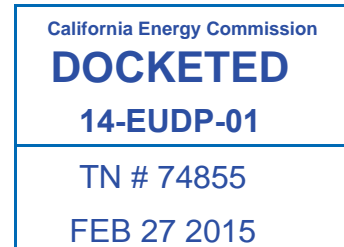


**Docket No. 14-EUDP-01
Comments on Proposed Changes to AB 1103**

February 27, 2015

California Energy Commission
Dockets Office, MS-4
Re: Docket No. 14-EUDP-01
1516 Ninth Street
Sacramento, CA 95814-5512



Dear California Energy Commission and Stakeholders:

Thank you for your efforts in developing and revising the AB 1103 Non-Residential Disclosure Program. I appreciate the opportunity to submit comments and recommendations to assist in this process. I have been benchmarking buildings with Energy Star’s Portfolio Manager since 2007, and have been an active consultant on many AB 1103 disclosures and trainings since its inception. After participating in various calls, meetings and webinars related to this law, I feel it is important that I provide professional recommendations based on my experience with hundreds of buildings in the State of California and nationwide.

I’ve outlined comments and recommendations below to follow the proposed language under consideration within: **Article 9. Nonresidential Building Benchmarking and Disclosure Sections 1680-1685**. My recommendations are in blue and underlined, while the second column provides rationale.

Language Recommendations <u>(Blue)</u>	Rationale & Comments
<p>Section 1681. Definitions: n) “Virtual Meter” means a representative meter, which aggregates energy use data per month across multiple electricity meters or meters of the same fuel type serviced by the same utility. <u>This shall include all accounts under meters, whether currently active or not, in order to satisfy 12 calendar months of whole-building data.</u></p>	<p>Tenant changes within a calendar year are very common, especially in multi-tenant buildings. A single meter may have data from multiple accounts and this clarification will ensure that the aggregation includes all applicable data, pursuant to the requirements set forth by Portfolio Manager. There will be no way for the building owner/operator to distinguish if the data is complete if aggregated. Aggregation however, will also limit or inhibit the owner from isolating energy efficiency issues within a single suite. The efficiency measures of EUI are essentially blended and therefore have no applicable meaning for the owner or prospective stakeholders.</p>

<p>Section 1682. Schedule of Implementation (c) On and after July 1, 2016, for a building with a total gross floor area measuring at least 5,000 square feet and up to 10,000 square feet. <u>(Remain as-is)</u></p>	<p>Smaller commercial buildings are typically easier to benchmark because of the minimal degree of complexity. The burden can seem proportional to size, but is rather greatly dependent on the number of tenants and meters. There is no justification in exempting a 5000 SF building, while imposing these regulations on larger buildings. The various California utilities have special programs targeting small business and retailers because of the significant population of these energy users, and the impact energy costs have on these businesses. It would be unjust to discriminate against small business simply because they reside in a small building.</p>
<p>Section 1683. Disclosures: a) A building owner or operator shall generate the Data Verification Checklist, or other disclosure forms approved by the Energy Commission from Portfolio Manager, which includes information specified in Section 1684(a) and Section 1684(b). <u>(Replace with)</u> <u>A building owner or operation shall generate a Statement of Energy Performance (SEP) from Portfolio Manager, or other disclosure forms approved by the Energy Commission, which includes information specified in Section 1684(a) and Section 1684 (b).</u></p>	<p>The Data Verification Checklist is a comprehensive report of all meters and operating characteristics related to a whole-building. The SEP is a single-page report, which provides the Score, EUI and applicable information for disclosure, without disclosing individual tenant data. Although single-tenant buildings can never be confidential, the SEP best protects the information and provides annual aggregate metrics. It is important to note that while some buildings may be eligible for a Score of 1 to 100, the majority of all buildings do not meet these requirements and therefore only an EUI (Energy Use Intensity) is available. The EUI is NOT a measure of efficiency, yet a metric for evaluating the overall usage per square foot compared to a wide database of data that computes the national median.</p>
<p>Section 1683. Disclosures: a) (1) A prospective buyer of the building no later than 24 hours <u>prior to execution of the sales contract</u> three days after signing of the purchase and sale agreement. (2) A prospective lessee of the building no later than 24 hours <u>prior to execution of the lease</u> three days after signing of the lease agreement. <i>(Timing for any transaction)</i> <u>As soon as possible after requested by a prospective buyer or lessee, but not later than</u></p>	<p>The value of the benchmarking report is to assist the prospective lessee or buyer of a building to make a decision regarding the lease or purchase of an available property. If energy use metrics are being used, and encouraged for use, in this decision making process, then the disclosure must occur early in the process. A lot of time and money goes into the search of available options, and if the decision hinges on the energy efficiency of a building, this law would actually require the prospective stakeholder to go into a binding agreement in order to get the information. This can be avoided if the Disclosure is made prior to any contracts or agreements, and is</p>

<p><u>5 business days prior to the signing of a lease or purchase agreement.</u></p>	<p>instead provided as a private disclosure to the prospective stakeholder. The intent of this law implies that there would be some level of analysis of the information and/or comparison to other options in the market; disclosure after an agreement is signed is contradictory to its' intent.</p>
<p>Section 1683. Disclosures (b) Nothing in these regulations permits an owner to use tenant energy use data for purposes other than compliance with Public Resources Code, Section 25402.10. <u>However, owners and operators of nonresidential buildings may proactively engage in benchmarking within Portfolio Manager at any time under this law, for the purposes of evaluating and/or improving the efficiency of the building. The owner may use the information in conjunction with energy efficiency improvement projects, as long as any disclosure of the information remains private and confidential, pursuant to Civil Code section 1798.98.</u></p>	<p>This recommendation is in alignment with the Purpose of the AB 1103 law, as stated on the CEC website: <i>The Nonresidential Building Energy Use Disclosure Program encourages greater energy efficiency in nonresidential buildings by requiring building owners to disclose energy use to prospective buyers, lessees, and lenders, as well as to the California Energy Commission.</i></p> <p>This additional language encourages owners and operators to take a proactive approach to energy management, and allows added value to the process of data collection and evaluation. It also provides the owners access to data pertinent to their property, which may otherwise be solely accessible by their tenants. Without the information, the owners and/or tenants cannot reasonably pursue upgrades.</p>
<p>Section 1684. Data Releases, Report (a) 4) Provide space use characteristics as specified by Portfolio Manager for all space types in the building. <u>Tenants are required by this law to disclose occupancy information, and any other data required for Portfolio Manager benchmarking, to the building owner or operator upon request.</u></p>	<p>Tenant operating characteristics can change the efficiency Score of a building drastically. If tenants are not included in these requirements, owners must make assumptions that may subsequently reflect poor data inputs into Portfolio Manager.</p>
<p>Section 1684. Data Releases, Report (b) As soon as practicable and no later than 30 days after receiving a request under subdivision (a) of this section, a utility or energy provider shall upload all energy use data for the entire building from at least the most recent 12 complete calendar months to the building owner's Portfolio Manager Account. Utilities and energy providers shall not require tenant consent to provide energy use data to the building owner or operator. <u>Utilities shall not require any</u></p>	<p>The process for utilities to release data is currently dependent on a letter of authorization or Authentication data that requires information from the tenant. The use of Meter numbers simplifies the data collection process for owners and the utilities. Verification of building ownership can be provided with the request in the form of a copy of a valid and current Deed or Title to the property. It would be very helpful to have specific direction regarding how the owners or operators of a building would go about making a request to the utilities for</p>

<p><u>Authentication information that is not under the sole control of the owner or operator of the building; utilities shall release data to building owners or operators using Meter Numbers and a reasonable verification that individual requesting data is the owner or operator. Verification of building ownership is validated by submitting a copy of a valid and current Deed or Title to the property, per public record at the County Recorder’s office.</u></p> <p>Where a building has multiple tenants, the utility shall upload the energy use data for the building, aggregated by electricity usage and/ or fuel type into a virtual meter for each fuel type.</p>	<p>information; formal requests in writing, via email, or a new form for owners to fill out.</p> <p>Some utilities currently require tenant information such as social security # or tax id, account numbers, last bill amount, etc.</p>
<p>Section 1684. Data Releases, Report (c) After all utilities and energy providers serving a building have complied with subdivision (b) of this section, and before after the building owner has made the disclosure required pursuant to Section 1683, the building owner shall generate the building’s Data Verification Checklist submit the building’s <u>Statement of Energy Performance data</u> to the Energy Commission from through Portfolio Manager via the reporting link provided on by the Energy Commission <u>program website</u></p>	<p>See previous recommendations for the SEP in lieu of the Data Verification Checklist.</p> <p>The current proposed language is confusing, as it states there will be a reporting link in both Portfolio Manager AND the CEC website. This change is assuming that the link is within Portfolio Manager.</p>
<p>Section 1684. Data Releases, Report (e) If 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. <u>All information, including assumptions, must be entered into Portfolio Manager.</u></p> <p><u>Reference FAQ Guidance:</u> <i>Q6. How may I present missing data?</i></p>	<p>Within the FAQ posted on the AB 1103, CEC website, there is inappropriate guidance in relation to missing information. Portfolio Manager depends on full-building data and information. If assumptions are written on a hard-copy of a report, then it has been excluded from the analysis and the report will not be a valid representation of the Score or EUI metrics provided for the whole-building. There are options within Portfolio Manager to indicate when assumptions or estimates are used, which will allow for the owner/operator to identify it as such.</p> <p>Additionally, the guidance to Q7 is incorrect to my working knowledge of Energy Star PM. Defaults are only available for certain space use characteristics; there are absolutely no defaults for energy use</p>

<p>A. As described above, if you have made reasonable efforts to receive the data, but it is not available, you may substitute approximate energy use data. You may offer a separate statement for the disclosure, fill in any missing data on the Data Verification Checklist within Energy Star Portfolio Manager, or add approximated data directly onto the hard copy of the Data Verification Checklist. You must identify the data as approximated, and you must disclose the best information available.</p> <p>Q7. What if I do not have any data to approximate?</p> <p>A. When you have no energy use data and where other measures are not reasonably suitable for your building, you may use the default values provided by Energy Star Portfolio Manager for your building type (some of which are found at this link). <u>(Strike this comment entirely)</u></p>	<p>consumption available within the system. The link provided in this FAQ document doesn't work in the PDF form.</p>
<p><u>Section 1685. Exemption from Disclosure (add additional exemption)</u> <u>(b) When a building subject to disclosure pursuant to Public Resources Code, Section 25402.10 has been 100% vacant for 12 consecutive months, due to recent construction or remodeling, the building owner is exempt from disclosure.</u></p>	<p>Portfolio Manager provides guidance for Vacant Spaces; this requires the entry of Gross Square Footage to be designated as OTHER, and all operating characteristics must be entered as a "0." This is true even if there is active energy meters, for leasing or construction purposes, because the benchmarking is dependent on human occupancy and use per the Space Type chosen. If there is no data and no occupancy, a report cannot be generated and reasonable assumptions cannot be made.</p>

A case for modeling Seattle's Office of Sustainability & Environment: Energy Benchmarking and Reporting Program (Ordinance [123226](#) and [123993](#))

I would recommend that the CEC evaluate Seattle, Washington's mandatory benchmarking program and ordinance, which claims in their recent report that, "Seattle boasts the highest compliance rates in the nation—as of January 1, 2014 nearly 3,000 (93%) of required buildings had 2012 energy use reported." I believe that two factors are the key to their success; the first is that this is an annual requirement without a transaction trigger, and the second is support and education from the city. Please review the source of this compliance rate and details about the program in the following report:

<http://www.seattle.gov/Documents/Departments/OSE/EBR-2011-2012-report.pdf>

Education: There is a large need for education regarding AB 1103 and Benchmarking. Over the years, I have delivered many workshops on both subjects, and I have found that the parties administering these reports (dominantly property managers) are overwhelmed by the increased scope of work on their jobs. In order for compliance rates to increase and the cost of compliance to decrease, education is critical. A state-funded education program may be necessary and will reduce the burden on the CEC and owners. Seattle's success is proof that it can work.

I feel that this law is very important for all stakeholders in commercial buildings and is a fundamental step towards awareness and action toward energy efficiency. I appreciate your consideration of my comments and recommendations, and I would be pleased to provide additional documentation to further support my input. Please feel free to contact me via email at eastonarango@gmail.com or via cell at 928.300.3111.

Sincerely,

The signature is written in a cursive, handwritten style in black ink, reading the name "Easton".

**Easton Arango, LEED AP
President/Owner
Arango Consulting, LLC
Carlsbad, CA**