



651 Commerce Drive  
Roseville, CA 95678

(916) 781-3636

www.ncpa.com

California Energy Commission

**DOCKETED**

**14-EUDP-01**

**TN # 75327**

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California Energy Commission  
Dockets Office, MS-4  
Re: AB 1103 – Docket No. 14-EUDP-01  
1516 Ninth Street  
Sacramento, California 95814-5512

**RE: NCPA Comments on the February 20, 2015 Staff Workshop on Proposed Changes to the Regulation for the Nonresidential Building Energy Use Disclosure Program (“AB 1103 Program”) [Docket No. 14-EUDP-01]**

The Northern California Power Agency (NCPA) appreciates the opportunity to comment on the proposed changes to the Regulation for the Nonresidential Building Energy Use Disclosure Program (hereinafter “AB 1103 Program”).

NCPA is a California Joint Powers Agency established in 1968. Its Members are: the Cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, the Bay Area Rapid Transit Agency, the Port of Oakland, and the Truckee Donner Public Utility District; and one Associate Members: the Plumas-Sierra Rural Electric Cooperative. These Members serve nearly 650,000 electric consumers in Central and Northern California.

NCPA appreciates the efforts of Energy Commission staff to revise the AB 1103 Program Regulation. NCPA supports the overall goal of providing energy usage data to building owners and operators for the purpose of benchmarking a building’s energy use and thereby informing building owners, operators, and/or lessees of energy efficiency opportunities. However, the current version of the AB 1103 Program establishes an unnecessary and inappropriate reporting obligation on utilities. In addition, the proposed changes to the AB 1103 Program Regulation may violate existing customer privacy requirements. NCPA respectfully submits the following comments and suggested amendments.

**I. Remove Requirement for Buildings With a Gross Floor Area Measuring At Least 5,000 Square Feet and Up To 10,000 Square Feet**

The proposed changes includes amendments to section 1682(c) of the current Regulation that would strike the requirement for a building owner to comply with the Regulation “[o]n 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.”<sup>1</sup> NCPA supports this proposed change as this requirement was anticipated to create significant demands on staff at NCPA Member utilities.

<sup>1</sup> California Code of Regulations, Title 20, Division 2, Chapter 4, Article 9, Section 1682(c)

## II. Clarify Utility Responsibility to Provide Building Owner with Energy Use Data

Section 1684(a)(5) of the current AB 1103 Program Regulation contains ambiguous language regarding the responsibility of utilities and energy providers to building owners and operators. The Regulation states that a building owner shall “[r]equest all utilities and energy providers serving the building to release energy use data for the entire building from at least the most recent 12 months for specified meters or accounts to the owner’s Portfolio Manager Account.”<sup>2</sup> The meaning of “release...to the owner’s Portfolio Manager Account” is unclear as to whether it means the utility shall provide the data to the building owner to upload to Portfolio Manager Account or whether the utility is required to directly upload the energy use data to the building owner’s Portfolio Manager Account.

In addition to the Energy Commission staff’s proposed changes, NCPA recommends further amending section 1684(a)(5) to clarify that the requirement on utilities and energy providers is to release energy use data to building owners in a format that allows for the upload of the data into a Portfolio Manager Account. Section 1684(a)(5) should be revised to read:

- a) At least 30 days before a disclosure is required by Section 1683, or no later than the first date that the property is available for sale or lease, a building owner or operator shall open an account or update an existing account for the same building on ~~EPA’s ENERGY STAR program~~ the Portfolio Manager website, and within the account, the building owner or operator shall:
- 1) Provide the owner name and the owner e-mail address;
  - 2) Provide the building name, the building street address, city and ZIP code, and the year in which the building was constructed;
  - 3) Identify all sources of energy use data for the entire building, for at least the most recent 12 complete calendar months;
  - 4) Provide space use characteristics as specified by Portfolio Manager for all space types in the entire building; ~~and~~
  - 5) Request all utilities and energy providers serving the building to release energy use data for the entire building from at least the most recent 12 complete calendar months for specified meters or accounts to the owner’s or operator in a spreadsheet format compatible for upload to the owner’s or operator’s Portfolio Manager Account; ~~and~~
  - 6) Upon request of the building owner or operator, the utility or energy provider may upload the energy use data for the entire building directly into the owner’s or operator’s Portfolio Manager Account; or, the owner may manually enter all energy use data for the entire building from at least the most recent 12 months to the owner’s Portfolio Manager account. The energy use data can be used for disclosure pursuant to Section 1683(a) for up to 1 year from the date of request.

## III. Remove Requirement that Utilities shall Upload Energy Usage Data into Portfolio Manager

Section 1684(b), of the current Regulation contains an unnecessary and inappropriate reporting obligation on utilities and energy providers that should be removed. The Regulation states, “a utility or energy provider shall upload all energy use data for the entire building from at least the most recent 12 months to the building owner’s Portfolio Manager Account.”<sup>3</sup> The proposed changes do not relieve the utility of the obligation to upload data to a building owner’s Portfolio Manager Account.

<sup>2</sup> California Code of Regulations, Title 20, Division 2, Chapter 4, Article 9, Section 1684(a)(5)

<sup>3</sup> California Code of Regulations, Title 20, Division 2, Chapter 4, Article 9, Section 1684(b)



NCPA Members can provide energy use data for the most recent 12 months in a spreadsheet format that a building owner and operator can then upload into their Portfolio Manager Account. Other utilities may have the staff resources to secure approval from the building owner to access their Portfolio Manager account, acquire their Portfolio Manager Account log-in information, and to upload the energy use data for the most recent 12 months. However, for NCPA Members, this upload requirement is yet another reporting obligation and strain on already limited resources, a concern that is reflected in the provisions of Public Resource Code section 25402.10(c) which provides that “in carrying out this section, an electric or gas utility may use any method of providing the specified data in order to maximize efficiency and minimize overall program costs.” This additional requirement is unnecessary and should be repealed. Suggested amendments are included below the following comment.

#### IV. Remove Proposed Amendment Regarding Tenant Consent

NCPA echoes the concerns of the California Municipal Utilities Association regarding language added in the CEC staff’s proposed changes to section 1684(b). As shared in the February 20<sup>th</sup> presentation, Energy Commission staff proposed changes include adding the following to section 1684(b), “Utilities and energy providers shall not require tenant consent to provide energy use data to the building owner or operator.”

NCPA is concerned that the proposed changes to section 1684(b) fail to take into account the restrictions placed on local agencies by the Government Code. With certain exceptions, Gov. Code section 6254.16 does not require the disclosure of utility usage data of a utility customers as a public record under the California Public Records Act (Government Code section 6251, et seq.). As such, the CEC needs to ensure that disclosures required in the Regulation are reconciled with the utilities’ and public agencies’ restrictions on disclosure of certain information under section 6254.16. The proposed revisions may also contravene the provisions Public Resources Code section 25402.10(b) that requires the utilities to provide the the informaiton “in an maner that preserves the confidentiality of the customer.”

NCPA recommends amending Section 1684, subdivision (b), to read:

- 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 release energy use data for the entire building from at least the most recent 12 complete calendar months for specified meters or accounts to the owner’s or operator in a spreadsheet format compatible for upload to the owner’s or operator’s Portfolio Manager Account.
  - 1) Upon request of the building owner or operator, the utility or energy provider may upload all energy use data for the entire building from at least the most recent 12 complete calendar months for the specified meters or accounts to the building owner’s Portfolio Manager Account. If a building has a utility or energy provider account for which the owner is not the customer of record, the utility or energy provider shall aggregate or use other means to reasonably protect the confidentiality of the customer.
  - 2) A utility or energy provider may verify a request or ask for clarification before releasing data, including seeking consent from building tenants before releasing the tenant’s energy use data to the building owner or operator and/or uploading the tenant’s energy use data – including in aggregate with the other building’s tenants – to the the owner’s or operator’s Portfolio Manager Account. Where a building has multiple tenants, and after securing consent for the tenants as warranted, 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.



**V. Delete Requirement for Building Owners to Submit Energy Use Data to the CEC**

Section 1684(c) of the current regulations includes a troubling provision. Without reference to statutory authority, the CEC requires that, “the building owner shall generate the building’s Data Verification Checklist from Portfolio Manager and electronically submit the Data Verification Checklist to the Energy Commission.”<sup>4</sup> It is unclear for what purpose the CEC is collecting this data or under what statutory authority the CEC can require a building owner to provide this data. The current Regulation sites authority for the Regulation Sections 25213, 25218(e), and 25402.10 of the Public Resources Code, none of which speaks to CEC collection of building energy use data. In light of proposed changes to section 1684(b) of the Regulation that may circumvent privacy protections for consumers, NCPA is extremely concerned about the current Regulation and proposed changes to section 1684(c). That concern is exacerbated by the proposed changes to section 1684(d), which indicate an interest in making the data submitted by building owners public.

The Legislature, in enacting AB 1103 (Chapter 533, Statutes of 2007) found and declared that:

- (a) Facilitating a benchmarking system that provides energy consumption information for all nonresidential buildings in the state would allow building owners and operators to compare their building’s performance to that of similar buildings and to manage their building’s energy cost.
- (b) Benchmarking scores could motivate building operators to take actions to improve the building’s energy profile and help to justify financial investments.

AB 1103 does not include provisions requiring the building owner to provide the building’s data to the CEC. The uncodified Legislative findings and declarations are silent regarding either the submission of building data to the CEC or the otherwise public disclosure of the building data. Furthermore, the Regulation itself is devoid of any language regarding the purpose of the disclosure or proposed use of the verified information. Without regulatory language that articulates clearly defined restrictions on the use of the data provided under this section, NCPA is concerned that by complying with either the current Regulation or the proposed changes, NCPA Members may be liable for violating Gov. Code section 6254.16. In the absence of clear statutory authority for requiring building owners or operators to provide building energy use data, NCPA strongly urges that this provision be deleted; failure to do so could hinder NCPA Members ability to provide energy use data to building owners or operators.

NCPA appreciates the CEC’s consideration our comments. Energy benchmarking can be a meaningful contributor to the state’s efforts to capture all cost-effective and feasible energy efficiency; however, this can only occur when customer confidential information remains just that – confidential. Furthermore, utilities can assist building owners and operators in their benchmarking efforts; however, mandatory requirements should acknowledge the limitations on utility staffing resources, especially for smaller publicly-owned utilities.

Sincerely,



JONATHAN CHANGUS  
Member Services Manager & Regulatory Affairs

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<sup>4</sup> California Code of Regulations, Title 20, Division 2, Chapter 4, Article 9, Section 1684(c)