



March 21, 2011

Deborah Taylor
Chief Sustainability Officer
Department of Buildings
280 Broadway
New York, NY 10007

Dear Ms. Taylor,

Thank you for the opportunity to comment on the City of New York's new proposed benchmarking rule. Looking back, the rule represents the culmination of collaborations among hundreds of stakeholders, the Administration, City agencies, the City Council and many others. Both Sustainability and Benchmarking specifically have made great strides in public education and participation, and we are supportive of the direction that benchmarking has taken. We understand that because of the City's leadership, the other cities across the country and the world are looking to New York City to find a successful benchmarking model. As a result, it becomes a necessary imperative to construct a program that makes sense, and is able to accurately inform building owner and tenant business decisions, obtain the cooperation of tenants, and to ensure transparency for observers who hope to emulate this regulation.

Given the unanticipated complexity of benchmarking 22,000 buildings, and the ongoing process of drafting these regulations, it will be extremely difficult for the City to read and incorporate the comments received today into the current rule with only 30 days. It will be correspondingly difficult for the affected buildings, who will then need to understand and comply in an extremely compressed timeframe. As a result, we think it is crucial to push back the deadline for compliance by at least 6 months. Additional time will also help utilities, like Con Edison, to get into place new account management software, solving the problem of missing data and superseding the extrapolation method in the rule, which will allow more accurate benchmarking.

With the goal of accurate and reflective benchmarking in mind, below please find our comments that are relatively brief, but still significant in concern.

1. ***Use of Default Values in the Rule:*** The stated overall intent of the benchmarking is two-fold: (1) to inform the building owner and management about the energy consumption of the building and (2) to inform tenants. As seen in equipment and marketing, this energy efficiency tool can be extremely powerful for those who value energy efficiency. As such, it is paramount to reflect reality as accurately as possible, and not falsely punish good actors and - equally important – not reward bad actors. The use of default values in the Rule enables such perverse incentives. The "default value" methodology for calculating tenant energy data as proposed has the potential to seriously distort energy performance benchmarking and disclosure as required by the law. The default methodology was initially offered anticipating a lack of data availability that can be avoided by requesting aggregated consumption data from utilities. Although the City cannot legally require building



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owners to obtain aggregated consumption data, it is a viable option for building owners to avoid a lower score and the outcomes should be weighted to reflect this – and not reward those who have access to data but choose not to obtain it. As a result, REBNY strongly advocates for the vast improvement to the transparency of the scoring by removing Sections g (2) (ii) B, g (2) (iii) B from the rule. If the removal of the default values is legally prohibitive, then it is extremely important – at a minimum – to ensure that when an alternative option for calculating energy has been used other than actual tenant or utility data, that the building is required to clearly indicate through Portfolio Manager that it is calculating information or using default values.

2. ***Use of Residential Tenant Data:*** During the initial discussions about the bill, residential buildings raised a serious concern regarding the use of tenant consumption data to rate the overall score of a building. Any score could not accurately reflect the building’s energy efficiency, only consumption, which would prove to be inconsequential as a measure due to the wide variety of the tenant types and usage. For example, a building that has a high percentage of “snowbirds” who live in New York City during the non-winter months and live elsewhere for 4 months or buildings that tend to empty out over the summer because of vacation homes, would receive a higher score regardless of building efficiencies. By benchmarking the central systems of residential buildings, building owners and tenant would have access to a more representative presentation of how well the building management ran the building. This agreement and decision was explicitly reflected in the text of Local Law 84:

§ 28-309.4.1 Obligation to request and to report information. Where a unit or other space in a covered building, **other than a dwelling unit**, is occupied by a tenant and such unit or space is separately metered by a utility company, the owner of such building shall request from such tenant information relating to such tenant’s separately metered energy use for the previous calendar year and such tenant shall report such information to such owner.

The rule indicates that the residential tenant data is required. If implemented as so, there will be no ability to figure out whether one building is run more efficiently than another.

3. **Types of Space:** Portfolio Manager has adapted to some of the issues that have been raised by New York City building owners. However, still outstanding is the lack of “types of spaces” listed for commercial buildings – which would greatly affect the efficiency of a space. Additionally, if there is a percentage threshold that is exceeded, then an EPA score cannot be obtained. DOB and the Mayor’s Office of Long Term Planning and Sustainability should coordinate a meeting with the EPA to again develop better criteria and variables to be used by the tool that would more accurately reflect efficiencies, and not just consumption.
4. **Timeframes:** (*Paragraph f*) The period of benchmarking is stated to cover from January 1st to December 31st rather than 12 months of energy data as the previous version of the rule stated.



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Since the intent of the benchmarking rule is to benchmark a year's worth of energy usage and energy bills may date from December 20th through December 19th. To ensure flexibility and accuracy while benchmarking, the rule should ask for 12 months of data. Requiring a building's representative to pro-rate consumption for two months every year represents an unnecessary burden that will do nothing to improve the accuracy of the report – and may actually reduce accuracy.

5. **Annual vs. Monthly Reporting Requirements:** (*Paragraph f*) There is a concern that the last line of the paragraph could be misconstrued to require that owners must input data each month. This should be clarified to state that while owners must input data just once a year, but it must be broken out by monthly consumption.
6. **Con Edison's Extrapolation Method:** (*Paragraph g, 2, ii, a*) REBNY applauds the efforts that Con Edison has made in order to allow for the use of the aggregated consumption data for residential buildings. However, REBNY has hosted several presentations regarding the use of this method, which is proving to be very confusing and complicated. Rather than requiring this extrapolation method, DOB should clarify that tenant data is not required for residential buildings as reflected in the legislation and raised in point 2 above. Additionally, for buildings that would elect to report full building data, DOB should postpone the effective date for reporting this data until next year, when ConEdison will have in place a new system that will not delete the data of closed accounts and make this method superfluous. We do not think it makes sense for building owners to spend the time and resources to benchmark to end up with an inaccurate assessment.
7. **Automatically upload utility data:** At the time that utilities have complete aggregated data available, the City should also have the utilities push the data into Portfolio Manager directly, as it is doing so with DEP water data. This will relieve all involved parties from the administrative burden of requesting the information from the utilities and the manual data entry required.
8. **Tenant Information Requests:** Local Law 84 legislation requires building owners to notify tenants and request data. However, in cases where the building owner already has the requested data (i.e. if the owner has aggregated data from a utility or has benchmarked their buildings previously) this requirement is duplicative. The rule should clarify that owners are only required to request this data if they do not currently have it.

Thank you again for the opportunity to discuss these issues. Should the City or DOB request it, REBNY will coordinate the appropriate resources to best address or answer any questions or concerns.

Thank you,



Angela Sung
Senior Vice President, REBNY