

DOCKETED

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**The Untimely, Unfortunate and Unnecessary Demise of California AB 1103
(Nonresidential Building Energy Use Disclosure Program)**

Additional submitted attachment is included below.

09 November 2015

The Honorable Edmund G. Brown, Jr.
Governor
State of California c/o State Capital, Suite 1173
Sacramento, California 95814

RE: The Untimely, Unfortunate and Unnecessary Demise of California AB 1103 (Nonresidential Building Energy Use Disclosure Program) and Action Steps to Restore Trust and Increase Key Stakeholder Engagement in Future Programmatic Decisions.

Dear Governor Brown:

California's continued suffering through record drought reminds us that our relationship with the environment hangs in the balance. As more and more of us take responsibility for our part in restoring our climate to health, the mantra of "Reduce, Reuse and Recycle," is rapidly becoming more than an aspirational bumper sticker. Citizens everywhere are internalizing their concerns for the State's climate and developing a whole new set of personal and environmentally-sensitive values expressed through the creation of new and interesting small business ventures – a key stakeholder group in any energy use disclosure program. But value-driven individuals and their small businesses alone cannot manifest their hopes for a renewed and refreshed planet without the help of our legislative and regulatory institutions.

Within this context, the California Energy Commission's rushed and last minute support of the repeal of AB 1103 during the month of September 2015 is alarming as it is completely out of step with the current values of many Californians and inconsistent with your own energy efficiency goals outlined in your State of the State address in January 2015. The repeal of AB 1103 is in direct opposition to the CEC's mandate to reduce the negative environmental impacts of the commercial building stock in the State of California and has legislatively wasted considerable stakeholder and taxpayer resources already devoted to the implementation and refinement of AB 1103. The negative economic hardships created by the repeal of AB 1103 are already being felt by small business owners throughout the State of California – some of who relied exclusively on AB 1103 compliance projects and are now out of business altogether.

After many years of carrying water for the California Energy Commission in their uninformed and less-than elegant implementation and enforcement of AB 1103, I, along with many other key stakeholders, are shaking our heads in disbelief at this last minute and strategically opportunistic maneuver fashioned by Commissioner McAllister and supported primarily by the California Business Properties Association. Consistent with this unilateral action, I have found my good faith-efforts to collaborate with the California Energy Commission on improving the regulatory language of AB 1103 and expanding market adoption to be ignored, rebuffed and in some cases refused. In fact, during two different public sessions this past year, Commissioner McAllister has reiterated his insistence that, "AB 1103 is not designed to create business for consultants." This may explain the completely unacceptable lack of outreach to me and to my colleagues – all of who are known to the CEC staff and are easily accessible via phone or email – in advance of the amendments to AB 802 that specifically repealed AB 1103 – and negatively impacted many livelihoods. None of us were consulted; we had no opportunity to review the language, consider options, voice opposition or offer support.

The future energy use disclosure program promised in AB 802 should not be considered a replacement for AB 1103. AB 1103 was an early and unique piece of legislation among energy use disclosure programs in the United States in that the language required private disclosure between prospective parties to specified real estate transactions - versus a public disclosure of private operating information. The goal of AB 1103 was to bring energy use transparency to the market by facilitating a "One-to-Many" disclosure by those and to those considering commercial real estate ownership, occupancy or lending decisions. Strategically, from both a regulatory and a programmatic perspective, the language contained in the AB 1103 legislation was simply brilliant as it moved energy efficiency performance information from the operational side to the investment side of the equation. This is not the intention or scope of language included in AB 802 and describing a similar energy use disclosure program proposed in AB 758. Both programs, with different purposes, could remain in effect and work in tandem.

06 November 2015

The Honorable Edmund G. Brown, Jr.

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I realize that reversing the repeal of AB 1103 is highly improbable. But as workshops begin to hammer-out the details of AB 802, my hope is that the California Energy Commission will take extra steps to make a good-faith effort to reach out to the number of energy benchmarking professionals building their practices throughout the State of California and try to rebuild the trust broken by Commissioner McAllister on behalf of the California Energy Commission. I strongly recommend the following:

1. Commission McAllister to publically and satisfactorily explain why AB 1103 compliance consultants were not engaged in the process of repealing AB 1103; to publically apologize for his lack of outreach to this key group of stakeholders; to publically retract his disparaging comments about the role of consultants in AB 1103 compliance requirements; and to publically commit to an open, transparent and productively engaging relationship with this key group of stakeholders.
2. The California Energy Commission to create a formal and recognized working group of benchmarking professionals - a group that receives a level of support from the CEC required to facilitate and foster participation by individuals and small business owners and to which the more technical and programmatic aspects of any commercial building energy use disclosure program in the State of California will be presented for discussion. This group can be advisory, provided that their input is seriously considered in any further decision making process around commercial building energy use disclosure in the State of California.

In my opinion, the implementation of these two recommendations will go a long way to resetting Commissioner McAllister's and the California Energy Commission's relationship with the nascent and growing private business community who only seeks to support him and the California Energy Commission in meeting their stated goals and objectives to help reduce the negative environmental impacts of the commercial building stock in the State of California.

Generally, in any correspondence I send to the California Energy Commission, I specifically state my intention of continued support and full participation in the process of bringing AB 1103 to the market, while conditioning any critical comments as reflecting a "working disagreement" with the CEC. While the spirit of continued and productive engagement remains, this time I must express my extreme disappointment in recent decisions and register my complete opposition to the recent actions by the CEC.

Thank you for your time and for your assistance in holding the California Energy Commission to a higher level of transparency and stakeholder engagement by which we can all fully participate and benefit.

Sincerely,



Randy J. Walsh, CCIM, LEED AP
Chief Efficiency Optimizer
San Diego Energy Desk

Copy: California Energy Commission, Chairman Robert B. Weisenmiller, Ph.D. (via email: Catherine.Cross@energy.ca.gov)
California Energy Commission, Commissioner Andrew McAllister, Ph.D. (via email: Donna.Parrow@energy.ca.gov)
2015 Rulemaking Proceeding – Docket #15-OIR-04, E-comment