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Comments on Goal 2.1 “Data Drives Informed Decisions” of the Existing Buildings Energy Efficiency Draft Action Plan

Additional submitted attachment is included below.

**Comments of the Natural Resources Defense Council (NRDC)
on Goal 2.1 “Data Drives Informed Decisions” of the
Existing Buildings Energy Efficiency Draft Action Plan**

15-IEPR-05

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I. Introduction

The Natural Resources Defense Council (NRDC) respectfully submits these comments on the data-related strategies outlined in the California Energy Commission’s Existing Buildings Energy Efficiency Action Plan, dated March 2015 (the “Action Plan”).

NRDC is a non-profit membership organization, representing nearly 80,000 California members with an interest in receiving affordable energy services and reducing the environmental impact of California’s energy consumption.

We applaud and support the California Energy Commission’s (hereafter Commission or CEC) focus on assuring utilities, customers, building owners, and other participants have the information needed to accomplish energy efficiency goals. We appreciate this opportunity to provide the Commission with our comments.

II. Discussion and Summary

Information is the lifeblood of financial decisions. In order for building owners to manage the energy use in their buildings and make investments to improve the energy efficiency of their buildings, they must be able to obtain reliable information about their buildings’ energy usage, in a timely manner, and in a form and format that works with modern systems and tools.

We focus our Comments on the importance of assuring building owners – residential and commercial – can obtain energy usage information needed to make efficiency decisions. The California Legislature, recognizing the importance of energy usage information, passed AB 1103 in 2007 requiring utilities to deliver whole-building usage information (WBUI) to building owners upon request (codified as Cal. Resources Code Section 25402.10(b)). The requirements of AB 1103 have not yet been implemented by many California utilities, in particular the

requirement to deliver WBUI upon request of the owner. The CEC currently has an open proceeding to update its implementing rules.

The Action Plan recognizes the importance of building owner access to energy usage information, and we applaud the Commission for this. We highlight that access to building-level data is requisite to the success of any benchmarking mandates or ordinances, as evidenced by AB 1103. It is also critical to energy investments in *all* buildings, regardless of whether they are required to comply with mandatory benchmarking requirements. We accordingly believe the Action Plan would benefit from the following additional strategies and revisions, summarized in Tables 1 and 2 below, and elaborated on in the sections below.

TABLE 1 – STRATEGY ADDITIONS

Strategy	Metrics/Timeframe	Lead/Partners
2.1.11 Data for Building Owner Usage - Implementing Guidance. Provide utilities with specific guidance on delivery of building-related utility usage information to all building owners.	2015 and annual update	CEC, CPUC, all utilities
2.1.12 Data for Building Owner Usage - Model Practices for Utility Delivery of Energy Usage Information to Building Owners. Develop and publish model policy for utilities to deliver building-related utility usage information to building owners.	2015 and annual update	CEC, CPUC, all utilities
2.1.13 Data for Building Owner Usage - Regulatory Certainty for Utilities on Customer Privacy. Issue a decision or report clarifying utility obligations to deliver WBUI to building owners under a reasonable policy to protect customer information from unauthorized disclosure.	2015	CEC, CPUC, all utilities
2.1.14 Reduce Transactions Costs to Obtain Usage Information. Encourage utilities to implement systems and policies to deliver information in a reliable and streamlined manner.	2015	CEC, CPUC, all utilities

TABLE 2 – SUGGESTED REVISIONS

(deletions in ~~strickthrough~~ and new language is underlined)

Strategy
<p>2.1 Data for Improved Decisions: Ensure that Californians (consumers, industry, <u>building owners</u>, policy makers, and professionals), have access to appropriate data sources to make informed decisions related to energy efficiency.</p> <p style="padding-left: 40px;">2.1.3 Easy-to-Access Data and Analytics: Provide very simple, standardized access to customers and their chosen service providers so that they can easily understand their energy use and assess their needs. Develop solutions for multi-family <u>buildings</u>, particularly low income, <u>and commercial buildings, including provision of regular and frequent building-level usage reports.</u></p> <p>2.1.7 Integrated Database for Low-Income Programs: Integrate the WAP, <u>LIHEAP, LIWP,</u> and Utility LEE <u>ESA</u> databases as a step toward alignment and streamlined delivery of energy efficiency services to low-income Californians.</p>

III. Comments

1. **Strategy 2.1 should include a new action (e.g., 2.1.11) for the CEC to provide utilities with specific implementing guidance for the delivery of energy usage information to all building owners.**

The CEC has indicated in the proceeding related to AB 1103 (Docket No. 14-EUDP-01) that it will provide utilities with guidance on delivering WBUI for certain commercial buildings. The Commission should use the authority it has under AB 758 and the Warren-Alquist Act to provide utilities with implementing guidance for delivering energy usage information more broadly to building owners for all large buildings, at any time requested by the building owner, and covering both whole-building usage information (WBUI) as well as individual customer usage information.

Recommended Strategy Addition:

Strategy	Metrics/Timeframe	Lead/Partners
2.1.11 Data for Building Owner Usage -- Implementing Guidance. Provide utilities with	2015 and annual update	CEC, CPUC, all utilities

specific guidance on delivery of building-related utility usage information to building owners.		
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2. In connection with any implementing guidance the CEC can provide utilities, the CEC should provide model practices for utilities to deliver energy usage information to building owners, including the elements described in Attachment 1.

We have included for Commission consideration a draft of certain ingredients to include in any such model policy related to the delivery of energy usage information to building owners (see Attachment 1 to these comments). Model policies can help ensure consistency among utilities—investor and publicly-owned—and sectors—multifamily and commercial. This consistency is particularly important given that building owners and developers often have portfolios of buildings that span numerous utility territories, and there are currently multiple forums with potential to rule on data access issues.¹

Recommended Strategy Addition:

Strategy	Metrics/Timeframe	Lead/Partners
2.1.12 Data for Building Owner Usage - Model Practices for Utility Delivery of Energy Usage Information to Building Owners. Develop and publish model policy for utilities to deliver building-related utility usage information to building owners.	2015 and annual update	CEC, CPUC, all utilities

3. Strategy 2.1 does not state how to accomplish the goal of utilities delivering whole-building usage information to building owners, which is the first milestone listed in the Action Plan.

The Action Plan’s first Milestone and Objective (page 36) is: “By 2016, all California utilities provide whole building energy use data to building owners and their agents upon request.” We concur with the Commission that this is a very high priority. Yet, as noted in the Action Plan, “most utilities [currently] do not offer even basic whole-building aggregation

¹ For example, the CEC is updating its implementing regulations for AB 1103 (Docket No. 14-EUDP-01) and the CPUC has within scope of its general energy efficiency proceeding (Phase II of R. 13-11-005) a joint proposal to resolve access to WBUI for multifamily building owners.

services.” (Action Plan, page 58). The Action Plan does not state how the Commission expects to accomplish this important goal, especially for multi-tenant, multi-meter buildings, both commercial and residential.

We encourage the Commission to identify specific actions it will take, and we include two specific actions in Sections 4 and 5 below.

4. Strategy 2.1 should include a mechanism for the CEC to assure utilities have greater regulatory certainty about delivering whole-building usage information to building owners.

California utilities and other stakeholders have grappled for several years with proposals to deliver WBUI to building owners for multi-tenant, multi-meter buildings. The process has been poorly clouded by speculation that a building owner could use WBUI to discern usage information about an included customer (a tenant in the building). This has created regulatory and legal uncertainty because utilities also have obligations related to customer confidentiality.

As part of Strategy 2.1, the Commission should include a process to provide greater regulatory certainty and clarity on utility practices for delivering WBUI to building owners for all buildings (including buildings not covered by Commission action implementing AB 1103).

One option is for the Commission to plan for a rulemaking, decision, or report with at least two specific findings of fact and conclusions of law on the subject, including:

i) A conclusion of law that utilities are permitted to deliver WBUI to building owners subject to reasonable standards to preserve customer information from realistic risks of unauthorized disclosure.

AB 1103 requires utilities to deliver WBUI upon request for non-residential buildings, and to do so “in a manner that preserves the confidentiality of the customer.” (See Pub. Resources Code Section 25402.10(b)). Other statutes require utilities to maintain customer usage information in a confidential manner. (See e.g., Cal. Pub. Utility Code Section 8380 and 8381, and see Cal. Civil Code Section 1798.98, and Cal. Gov. Code Section 6254.16). Comments to the CEC and California Public Utilities Commission (CPUC) suggest utilities interpret these legislative directives to mean they may not deliver WBUI to building owners if there is any slight, highly remote, or *de minimis* risk of unauthorized disclosure to the building owner. This is incorrect.

Our legal analysis strongly supports the conclusion that utilities, under applicable California and federal law, are on solid legal ground to implement a reasonable policy that

protects customer information against realistic risks of unauthorized disclosure. Utilities are not obligated to assure information sharing policies protect against every remote or *de minimis* risk of unauthorized disclosure. Further, the statutes referenced above generally apply to individual, not aggregated, customer usage information, and provide for specific exemptions.

We believe the Commission, in collaboration with the CPUC and other partners, would come to the same conclusion.

ii) A finding of fact that utility delivery of WBUI composed at least of two or more active tenants' meters does not present any realistic risks of unauthorized disclosure of customer information to the building owner.

We have not found any evidence to suggest the risks of unauthorized disclosure are anything but highly remote. We believe the Commission, in collaboration with the CPUC and other partners, would come to the same conclusion. It is worth noting that even if delivering WBUI to building owners carries some risk of unauthorized disclosure of an included customer's usage, other protective terms and conditions can be used to reach a reasonable outcome, and any risk may be *de minimis* since the owner already has direct access to tenant meters on site.

Recommended Strategy Addition:

Strategy	Metrics/Timeframe	Lead/Partners
2.1.13 Data for Building Owner Usage - Regulatory Certainty for Utilities on Protecting Customer Privacy. Issue a decision or report clarifying utility obligations to deliver WBUI to building owners under a reasonable policy to protect customer information from unauthorized disclosure.	2015	CEC, CPUC, all utilities

5. The Action Plan should make clear if the Cal. Energy Commission or the CPUC will establish rules on aggregated building level data for different building types and utilities so that all buildings are covered

While utilities currently have statutory authority to provide aggregated whole building energy usage information to building owners, subject to reasonable terms and conditions, they

have so far refused to do so. It is therefore up to the Commissions to require utilities to provide WBUI under associated terms and conditions for all relevant building types.

The Action Plan, as currently proposed at Section 1.2, suggests that benchmarking mandates would be created by the CEC in a new rulemaking/ proceeding (page 45), presumably under the CEC's Warren-Alquist Act authority. These mandates presumably would apply to multifamily and commercial buildings over 50,000 square feet. It is essential that the Commission resolve and rule upon aggregated data access prior to or concurrently with this benchmarking proceeding. Should this be accomplished concurrently with the benchmarking proceeding, all utilities would be required to share information with commercial and multifamily building owners for buildings above 50,000 square feet.

However, numerous buildings fall under this 50,000 square foot threshold and also require WBUI for basic energy management. The CEC will need to establish a separate ruling for this segment of the building sector to ensure utilities share WBUI. We note that the CPUC, in its final Data Decision in R. 08-09-133, specifically deferred to the CEC to rule on data access for all commercial buildings, regardless of their size or need to comply with benchmarking mandates.²

Alternatively, the CPUC can establish a ruling for the major IOUs, as currently proposed in the general energy efficiency proceeding.³ This would still leave out the POUs and commercial buildings. However, the POUs can unilaterally adopt WBUI data-sharing policies at any time, subject to board approval.

Regardless of how the CEC and CPUC divide the work, we emphasize that the solutions be consistent and fully cover:

- Commercial and multifamily residential buildings
- Buildings over and under any set benchmarking threshold, such as 50,000 square feet
- Rules for Investor-owned and Publicly-owned Utilities.

² Use Case 7 in the CPUC's D. 14-05-016 is described as: "Building owners and managers seeking monthly energy consumption by building to conduct building benchmarking analyses pursuant to AB 758 and AB 1103, and publishing aggregate, non-Personally Identifying Results." The CPUC ruled: "The Commission recognizes that implementation of that or any other program pertaining to the Public Resource Code – including handling privacy concerns as appropriate to carry out legislative intent – is the responsibility of the CEC, not this Commission."

³ In its ruling and scoping memo for Phase II of Rulemaking 13-11-005, the CPUC provided that, in regards to multifamily owner access to energy usage data, "interested parties are free to work together to develop a joint proposal to advance for consideration."

6. Strategy 2.1 should include a directive to utilities to implement data-related strategies with attention to reducing transactions costs for the intended users of the information, such as relying on the owner obtaining customer permission in a standard form lease.

It is important to maintain focus on how building owners (and other users) in practice are able to obtain needed information to support energy management and energy efficiency. If obtaining information is costly in terms of time, delays, paper forms, and hassle, the practical value of the information is substantially reduced.

Special attention is warranted for affordable multifamily building owners who need to obtain tenant usage information on a regular basis. A recent letter from the U.S. Secretary of Housing and Urban Development requested utilities to implement better policies on this point because of the need for this usage information to set utility allowances, to assess efficiency improvement projects, and to finance efficiency improvements from utility savings in affordable housing.

We also encourage the Commission to give special attention to ways to improve the permission process for building owners with large numbers of tenants. One option to explore is for the Commission to give utilities authority to rely on customer permission conveyed to the landlord (or building operator) in a standard form lease. The utility would then not be required to manually read and process every individual permission form as a pre-condition of delivering the monthly information to the owner. Another option is to allow utilities to use cost-based fees for certain customer delivery paths that require system expenses.

Recommended Strategy Addition:

Strategy	Metrics/Timeframe	Lead/Partners
<p>2.1.14 Reduce Transactions Costs to Obtain Usage Information. Encourage utilities to implement systems and policies to deliver information in a reliable and streamlined manner.</p>	2015	CEC, CPUC, all utilities

7. At Strategy 2.1.3, utilities should test delivery of regular whole building usage reports to owners and operators of certain large buildings (not just Home Energy Reports).

Many reports and studies strongly suggest that large buildings are operated in a manner that leads to substantial amounts of wasted energy.⁴ For example, chillers run at night in commercial buildings due to simple scheduling errors, or a building is heated early in the morning on a hot summer because the pre-cooling set for cold winter days remained in place, unnoticed.

Better information is an essential ingredient to address these problems. Regular and frequent usage reports for buildings can provide useful intelligence to a building owner or operator about how systems are operating. If proven to work, utilities could potentially offer such services for a cost-based fee. We strongly encourage the Commission to identify better and frequent usage reports as a meaningful data strategy, and accordingly recommend the following addition to section 2.1.3:

2.1.3 Easy-to-Access Data and Analytics: Provide very simple, standardized access to customers and their chosen service providers so that they can easily understand their energy use and assess their needs. Develop solutions for multi-family buildings (particularly low income) and commercial buildings, including provision of regular and frequent building-level usage reports.

8. At Strategy 2.1.7, an integrated database should cover all data from federal, state, and utility low income energy efficiency programs.

We strongly support the need to integrate WAP (Weatherization Assistance Program) with Utility low income energy efficiency program databases. We further recommend that all weatherization programs administered by the California Department of Community Services and Development be included. These programs consist of the Low Income Home Energy Assistance Program (LIHEAP) and the Low-Income Weatherization Program (LIWP), the latter of which is funded through the state's Greenhouse Gas Reduction Fund. We also clarify that the Utility low income efficiency program is currently named the Energy Savings Assistance Program (ESA). We therefore recommend the following revisions to strategy 2.1.7:

⁴ See, for example, reports from the Lawrence Berkeley National Lab on energy information systems, available at: <http://eis.lbl.gov/>; NRDC's Report on Real Time Energy Management, available at: <http://www.nrdc.org/business/casestudies/files/tower-companies-case-study.pdf>; and Duke Energy's Smart Energy Now program: http://beccconference.org/wp-content/uploads/2014/12/presentation_Flory.pdf.

2.1.7 Integrated Database for Low-Income Programs: Integrate the WAP₂, LIHEAP, LIWP, and Utility ~~LEE~~ ESA databases as a step toward alignment and streamlined delivery of energy efficiency services to low-income Californians.

IV. Conclusion

NRDC appreciates the opportunity to offer these comments on the Commission's data-related strategies outlined in the California Energy Commission's Existing Buildings Energy Efficiency Action Plan. Addressing access to building-level data is foundational for efficiency upgrades and the majority of the strategies outlined in the CEC's Action Plan. We urge the Commission to adopt our recommendations, elaborated on above, which provide a framework for addressing building-level data issues for *all* building types and utility service territories in California. Solving data access issues is critical for achieving the state's climate goals, and in particular, the Governor's ambitious energy goal of doubling the amount of energy efficiency savings currently being achieved in order to reduce greenhouse gas emissions.

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Respectfully submitted,



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ATTACHMENT 1

QUESTIONS TO CONSIDER FOR MODEL UTILITY POLICY FOR DELIVERY OF USAGE INFORMATION TO BUILDING OWNERS

- 1. Deliver whole-building usage information (WBUI) to building owners in systematic manner to enable energy management and benchmarking.**
 - a. Are usage reports available in standardized format commonly used by customers (such as Excel CSV file)?
 - b. Are usage reports available to be delivered by email or a standard integration protocol (web services) to tools commonly used by large building owners (such as to EPA's Portfolio Manager)?
 - c. Does the utility map meters and accounts to building addresses so that a building owner can obtain accurate WBUI by providing own account and address?
 - d. Are usage reports available for all building types (e.g., residential, non-residential, government, institutional)?
 - e. Are reports available for monthly, weekly, and daily basis (as permitted by metering infrastructure)?
- 2. When delivering WBUI to building owners, terms and conditions can be used to reasonably protect customer information from unauthorized disclosure.**
 - a. Do building owner requesting WBUI complete an initial registration process in which the utility verifies owner's identity, records the owner's request, owner accepts terms of use?
 - b. How does the utility isolate situations where WBUI conveys a customer's usage information?
 - c. Does the utility deliver a periodic notice to "included customers" explaining the utility delivers a whole building monthly total to the building owner?
- 3. Effective processes for delivery of individual customer usage information with permission.**
 - a. What is the process for a building owner to request and obtain a customer's specific usage information?
 - b. Is it a paper-based process or can the request occur online?
 - c. For landlords with a large number of included tenants/customers, can they obtain customer permission in a standard form lease agreement? Would the utility manually review every lease form?
- 4. Do you charge customers a cost-based fee for use of certain system functions (such as web services, and aggregation of large numbers of meters)?**