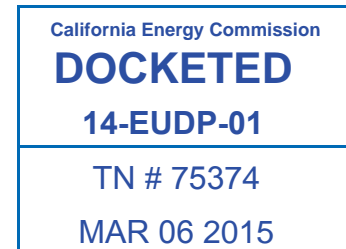


06 March 2014

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



Via Email: docket@energy.ca.gov

Re: Public Comment, Docket No. 14-EUDP-01

To Whom It May Concern:

After the first full year of enforcement, the California Energy Commission is revisiting the language of California's Nonresidential Building Energy Use Disclosure Program – AB 1103. Commercial real estate owners and investors are a pretty savvy group and by continuing to operate under the misperception that they have the access to data, operating capacity or interest in complying with this regulation, the CEC is missing an opportunity to create a compelling business case that could easily increase the AB 1103 compliance rate statewide.

As written and as proposed, owners are required to provide whole-building energy performance metrics based on historical energy use data over which most have no control or ready access. Because AB 1103 disclosures take place before escrow is open or a lease is signed or at the time of an application to refinance, disclosure costs borne exclusively by the owner can reduce the investment yield of the asset or increase rental rates to recoup disclosure costs.

While I appreciate the fact that the CEC is now privy to some first-hand knowledge of the challenge owners face when attempting to comply with AB 1103, I believe that the suggested edits presented at the Staff Workshop, Friday, February 20, 2015, do not address the more substantial impediments faced by the compliance-shy owners and the recalcitrant and non-cooperative utility companies. In addition to the comments I made remotely to the above referenced gathering, I would like to add a few additional comments here for your consideration.

1. Let Energy Star® Portfolio Manager® do what Energy Star® Portfolio Manager® is designed to do – conduct regular, on-going, long term and comparative analysis of energy use and performance. As written and as proposed, California AB 1103 works against itself by limiting the one-time disclosure to transaction and limiting use of the data collected for compliance for any other purpose. Preparing disclosure reports is costly and time consuming and the one-time transactional disclosure discourages full and cooperative compliance and prevents building a valuable data legacy for a building that would further serve the intent of AB 1103.
2. Let California AB 1103 do what California AB 1103 was designed to do – bring energy use transparency to the commercial real estate market in order to reward and drive value recognition of more energy efficient commercial real estate. Do not look to the existing commercial real estate regulatory structure or established business practices which require other pro-forma disclosures too late in the process to effectively impact purchase, lease or refinancing decisions. Change the name of the regulation from Nonresidential Building Energy Use Disclosure Program to Nonresidential Building Energy Efficiency Performance Reporting Program to differentiate between current industry practice of requesting and providing accessible utility bills or referring to a cost per square foot benchmark to craft an energy expense projection; energy use is not the same as energy efficiency.



3. For AB 1103 to succeed, the market needs data – not dilution. Postpone any consideration of substantive revisions or reductions of AB 1103 until there is enough market data to support proposed alterations. Remove and refrain from including any specific regulatory language that may restrict functionality, limit access or prevent optimal use of Portfolio Manager® as the tool continues to develop. Remove and refrain from redefining terms of a commercial real estate transaction for purposes of AB 1103 compliance in order to avoid market confusion and further differentiate a reporting process from a disclosure.
4. AB 1103 must strive to create a business environment that facilitates the movement of energy use data and energy efficiency capital within the commercial real estate market – especially between owners and occupiers. Properly weigh data privacy concerns against the potential upside of full transparency and engagement. A persuasive business model that acknowledges the public good inherent in more responsible energy use and resource management can create value for both investors and occupiers.

AB 1103 presents many challenges – and many opportunities - on both the implementation side and the compliance side. A number of challenges manifest when the language of the regulation attempts to repurpose and restate the operating and methodological requirements of Energy Star® Portfolio Manager®. Trying to match the well-established terminology of the trade developed over many years and resulting from much legal and regulatory intervention, creates market confusion by mistakenly positioning AB 1103 as a real estate law. Nothing like AB 1103 has been attempted in the United States and the tenuous traction gained to date should be regarded as precarious until firm-footing can be found. By creating a more persuasive business case focused on creating value for both investors and occupiers, privacy concerns are minimized, key stakeholder engagement expanded and the mission and purpose of AB 1103 can materialize.

While not part of the above referenced Docket Number, I want to again express my opposition to the emergency postponement of the 5,000-10,000 square foot threshold implementation schedule and to the consideration of a permanent exclusion for this category of properties based on size. The Energy Star® Portfolio Manager® tool was designed to provide accurate comparative performance metrics for properties as small as 5,000 square feet for most property types, and as small as 1,000 square feet for others. Clearly, the EPA and the Energy Star® program see value in benchmarking energy performance of even some of the smallest buildings in the country.

Thank you in advance for receiving and considering these comments. As always, I remain committed to this process and look forward to continued dialogue and interactions. Please reach me directly for any response or follow up questions.

Sincerely,



Randy J. Walsh, CCIM, LEED AP
Chief Efficiency Optimizer