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California Benchmarking Collaborative Comments on Revised Express Terms for AB 802 Benchmarking Program

Additional submitted attachment is included below.

September 28, 2017

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

Re: Docket Number: 15-OIR-05

California Benchmarking Collaborative Comments on Revised Express Terms for AB 802 Benchmarking Program

On behalf of the California Benchmarking Collaborative [henceforth “Collaborative”] the Center for Sustainable Energy[®] respectfully submits these public comments in response to the Revised Express Terms (15-Day Language) for AB 802 Benchmarking Program [henceforth “proposed regulations”] and Notice of Commission Adoption Hearing for Proposed Regulations made available by the California Energy Commission (Energy Commission) on the 15-OIR-05 Docket Log on September 14, 2017.

The Center for Sustainable Energy (CSE; 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), Green Cities California (GCC), the Institute for Market Transformation (IMT), Zachary Brown: BOMA San Francisco Energy & Environment Committee Chair, Bright Power, US Green Building Council California (USGBC CA), and Barry Hooper, Senior Green Built Environment Coordinator, San Francisco Department of Environment. In addition to these comments, parties may also submit individual comments.¹

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

The Collaborative strongly supports Assembly Bill (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; August 12, 2016; and April 10, 2017.

¹ The Collaborative also received technical advice from the U.S. Environmental Protection Agency (EPA).

In these comments, we:

1. Strongly support the proposed regulations posted to the 15-OIR-05 Docket Log September 14, 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;
4. Request clarification from the Energy Commission on certain portions of the proposed regulations.

These comments are organized into four main sections: The Collaborative Strongly Supports the Revised Express Terms shared on September 14, 2017 (**Section 1**); AB 802 Implementing Regulations Should Ensure a Robust Statewide Program (**Section 2**); Outreach and Education for the Benchmarking Program Needs to Begin as Soon as Possible (**Section 3**); and Request for Clarification and Revision of Minor Items (**Section 4**).

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 Revised Express Terms Shared on September 14, 2017

The Collaborative applauds the Energy Commission for its work creating the implementing regulations for AB 802 (Williams). The Collaborative recognizes that the proposed regulations are a culmination of a great deal of effort and vision beginning with AB 758 (Skinner) and the subsequent 2015 and 2016 Existing Building Energy Efficiency Action plans. The Collaborative also recognizes that AB 802 will play a significant role in helping to meet the State’s 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 established 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 that statewide benchmarking and transparency will serve these goals as a foundational program for measuring building performance and motivating energy efficiency improvements.

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 purpose of enriching the overall implementation of a successful and sustainable long-term benchmarking policy for the state of California.

2.1 Revisions and Additions to Definitions (Section 1681)

The Collaborative respectfully suggests the following revisions and additions to definitions listed in the Revised Express Terms.

Active

The proposed regulations revised the definition of “active” to:

Active: A Utility Account is considered “Active” if (1) it is receiving Energy at the time of the request, and (2) the postal address that the Utility Account is currently serving received Energy at any time during the time period for which Energy use data is requested.

The Collaborative suggests that an account should be considered ‘active’ if it received energy at any time during the previous or current 12 month reporting period, to provide coverage for accounts that had a meter change, a new tenant, or other similar modification during the time for which data is requested. The Collaborative suggests the following revisions:

Active: A Utility Account is considered “Active” if (1) it is receiving Energy at the time of the request or received energy during the reporting period for which data is requested, and (2) the postal address that the Utility Account is currently serving or served received Energy at any time during the time period for which Energy use data is requested.

Covered Building

Excluding condos as a “covered building” legally excludes condos from being able to request data per AB 802 Section 5, 25402.10, (c), (1). The Collaborative suggests moving

the exclusion of condominiums from the definition of a “covered building” to that of a “disclosable building” so that condominium associations can voluntarily request aggregated whole-building energy use data. Of note, utilities are not typically able to verify ownership status of a building, such as condominium or multifamily.

Energy Use Data

The Collaborative recommends that the Energy Commission provide clarification as to what is required or optional “energy use data.” There is ambiguity regarding whether monthly peak electric demand data, in addition to consumption data, is required to be provided by utilities and disclosed by building owners.

As of August 2017, the EPA has enabled energy data collection and reporting in Portfolio Manager that includes both consumption (measured in kWh) and peak electric demand data (measured in kW). This new feature provides customers with insight into their peak demand and empowers them to take control of their bills to further lower their energy costs and participate in reducing peak consumption on the grid. We note that consumption data is required in reporting and that customers have access to this information from their utilities via required data transfer. The Collaborative suggests clearly defining “energy use data” required for reporting and data access purposes as only consumption data (measured in kWh).

Postal Address

The Collaborative recommends the inclusion of a definition for a “postal address” to remove any ambiguity regarding whether separate suite numbers at the same street address (e.g. 101 Main Street Suite A and 101 Main Street Suite B) are considered separate postal addresses for the purposes of this regulation. The Collaborative strongly encourages the Energy Commission to consider individual suite and tenant numbers as separate addresses.

Secure Electronic Method

Section 1682 (a)(2) indicates that a building owner may 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, public, 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 to ensure that building owners have streamlined electronic access to whole-building data.

Utility Account

The Collaborative recommends clarifying the definition of a "utility account," in addition to providing a definition for a "postal address." The Collaborative understands the intent is to ensure that a building owner with multiple utility accounts under a postal address is considered one account for data aggregation purposes, but sees the potential for confusion and for potential barriers to data access for separately metered tenants in a building if these definitions are not clarified further.

2.2 Provide Clarification and Flexibility to the Data Access Provisions (Section 1682 (a))

The Collaborative applauds Energy Commission staff efforts to streamline and clarify the regulations regarding proof of ownership. However, the Collaborative has recommendations to further improve upon the proposed language:

Section 1682 (a)(1)(B) Verification that the person making the request is authorized to receive energy use data. (i) This may be demonstrated through an attestation that the person submitting the request is the building owner or Owner's Agent, or is authorized to act on behalf of the building owner or Owner's Agent.

The Collaborative advises against the ambiguous use of "attestation" and requests further clarification as to what would or would not be acceptable for current or future aggregated energy use data requests.

Additionally, a wet signature or lease agreement should NOT be required for transfer of monthly aggregate data. An electronic signature must be considered sufficient for this level of data. In the regulations:

Section 1682(a)(1)(D) The written permission of any Utility customers for accounts serving a postal address in the building that have been obtained by the building owner as described in subdivision (b)(4) of this section.

The Collaborative strongly suggests the revision of the language to "the written or electronic permission" to remain consistent with AB 802 language.

Finally, the Collaborative urges the Energy Commission to streamline data access requests and not create additional market confusion over the processes for requesting whole-building energy use data based on whether the request is for compliance with the Benchmarking and Public Disclosure Requirements in Section 1683. The Collaborative suggests the removal of the following provision to prevent the creation of new barriers to data access:

Section 1682(a)(1)(E) If there are fewer than three Utility Accounts serving the building, an indication of whether the request is made for compliance with the Benchmarking and Public Disclosure requirements in section 1683.

2.3 Utility Requirements for Data Access (Section 1682(b))

The Collaborative respectfully suggests that Energy Commission staff review the spreadsheet template available in Portfolio Manager to ensure that this method provides all the fields necessary for compliance with the proposed regulations. It is possible that the proposed process does not align with the constraints of the Portfolio Manager system. We therefore encourage staff to consult with the EPA to ensure utilities can provide all required information using the Portfolio Manager data upload template.

Section 1682(b)(2) (A) Utilities not using ENERGY STAR Portfolio Manager's Data Exchange Services shall send the data to the building owner or Owner's Agent using the spreadsheet template provided by ENERGY STAR Portfolio Manager.

Additionally, Collaborative members found the wording of Section 1682(b)(4) to be confusing and respectfully suggest Energy Commission staff revise this subsection for increased clarity and comprehension.

2.4 Benchmarking and Reporting Disclosable Buildings (Section 1683(b))

The Collaborative strongly suggests that the regulations provide a clear protocol for a building owner to identify and prove that all best-faith attempts were made to collect tenant-owned data. The regulations state:

Section 1683(b)(3) For Disclosable Buildings with fewer than three Active Utility Accounts of any Energy type serving the building, where one or more Utility customers other than the building owner have not granted permission to have their Energy use data publicly disclosed consistent with section 1682(b)(4)(B), the building owner or Owner's Agent shall, on the Energy Commission benchmarking website, select the appropriate ENERGY STAR Portfolio Manager reporting link, log into ENERGY STAR Portfolio Manager, and complete the reporting steps specified therein, including selecting the building(s) to report, reviewing the information to be reported for accuracy, and sharing the information with the Energy Commission.

There will be tenants that will simply not comply with requests for data or to grant permission directly to the Utility – especially if there is no legal obligation under this law

to do so. The Collaborative looks forward to working with the Energy Commission to support a statewide standard for these forms and processes during implementation.

Additionally, it is unclear what the building owner would be required to report if they request, and are granted, a trade secret exemption (Section 1683(a)(4)). This could be simplified by deleting this section, and treating the trade secret exemption as another type of exemption by creating a new Section 1683(a)(4):

"A building with fewer than three Active Utility Accounts of any Energy type serving a non-residential building, or fewer than five Active Utility Accounts of any Energy type serving a residential building, one of which belongs to the building owner, where the building owner has filed a request for determination by the Executive Director of the Energy Commission that disclosure of the building owner's Energy use data would result in the release of proprietary information that can be characterized as a trade secret, and the Executive Director has granted that request."

2.5 Updates to the fields for Public Disclosure (Section 1683(c))

For the fields required for public disclosure, the Collaborative suggests adding ENERGY STAR Certification status, in addition to the ENERGY STAR score.

Additionally, the Collaborative strongly recommends that the regulations specify that actual values (and not default values) are to be used for property use details (e.g. number of occupants). Good faith efforts to estimate number of occupants should be considered compliant, but it is important for building owners to attempt to get as accurate information as possible. In jurisdictions where there are local benchmarking and transparency policies in place, the use of default values has been shown to skew the results of the data, particularly for the calculated energy use intensity of the property.

Finally, the Collaborative recommends that the Energy Commission publicly disclose a building's compliance (or exemption) status to further encourage building owners to comply with the regulations.

2.6 Streamlining and Clarifying the Exemption Processes (Section 1684)

The Collaborative recommends that the regulations require building owners who qualify for an exemption under Section 1684(a)(1) or 1684(a)(2) file the same basic benchmarking report as those exempted under Section 1683(b)(4), so that the Energy Commission has documentation that the building is in compliance but considered to be exempt for the current reporting year.

Additionally, for buildings pursuing an exemption under Section 1684(a)(2), the Collaborative strongly recommends revising the requirements for exemption. Currently, the exemption states:

Section 1684(a)(2) The building is scheduled to be demolished one year or less from the reporting date.

Often, a building could be "scheduled" to be demolished for years and this is a potential loop hole that needs to be addressed. The Collaborative suggests revising the language to state: *"The building is scheduled to be demolished one year or less from the reporting date. Proof of the scheduled demolition must be submitted to the Energy Commission."*

Furthermore, the Collaborative strongly recommends that the language for Section 1684(b) be revised to clearly state that the data access provisions of AB 802 (Section 1682) apply statewide, regardless of whether a jurisdiction has a local benchmarking program in place or not, or the data access request is for compliance with the AB 802 benchmarking and disclosure program (Section 1683) or not. The intent of statewide data access is clearly expressed in the AB 802 legislation and we strongly encourage that this be clearly articulated in the final regulations.

Finally, the Collaborative advises that Energy Commission staff expand the list of required fields for the local benchmarking program exemption process to include items (A), (C), (D), (F-J), and (M-N). Excluding these fields would prevent the Energy Commission from gathering useful and actionable energy use data from local jurisdictions, thus undermining the goal of the legislation. If the Energy Commission does not wish to publicly disclose these fields, the Collaborative respectfully suggests that local jurisdictions should still be required to provide these fields in a dataset to Energy Commission staff for internal use.

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 and April 10, 2017) recommended that proactive outreach to utilities, local governments, and building owners begin as soon as possible. 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 regarding utility data requests and the customer permission process.

The Collaborative recognizes that two RFPs (RFP-15-402 and RFP-16-406) awarded 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 impacted by the benchmarking program represent diverse constituencies that require customized resources, comprehensive outreach, and technical assistance to successfully implement the statewide benchmarking and transparency program. The Collaborative would also like to emphasize the need for statewide support in jurisdictions both with and without a local benchmarking program.

Section 4: Request for Clarification and Revision of Minor Items

In addition to these comments, the Collaborative will be submitting a table with requests for clarification or minor revision of the proposed regulations. Since these comments are minor and more editorial in nature, they will be submitted directly to Energy Commission staff.

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

Submitted on behalf of the CA Benchmarking Collaborative.

Respectfully,

A handwritten signature in cursive script that reads "Hanna Grene".

Hanna Grene
Assistant Director, Government Affairs
Center for Sustainable Energy®
9325 Sky Park Court Suite 100
San Diego, CA 92123
Tel: 858-429-5129
hanna.grene@energycenter.org