



ASSOCIATION OF INDEPENDENT COLLEGES  
& UNIVERSITIES IN MASSACHUSETTS

September 25, 2024

Elizabeth Mahony  
Commissioner  
Massachusetts Department of Energy Resources  
100 Cambridge Street, 9<sup>th</sup> floor  
Boston MA 02114

Via: DOER.BER@mass.gov

CC: Lyn Huckabee, Department of Energy Resources

RE: **Comments on Building Energy Reporting Draft Regulations 225 CMR 27.00**

Dear Commissioner Mahony:

The Association of Independent Colleges and Universities in Massachusetts [AICUM] represents the public policy interests of 58 independent colleges and universities throughout the Commonwealth – institutions responsible for educating more than 290,000 students each year and employing more than 98,000 people. Our members include large, nationally and internationally renowned research universities, smaller, highly regarded liberal arts colleges, religiously affiliated institutions, and colleges with special missions focused on entrepreneurship or music or allied health services.

Our colleges and universities are committed to supporting policies and practices that reduce emissions, help solve for transitioning the Commonwealth to clean energy, support healthy communities, and help to stem the tide of climate change. These institutions have invested considerable resources in decarbonization efforts and are recognize the value of the Department of Energy Resources (DOER) developing a better understanding of building energy use in the Commonwealth as a component of its climate action plan.

However, as DOER prepares for implementation of the draft regulations, we want to share our feedback on specific policy areas that we believe can be improved. These comments have been kept at a higher level since there are critical issues to address in how this regulation is envisioned to be structured rather than the fine details of the language itself. Overall, the draft regulations underestimate the building sector's complexity and energy data, and it will be challenging to fully implement this endeavor within only nine months.

#### **Coordination with existing local building energy reporting regulations**

The regulation, as proposed, does not recognize existing building energy reporting ordinances in Municipalities as a compliance pathway for this legislation.

***Recommendation:*** We strongly recommend that the DOER leverage existing processes on building energy reporting. In municipalities with existing building energy use reporting regulations, including but not limited to the Cities of Boston and Cambridge, compliance with proposed state reporting requirements should be met through compliance with municipal reporting regulations to avoid unnecessary dual reporting and duplication of effort by Building Owners and Public entities.

## Timeline for implementation

We are very concerned with the timelines proposed for implementation of this highly complex regulation given it is in draft status and proposed implementation in only nine months. Based on experiences in the Cities of Boston and Cambridge, this process has taken years to draft and promulgate similar regulations. Cambridge and Boston have made and continue to make a significant effort to garner stakeholder feedback and provide a host of policies, procedures and guidance materials to help better articulate reporting requirements. The proposed regulations appear to ignore this vital process, given the timelines proposed.

Additionally, the proposed regulations allow DOER to issue a regulated building list as late as March 30, 2025. This would provide the regulated community and distribution companies with only three months to report, an unrealistic timeline given the scale and breadth of this draft regulation.

**Recommendation:** *We recommend the DOER establish a phased process over multiple years to on-board buildings based on building size, similar to the approach used by the City of Boston.*

## Proposed process for reporting

There are two significant concerns with regard to how energy reporting is proposed in the regulation.

1. The regulation proposes that the responsibility is primarily on the distribution companies to report building-level energy use on behalf of the Owner. Distribution companies have currently failed to provide utility data related to the City of Boston's BERDO regulation requiring a BERDO reporting extension in 2024. Based on this experience, distribution companies have not demonstrated the capacity to acquire, handle, and report this data accurately in the City of Boston. We question the ability to do this statewide within nine months as proposed when they are not able to do it for the City of Boston.

Additionally, small businesses that commonly supply delivered fuels to buildings are expected to provide compliance quality data within 9 months. This, too, is an unreasonable expectation in such a short timeframe.

**Recommendation:** *We strongly recommend that DOER evaluate the quality and accuracy of distribution company data programs, the ability to and accuracy of reporting at a building (not meter account) level before relying on this as the primary means of energy reporting for this regulation.*

2. The regulation proposes that the responsibility is primarily on the distribution companies to report building level energy use on behalf of the Owner but appears to propose the responsibility for third-party data verification is on the Owner (27.08 Data Verification). We have concerns over the split responsibility proposed and timelines with which the Owner will be held to verify data reported by distribution companies.

**Recommendation:** *We strongly recommend that DOER reconsider its split approach to data verification, where one entity is reporting the data and another entity is responsible for verifying the accuracy of the data.*

## Covered Buildings

The process for developing a covered parcels list is very unclear and appears to underestimate the complexity involved in developing such a list. The proposed regulations need to more clearly define how covered parcels and the buildings on large parcels are defined and what is - or is not - covered. We do not think the proposed regulations are intended to require reporting for small buildings on larger parcels

such as non-profits, school districts, municipal facilities, and institutional campuses. For example, there are many instances where there are very large parcels with upwards of 30 buildings.

Additionally, barns and similar uninhabited structures used for facility purposes, animal care, or agriculture, can drive whether a parcel is covered. These structures may have utilities, and a small campus inclusive of a barn, and multiple small wood frame residential structures that could unintentionally be pulled into the regulations.

**District Energy System:**

The regulation does not clearly define how utility companies and institutions should report energy consumption on campuses that are served by a district energy system (DES). It is not clear if those campuses are able to report energy consumption at the DES level or would be required to report at the individual building level.

*Recommendation: Include a definition for district energy systems and campuses and define reporting requirements that recognize the dynamics of DES central plant-level reporting and individual building-level reporting. Provide for a compliance pathway for campuses with a district energy system that serves a portfolio of buildings that allows reporting be done in the aggregate at the central plant-level and not at the individual building-level. The owner should be able to comply with the requested reporting through the utility company and self-reporting for any additional delivered fuels in the aggregate: oil, biofuel, propane etc. This approach meets the original intent of the legislation where the distribution utility is responsible to report based on active accounts and would greatly simplify the reporting requirements of DES owners. This approach assumes the data quality and data service capabilities of utility companies can be resolved.*

**Utility cost/rate data:**

The regulations would require the disclosure of utility cost/rate data, which was not included in the preceding legislation. This is problematic as it would publicly disclose private negotiated rates and rate structures among customers. This data should remain confidential between the utilities and customers, not publicly available for cross comparison between customer bases.

*Recommendation: Remove the requirement for reporting cost/rate structure request as it was not within the original law and exposes private business/trade terms.*

On behalf of our member colleges and universities, we thank you for your work to maintain Massachusetts' leadership on climate action. Please do not hesitate to reach out if you have any questions on the comments above.

Sincerely,



Rob McCarron  
AICUM President and CEO