

**BEFORE THE STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

In the matter of,

AB 1103 Nonresidential Building Energy Use  
Disclosure Program Rulemaking

Docket No. 14-EUDP-01

STAFF WORKSHOP

RE: AB 1103 Order Instituting an  
Informational Proceeding

**SOUTHERN CALIFORNIA EDISON COMPANY'S COMMENTS ON STAFF**

**JULY 2, 2014 WORKSHOP ON AB 1103 OII**

California Energy Commission

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**I.**

**INTRODUCTION**

Southern California Edison Company (SCE) appreciates the opportunity to provide comments on the California Energy Commission's (CEC or Energy Commission) Staff Workshop on the Nonresidential Building Energy Use Disclosure Program Order Instituting an Informal Investigation, pursuant to Assembly Bill (AB 1103).

On July 2, 2014, the CEC held workshops to discuss the efficacy of the Nonresidential Building Energy Use Disclosure Program as well as evaluate the program implementation. The discussion included the intent and value of the energy use disclosure programs, experiences from key stakeholders, barriers, challenges to compliance, and recommendations for improvement. Below, in Section II, SCE provides comments on the overall Workshop. In Paragraph A, SCE provides input on the issue of complying with AB 1103's requirement to maintain the confidentiality of the customers' information. In Paragraph B, SCE reviews the issue of program implementation while complying with the confidentiality requirements of AB1103.

## **II.**

### **DISCUSSION**

Some stakeholders have questioned whether the utilities' options for disclosing customer information to commercial property owners create barriers to implementation of AB 1103. As discussed below, the utilities have various options for disclosing customer information to commercial property owners, all of which seek to protect the tenant's right of confidentiality under California law while providing commercial property owners reasonable access to utility customer data to benchmark their commercial buildings. SCE's options include:

1. obtaining the tenant's written consent to the disclosure of its data;
2. aggregating data pursuant to longstanding rule (15/15) for energy usage data aggregation developed in proceedings before the California Public Utilities Commission;
3. obtaining an affidavit from the commercial property owner attesting to the inclusion of a term in its lease in which the tenant authorized SCE to release the data directly to the property owner for purposes of AB 1103;
4. assisting the property owner in a reasonable approximation of the building's energy consumption.

These options have not proven to be a barrier in SCE's implementation to date. Information shared by the other utilities during the CEC's recent Workshop suggests that maintaining customer confidentiality has not been a barrier to AB 1103 implementation. Nevertheless, SCE looks forward to exploring these issues more thoroughly with the Energy Commission and other stakeholders.

#### **A. Protection Of Customer Confidential Information**

AB 1103, Public Resources Code Section 25402.10(b) provides that electric and gas utilities may only disclose building energy usage data for purposes of disclosure to landlords and building owners "in a manner that preserves the confidentiality of the customer." The Energy

Commission's regulations implementing AB 1103 provide that utilities when disclosing energy usage data must "aggregate or use other means to reasonably protect the confidentiality of the customer." (20 California Code of Regulations, Section 1684(b).) Various other privacy statutes also apply to the Energy Commission's implementation of AB 1103, such as, the California Information Practices Act (IPA), California Civil Code Sections 1798- 1798.56. The IPA applies detailed requirements to state agencies, including the Energy Commission, regarding the collection, use, disclosure and reporting of any unauthorized disclosure, of personally identifiable information (PII). The IPA restrictions on collection, use and disclosure of utility customer PII generally apply to customers who are "persons," e.g. non-residential business customers or commercial building owners generally are not defined as "persons." Under Civil Code Section 1798.24, "personal information" may not be collected or used by a state agency for "statistical research or reporting purposes" unless the information is in a form "that will not identify any individual." These statutes and restrictions must be considered and included as part of the discussions on how the Energy Commission, stakeholders, IOUs and municipal entities can move forward to seek a consensus on protecting customer privacy while achieving the Commission's goals on building benchmarking.

**B. Program Implementation And Compliance Via Aggregation And CISRs**

SCE began providing energy usage data on a routine basis to Portfolio Manager in 2009 and launched a successful, fully-automated system in 2011. Our approach is to continue to ensure that customer confidentiality is preserved by using the following via SCE's Automated Benchmarking Web Services:

- Authentication and verification of Customer Account Number, Tax ID, and Service Account Number (or Meter Number) combinations;
- Verify appropriate consent forms are on record in the billing system;
- Perform aggregation using the 15/15 Rule in select cases.

Upon successful initial authorization, up to 14-months' worth of historical energy usage data are uploaded with monthly uploads occurring automatically thereafter at the end of each billing cycle. The following property-level Portfolio Manager activity has been observed during the indicated year, which includes only active properties at year-end:

<b>Year</b>	<b># of Properties</b>
2009	67
2010	388
2011	230
2012	1,507
2013	892
2014 (YTD)	188
<b>Total</b>	<b>3,272</b>

In addition to providing automated utility data uploads, SCE also provides technical support via a toll-free hotline (1.855-SCE-INFO; 1.855-723-4636), email (benchmarking@sce.com), and through sce.com. SCE also provides hands-on training through our Energy Education Center in Irwindale and Tulare.

SCE submits that privacy concerns and associated requirements to protect customers' specific energy usage information that may be market-sensitive or trade secrets must be balanced with the building owners' need to have reasonable access to energy usage data in order to comply with AB 1103. SCE does so by using customer authorization forms (CISRs) or by aggregating usage data per the 15/15 Rule where possible. The issues of CISRs and aggregation were discussed at length during the Workshop.

SCE believes that a common approach can be found that will comply with the existing statutes and regulations while also achieving the Commission's objective of meaningful benchmarking of energy use by California's buildings. In fact the speakers at the Workshop provided valuable insight into program implementation.

A few utilities, including SCE, have had external training, automated data systems, and supporting processes in place for several years in support of AB 1103. Nevertheless, some speakers pointed out that a large roadblock has been education and that the necessary programs are only now being put in place on a statewide basis to assist the building owners' benchmark their facilities. As the utilities, both Municipal and Investor-Owned, have worked to address this issue, systems are being established and programs implemented that will allow the utilities and building owners to interface in a manner that will both protect the customers' confidentiality and provide meaningful energy use for the appropriate benchmarking of the buildings.

Several speakers raised aggregation and the IOUs' use of a CISR form as roadblocks to the benchmarking. The IOUs use the 15/15 Rule for aggregation as a general method for multiple use cases to maintain the confidentiality of customers' energy usage data. The 15/15 Rule was the product of many days of hearing and testimony by a number of parties before The California Public Utilities Commission (CPUC). Some cities that spoke at the Workshop have benchmarking programs that use an aggregation number of 4, but stated that that number was not the product of any research or study, and was simply the result of the "lawyers' negotiation". It is also important to note that the majority of non-residential buildings in SCE's service territory are estimated to be occupied by 3 or fewer customers, which could be a combination of either building owner and tenants or all tenants. Given that SCE's billing system is based on meters and not buildings, this is only a rough estimate but may be useful for the purpose of the issues at hand.

SCE appreciates that the CEC is looking into a lower level of aggregation, and SCE would encourage the CEC to consider the previous decisions of the CPUC, current and pending studies on the subject of the appropriate size for aggregation, as well as comments, testimony and filings provided by interested parties to this proceeding. The appropriate level of aggregation will be a question of facts and reasonableness and the CEC will need a credible record for whatever it ultimately decides is the appropriate level of aggregation to provide the proper level of confidentiality and security while still making benchmarking workable.

The realtors who spoke felt that obtaining CISRs would be a substantial hurdle, however, none of them had yet specifically experienced this as a hurdle. In fact, PG&E, which has the vast majority of buildings benchmarked in California and nearly half of the buildings benchmarked using utility-provided automated data systems in the United States, requires a CISR from every customer prior to releasing the information pursuant to AB 1103. PG&E indicated that it was simply a requirement in the benchmarking process and while it may add a few weeks to the process it has not been a hurdle or roadblock. Therefore based on the speakers and the evidence to date it would appear that the use of the CISRs is not a problem and when properly factored into the process the implementation of benchmarking is not impacted. The customers' confidentiality is protected and the confidentiality requirements of the AB 1103 statute are met.

SCE suggests that if the use of CISRs and aggregation are not possible for property owners, the building owners could include a standard term in future leases whereby the customer authorizes the IOU to release the data directly to the landowner for purposes of AB 1103. The landlord could then submit to the IOU an affidavit attesting to the inclusion of such a term in the lease for the appropriate accounts. Should all of these avenues fail, the regulations currently recognize that building owners can and will make do with imperfect information provided that their estimates are reasonable and made in good faith, given the inevitable limitations. Namely, 20 CCR § 1684(e) provides that “[i]f there is information missing from a disclosure, and if the owner has made a reasonable effort to ascertain the missing information, the owner may then use an approximation of the information, provided that the approximation is identified as such, is reasonable, is based on the best information available to the owner, and is not used for the purpose of circumventing or evading this article.” To the extent SCE could facilitate landlord estimates, using data we have on usage related to particular building types, we could work with the building owners to prepare the right guidelines/materials. For example, SCE could sum the tenants' annual usage data, divide evenly by 12, and using that “masked” monthly usage data to derive the exact same index number needed to complete the AB 1103 benchmarking. The CEC's benchmarking system was built to require twelve monthly inputs, even though the relevant figure

is based only on annual usage data. Provided that the CEC's website makes clear that the twelve inputs are averaged evenly (to avoid reliance on the monthly data for purposes unrelated to AB 1103, if any), this could very well be an elegant solution that involves far less granular data than actual monthly usage data.

We also encourage the CEC to consider the potential increase in cost for implementing any technical solution, as utility infrastructure costs in support of benchmarking are paid for primarily through revenue collected from utility customers and maintained in the Energy Efficiency balancing account under the auspices of the CPUC.

### **III.**

#### **CONCLUSION**

SCE appreciates the opportunity to participate in the Staff's workshop and to provide comments on the CEC's Nonresidential Building Energy Use Disclosure Program and its Benchmarking mandates. SCE looks forward to working with the CEC, the other IOUs and other interested parties on this subject in the future in an effort to find common ground that will comply with the existing statutes and regulations on confidentiality and also achieve the Energy Commission's objective of meaningful benchmarking of energy use by California's buildings.



Respectfully submitted,

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