchable tables are available for Chicago, IL (<https://data.cityofchicago.org/Environment-Sustainable-Development/Chicago-Energy-Benchmarking-2019-Data-Reported-in-/jn94-it7m>) and Seattle, WA (<https://data.seattle.gov/dataset/2020-Building-Energy-Benchmarking/aez-gz8p/data>). Philadelphia, PA (<http://visualization.phillybuildingbenchmarking.com/#!/map>) and Hennepin County, MN (<http://efficientbuildingsmap.hennepin.us/>) have examples of interactive GIS maps.

of the building's score, so that the building owner can submit such score to EPA to apply for the Energy Star Building Certification.

## **2.9 Staff seeks feedback on how to optimize reporting compliance.**

**Comment:** Many stakeholders commented on the recommendation to require compliance with benchmarking as a prerequisite for participation in any of the Board's other programs, as well as utility EE programs. NJUA, PSE&G, RECO, SJI, and MaGrann strongly objected to this recommendation, arguing that it would impose an additional barrier to participation in EE programs and that its implementation would increase administrative costs of those programs. PSE&G added that, while building owners are responsible for benchmarking, they are frequently not the same as the utility customer of record, which passes the "penalty" onto individual customers within the building. EEA-NJ cautioned against this recommendation as well. Calico acknowledged that while this may provide an incentive to comply, it may also conflict with other energy savings goals.

**Staff response:** Staff appreciates the feedback on compliance and understands the concerns stakeholders raised on reporting compliance. After review of the stakeholder comments, Staff agrees that requiring benchmarking as a prerequisite for participating in Board and utility clean energy programs, something the Board supports, may raise undue barriers to such participation. As a result, Staff recommends not including this requirement in the benchmarking program.

**Comment:** Bright Power and EEA-NJ commented that levying fines is often a key contributor to compliance in other jurisdictions that require benchmarking and recommended that the BPU explore other penalties if the BPU does not have the ability to levy fines. Both entities noted that, in New York City, properties that are not in compliance with benchmarking rules are at risk of losing the ability to obtain permits. RECO commented that the BPU has the statutory ability to levy fines and recommended that the BPU use that authority, citing N.J.S.A 48:2-42.

**Staff response:** Staff recognizes that many jurisdictions that require benchmarking levy fines to motivate compliance. Staff acknowledges that fines can be an effective compliance tool and have observed lower rates of benchmarking compliance in jurisdictions that do not levy fines as a penalty. Staff recommends that no fines be levied for benchmarking program. Staff recognizes that there may be opportunities to improve program administration and that time is needed to familiarize building owners with their benchmarking obligations and Portfolio Manager. Staff recommends that two years is sufficient for such purpose. Accordingly, after the benchmarking program's first two years, Staff recommends analyzing compliance rates and exploring additional methods to spur program compliance.

**Comment:** In lieu of fines, stakeholders provided feedback on other approaches for encouraging compliance, including sending a warning letter 90 days after the reporting deadline and including compliance status in a public building-level database. Stakeholders noted that penalties could be a strong motivator to comply with benchmarking requirements and suggested that the BPU clearly communicate dates, rules, the benefits of compliance, and how the fines are calculated (Calico, Willdan, MaGrann). Willdan noted that a public dashboard that shows each building's compliance status, based on automated data the utilities provide, would promote compliance. Calico and MaGrann also suggested that penalties could be implemented after a "grace period" during which outreach and education takes place.

RECO and EEA-NJ supported issuing a warning letter. PSE&G opposed this and noted that this action requires additional details regarding the timeliness of requests to the utility for usage information.

Utility Advantage recommended that the benchmarking program be designed to allow local municipalities and counties to determine if they want to authorize fines using the same information provided in the State's benchmarking program.

**Staff response:** Staff appreciates the thoughtful feedback on alternative compliance methods. Staff agrees that compliance is a critical aspect of the design of the benchmarking program and reiterates that the objective of benchmarking is to generate energy and water savings statewide. The participation of as many eligible buildings as possible is a priority for Staff. Staff recommends the following methods to optimize compliance: public reporting of compliance status, sending e-mails to building owners reminding them of benchmarking obligations and deadlines, and helping building owners to properly enter data into Portfolio Manager (by means of a help desk as well as automated notifications that appear at the time of data entry, when an error is detected in the Portfolio Manager entry). Staff supports a "grace period" of 90 days after the submission deadline before a building owner is considered out of compliance. Staff recommends sending a notice to the building owner on the day after the data submission deadline and reporting them as non-responsive in the public building-level database. A grace period will allow building owners, particularly during the first two years of the benchmarking program, to learn how to fulfill their benchmarking obligations.

In addition, Staff will work with the investor-owned electric and gas utilities and stakeholders to discuss the potential of offering enhanced incentive levels in utility and State EE programs for buildings that benchmark as a way of encouraging compliance for Covered Buildings and for encouraging voluntary benchmarking for non-Covered Buildings through the free benchmarking services from NJCEP and the LGEA program. Discussions will include aspects such as specific incentive levels, costs and budgets, logistics, and any other relevant considerations.

**Comment:** BOMA and NAIOP provided joint comments that cautioned the BPU that "fines and high costs, including time and money that building owners must spend for purposes of benchmarking compliance are counterproductive."

**Staff Response:** NAIOP stated that "Many of our members have been benchmarking for some time." To lessen the cost and time burden for building owners who have not previously benchmarked, Staff recommends creating a pool of NJ Certified Benchmarkers who will aid building owners to comply with the law. In addition, Staff recommends a help desk to answer questions about the law and Portfolio Manager.

**Comment:** BOMA and NAIOP jointly argued that "making a building's compliance status public when non-compliance may be due to a clerical error, or an appeal is not reasonable."

**Staff Response:** Portfolio Manager and the CRM contain quality assurance tools to guide building owners to correct input values. These quality assurance tools, along with the help desk, will assist in minimizing potential clerical errors regarding data entry.

**Comment:** Bright Power suggested using the e-mail address associated with the Portfolio Manager account for any submission communication to ensure delivery to the correct point of contact.

**Staff Response:** Staff agrees with Bright Power's suggestion. Building owners or their designees who file Portfolio Manager submissions will be instructed to register all of their e-mail addresses in their Portfolio Manager account. The CRM system database will download Portfolio

Manager data, including the contact information of the respective building owners, operators, and their designated agents. Staff will then be able to use the CRM to effectively contact these individuals.

**2.10 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.**

**2.10.1 Comments Received:**

Regarding expanding future coverage, NEEP and EEA-NJ recommended that the benchmarking program incorporate current non-Covered Building types and buildings with a smaller square foot threshold than 25,000 square feet. NEEP commented that this expansion could use a phased approach, paired with education and engagement to help building owners understand their building energy usage and the benchmarking requirement.

NEEP and EEA-NJ recommended leveraging the information on building energy usage gained through benchmarking for other clean energy policies, specifically building performance standards and strategic energy management. NEEP mentioned their Building Energy Analysis Manager tool that can track both benchmarking and building performance standard compliance.

ReVireo suggested modeling the benchmarking program and future expansion on Philadelphia's Building Energy Benchmarking Program and Philadelphia's Building Energy Performance Policy. They also recommended modeling the program and future expansion based on New York City's various Local Laws: 84, 87, 95, and 97.<sup>28</sup> In particular, New York City's Local Law 84 is its benchmarking law, Local Law 87 is its law requiring annual energy audits and periodic retro-commissioning, Local Law 95 is its poster-on-the-building disclosure law, and Local Law 97 is its law covering Building Energy Performance Policy.

**2.10.2 Staff Response to Comments - Question #11:**

Staff affirms that the purpose of benchmarking is to provide a baseline understanding of building performance. Staff further affirms that benchmarking positions building owners and operators, as well as the State, to make informed decisions on EE and building decarbonization. Staff appreciates the feedback from stakeholders suggesting best practices from benchmarking programs in other states. Staff evaluated other jurisdictions where benchmarking evolved toward building performance standards, in which buildings must meet performance targets that improve the building's overall energy and water usage over time. Building performance standards are not being proposed at this time. 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.

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

**2.11.1 Comments Received:**

Several stakeholders sought to address the issue of the cost of implementing the benchmarking program. NJUA supported keeping benchmarking implementation simple in the beginning,

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<sup>28</sup> City of New York, "Local Laws," <https://www1.nyc.gov/site/buildings/codes/local-laws.page>.

asserting that an orderly, well-planned rollout and expansion would minimize costs to customers. Rate Counsel recommended that Staff explore outside funding sources, particularly the Infrastructure Investment and Jobs Act of 2021, to address BPU costs for additional personnel such as help desk staff and implementation consultants. Rate Counsel noted that doing so would offset any program costs recoverable from ratepayers. Separately, HCANJ inquired about performing analyses of cost impact to long-term care providers, many of which rely primarily on fixed payments.

Several stakeholders recommended providing additional services to building owners and tenants. NEEP raised the potential issue of tenant displacement if multi-family buildings were to be included due to efficiency investments resulting in higher home values. They recommended pairing decarbonization activities with anti-displacement strategies such as renter protections, right to return, and first right to buy. Rate Counsel suggested assisting owners of buildings with low-ranking benchmarking scores to obtain resources needed to improve their standing, such as providing access to utility EE and conservation programs. ReVireo suggested providing recommendations to perform energy audits based on properties' Energy Star scores, noting that many building owners may not understand the meaning of the Energy Star scores. The company also suggested sharing information about EE incentives and financing from utilities, the NJ C-PACE program, and the federal 179D Tax Credit. Willdan noted that analytics that benchmark for a wider range of buildings; the ability to disaggregate heating, cooling, and baseload-driven energy consumption; and monthly benchmarking collectively would allow owners to improve their buildings and track expected energy savings after making improvements.

#### **2.11.2 Staff Response to Comments - Question #12:**

Staff is aware that building owners may incur costs to hire personnel to complete submissions to Portfolio Manager. Staff plans to have a CRM vendor provide a free call-in help desk to aid building owners in understanding their benchmarking obligations and how to use Portfolio Manager. Staff also notes that external funds from the DOE's State Energy Program currently support the CRM implementation. Staff recommends that the Board evaluate in future base rate case proceedings any incurred expenditures by the regulated electric and gas utilities due to the program requirements articulated in this Board Order.

Staff appreciates the recommendations for additional benchmarking program elements that could maximize benefits. As the benchmarking program evolves, Staff will continue to work with stakeholders to mitigate issues and to ensure cost-efficient and customer-friendly solutions. On the Board's benchmarking website, Staff plans to describe how Portfolio Manager works, as well as explain the meaning of Energy Star Scores and the opportunity to apply to DOE for the Energy Star Certification for Buildings if a building's Energy Star Score is greater than 75.

### **3. STAFF RECOMMENDATIONS**

Staff reviewed and considered all stakeholder comments received throughout this process and used stakeholder input to develop and modify recommendations. Based upon the comments received to the Straw Proposal, Staff recommends the following:

- I. *Buildings to Be Benchmarked*** – The Covered Buildings list will be developed from the data on existing buildings in the State's tax assessment database, MOD-IV. Staff recommends including commercial buildings (class 4A) along with apartments designed for five families or more (class 4C) and State properties (a subset of class 15C, which represents all public buildings). The excluded property classes are:

- a. Vacant land (class 1)
- b. Residential (four families or less, class 2)
- c. Farms (classes 3A & 3B)
- d. Industrial (class 4B)
- e. Railroad property (classes 5A & 5B)
- f. Personal property telephone (class 6A)
- g. Petroleum refineries (class 6B)
- h. Public schools (class 15A)
- i. Other school property (class 15B)
- j. Public property, including federal, county, and local government (class 15C)
- k. Church and charitable property (class 15D)
- l. Cemeteries and graveyards (class 15E)
- m. Other exempt properties (class 15F)

The Division of State Energy Services of the BPU will assist State agencies to benchmark State buildings over 25,000 square feet.

Staff notes that excluding class 2 (residential, four families or less) buildings means that multi-family condominiums, regardless of size, are not included on the Covered Buildings list.<sup>29</sup>

Staff recommends including LEED buildings, commercial buildings that are franchise locations, stand-alone parking garages over 25,000 square feet, and Covered Buildings with attached parking garages. The square footage of an attached parking garage will factor into the classification of the commercial building itself. This means that a commercial building may be classified as a Covered Building if the square footage of the attached parking garage together with the square footage of the commercial building exceeds 25,000 square feet.

With regard to campuses, Staff recommends that, when a building owner owns one or more buildings over 25,000 square feet on a particular campus, the Board should direct that building owner to benchmark in Portfolio Manager at a minimum all of the Covered Buildings located on that campus. The building owner for that campus may also include non-Covered Buildings (i.e., buildings with 25,000 square feet or less) located on that campus as part of its Portfolio Manager reporting. Staff encourages these building owners to include non-Covered Buildings as part of their reporting, as doing so assists in generating a meaningful representation of that campus's operations overall. For example, an owner of multiple buildings on a campus may include all buildings on the entire campus in its Portfolio Manager submission. Alternatively, that owner may elect not to report on non-Covered Buildings. As long as a building owner enters information regarding the Covered Buildings on its campus into Portfolio Manager, Staff recommends that the building owner may use its discretion regarding whether to include or exclude campus non-Covered Buildings (i.e., buildings with 25,000 square feet or less) as part of its Portfolio Manager reporting.<sup>30</sup>

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<sup>29</sup> See Section 2.1.2 for discussion.

<sup>30</sup> See note 17.

- II. **Appeals and Exemptions** – Staff recommends that building owners or operators be able to apply for and may be eligible for an exemption from the Benchmarking Requirement under the following conditions:
- a. **New Buildings** – Staff recommends that a new building be operated for a full calendar year before the owner should benchmark. Staff recommends using the “year-built” data field in the MOD-IV database to qualify new buildings for purposes of benchmarking. A building will not be added to the Covered Buildings list until the second year after the year-built. For example, a building with a year-built value of 2022 will begin reporting for the second reporting year, January 2023 to December 2023 (“Second Reporting Year”), which has a July 1, 2024 data submission deadline. The rationale for this is to give the building owners at least one full year of building operations before assessing the building’s performance.
  - b. **Demolitions** – Recently- or soon-to-be-demolished buildings may be removed from the Covered Buildings list, provided that the building owner submits a certificate of approval for demolition.
  - c. **Unoccupied** – If a building is unoccupied for a full year (365 days), the building owner may receive an exemption, provided that the building owner submits an affidavit or certification of non-occupancy.
  - d. **Foreclosure or Bankruptcy** – If an action for foreclosure or bankruptcy has been filed during a particular reporting year, the building owner may apply to receive an exemption for the given reporting year.
  - e. **Other Conditions** – Staff recommends that building owners be able to have their buildings removed from the Covered Buildings list in certain other situations for good cause (e.g., the building’s size falls below the threshold, there is an error in the Covered Buildings list, or an unregulated utility does not apply the 4/50 rule and provide aggregated building-level data and refuses to provide individual data even with tenant consent) and after providing appropriate evidence justifying such removal.

An appeals administrator from the CRM vendor, with Staff oversight, will review and make final determinations regarding applications for appeals and exemptions.

For building additions and building property sales occurring during the annual benchmarking period (calendar year), Staff recommends that owners must still benchmark and submit data by the submission deadline for the given reporting year.

Staff further recommends that the utilities bear no responsibility for verifying any of the aforementioned building conditions. In order to seek an exemption, a building owner would need to initiate an application for an exemption, through the application form that the benchmarking program provides, and provide evidence for the type of benchmarking exemption being sought.

Staff agrees that the policy and administrative rules governing benchmarking exemption requests should be accessible and unambiguous. Staff recommends drafting such rules as soon as administratively feasible and staffing a CRM team with responsibility to process exemption requests with respect to these rules, with Staff oversight.

Staff recommends that the utilities 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.

III. **Data Aggregation** – Staff recommends that all regulated utilities in New Jersey provide aggregated building-level data. Staff recommends creating Terms of Use and following a 4/50 rule, as described below, to address privacy and cybersecurity concerns.

a. **Terms of Use** – Staff recommends creating Terms of Use for the aggregated building-level data that building owners would receive from their applicable utility with respect to water, gas, and electric services provided, upon request. The Terms of Use would include the following minimum requirements relating to data collected:

- The aggregated data can only be used for benchmarking purposes;
- The aggregated data shall be handled with standard security practices used for utility customer data;
- The aggregated data shall only be shared with the building owner and the building owner's designated agents, including the building operator, the EPA, and the BPU, including any BPU partners or representatives assisting BPU with respect to this data; and
- The aggregated data shall be destroyed, to the extent technically practicable, upon the earlier to occur of (i) the owner's submission of the data to Portfolio Manager or (ii) one year from the date the owner receives the data from the applicable utility.

b. **4/50 Rule** – For the utilities providing aggregated building-level data, Staff also recommends utilizing the 4/50 rule. Under this rule, if there are four or more tenants in a particular building or no one tenant exceeds 50% of the energy consumption or water usage in a particular building, data collected from all meters in a particular building will be aggregated absent affirmative tenant consent. This data aggregation will have the effect of anonymizing the data collected in each building. If, on the other hand, 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 particular 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. Regulated water utilities are not subject to N.J.A.C. 14:4-7.8, and buildings typically have a single master water meter where the building owner is the water utility customer. Staff recommends that the 4/50 rule nevertheless apply to water data when water utility customers are tenants to more readily facilitate following and implementing the 4/50 rule. Staff maintains that the 4/50 rule strikes a reasonable balance between ensuring consumer protection of utility data (N.J.A.C. 14:4-7.8) and meeting the EMP's benchmarking transparency goals by complying with the CEA's Benchmarking Requirement (see Section 2.4.2 for an in-depth discussion).

- c. Process for Utilities to Provide Aggregated Building-Level Data** – Staff recommends the following process for utilities to provide aggregated building-level data to building owners directly or through Portfolio Manager.
1. Every year, the building owner of Covered Building shall receive a notification from the Board that their property is a Covered Building;
  2. If their building meets any of the exemption conditions discussed in Section 2.3.2, the building owner may request an exemption from benchmarking their building through an application form that the benchmarking program provides;
  3. If the building owner does not seek an exemption, the owner submits to all applicable utilities providing service to the building a Data Access Request Form requesting aggregated building-level data. The utilities identify the meters in the building through a process that the utilities will develop with Staff; and
  4. The utility then applies the 4/50 rule and notifies the owner whether the 4/50 rule is satisfied:
    - a. If the 4/50 rule is satisfied, the utility aggregates the data and provides it to the building owner or Portfolio Manager via one of the methods described in Section 2.4.3.
    - b. If the building fails the 4/50 rule, the utility notifies the building owner, and the building owner requests the consent of each tenant through the use of a Consent Letter that the utility provides to the building owner. The building owner next provides this Consent Letter to its tenants. Each tenant then completes the Consent Letter, either providing their consent or denying permission for the utility to release their data as part of the aggregated data that the utility will provide to the building owner for benchmarking purposes. If the building owner is unable to contact the tenant, the building owner may indicate on the Consent Letter that a good faith effort was made to obtain consent. The building owner then returns as a group all of the completed Consent Letters to the utility. The utility next provides the aggregated data for the consenting tenants to the building owner or Portfolio Manager.

Staff recommends that Staff work collaboratively with the utilities to establish the template Data Access Request Form and Consent Letter, develop the process to identify meters in a building, and finalize any outstanding details of the statewide procedure for data aggregation.

- d. Unregulated Utilities** – Staff recommends that Staff conduct outreach and hold workshops with the utilities that the BPU does not regulate about the Benchmarking Requirement, for the purpose of encouraging them to follow the same data aggregation process outlined above that applies to regulated utilities. These utilities may include smaller water utilities, municipal water utilities, municipal electric utilities, and delivered fuel companies (i.e., fuel oil, propane, and biomass).

Staff recommends the following process for building owners with Covered Buildings that unregulated utilities serve:

1. Every year, the building owner of a Covered Building shall receive a notification from the Board that their property is a Covered Building;
2. The building owner may request an exemption from benchmarking their building through an application form that the benchmarking program provides if their building meets any of the exemption conditions discussed in Section 2.3.2;
3. If the building owner does not seek an exemption, the owner requests aggregated building-level data through the Data Access Request Form that the benchmarking program provides to the unregulated utility providing service to the building.
4. If the unregulated utility does not identify the meters in the building through the process applicable to the regulated utilities that will be developed by the utilities and Staff, and if it does not utilize the 4/50 rule and notify the building owner whether the 4/50 rule is satisfied, the building owner requests the consent of each tenant through use of the Consent Letter that the benchmarking program provides. Each tenant then completes the Consent Letter, either providing their consent or denying permission for the utility to release their data. If the building owner is unable to contact the tenant, the building owner may indicate on the Consent Letter that a good faith effort was made to obtain consent. The building owner then returns as a group all of the completed Consent Letters to the utility. The utility then provides the individual data for the consenting tenants to the building owner.
5. The building owner manually enters all of the data that is available for their building into Portfolio Manager.
6. If the unregulated utility refuses to provide individual data even with consent from the tenants, the building owner may seek an exemption from the Benchmarking Requirement.

Staff recommends revisiting the exemption conditions and the 4/50 rule in the second program year. The 4/50 rule is more conservative than rules implemented in other benchmarking jurisdictions. Once Staff receives data from the first year of benchmarking, based on this data, when considering revisions to the 4/50 rule, Staff will analyze and take into account the data regarding privacy issues, program compliance, and the percentage of exemption requests received and exemption requests granted, relative to the entire pool of benchmarking participants. This data-driven approach will provide a foundation for whether to modify opt-out conditions or the 4/50 rule for the third and subsequent years of the benchmarking program.

- IV. Data Access Services** – Staff maintains that, for a successful program launch, data access services should be implemented from the benchmarking program’s start. Staff recommends an October 1, 2023 initial data submission deadline for the First Reporting Year. Staff further recommends July 1 as the data submission deadline in subsequent reporting years.

Staff recommends that the regulated electric and gas utilities serving over 50,000 customer accounts implement data access services utilizing Web Services by August 1, 2023 for the First Reporting Year. Staff recommends that all other regulated electric, gas, and water utilities be permitted to implement data access services using the Portfolio Manager Spreadsheet Template by August 1, 2023 for the First Reporting Year.

Staff recommends that each utility providing data access services publish a benchmarking webpage where building owners may submit Data Access Request Forms and download Consent Letters, if necessary, to obtain individual tenant data. The utility shall follow the process for providing aggregated building-level data described in Section III.

- V. **Benchmarking Certification** – Staff recommends that the building owner may designate a third party, such as their property manager for that building, to complete the Portfolio Manager submission. In addition, Staff recommends developing a NJ Certified Benchmarker certification to create a pool of knowledgeable personnel to help building owners who may not have the staff, resources, skills, or time to conveniently complete the Portfolio Manager submissions. Staff recommends posting a list of NJ Certified Benchmarkers along with their credentials on the BPU's benchmarking webpage.
- VI. **Training and Outreach** – Staff recommends a robust outreach plan, starting at least one year prior to the first submission deadline of October 1, 2023, to commercial building owners and operators. Staff will implement a CRM system, including a help desk, to support outreach, communicate with building owners, process requests for exemptions, and perform services as needed for building owners. Staff will work with a BPU partner organization to develop a training website that includes the benchmarking program information, training modules, and FAQs. Staff initially intends to work with various state-level stakeholder organizations, including municipalities, chambers of commerce, industry associations, and real estate associations to provide benchmarking educational sessions and assist in educating building owners. Staff plans to hold informational workshops with individual building owners whom these stakeholder organizations represent. With guidance from these stakeholder organizations, Staff will tailor messaging to the audience, accounting for different building uses, non-English languages, and resources of the building owners. Staff recommends posting the complete benchmarking program information to support the outreach effort on the BPU's benchmarking webpage.
- VII. **Public Reporting** – Staff recommends a public stakeholder meeting to solicit feedback on public reporting of benchmarking data, including the format of and variables reported, such as in a building-level database and/or poster-on-the-building disclosure. Staff also recommends publication of an annual program report that provides summary statistics, discusses program achievements and opportunities, and announces program changes.
- VIII. **Program Compliance** – Staff recommends that the Portfolio Manager data submission deadline for the First Reporting Year (2022) be October 1, 2023. For subsequent reporting years, Staff recommends that the submission deadline be July 1 of each such program year. The CRM system will send notifications about pending deadlines, late notices, and non-responses. The help desk will be available to answer questions about the benchmarking program and Portfolio Manager. Additionally, for the initial two reporting years (2022 and 2023), Staff recommends the following:
- a. Providing building owners with a 90-day grace period after the applicable submission deadline before they are deemed to be nonresponsive; and
  - b. Working with the investor-owned electric and gas utilities and stakeholders to develop potential enhanced incentive levels in utility and State EE programs for buildings that participate in the benchmarking program as a way of encouraging compliance as well as voluntary benchmarking. Discussions will include aspects such as specific incentive levels, costs and budgets, logistics, and any other relevant considerations.

After two years, Staff recommends analyzing compliance rates and exploring additional methods to motivate benchmarking program compliance.

- IX. **Cost Recovery** – Staff recommends recovery of the reasonable and prudent costs by the regulated utilities for implementation of the Benchmarking Requirement, which may include establishing, operating, and maintaining data aggregation and data access services. Staff recommends that the Board evaluate costs as part of future base rate case proceedings.
- X. **Maximizing Program Benefits** – Staff recommends proactively promoting EE programs to benefit all properties.
- XI. **Rulemaking** – Staff recommends developing administrative rules that detail the processes and procedures of the benchmarking program.

#### 4. **DISCUSSION AND FINDINGS**

Goal 3.3.2 of the 2019 New Jersey Energy Master Plan is to “Establish transparent benchmarking and energy labeling.” 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. Benchmarking enables commercial building owners and operators to measure and analyze their respective facilities’ energy and water use, and compare performance to that of similar buildings. Building owners and operators can then assess opportunities for performance improvements that reduce their respective buildings’ energy usage and costs. As buildings become more efficient, they consume less energy and water, resulting in fewer emissions, improving air quality and public health, preserving water supply, and supporting increased energy and water resilience. EE improvements also spur economic investment through reduced operating costs, increased asset values, improved comfort and productivity, and job creation.

The CEA mandates the 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 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.

While the CEA directs the Board to establish a Benchmarking Requirement, it does not provide guidance on a number of key topics and implementation details, which Staff identified as necessary to effectuate a benchmarking program.

The Board **HEREBY FINDS** that the processes utilized in developing Staff’s recommendations were appropriate and provided stakeholders and interested members of the public with adequate notice and opportunity to comment.

After careful consideration of the stakeholder comments, Staff’s responses to comments, and Staff’s recommendations, the Board **HEREBY FINDS** that the policy interpretation and implementation plan that Staff recommends provides the procedural and substantive components necessary to enable the Board to implement and administer a benchmarking program that is consistent with the requirements of the CEA and the goals of the EMP. As such, the Board

**HEREBY APPROVES** Staff's recommendations and **ADOPTS** Staff's reasoning as expressed in its responses to comments and recommendations, with specific directives included below.

### **Buildings Required to Benchmark**

The Board **HEREBY ADOPTS** Staff's recommendation that the Covered Buildings list be developed utilizing the data on existing buildings contained in the State's tax assessment database, MOD-IV, and include commercial property (class 4A), apartments, designed for five families or more (class 4C), and state properties (a subset of class 15C, which represents all public buildings). Excluded property classes include the following:

- a. Vacant land (class 1)
- b. Residential (class 2, four families or less)
- c. Farms (classes 3A & 3B)
- d. Industrial (class 4B)
- e. Railroad property (classes 5A & 5B)
- f. Personal property telephone (class 6A)
- g. Petroleum refineries (class 6B)
- h. Public schools (class 15A)
- i. Other school property (class 15B)
- j. Public property, including federal, county, and local government (class 15C)
- k. Church and charitable property (class 15D)
- l. Cemeteries and graveyards (class 15E)
- m. Other exempt properties (class 15F)

The Board **HEREBY DIRECTS** Staff to develop the Covered Buildings list, to be updated annually, utilizing the MOD-IV database.

As the State will lead benchmarking by example, the Board **HEREBY DIRECTS** the Division of State Energy Services to assist State agencies to benchmark State buildings over 25,000 square feet in conformity with the Benchmarking Requirement and in the same manner as commercial building owners.

The Board **HEREBY FINDS** that Staff's recommendations regarding campuses are consistent with the plain language of the CEA. Therefore, the Board **HEREBY ADOPTS** Staff's recommendations and **ORDERS** commercial building owners to benchmark in Portfolio Manager at a minimum all Covered Buildings located on campuses. As 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.

### **Appeals and Exemptions**

The Board agrees with Staff that building owners should be able to seek an exemption from the requirement to benchmark under certain, limited situations.

The Board **HEREBY ADOPTS** Staff's recommendations regarding appeals and exemptions and **HEREBY DIRECTS** Staff, along with the Board's CRM vendor, to process and review applications for exemptions from the Benchmarking Requirement where the following conditions exist:

- **New Buildings** – New buildings must be operated for a full calendar year before the owner should benchmark. Staff will use the “year-built” data field in the MOD-IV database to qualify new buildings as operational for the purposes of benchmarking. In order to exempt new buildings, a commercial building will not be added to the Covered Buildings list until the second year after the year-built as listed in the MOD-IV database.
- **Demolitions** – Upon application, demolished buildings may be removed from the Covered Buildings list, provided that the building owner provides a certificate of approval for demolition.
- **Unoccupied** – If a building is unoccupied for a full year (365 days), the building owner may apply for an exemption, provided that the building owner provides an affidavit or certification of non-occupancy.
- **Foreclosure or Bankruptcy** – If an action for foreclosure or bankruptcy has been filed during a particular reporting year, the building owner may provide proofs of the filed action and receive an exemption for the given reporting year.
- **Other Conditions** – Building owners may have their buildings removed from the Covered Buildings list in certain other situations for good cause (e.g., the building’s size falls below the threshold, there is an error in the Covered Buildings list, or an unregulated utility does not apply the 4/50 rule and provide aggregated building-level data and also refuses to provide individual data even with tenant consent) and after providing appropriate and sufficient evidence justifying such removal.

To apply for an exemption, a building owner shall file an application utilizing the form provided by the benchmarking program, and provide evidence supporting the type of benchmarking exemption being sought. An appeals administrator from the CRM vendor, with Staff oversight, will review and make final determinations regarding applications for appeals and exemptions.

The Board agrees with Staff that there should be no exemption based on building additions or property sales. The Board **FINDS** that building owners must continue the benchmarking obligation where building additions and property sales occurred during the annual benchmarking period (calendar year) and submit data by the submission deadline for the given program year.

The Board **DIRECTS** the utilities to 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.

### **Data Aggregation**

In implementing the benchmarking program, the Board seeks to strike a reasonable balance between protecting consumers’ proprietary utility data and meeting the EMP’s benchmarking transparency goals in order to effectuate compliance with the CEA’s Benchmarking Requirement. See N.J.S.A. 48:3-87.10(b) and N.J.S.A. 48:3-85. The Board **AGREES** with Staff’s recommendation that a process to anonymize customer utility data for benchmarking is required to harmonize the statutory requirements.

The Board therefore **DIRECTS** all regulated electric, natural gas, and water utilities in New Jersey to provide aggregated building-level data to owners of Covered Buildings in accordance with

Staff's Terms of Use and subject to the 4/50 rule. The Board **HEREBY ADOPTS** Staff's recommended 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 per tenant energy consumption. Under the 4/50 rule, if there are four or more tenants in a particular building or no one tenant exceeds 50% of the energy consumption or water usage in a particular building, data collected from all meters in a particular building will be aggregated, and this anonymized data will be provided to building owners for benchmarking. If, on the other hand, 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 particular building, then the building owner must request each tenant's written consent to allow the applicable utility to provide energy and water data to the building owner. The 4/50 rule shall be applied to water data whenever water utility customers are tenants rather than the building owner with a single master meter.

The Board **HEREBY DIRECTS** Staff to implement its recommended process by which utilities will provide building owners with aggregated building-level data subject to the 4/50 rule and **DIRECTS** the utilities to follow this process and work with Staff to establish standardized forms, develop a process to identify meters in a building, and finalize any outstanding details of the statewide procedure for data aggregation. The Board also **DIRECTS** Staff to conduct outreach to unregulated utilities to encourage them to apply the 4/50 rule and provide aggregated building-level data according to the same process followed by the regulated utilities. The Board also **DIRECTS** Staff to develop and provide a Data Access Request Form and Consent Letter on the BPU's benchmarking webpage as recommended by Staff.

### **Data Access and Web Services**

The Board **HEREBY DIRECTS** the utilities providing data access services to offer benchmarking webpages through which building owners may submit Data Access Request Forms and download Consent Letters to obtain individual tenant data. The Board **DIRECTS** the regulated electric and gas utilities serving over 50,000 customer accounts to provide the data access services using Web Services beginning on August 1, 2023 for the First Reporting Year (2022). The Board **DIRECTS** all other utilities to provide data access services using the Portfolio Manager Spreadsheet Template beginning on August 1, 2023 for the First Reporting Year.

### **Benchmarking Certification**

The Board **HEREBY ADOPTS** Staff's recommendation that the building owner may designate a third-party, such as their property manager, to complete the annual Portfolio Manager submission.

The Board agrees with Staff that it appropriate to create a certification program in order to develop a pool of knowledgeable personnel to assist building owners who may not have the staff, resources, skills, or time to conveniently complete the Portfolio Manager submission. Therefore, the Board **HEREBY DIRECTS** Staff to take the necessary steps to develop a NJ Certified Benchmarker certification program and to publish a list of the certified personnel along with their credentials on the BPU's benchmarking webpage.

### **Training and Outreach**

The Board **HEREBY APPROVES** Staff's recommendations to implement a robust outreach plan. The Board **HEREBY AUTHORIZES** Staff to implement the plan, including the following elements:

- Implementing a CRM system, including a help desk, to support outreach, manage communications with, process requests for exemptions, and perform services as needed for building owners;
- Developing a training website that includes the benchmarking program information, training modules, and FAQs;
- Working with various state-level stakeholder organizations – including municipalities, chambers of commerce, industry associations, and real estate associations – to provide benchmarking educational sessions and assist in educating building owners;
- Holding informational workshops with individual building owners represented by these stakeholder organizations;
- Tailoring messaging to the audiences, accounting for different building uses, language, and resources of the building owners; and
- Posting full benchmarking program information to support the outreach on BPU's benchmarking webpage.

### **Public Reporting**

As with the cybersecurity and data access components of the benchmarking program, the Board seeks to strike a reasonable balance in protecting consumers' utility data and meeting the EMP's benchmarking transparency goals.

The Board **HEREBY DIRECTS** Staff to host a public stakeholder meeting to solicit feedback on public reporting of benchmarking data, including the format of and variables reported, and to develop an annual program report as recommended by Staff. Following the stakeholder process, Staff is directed to report to the Board its findings and any Staff recommendations. The Board also **HEREBY AUTHORIZES** Staff to incorporate third-party verification of Energy Star Building Certification for Buildings as a requirement in the benchmarking program.

### **Program Compliance**

For the first benchmarking program year (calendar year 2022), the Board **HEREBY ADOPTS** Staff's recommendation for a Portfolio Manager data submission deadline of October 1, 2023 and a July 1 submission deadline for subsequent benchmarking program years. For the initial two years of the program, the Board **HEREBY ADOPTS** the following program compliance recommendations from Staff:

- Giving building owners a 90-day grace period after the applicable submission deadline for each of those two years before they are deemed to be nonresponsive; and
- Working with the investor-owned electric and gas utilities and stakeholders to develop potential enhanced incentive levels in utility and State EE programs for buildings that participate in the benchmarking program, as a way of encouraging compliance as well as voluntary benchmarking. Discussions will include aspects such as specific incentive levels, costs and budgets, logistics, and any other relevant considerations.

Following the first two benchmarking program years, Board **HEREBY DIRECTS** Staff to analyze compliance rates and re-evaluate methods to motivate program compliance; Staff shall report to the Board its findings and any recommendations to increase program compliance.

**Cost Recovery**

The 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.

**Maximizing Program Benefits**

To maximize benefits from the benchmarking program, the Board **HEREBY DIRECTS** Staff to ensure that the program proactively promotes EE programs to benefit all properties.

**Rulemaking**

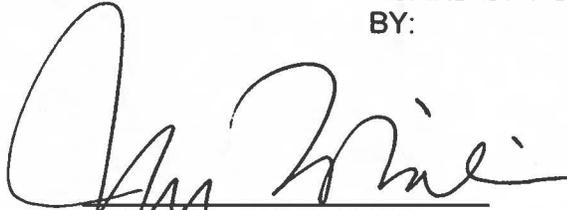
The Board **HEREBY FURTHER DIRECTS** Staff to develop benchmarking program rules and regulations to clearly document the obligations for building owners and operators to meet the requirements of the law.

Finally, the Board **HEREBY AUTHORIZES** Staff to take any additional and all necessary steps to implement the benchmarking program.

This Order shall be effective on September 14, 2022.

DATED: September 7, 2022

BOARD OF PUBLIC UTILITIES  
BY:



JOSEPH E. FIORDALISO  
PRESIDENT



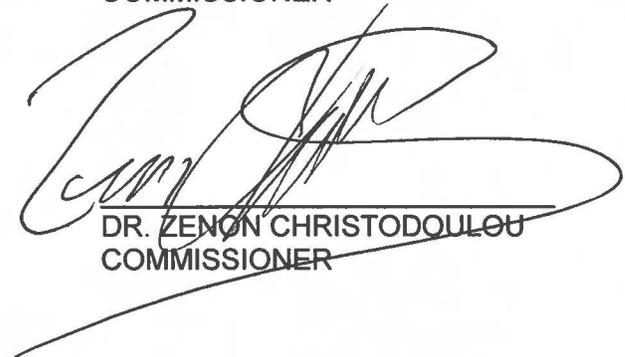
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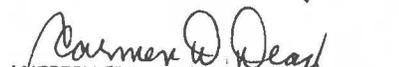


DR. ZENON CHRISTODOULOU  
COMMISSIONER

ATTEST:



CARMEN D. DIAZ  
ACTING 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. QO21071023

SERVICE LIST

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