



California
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COMMERCIAL REAL ESTATE
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NAIOP OF CALIFORNIA



International Council of Shopping Centers



June 30, 2014

<p>California Energy Commission DOCKETED 14-EUDP-01 TN 73311 JUL 08 2014</p>

TO: Commissioner Karen Douglas
Commissioner Andrew McAllister
California Energy Commission

CC: Care of Email Documents Unit docket@energy.ca.gov

FR: California Business Properties Association
California Building Industry Association
Building Owners and Managers Association of California
NAIOP of California
International Council of Shopping Centers

Re: Docket number 14-EUDP-01; AB 1103 OII

Dear Commissioners Douglas and McAllister:

This letter is to provide information regarding the implementation of regulations related to the **Nonresidential Building Energy Use Disclosure Program (AB 1103)**.

Unfortunately, the regulatory rollout of this law has been rough on our member companies. Issues primarily range from lack of knowledge about the regulations, to lack of clarity about application, to the fact that some of the requirements just do not make sense in the "real world."

In order to help the Commission "ground-truth" issues related to the AB 1103 implementation, attached are raw comments from companies that have attempted to comply with the regulation.

Issues generally fall into one of these categories: Trigger Issues (who needs to comply and when); How to deal with Vacant Buildings and/or buildings that are difficult to benchmark because of their structure and/or purpose; Issues related to information gathering and assistance from local energy providers; CEC Reporting and website issues; Issues with Energy Star.

Moving forward, we hope that providing comments from our members will help with the Commission's attempt to improve implementation of AB 1103.

Members of the business community are dedicated to energy efficiency and want to help the state shape these regulations into something workable for all involved.

Thank you for taking our views into consideration. If you have any questions or comments about this letter, please feel free to contact Matthew Hargrove at 916-443-4676 or Bob Raymer at 916-340-3322.

AB 1103 Compliance Comments
Solicited from Commercial Real Estate Company Leadership

Negative Comments are in Red. **Positive Comments are in Green.**

TWO FULL EMAILS FOR A COMPREHENSIVE EXAMPLE FROM INDUSTRY PROFESSIONALS WHO FOCUS ON ENERGY ISSUES FOR TWO OF THE LARGEST REAL ESTATE COMPANIES

Since January 1, 2014, I have assisted with about 7 transactions requiring AB 1103 disclosures. The majority of these transactions have been NNN buildings with tenants paying their energy bills directly to the utility. AB 1103 is entirely an administrative burden and in no way encourages energy efficiency as the mandatory disclosure is given to the counter party when the sales contract is executed. Some other observations:

I have only dealt with PG&E, who requires tenant authorizations. For our transactions, I have sent emails to our PG&E account managers requesting that they release aggregated data into our ENERGY STAR accounts. I then save their response ("no") with the request and include that as part of the disclosure documents. I also document the request for energy data and subsequent response from tenants (usually "no" as well). I include of this documentation as part of the disclosure to the counter party and CEC.

PG&E further threw a wrench in the process by revoking all sharing rights for their automatic benchmarking service (now called exchange data service). Customers must go in to ENERGY STAR, re-authorize all of the meters and then use their online data authorization form to re-instate the exchange data service. This has been an enormous inconvenience to say the least.

AB 1103 should be the prime example of an ineffectual, overly-burdensome energy benchmarking and disclosure ordinance.

In Southern California, San Diego Gas & Electric requires an "***Authorization to Receive Customer Information or Act on a Customer's Behalf Form***" to be completed in order to obtain the information to comply with AB 1103. As tenants at retail centers and multi-tenant industrial parks are metered separately, it becomes very problematic and time-consuming to distribute and collect these forms, and then enter the data in order to even begin complying with this legislation.

For example:

I manage ***** Commerce Center in ***** , CA. This five-building, 70,000+ SF multi-tenant industrial park has over 40 tenants. On February 4, 2013, I distributed a memo to each tenant with the authorization form attached. I have since sent out three emails requesting the return of these forms. It is March 21st and I still do not have 100% of the Authorization Forms – and I have a great relationship with my tenants! I can't imagine the lack of response if the Real Estate Manager was incompetent or hostile, and the tenants had little incentive or desire to assist the owner.

Another one of my Managers oversees a retail center in San Diego. She has requested the same Authorization Form and has only received the form from one of her ten tenants.

Energy Star Database:

Entering twelve months of energy invoices for each tenant into Energy Star is time-consuming and frustrating. The slightest misinterpretation of dates, entering 1/29/13 instead of 1/30/13, will prevent you from receiving a rating from your property. Energy Star requires the inputting of the tenant's use that must be changed as tenant's change, and one must also remember to continually update vacant spaces as they are leased or tenants move-out.

*I am told by ***** Managers in Northern California that there is a utility company there that only requires the inputting of the meter numbers and then the twelve months of data populates automatically. It seems that this could, and should be standard throughout the California's utility companies. It would save us all a lot of time and ensure a higher level of compliance.*

Retail, Office vs. Industrial:

I have been a commercial Real Estate Manager for over 25 years. While there are significant cost/energy savings measures that can be placed into place in office and retail properties, I think multi-tenant industrial properties should be exempt from this legislation.

Most multi-tenant industrial suites have 10-20% office build-out. It has been my experience that industrial tenants work with their roll-up doors open and only turn on their air-conditioning during the hottest days of the year. There is little else that can be implemented in other energy saving measures except for office & restroom light sensors, as most parks already have tinted glass windows.

TRIGGER ISSUES

- The law is extremely unclear in many ways, but one way is whether buildings that are a part of a larger shopping center, but less than 5,000 SF are to be included or not included in the disclosure. What about multi-tenant buildings where the total building is greater than 5,000 SF, but it has many tenants that have their own electric meters. Is this larger than 5,000 SF or not.
- The law requires providing the disclosure BEFORE a purchase and sale agreement is signed, but it requires the information to be no later than 30 days old with the past 12 months of data. We do not know when we are going to have a buyer for a property and therefore it is nearly impossible to gather the data and have it ready beforehand. This should have clearly said that this information was required to be provided prior to a buyer waiving due diligence contingencies. Also, the result of this process is that it tips tenants off that a building is for sale when this clearly may not be in the best interest of the owner. This can cause a significant amount of financial risk to a seller.
- Most of our industrial buildings that we lease are mainly shells with very small office spaces. Tenants drive the plug-load and that plug-load is driven by what their business does (fix cars, manufacture something), so the energy efficiency of the shell is almost irrelevant. Even if the building can obtain an energy star score (and many industrial buildings can't as the program isn't designed for industrial or retail) the incoming tenant doesn't care about that information because they will have a completely different plug-load. Their equipment is what uses 90% of the energy load, so this requirement, even if it was easy to accomplish, is not relevant. For us in most of our transactions it's simply administrative busy-work, a real burden on real estate transactions, and an example of activists and politicians writing requirements that sound good but have no real world benefit.

VACANT BUILDINGS

- Also vacant buildings without proper historical information is problematic. We have an industrial building that has been vacant for several years and were in the process of leasing it. We ran into difficulty getting an accurate Energy Star score – hard to benchmark it properly and assumptions had to be used.
- Biggest issue I see is with “empty” buildings. It’s simply silly to have to comply. I do not see an express exception, so I have simply developed a waiver provision that I insert for empty buildings.
- Spaces of 5,000 Sf or greater are frequently vacant for extended periods of time prior to being leased. As a result, providing a buyer with information on the electrical usage of a vacant space serves no value.

UTILITY ISSUES

- Pasadena Water and Power acknowledged when we last spoke to them in December that yes they should have a form so that our tenants can sign off and release the data but they are a smaller utility company and just aren’t at that point yet. So they have done absolutely nothing. Forget about automatically uploading into Energy Star or any modern time saving measure.
- The Utility companies do not seem to be able to comply with the requests for information. Despite our being able to get some of our tenants to sign the information request waivers from SoCal Edison, the utility company does not seem to be able to process this information.
- Local utility claims it does not have the ability to release information
- Utility says it is unaware of AB 1103 Requirements.
- Utility says it doesn’t have staff to fulfill data request.
- Making us get a data release it and send to them before releasing information (SCE).
- SCE requires a specific tenant release to be completed and signed by the tenant.
- PG&E is unwilling to release utility data without a signed release.
- **SMUD has been relatively easy to work with. It is providing aggregate building data without the requirement for release forms.**
- We’re currently working with the City of Roseville utility department. It says it doesn’t have the capability to provide electronic uploads to Portfolio Manager, and we’re still not sure if they will require a release in order to provide data to us. It’s been difficult finding anyone at the utility who is familiar enough with AB1103 to give us an answer about their process.
- Our retail center isn’t getting any utility data.
- main problem for us is tenant authorization. Basically the utilities aren't budging so we either have to get protective language in our leases or plead for LOAs

- We have had repeated issues with SCE not releasing energy data without tenant authorization. This has been problematic in retail centers and industrial parks where the tenants pay their utilities directly and we have some parks with literally hundreds of tenants, so to get authorizations from all these tenants is very time intensive and many simply don't respond, thus, preventing us from being able to comply with AB 1103 in benchmarking their buildings.
- Southern CA Edison, San Diego Gas & Electric & PG&E requires tenant authorization forms for each tenant before releasing information. **SMUD requires you to have the meter numbers which is much simpler then they will populate. If all companies operated this way then I am positive there would be a much higher compliance.** In some regions with smaller water companies our teams have had to educate the provider before they would assist us.

DATA RELEASE FORMS – OTHER ISSUES

- Chain/large retail is impossible: None of the local contacts for the larger retail stores knows who at “corporate” receives the utility bill. I make half a dozen fruitless phone calls, give up and estimate the data. Aggregated data for a building would resolve this problem.
- We too are experiencing difficulties acquiring electric consumption from our warehouse tenants. Not because they are not willing to provide property management with the information but because their accounts payable are processed off site (corporate offices), making it difficult for on-site personnel to retrieve the information. It would be more time efficient and stream line the process if SCE (or utility companies) would provide building owners with access to the information for purposes of benchmarking without tenant authorization.
- The burden on our firm to collect and process all of these forms was tremendous. It took many, many hours of staff time to prepare these forms, get them to the tenants and follow up with the tenants to finally either get the forms or have the tenants refuse to provide the forms. This was an enormously burdensome process to go through only to obtain a bunch of data that will likely be useless to a buyer.
- PG&E has tried to provide info and protect their ratepayer’s privacy and has failed at both: PG&E has an online mechanism for receiving permission from the ratepayer to release data to the Portfolio Manager property profile, but then they do not have a mechanism for actually providing the data, the process halts at the Authorization. The “protection of privacy” is fundamentally flawed when in order for PG&E to provide utility data, the requester must simultaneously have access to information that should be private. All the requester needs is a meter number (or an SAID number) but what we ask for is a utility bill so that we can go through the Authorization process on behalf of the ratepayer (essentially impersonating the ratepayer which we don’t want to have to do!). The utility bill includes all the info. needed to access the PG&E online account which can be used to see data, but can also be used to cancel service! If PG&E could just email to the requester the SAID numbers (they appear on the 2nd page of the online Authorization anyway) their “privacy” problem would be resolved. I have gotten nowhere with this suggestion.
- Retail is definitely a problem – the large anchors are impossible to track down and the mom and pop shops don’t even understand why we want the data.
- I am worried that if the utility companies even get their act together, by the time we actually get the waivers that there will be expiration dates on the release forms the tenants give the

Landlord. For retail as this isn't even relevant until a center sells or finances we will then be scrambling under a tight deadline to get everything together again.

CEC REPORTING/WEBSITE ISSUES

- no confirmation email from CEC to acknowledge receipt of compliance documentation
- the data verification checklist, which is the document we have to generate and send, is problematic. First, because it's a checklist people think they have to fill it out (they don't). Also it contains info that then becomes part of the legal documentation for the lease, and another PM said this ancillary info ended up causing problems (due to listing when particular meters stopped and started)
- Data Verification Report. There is too much information listed on the DV that then becomes arguable points in the transaction process. And the DV Report is too long, I have one that is 42 pages, and you know all parties are printing these out!
- There is no need to report any of this directly to the state. It should be treated like other real estate disclosures.

ENERGY STAR ISSUES

- There needs to be a submit button within energy star itself; currently you send an email after generating a report.
- The Energy Star web site is virtually impossible to use. It is set up for an office building where the landlord pays the bills for many tenants. It is not set up well for a multi-tenant property.
- Although we track energy consumption through Energy Star, we are unable to benchmark to receive an energy score at one of our properties in the Inland Empire due to centralized non metered cooling water from the Central Plant for all three buildings on campus. Energy Star should allow Commercial Office Building Campuses to be benched marked as a whole, instead of as individual office building, as they allow for Hospital Campuses. If benchmarked as a whole, all space and energy consumption would be included and calculated to provide a score.

OVERALL/GENERAL

- To our knowledge the real purpose of AB 1103 is to promote implementing efficiency programs in existing buildings but the *current structure does not encourage owners to do so, it simple acts as red tape against new lease transactions and forces assumptions to be made in the case of previously vacant buildings.*
- When I encounter building owners in San Francisco they all seem to be aware of the law, most likely because SF has its own ordinance.
- As a result of selling a 100,000 SF multi-tenant shopping center, we have been dealing with AB 1103 head on. It simply baffles me how this legislation got passed. In my opinion, it is the most cumbersome and useless piece of legislation that I have ever encountered. It makes ADA laws look brilliant.

- Providing an investor with information on occupied space where the tenants are responsible for the electric bills also does not provide much value.
- This is a huge burden on the shopping center community with virtually no benefit.
- Consultant quotes to help with compliance for one shopping center ranges from \$1,050 to over \$10,000. I hired 2 of them and I can tell that they are all still trying to figure out how to comply.
- I cannot believe that this legislation made it through without any input from the real estate community. There is no way that anyone with any knowledge of the real estate business could have been involved because otherwise the legislation would have been written in a manner that would at least make some sense.