

BEFORE THE ENERGY COMMISSION
OF THE STATE OF CALIFORNIA

California Energy Commission DOCKETED 14-EUDP-01
TN # 75330 MAR 06 2015

In the matter of:)
)
Nonresidential Building Energy Use)
Disclosure Program)
)
California Code Regulations, Title 20,)
Section 1680 through 1684)
)
_____)

Docket No. 14-EUDP-01

RE: AB 1103

COMMENTS FROM THE LOS ANGELES DEPARTMENT OF WATER AND POWER (LADWP) TO THE CALIFORNIA ENERGY COMMISSION (CEC) NOTICE OF STAFF PROPOSED CHANGES TO THE REGULATIONS FOR THE NONRESIDENTIAL BUILDING ENERGY USE DISCLOSURE PROGRAM (ALSO KNOWN AS THE AB 1103 PROGRAM)

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Dated: March 06, 2015

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OF THE STATE OF CALIFORNIA**

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INTRODUCTION

The City of Los Angeles (City of LA) is a municipal corporation and charter city organized under the provisions set forth in the California Constitution. LADWP is a proprietary department of the City of LA, pursuant to the Los Angeles City Charter, whose governing structure includes a mayor, a fifteen-member City Council, a five-member Board of Water and Power Commissioners (Board). LADWP is the third largest electric utility in the state, one of five California Balancing Authorities, and the nation’s largest municipal utility, serving a population of over four million people. LADWP is a vertically integrated utility, both owning and operating the majority of its generation, transmission and distribution systems. LADWP has annual sales exceeding 23 million megawatt-hours (MWhs) and has a service territory that covers 465 square miles in the City of LA and most of the Owens Valley. The transmission system serving the territory totals more than 3,600 miles and transports power from the Pacific Northwest, Utah, Wyoming, Arizona, Nevada, and California to Los Angeles.

LADWP appreciates the opportunity to comment on the CEC staff proposed changes to the regulations for the Nonresidential Building Energy Use Disclosure Program (also known as the AB 1103 Program).

**CUSTOMER CONFIDENTIALITY IS OF THE UTMOST IMPORTANCE TO THE LOS ANGELES
DEPARTMENT OF WATER AND POWER**

LADWP aligns itself with the Federal Trade Commissions’ policy “to protect consumers’ personal information.” It is important to ensure that our consumers have the confidence to take advantage of LADWP’s services without concern that personal data will be publicly shared.

LADWP has adopted the recently released high level principles of conduct for both utilities and third parties as defined by the Federal Smart Grid Task Force. The Voluntary Code of Conduct (VCC) states “The VCC primarily protects ‘customer data,’ which is defined as the combination of (i) Account Data and (ii) Customer Energy Usage Data (CEUD).”

In line with our commitment to protect the confidentiality of our customers, LADWP opposes the CEC’s proposed changes to the regulations for AB 1103 that put customer confidentiality at risk.

**SPECIFIC COMMENTS ON THE PROPOSED CHANGES TO THE REGULATIONS FOR THE
NONRESIDENTIAL BUILDING ENERGY USE DISCLOSURE PROGRAM
(ALSO KNOWN AS THE AB 1103 PROGRAM)**

Section 1681. Definitions

In Section 1681, the CEC added clarification on the definition of “Prospective buyer” and “Prospective lessee”. LADWP supports these proposed changes.

Section 1683. Disclosures

LADWP opposes the proposed modifications in Section 1683(b) regarding protection of the confidentiality of customer energy usage data. The proposed changes state:

“...Any business that receives or has access to energy use data provided pursuant to Public Resources Code Section 25402.10, including but not limited to, a building owner, operator, prospective buyer, prospective lessee, an agent or broker, may be obligated to protect the confidentiality of that data pursuant to Civil Code section 1798.98,...”

The revised language is insufficient and misleading. Any recipient of customer data should keep that data confidential pursuant to **all** state and federal laws, not only limited to Civil Code Section 1798.98. LADWP recommends that the phrase “pursuant to Civil Code section 1798.98” be changed to “as required by state and federal laws.” This better addresses the stated CEC rationale that parties be made aware of their obligations.

Section 1684. Data Releases, Report

LADWP opposes the proposed modifications in part (b) and (d) of this section. The proposed modifications in these sections in particular could weaken or eliminate the ability of the utilities to protect the confidentiality of their customers.

The new version of the regulation in Section 1684(b) fails to address the statutory mandate of Public Resources Code Section 25402.10(b) (the statute it is seeking to implement) that utilities provide information “in a manner that preserves the confidentiality of the customer.” Aggregating data may only preserve the identity of some customers, rather than preserve the confidentiality of all of the customers’ utility usage data. This new version further disregards this requirement by expressly removing customer consent from the process while requiring disclosure to a third party. Such a reversal from the long-standing requirement of protecting utility customer data (including in Government Code Section 6254.16, Civil Code Section 1798.98, and Public Utilities Code Section 8381) should not be accomplished by a mere

regulation. Further, if there is such a statutory erosion of the long-standing practice of protecting utility customer data, the statute should make clear that disclosures under this provision do not constitute a disclosure that would waive the exemption provided in Government Code Section 6254.16.

The proposed revision to Section 1684(b) states:

“Utilities and energy providers **shall not require tenant consent** to provide energy use data to the building owner or operator.”

Additionally, the following statements are removed:

“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**. A utility or energy provider may verify a request or ask for clarification before releasing data.”

The reasons for the above changes are not clear. The sentences in this section that allowed the utilities to reasonably protect customer energy usage data have been removed and not replaced with anything similar. Instead, these sentences are replaced with one sentence that indicates that utilities “shall” no longer require consent from their customers to release confidential energy usage data. As stated above, this is a reversal of California’s long standing protection of customer confidentiality.

It is the obligation of all utilities to protect confidential customer information, which includes energy usage data. The CEC should be in support of utilities in their efforts to protect the confidentiality of the residents and business owners of California. Therefore, LADWP recommends that the proposed changes in Section 1684(b) that eliminate the requirement for

tenant consent be removed, and the existing language, which promotes the protection of customer confidentiality, be kept.

The revision of the regulation in Section 1684(d) also further erodes the protections for customer confidentiality. The existing subsection (d) should be maintained. The revision opens the door to additional uses of customer data beyond the use contemplated by Public Resources Code Section 25402.10. All data disclosed pursuant to the regulation should be treated as confidential without further consideration by the CEC as to what it wishes to treat as confidential. To require Publicly Owned Utilities, or building owners with no desire, to declare that customer information is confidential in order for the CEC to make its determination consistent with Section 2505 of Title 20, Division 2, is not reasonable. Existing statutory law clearly recognizes the confidential nature of utility customer information by expressly exempting it from disclosure under the California Public Records Act. The existing provision is correct as a matter of policy—the CEC should treat the data as confidential.

The current language in Section 1684(d) states that:

“... the Energy Commission shall treat the data as confidential consistent with state and federal law.”

The proposed changes in Section 1684(d) state:

“In the event that the Energy Commission accesses energy consumption data submitted pursuant to subdivision (c) of this section, the Energy Commission shall determine whether the data is confidential, in a manner consistent with Section 2505 of this Division. Disclosure of any such records shall be made in a manner consistent with Section 2507 of this Division.”

This is similar to the changes in Section 1683 which imply that it is optional to treat customer energy use data as confidential. The CEC provides no justification for this change. The proposed changes will give the CEC the authority to determine confidentiality of energy use data even after the utility has indicated that it is confidential. This change may discourage utilities from sharing this information if they know that customer confidentiality may be violated as this data is uploaded to Portfolio Manager and distributed to various parties. LADWP strongly recommends that the language in Section 1684(d) continues to state that “the Energy Commission shall treat the data as confidential, in a manner consistent with state and federal laws”.

CONCLUSION

In closing, LADWP appreciates the opportunity to provide comments on the Notice of Staff Proposed Changes to the Regulations for the Nonresidential Building Energy Use Disclosure Program (also known as the AB 1103 Program). We look forward to continue working with the CEC to help shape legislation that promotes energy efficiency and customer privacy for all California residents and business owners.

Dated: March 06, 2015

Respectfully Submitted,

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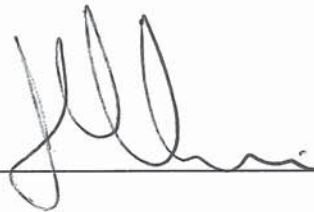
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