

DOCKETED

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Public Comments: November 12, 2015, Monthly Business Meeting, California Energy Commission

Additional submitted attachment is included below.

Thursday, November 12, 2015

Robert B. Weisenmiller, Ph.D.
Chairman, California Energy Commission
1516 Ninth Street, MS-33
Sacramento, CA 95814

Re: November 12, 2015, Monthly Business Meeting, California Energy Commission
Agenda Item #7: Building Energy Use Benchmarking and Public Disclosure Program

Dear Chairman Weisenmiller:

As a citizen, a taxpayer, a utility ratepayer, a small business owner and a key stakeholder for many years in the development and implementation of the state-wide commercial building energy use disclosure program, I submit the following comments in order to: put forth my complete opposition to the repeal of AB 1103; register my grave concern about the appropriateness of recent actions and decisions by Commissioner McAllister on behalf of the California Energy Commission resulting in repeal of AB 1103 and causing immediate economic hardship to a number of small business owners across the State of California; express my vote of “no-confidence” in the ability of the California Energy Commission to effectively manage any longer our collective resources in bringing to market a viable commercial building energy use disclosure program; and, finally, request the immediate defunding and dismantling of any internal organizational structures devoted to the energy use disclosure programming and the immediate resignation of Commissioner McAllister.

Regarding my complete opposition to the repeal of AB 1103, it's simple - I object. There is no data, analysis or reports that can support any claim that AB 1103 was either a success or a failure. I alone have completed a number of AB 1103 compliance projects over the past year – despite the real or perceived barriers to full compliance. While both the legislative and regulatory language would have benefited from some revisions, rushing the repeal of AB 1103 through the legislative process at the very last minute prior to the end of the last legislative session was unnecessary. For all of the problems that the California Energy Commission purports AB 1103 to have had, that same legislative action could have improved the program, allowed it to continue and run in conjunction with the pending but different disclosure program outlined in AB 758 and potentially resulted in a greater number of building owners understanding the energy performance of their assets. Instead, rather than rising to the challenge of bringing a new and potentially impactful program to the market, the regulation and legislation was more than repealed, it was abandoned. The California Energy Commission has wasted an opportunity, squandered our collective resources and left us without an energy use disclosure program until the promised implementation of a new program in the future of which the details are not yet available. Based on the performance history of the California Energy Commission for the past 8 years, I am prepared for the State of California – once a leader in energy use disclosure regulations – to move to last place and stay there as we may be without an energy use disclosure program for a very long time.

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It is ironic that, while both the replacement Assembly Bill 802 attempts and the repealed Assembly Bill 1103 attempted to bring transparency to the market by requiring the public disclosure of private information, I submit, that in my opinion, through my direct experience and based on my preliminary research into the genesis of this matter, the California Energy Commission has operated unilaterally and in secret, negotiated with special interests outside of the public view and has specifically excluded a group of key stakeholders – with both a personal stake and an economic interest in the outcome – from full and informed participation in deliberations, the results of which are represented by the revised language in AB 802 repealing AB 1103. A strategically opportunistic maneuver, this last ditch legislative feat accomplished by Commissioner McAllister has left the energy efficiency consulting community stunned in disbelief. While a number of us are known to the Commissioner and staff members and are easily reached by phone or email, none of us were consulted; we had no opportunity to review the language, consider options, voice opposition or offer support.

My research continues into this clear violation of the good-faith agreement I have made with the CEC to participate in the refinement of AB 1103 and what is, I believe, to be a breach of the public trust, as I attempt to ascertain if the group of supporters for the passage of AB 802 – a bill that had been in progress since February 2015 – had full and advance knowledge of the last minute revisions repealing AB 1103 and supported passage because the bill included the language to repeal AB 1103 or despite the language including repeal of AB 1103.

This is not a discussion about the merits of energy use disclosure programs or AB 802 versus AB 1103, but it is important to note that the California Energy Commission has been charged with the implementation of AB 1103 since 2007 and for approximately 8 years has failed in these responsibilities. There is a general consensus among energy benchmarking and commercial real estate professionals that the failure of AB 1103 to gain traction in the market is due to the California Energy Commission's: refusal to acknowledge the original spirit and intent of AB 1103; consistent, mistaken, detrimental and repeated reinterpretation of the language of AB 1103; and, very public and extended equivocation on the long-delayed implementation of the regulation.

While a number of other factors worked against a speedy and State-wide embrace of the new regulatory requirements of commercial real estate owners posed by AB 1103, the staff at the California Energy Commission tasked with AB 1103 implementation: lacked – and continues to lack - a basic understanding of the generally-accepted and industry-wide practices of commercial real estate ownership and management – including lease agreements; lacked – and continues to lack - a basic understanding of the business relationship established between energy providers and their customers and the types and methods by which energy use data could be shared; lacked – and continues to lack – a complete and definitive status report of the level of compliance readiness of each of the utilities to share data; and, lacked – and continues to lack - the most basic understanding of the methodology, operation and capabilities of the mandated compliance reporting tool – Energy Star Portfolio Manager.

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For at least 8 years, from the very beginning of discussions focused on drafting the legislation and the subsequent regulations, and even as of today, a number of the major utility companies and a number of smaller energy service providers and associations, expressed and continue to express their concerns that data release obligations imposed under AB 1103 conflicted with already established regulations and protocols designed to preserve the confidentiality of end-user energy use information. Throughout this time, the California Energy Commission has not had the power, the authority or the influence to satisfy these concerns or to negotiate the much needed cooperation by the utilities and energy service providers throughout the State to the degree required to ensure a successful implementation.

Why is this context important? Because the new words in AB 802 related to energy use disclosure substituted for the old words of AB 1103 do not bestow upon the California Energy Commission any additional authority, provide any additional resources, expand their internal knowledge base or guarantee cooperation from the utility companies in providing energy use data. The repeal and replacement language is a distraction and has proven to be a black mark against the California Energy Commission; it underscores the incapacity of the California Energy Commission to fulfill their mandated obligations and adds greater confusion to an already confused marketplace. In fact, at the first pre-rulemaking session held this Tuesday, it was apparent that staff had cleared the board and were starting over completely from scratch in designing a new energy use disclosure program per AB 802.

This far into my comments, two important points must be elucidated:

1. The claim by the California Energy Commission that the repeal of AB 1103 was necessary because the law wasn't working does carry some truth. However, the law wasn't working primarily because the California Energy Commission couldn't make it work, wouldn't make it work, didn't want to make it work or had no interest in making it work.
2. Despite the real or perceived barriers, a number of benchmarking professionals and sustainability consultants across the State were able to provide complete, timely and accurate AB 1103 compliance reports to our clients.

This discussion would not be complete without recognizing the involvement of the California Business Properties Association (CBPA), especially because Matthew Hargrove, Senior Vice President of Governmental Affairs, was a witness in support of Assembly Member William's first introduction of revised language of the bill to the Senate Appropriations committee on September 10, 2015. A well-known, well-regarded and well-respected organization, that capably and with distinction represents the interests of their member organizations, can sometimes, to their credit, be falsely perceived as proxy - representing the interests of all commercial real estate owners. While this organization, through their representative, has been actively involved in the initial formulation of the legislative and regulatory language and has consistently supported the development of AB 1103 – even when that support came with conditions or concerns – their abrupt reversal of their support for AB 1103 and their full support for repeal has sacrificed

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any moral high ground in this matter. This reversal is unexpected as the new law takes away rights to information afforded to commercial real estate owners or occupiers and because rather than a private disclosure under AB 1103, commercial real estate owners will, under AB 802, have to publically disclose potentially sensitive operating data. They have negotiated away two very important protections for commercial real estate owners – the exact type of protections for which commercial real estate owners support organizations like CBPA. At this point in time, I regard the CPBA as neither ally nor enemy in this matter and hope we can work together to restore their damaged credibility.

So where are we now? The manner in which AB 1103 was repealed, the historic inability of the California Energy Commission to fulfill their mandate to bring to market a viable commercial building energy use disclosure program, combined with the secret negotiations and the exclusion of key stakeholders from what should be public deliberations has interjected additional and unnecessary confusion into the marketplace and sown fear and distrust in the hearts and minds of energy benchmarking and sustainability professionals throughout the State of California. (First question: Why was AB 1103 repealed? Second question: How was AB 1103 repealed? Third Question: Can I continue to profitably operate a sustainable business in such a volatile marketplace?)

I along with a few other colleagues have begun a drought-tolerant-native-species grass-roots campaign to inform other energy benchmarking and sustainability professionals around the State of recent developments, to encourage their direct communication with the CEC of the negative economic impacts they are beginning to realize now that the demise of AB 1103 has been announced, and to gauge their level of interest in supporting a formal complaint against the California Energy Commission in order to reinforce our collective expectations of trust, transparency and engagement with stakeholders and the general public by our elected or appointed officials.

In the meantime, Chairman Weisenmiller, I realize that restoring AB 1103 is highly improbable. But as details behind recent developments come to light and 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 in support of Governor Brown's goals and objectives to reduce environmental impacts and to and try to rebuild the trust broken by Commission McAllister in his leadership within the California Energy Commission. To my requests outlined at the beginning of this communication, I add the following recommendations:

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 previous and public 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.

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2. Release the supporting documents on which the California Energy Commission based the decision to propose the repeal of AB 1103, as well as any other materials submitted to Assembly Member Das Williams that presents the full scope of information provided to him and on which he based his decision to introduce the revised language to AB 802. Please also include any analysis or written documentation provided to the CEC by the CBPA that quantifies the reported difficulties and impacts faced by their members in trying to comply with AB 1103.
3. 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 three additional recommendations will go a long way to resetting the deteriorating relationships inspired by Commissioner McAllister's actions and may begin to reveal an opportunity by which the California Energy Commission can help offset or mitigate the direct economic damages caused to the nascent and growing private business community who only seek to support the California Energy Commission in meeting their stated goals and objectives of reducing the negative environmental impacts of the commercial building stock in the State of California.

Thank you for your time and for your assistance in committing 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

Copy: Governor Edmund G. Brown
Assembly Member Das Williams