

DOCKETED

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On AB 802 Benchmarking Express Terms

Additional submitted attachment is included below.

April 10, 2017

California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Re: Docket Number: 15-OIR-05

California Benchmarking Collaborative Comments on AB 802 Benchmarking Express Terms (Proposed Regulations)

On behalf of the California Benchmarking Collaborative [henceforth “Collaborative”] the Center for Sustainable Energy® (CSE) respectfully submits these public comments in response to the AB 802 Benchmarking Notice of Proposed Action and Benchmarking Express Terms (Proposed Regulations) [henceforth “proposed regulations”] made available by the California Energy Commission (Energy Commission) on the 15-OIR-05 Docket Log on February 23, 2017.

The Center for Sustainable Energy (CSE; www.energycenter.org) is a mission-driven nonprofit organization accelerating the adoption of clean and renewable energy technologies, policies, and practices. The Collaborative is comprised of CSE, the Natural Resources Defense Council (NRDC), the Institute for Market Transformation (IMT), Green Cities California (GCC), Association of Bay Area Governments on behalf of the Bay Area Regional Energy Network, Berkeley Office of Energy and Sustainable Development, Los Angeles Mayor’s Office of Sustainability, the California Energy Efficiency Industry Council (Efficiency Council), the Local Government Sustainable Energy Coalition (LGSEC), Zachary Brown: BOMA San Francisco Energy & Environment Committee Chair, and The Energy Coalition. The Collaborative has received technical advice from the U.S. Environmental Protection Agency (EPA).

In addition to these comments, parties may also submit individual comments.

Notice of Proposed Action and Proposed Regulations for Whole-Building Energy Use Data Access, Benchmarking, and Public Disclosure Program

The Collaborative strongly supports AB 802 and the Energy Commission's proposed regulations for a statewide, time-certain benchmarking and transparency program. These comments build upon the recommendations provided in public comments filed by the Collaborative on December 22, 2015; April 14, 2016; and August 12, 2016. In these comments, we:

1. Strongly support the proposed regulations posted to the 15-OIR-05 Docket Log February 23, 2017;
2. Offer recommendations for enriching implementation of the statewide benchmarking program;
3. Urge the Energy Commission to begin education and outreach for the statewide benchmarking program immediately.

These comments are organized into three sections: The Collaborative Strongly Supports the Proposed Final Regulations Shared on February 23, 2017 (**Section 1**); AB 802 Implementing Regulations Should Ensure a Robust Statewide Program. (**Section 2**); and Outreach and Education for the Benchmarking Program Needs to Begin as Soon as Possible (**Section 3**).

For the purposes of these comments, "building owner" refers to an owner, manager, operator, or owner's agent.

Section 1: The Collaborative Strongly Supports the Proposed Final Regulations Shared on February 23, 2017

The Collaborative applauds the Energy Commission for its work creating the implementing regulations for AB 802. The Collaborative recognizes that AB 802 is the culmination of a great deal of effort and vision beginning with AB 758 (Skinner) and the subsequent 2015 and 2016 Existing Building Action plans. The Collaborative also recognizes that AB 802 will play a significant role in helping to meet the State's new energy efficiency and renewable energy targets as directed by SB 350. As outlined in the 2016 Existing Buildings Energy Efficiency Action Plan, the Energy Commission establishes a 10-year plan to achieve the following goals: 1) increased government leadership in energy efficiency; 2) data-driven decision making; 3) increased building industry innovation and performance; 4) recognized value of energy efficiency and upgrades; and

5) affordable and accessible energy. The Collaborative strongly believes the newly created statewide benchmarking program will serve these goals in its role as foundational program for measuring building performance throughout the state of California.

Section 2: AB 802 Implementing Regulations Should Ensure a Robust Statewide Program

The Collaborative thanks the Energy Commission for addressing critical items to ensure a robust statewide benchmarking program for commercial and multifamily properties. The Collaborative comprises a broad spectrum of technical experts specific to energy efficiency, benchmarking, and local government program administration. As such, the Collaborative offers the following feedback on the proposed regulations. The Collaborative does not wish to delay the approval and subsequent implementation of the benchmarking program and so offers this information with the express intention of enriching the overall implementation of the benchmarking program; with an eye towards a successful and sustainable long-term benchmarking policy for the state of California.

2.1 Make proof of ownership process straightforward and streamlined

The proposed regulations include the following sections about proof of ownership:

Section 1681 (d) Building Owner – The Person listed as the Building Owner on the current deed or the most recent mortgage statement for the property on which the building for which Energy use data is requested is located.

Section 1682 (a)(C) Information that verifies that the Person submitting the request is the Building Owner or Owner’s Agent.

Utilities should use reasonable procedures to assure that customer information is only shared with parties authorized to receive it. However, with the aim of achieving high rates of compliance, the Collaborative recommends the Energy Commission ensure that the process to demonstrate proof of ownership by the building owner or agent is straightforward and streamlined. Producing a deed or a mortgage statement can be a challenging process. Similarly, tracing ownership to an individual human being with the authority to sign documents is frequently a difficult process, often intentionally set up to be so. Given the complex nature of building ownership, the Collaborative strongly encourages that the Energy Commission not require a current deed, or other similar proof of ownership, and instead accept a letter from the Property Manager or other

designated agent self-certifying under penalty of perjury that they are authorized to request the data.

2.2 Include condos in reporting requirements

Prior comments submitted by the Collaborative (on August 12, 2016) recommended that multifamily buildings with individually-owned units should be included in the statewide benchmarking and transparency program. Section 1681(e) of the proposed regulations excludes condominiums from the definition of a covered building. The Collaborative feels that the inclusion of condominiums in the benchmarking program would make for a more complete building energy dataset and would align more closely with local building performance policies (as none of the existing local benchmarking policies exclude condominiums from benchmarking and transparency requirements). Excluding condos from the requirements would not only make it impossible for potential purchasers to compare the energy performance of different condo buildings, but it would also preclude the Energy Commission and California utilities from understanding how a significant portion of the multifamily properties in the state are performing with regard to their energy efficiency.

The Collaborative includes below our comments on the recommendation for including condominiums from our August 12 Comments below to reiterate our support for this building type's addition to the definition of covered building:

The Collaborative recommends that the Commission include condominiums with four or more units in the benchmarking and transparency program. None of the existing local benchmarking policies exclude condominiums from benchmarking and transparency requirements. In addition, utilities have no easy visibility into the ownership of multifamily properties, and therefore would have no way of differentiating between buildings that are operated as condominiums vs. rental apartments. Exempting condominiums from the data access and reporting provisions of AB 802 could place an additional and unnecessary verification burden on utilities.

With respect to condominiums, six cities define the association or organization of unit owners responsible for management of the condominium as the building owner responsible for benchmarking reporting. Those cities are Berkeley, CA; Boston, MA; Cambridge, MA; New York, NY; Portland, OR; and Seattle, WA. The remaining jurisdictions with benchmarking requirements that apply to multifamily buildings do not directly address condominiums in their ordinance or regulations, nor do they exclude them.

Seattle's benchmarking rules serve as an example of how a city manages the participation of condominiums in a benchmarking program. The owners' association, or if applicable the master association, is responsible for establishing a record in Portfolio Manager for the entire condominium, including common spaces and all individual condominium units and benchmarking, disclosing, and reporting its aggregate performance. Owners of individual condominium units must provide the association with any authorization or billing/metering information needed to comply with these requirements.

2.3 Defining an active utility account for the purposes of benchmarking and disclosure

Section 1681(a) provides an updated definition of "Active" as being:

- (a) Active – A Utility Account is considered "Active" if it receives Energy in each month during the time period for which Energy use data is requested.

Previously, an active utility account was considered as being active if the point of service received energy at any time within the time period for which energy use data was requested. The Collaborative respectfully asks the Energy Commission to consider how many covered buildings this new definition may exclude from reporting (when determining if the utility account threshold has been met), since this new definition would exclude from consideration the account for any tenant that was not consistently served for all twelve months of the calendar year. If there is analysis that has been done by the Energy Commission on the impact of this change, the Collaborative would kindly request the Energy Commission present such information during the next public workshop. It would also be reasonable to investigate how many aggregated meter readings contain gaps from tenant turnover that would result in artificially low energy use intensities, or erroneous data reporting. This would happen in situations where tenant meters are aggregated upon request from the building owner or owner's agent, but tenant spaces may have been unoccupied, or the utility does not include previous tenants' data in the aggregation reporting period for the whole building.

In addition, the new definition would require that building owners inventory the number of individual accounts receiving service **during each month of the year**. This would likely impose such a high burden on some building owners as to render the reporting requirements of AB 802 impractical and unachievable. If the intent is to minimize the potential for exposing individual customer information to building owners during brief periods when the number of active accounts may fall below the threshold values, we respectfully remind the Energy Commission that building owners will only be

receiving and reporting aggregated annual information, so brief periods below the accepted threshold level would still be combined with data from periods that could be well above the threshold.

To balance the need for protection of privacy with minimizing the level of effort required for both utilities and building owners, the accepted practice in all other jurisdictions is simply to measure the number of accounts active at the time the data request is made. Should the Energy Commission wish to instead use a value that is more representative of the average number of accounts active during the course of the reporting year, we suggest that building owners instead be asked to verify the number of active accounts at a single point in time, such as July 1, of the year being reported.

2.4 Clarify utility data access threshold requirements

The current language in Section 1682 (b) (4) of the draft regulations is not clear in describing how utilities should determine whether minimum account threshold levels have been met when looking across multiple fuel types. We suggest the following changes for clarification:

If a Utility receives a request for Energy use data for a building that has: (1) fewer than three Active Utility Accounts of any Energy type the Utility provides, none of which are residential, or (2) fewer than five Active Utility Accounts of ~~each~~ any Energy type the Utility provides, at least one of which is residential, the Utility shall not provide the information listed in subdivisions (b)(1) and (b)(2) of this section for that Energy type unless customer permission is obtained from each Utility customer other than the Building Owner.

2.5 Clarify definition of "disclosable building"

Section 1681's definition for a "covered building" states that:

Two or more Covered Buildings on the same parcel, campus, or site, that are served by one common Energy meter without sub-metering, such that their Energy use cannot be tracked individually, shall be considered one Covered Building.

However, the definition of a "disclosable building" does not specifically address the fact that if a building is operating in a campus setting, then by definition, some buildings below 50,000 sq. ft. would have to benchmark in order for the larger building to get accurate data. We respectfully suggest adding the following italicized language to the definition of a "disclosable building":

If a building(s) is(are) less than 50,000 square feet, but shares one or more common energy meters with a building required to disclose as described in Section 1681(e), then the entire campus of buildings should be benchmarked, reported and disclosed for data accuracy.

2.6 Clarify definition of secure “secure electronic method”

Section 1682 (a)(2) indicates that a building owner make a request for whole-building data to the utility “in writing or by secure electronic method” as “specified by the Utility”. The Collaborative respectfully requests that the Energy Commission further define what constitutes a secure electronic method by adding a definition to Section 1681. Given that all utilities (investor-owned and municipal) are subject to the data access provisions set out in the proposal final regulations, the number of methods that may be allowable by each separate utility could create market confusion. As such, the Commission should define the allowable electronic methods in the proposed regulations.

2.7 Modify the list of fields or address technical challenges with data fields that may be required to be reported and publicly disclosed

Some of the data fields that the Energy Commission may make available on a public website, as listed in Section 1683 (c) (3) of the regulations, do not actually map to fields currently available in Portfolio Manager, or could pose other technical challenges. We recommend that the Commission ensure there is a reasonable means to collect or report the data fields outlined below before making these fields a requirement.

1. Building Identification Number: The Data Request process in 1682 (a)(1) requires the Energy Commission to specify “California Building ID Number” here to differentiate it from the Portfolio Manager Property ID. Although the California Building ID Number does not yet exist, if the Energy Commission creates this and assigns it to California buildings, the EPA can add that field to Portfolio Manager.
2. Open "comments" field for the Building Owner or Owner’s Agent to provide additional information about the building: this field, which is called “Notes” in Portfolio Manager (not “comments”), is often used for building owners to record unique information about their own buildings within an account. Jurisdictions with building performance policies may provide a communication option external to Portfolio Manager for covered buildings that wish to include qualitative information not collected by Portfolio Manager. Review of the text returned in this field to the Energy Commission will be necessary before it is publicly released. Also, some

building owners may currently use the Notes field in response to reporting requirements detailed in (a)(1) (for a local ordinance).

3. Monthly and/or annual site and/or source Energy use by energy type, and monthly and/or annual weather-normalized site and/or source Energy use intensity: Monthly whole building energy metrics are not currently available in Portfolio Manager.
4. Percentage of space occupied (Occupancy), and number of hours operated per week: This information may be viewed as sensitive information about business activity and has therefore not been disclosed in any jurisdiction with an existing benchmarking policy. Though we agree that there could be value in collecting it, the Energy Commission may wish to reconsider whether these fields should be publicly disclosed. In addition, since California cities with local policies may not be collecting this data, their ordinances may need to be updated before requesting a determination from the Energy Commission that their benchmarking program fulfills the requirements of AB 802.

2.8 Ensure a streamlined pathway exists for requesting tenant-level data with customer consent

AB 802 specifically grants the Energy Commission authority to streamline the individual tenant consent process for building owner access to data:

(f) For buildings that are not covered buildings, and for customer information that is not aggregated pursuant to subparagraph (A) of paragraph (2) of subdivision (c), the commission may adopt regulations prescribing how utilities shall either obtain the customer's permission or determine that a building owner has obtained the customer's permission, for the owner to receive aggregated energy usage data or, where applicable, individual customer usage information, including by use of electronic authorization and in a lease agreement between the owner and the customer.

However, the Energy Commission's regulations currently remain silent as to how residential and mixed-use buildings obtain customer consent for tenant-level data, or how residential or mixed-use buildings with five or fewer accounts obtain customer consent.

We recommend the Energy Commission instead automate and streamline the tenant consent process by developing standard CISR forms that can be used statewide and

across utilities. PG&E's CISR form and automated data retrieval process is a potential model that we recommend be replicated by other utilities.

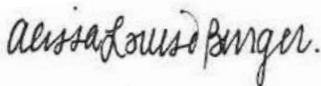
Section 3: Outreach and Education for the Benchmarking Program Needs to Begin as Soon as Possible

Prior comments submitted by the Collaborative (on August 12, 2016) recommended to the Energy Commission that proactive outreach to utilities, local governments, and building owners begin as soon as possible. In particular, the Collaborative called out the need for 1) Utility meter mapping technical assistance; and 2) Outreach to municipal buildings encouraging feedback on the benchmarking process with regard to utility data requests and the customer permission process. The Collaborative recognizes that two RFPs (RFP-15-402 and RFP-16-406) put out by the Energy Commission will support outreach, training, and education specific to the benchmarking program. In that vein, the Collaborative would like to underscore the importance of early and comprehensive stakeholder engagement, education, and outreach. Stakeholders affected by the benchmarking program represent diverse constituencies and will require customized resources, comprehensive outreach, and technical assistance in order to successfully implement the statewide benchmarking and transparency program.

The Collaborative thanks the Energy Commission for this opportunity to provide public comments.

Submitted on behalf of the CA Benchmarking Collaborative.

Regards,



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