



Tamara Rasberry
Manager
State Regulatory Affairs

925 L Street, Suite 650
Sacramento, CA 95814

(916) 492-4252
trasberry@semprautilities.com

March 6, 2015

California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

RE: Comments on February 20, 2015 Staff Workshop Regarding the Proposed Changes to Regulations for the Nonresidential Building Energy Use Disclosure Program (also known as the AB 1103 Program) Sections 1680-1685

Dear Commissioners:

San Diego Gas & Electric Company and Southern California Gas Company (the Sempra Utilities) appreciate the opportunity to provide the following comments on the “Proposed Changes to Regulations for the Nonresidential Building Energy Use Disclosure Program” presented by Commission Staff at its February 20, 2015 workshop.

I. INTRODUCTION

At the February 20th workshop, the staff proposed revisions to most of the AB1103 regulations, participants, including updates to Sections 1683 and 1684 regarding disclosures of energy use data and data releases by utilities.¹ The Sempra Utilities’ comments will focus on the proposed revisions to these sections (hereinafter, the “Proposed Revisions”):

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. 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. At the time of disclosure as specified in Section 1683(a), the building owner or operator shall notify the prospective buyer or lessee of this obligation.

¹ “National Building Energy Use Disclosure Program”, included in the Workshop Notice.

Rationale: Reinforces the Energy Commission’s position that this is a private disclosure between two parties; and makes both parties explicitly aware of their obligations.

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. 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. ~~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.~~

Rationale: The Energy Commission is requiring the utilities to aggregate energy use data for all meters into a single ‘virtual meter’ before uploading into Portfolio Manager. However, there is no threshold for the number of meters that a building must have to be subjected to aggregation. Public Resources Code Section 25402.10 requires energy use data to be disclosed between private parties during a transaction.

II. DISCUSSION

The Sempra Utilities understand the importance of benchmarking and strongly support the CEC’s efforts to increase the energy efficiency of commercial and residential buildings in California. We also recognize that benchmarking, as required under AB1103, cannot take place if building owners do not have access to the building’s energy use data. Furthermore, we appreciate that the proposed revisions from the Commission have been put forth in order to address confidentiality concerns raised by the Sempra Utilities and other investor owned utilities (“IOUs”) in California with respect to the provision of tenant energy use data to a building owner.

Unfortunately, the Proposed Revisions do not address the Sempra Utilities’ concerns regarding our obligation to ensure the confidentiality of customer energy use data, as required by California Public Utilities Code section 8380 and Public Resources Code section 25402.10, as described in more detail below.

A. Proposed Revisions to Section 1683 concerning Civil Code section 1798.98

The Proposed Revisions to Section 1683 of the AB1103 regulations require the building owner or operator to notify a prospective lessee or purchaser of the requirements of Civil Code section 1798.98, which prohibits a business from disclosing another party’s energy consumption data without that party’s express consent.²

The Sempra Utilities appreciate the CEC for addressing customers’ confidentiality concerns by requiring the building owner to notify any prospective lessee or purchaser of the requirements

² Cal. Civ. Code section 1798.98(b).

of Civil Code 1798.98. Compliance with Civil Code 1798.98 is a requirement for all businesses in California, including prospective buyers or lessees. However, Civil Code 1798.98 does not substitute for or negate a utility's obligation to protect the confidentiality of the customer pursuant to PUC 8380 and PRC 25402.10, as discussed in greater depth below.

B. Proposed Revisions to Section 1684 in light of Public Utilities Code Section 8380 and Public Resources Code Section 25402.10:

California Public Utilities Code section 8380(b)(1) states that “an electric corporation or gas corporation shall not share, disclose or otherwise make accessible to any third party a customer’s electrical or gas consumption data, except as provided in subdivision (e) or upon consent of the customer (emphasis added).” Below, we address two of the relevant exceptions to this rule provided in subdivision (e), specifically the exception for the release of aggregated data in subdivision (e)(1), and the exception for the release of data pursuant to state or federal law in subdivision (e)(3).

1. PUC 8380(e)(1)

Subdivision (e)(1) of PUC 8380 allows the disclosure of aggregated electrical or gas consumption data for analysis, reporting, or program management if all information has been removed regarding the individual identity of a customer. Although this subsection permits an IOU to share a customer’s consumption data if it is appropriately aggregated, the majority of all tenant-occupied buildings for which benchmarking is required under the AB1103 Program in the Sempra Utilities’ service territory do not contain enough tenants to provide a level of aggregation sufficient to disguise the identity of the individual customers. In fact, most contain only one or two tenants – a level of aggregation insufficient to disguise the identity of the individual customers.

The Proposed Revisions to Section 1684 requiring multiple customer accounts to be aggregated into a virtual meter for each fuel type does not satisfy the requirements of PUC 8380(e)(1) because the individual identity of the tenants would still be obvious in many cases. The California Public Utilities Commission (“CPUC”) has relied for many years on a “15/15” aggregation standard (15 or more customers and no single customer constitutes more than 15% of total consumption) to determine whether aggregation satisfies the requirements of PUC 8380(e)(1). The Sempra Utilities acknowledge that the CPUC declined to set an aggregation standard for AB1103 compliance in Decision 14-05-016,³ and that the CEC chose not to set a specific aggregation level under the Proposed Revisions to Section 1684. Nevertheless, as the majority of the Sempra Utilities’ tenant-occupied buildings have only one or two tenants, there would be no actual aggregation in such instances, therefore the subdivision (e)(1) exception to the requirements of PUC 8380(b) would not be met.

2. PUC 8380 (e)(3)

Subdivision (e)(3) of PUC 8380 also permits an IOU to disclose customer consumption data if such disclosure is required or permitted under state or federal law or by an order of the CPUC. Public Resources Code Sec. 25402.10(b) requires an electric or gas utility to upload all of the energy consumption data for the account(s) specified for a building for benchmarking

³ Page 64, *Order Instituting Rulemaking to Consider Smart Grid Technologies Pursuant to Federal Legislation and on the Commission’s own Motion to Actively Guide Policy in California’s Development of a Smart Grid System*, CPUC D. 14-05-016, issued May 5, 2014.

purposes. This directive would be sufficient to allow the utilities to disclose the tenants' consumption information for AB1103 purposes, except that the statute also requires the utility to upload the data "in a manner that preserves the confidentiality of the customer (emphasis added)." As discussed in our analysis of PUC 8380(e)(1) above, the AB 1103 regulations, in their existing versions and as revised, do not preserve the confidentiality of the customer, as they offer no method to disguise the identity of a customer when the level of data aggregation available is too minimal for functionality, especially in the case of a single tenant building.

The Sempra Utilities remain concerned that the release of customer consumption data to a building owner without an appropriate level of aggregation would be a violation of PUC 8380, as such release would fail to preserve the confidentiality of the customer as required by Public Resources Code section 25402.10. If a utility is asked to provide a building owner with its tenants' consumption information for a building with one or a small number of tenants, or for a building where one of the tenants uses a significant portion of the energy for the building, the utility can only remain in compliance with PUC 8380 and AB1103 by requesting customer consent, per the language of PUC 8380(b).

The Proposed Revisions suggest the following be added to Section 1684: "Utilities and energy providers shall not require tenant consent to provide energy use data to the building owner or operator." Although this new language appears to be intended to provide utilities with additional regulatory authority to rely upon to exercise the statutory exception available under subdivision (e)(3), the Sempra Utilities are concerned that this language will actually have the opposite effect, as the requirement to "preserve the confidentiality of the customer" in PRC 25402.10(b) remains in effect, and the utilities have no other method of preserving the customer's confidentiality at this time.

C. Recommendations

Requiring tenant authorization when adequate aggregation levels cannot be achieved to preserve the confidentiality of tenant customers remains the most reliable means available to utilities to ensure a) tenant customers are aware that their information is being shared, and b) compliance with PUC 8380(b). However, the Sempra Utilities understand the difficulties that arise for building owners when a tenant refuses to provide consent, which may prevent the building owner from performing an accurate benchmarking analysis.

In order to resolve this situation in a way that is beneficial for the CEC, the utilities, utility customers and building owners, the Sempra Utilities recommend that the CEC further investigate other options to address these issues rather than adopt the Proposed Revisions to Section 1684, such as:

- (1) streamlining customer authorization procedures between building owners and tenants;
- (2) permitting building owners to report benchmarking without each tenant's information, if some tenants refuse to provide authorization;
- (3) requiring tenants to perform their own benchmarking analysis; or

- (4) requesting the California Legislature amend AB1103 to require the local utilities to analyze the building's total consumption data and provide benchmarking information to the building owner, so no transfer of confidential customer information takes place.⁴

California's regulatory regime generally requires customer consent or the protection of the identity of the customer before allowing the release of energy consumption information. The Sempra Utilities urge the CEC to consider the sensitivities of some commercial customers who wish to keep their electric and gas consumption information private for valid business purposes.

III. CONCLUSION

The Sempra Utilities recognize and appreciate the leadership of the CEC and the efforts of all stakeholders towards the development of a comprehensive plan to successfully implement AB1103. The Sempra Utilities look forward to continuing our participation in the implementation and refinement of the Program.

Respectfully submitted,

Tamara Raspberry

⁴ As the Commission is aware, energy consumption data is not the only data necessary to benchmark a building. For the utilities to perform benchmarking internally, changes would need to be made to the AB1103 program to provide the utilities with enough information to perform the analysis. There are also other regulatory and administrative issues that would need to be addressed if utilities become the entity responsible for benchmarking.