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California Housing Partnership Corporation Comments on Rulemaking Scoping Questions for Building Energy Use Benchmarking and Public Disclosure (AB 802)

Additional submitted attachment is included below.



December 31, 2015

California Energy Commission
1516 Ninth Street
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Subject: Docket Number: 15-OIR-05

California Housing Partnership Corporation Comments on Rulemaking Scoping Questions for Building Energy Use Benchmarking and Public Disclosure (AB 802)

The [California Housing Partnership Corporation](#) (CHPC) appreciates the opportunity to provide comments on the design and implementation of the California Energy Commission's Rulemaking Scoping Questions for Building Energy Use Benchmarking and Public Disclosure (AB 802). Since our incorporation by the State of California in 1988, CHPC has helped hundreds of government and nonprofit housing agencies leverage more than \$6 billion in private and public financing to preserve and create more than 25,000 affordable homes for lower income households in California. CHPC is recognized as one of the leading experts on affordable housing finance and policy in the country.

In 2010, in recognition of the key role that utility and water costs play in the long-term financial feasibility of operating affordable housing developments, CHPC created the [Green Energy Rental Home Energy Efficiency Network \(GREEN\)](#), a coalition of over 80 affordable housing, environmental, and energy efficiency organizations working to increase access to energy efficiency resources for multifamily rental properties in California, and ensure that publicly-assisted properties serving the state's lowest-income households receive an equitable distribution of these resources.

CHPC's comments cover the following topics:

- Specifies why multifamily low income property owners need access to both *whole building* and *tenant-specific* data.
- Provides recommendations in response to the CEC's Rulemaking Scoping Questions.

Why do Multifamily Low Income Property Owners Need Access to Whole Building Data?

Consistent access to accurate energy usage data is both a fundamental need for operating publicly supported rental housing serving low-income households and a transformative tool for reducing energy consumption for all multifamily properties. Access to consistent and accurate

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energy use data improves audit accuracy and enables building owners to target the most cost effective energy upgrades, thus ensuring the long-term sustainability and affordability of these properties. Further, data is becoming a prerequisite for participation in many federal and state energy efficiency and renewable incentive programs in order to establish a baseline against which realized savings can be measured.

The following represents a few of many reasons access to monthly energy usage information is necessary:

1. **To reach mandated greenhouse gas emission and energy use reduction goals.** The ability of property owners as well as local governments to contribute to the state's greenhouse gas (GHG) reduction goals under AB 32, AB 758 and more recently SB 32, is to a large degree contingent upon having access to this data. Without it, it will be difficult if not impossible to quantify GHG reductions accurately.
2. **To achieve energy efficiency across multifamily portfolios, qualify for federal and state incentive programs and meet capital planning requirements.** Publically supported affordable rental housing properties have restricted cash flows. Unlike market rate housing and commercial properties, rents in these properties are set based on household income levels and cannot increase to offset rising operational expenses, such as energy costs. Energy costs have become critical to the ability of the owners of these properties and their government regulators to preserve them over the long term. In response to this economic reality, the use of energy management tools and techniques is rapidly growing in the multifamily affordable rental sector as a way to decide which properties to target in a portfolio to retrofit with the limited resources available and to identify maintenance issues that could be leading to excess energy and water use.

Better multifamily data not only helps the owner identify retrofit opportunities, it is also a critical component of improving energy efficiency projections in multifamily energy audits. Without good baseline data, even the best and most comprehensive energy audit will not be able to make accurate projections about which measures will be most effective and the scale of their impact. This lack of predictability is also a barrier to energy efficiency finance, since lenders do not want to invest in this market until the savings projections are reliable enough to lend against.

As one example, the U.S. Department of Energy's [Better Buildings Challenge \(BBC\)](#) was expanded in 2013 to owners of affordable multifamily rental properties committing to reduce energy consumption by at least 20 percent by 2020. One-third of the participants are based in California or have substantial housing assets in the state. However, the current lack of access to data for these buildings in California prohibits BBC owners from benefitting from BBC incentives. Further, many multifamily owners have cited lack of data access as their primary barrier to participating in DOE's BBC.

Specific Recommendation: The CEC should require that utilities provide owners of affordable multifamily rental properties with regular access to aggregated property-wide energy usage data in a form that can be downloaded, analyzed, and tracked in U.S. EPA Portfolio Manager.

Why do Multifamily Low Income Property Owners Need Access to Tenant Data?

While access to whole building energy usage data will provide significant benefits, most owners will continue to need more granular data on energy usage at their properties in order to make the next level of efficiency improvements cost effective. In order to do this, they must have authorized access to tenant-specific data. Unfortunately, owners attempting to obtain this information routinely encounter a range of inconsistent utility protocols and practices with respect to obtaining tenant and utility consent. In the event that owners do gather permissions, there is no way to receive utility data on a monthly, ongoing basis packaged by property. Further, the data is often not provided in a format that can be uploaded to energy management software.¹

Streamlined access to tenant data is essential for two major reasons: (1) owners need more granular data on energy usage in order to make the next level of efficiency improvements cost effective and ensure long-term housing affordability; and (2) because it is required by federal and state housing regulations. Tenant payments for both housing and utility costs are capped by law in federally- and state-funded affordable housing at 30 percent of the tenant's income (or 30% of the tenant's income bracket in the case of Low Income Housing Tax Credit properties).

To comply with federal and state law, owners must provide low-income households that make direct payments to utilities for energy and/or water with a *Utility Allowance* that reflects the average utility consumption and costs paid. Pursuant to federal and state requirements, Utility Allowances must be reviewed annually and, if necessary, adjusted. If periodic adjustments to Utility Allowances are not made, tenants will end up paying a greater *Total Tenant Payment* than is legally permissible. The U.S. Department of Housing and Urban Development [requires building owners to collect a sample size of tenant energy data](#) in order to conduct accurate Utility Allowance Analyses. This data will also benefit low-income tenants by enabling more accurate Utility Allowance estimates.

Specific Recommendation: The CEC should require utilities to make tenant-specific energy data available and accessible to owners of federally and state regulated multifamily affordable rental properties with a permission protocol that is realistic and workable (from the owner perspective) and that facilitates compliance with federal and state Utility Allowance requirements.

Specific Recommendations in Response to CEC Rulemaking Scoping Questions

The following are CHPC's responses to CEC's questions regarding four main issues pertaining to the design of the forthcoming Building Energy Use and Benchmarking and Public Disclosure (AB 802) proceeding:

- 1. The CEC should address whole building data access tenant-specific data components of AB 802 separately.**

¹ Once owners receive data, there is a lack of consistency regarding how the accounts and files are linked together. For example, the tenant usage data for one property might come in separate batches at separate times. One utility only delivers data in PDF, which creates barriers to electronically uploading data into benchmarking software.

AB 802 provides that the Energy Commission may adopt regulations prescribing how utilities shall either obtain customers' permission or determine a building owner has obtained customers' permission to receive aggregated or individual customer usage information. As previously described, property owners of multifamily housing currently have no consistent way of determining historic energy usage for a property because of difficulties obtaining both *anonymized and aggregated whole-building data* and *individual tenant data*. These barriers impede effective energy management and prevent the broader benchmarking efforts needed to support longer-term energy financing objectives. Both types of multifamily data needs raise a different set of questions that should be addressed separately within the scope of the AB 802 proceeding. The California Housing Partnership therefore encourages the Energy Commission to include the following provisions to streamline the authorized tenant-consent path for utility data within the scope of its AB 802 regulations. **Topics we recommend be included within the scope of regulations are noted in bold, with our specific recommendations included under each heading.**

a. Provide Guidance on Owner/ Third Party Authorization Process

- Provide an option to request continuous monthly data feeds or one-time data drop. Specify how often a building owner has to request the provision of this data (ideally once).
- Establish a mechanism to easily designate a third party to receive information, such as energy auditors or building managers.
- Direct utilities to use a standard authorization form for owners to request data so that owners of properties in multiple utility territories can use a single form and consistent process.

b. Establish a streamlined process through which owners can obtain individual usage information (not ABUI).

Obtaining tenant consent for utility information can be exceedingly difficult under current processes, especially for larger properties and developers who have buildings in numerous utility service territories. We recommend the Energy Commission issue regulations to help streamline this process to the greatest extent possible, including by:

- Issuing guidelines requiring utilities to establish and accept electronic consent from tenants, with an option for paper compliance where necessary.
- Specify required delivery formats, specifically Excel CSV file and Portfolio Manager.
- Specify data fields utilities must provide upon request.
- Specifically allowing the use of lease agreements to establish tenant consent
 - Specify pre-approved language, which utilities can accept as consent
 - Identify whether a utility has to review individual lease clauses
 - Issue general guidance authorizing utilities to accept consent via lease agreements so long as the intent is clear.

c. Establish Deadlines for Utility Provision of Data

Establish a minimum date by which utilities must share the information. Without specific deadlines, documented instances where building owners who obtained tenant consent have waited over a year before receiving data.² We recommend a two- to four-week maximum turn over time to be consistent with provision of data.

2. The CEC should use authority under AB 802 to provide owners of federally and state regulated affordable rental properties with streamlined access to tenant-specific data with tenant consent.

While access to whole building energy usage data will provide significant benefits, many building owners will continue to seek a more granular picture of energy usage at their properties by securing authorized access to tenant-specific data. Owners use tenant data for a range of reasons, including: 1) tracking and verifying energy savings, 2) targeting energy efficiency upgrades, 3) calculating utility allowances at deed-restricted, low-income housing properties (now required as part of HUD guidance), and 4) participating in grant and incentive programs, especially for low-income housing owners. Currently, owners seeking access to tenant energy data encounter a range of piecemeal utility protocols and practices, and inconsistencies in the format and delivery of tenant data. Such barriers impede effective energy management and prevent compliance with federal policies around setting utility allowances.

3. For owners seeking access to both tenant-specific and whole building energy usage data, coordinate and streamline verification and data delivery processes.

Some building owners will want access to both WBUI and tenant-specific data, which is currently available to owners if they procure tenant consent. We recommend the Energy Commission require utilities to offer one form or authorization process for both aggregated and tenant-specific data requests so that these two pathways do not become duplicative for owners.

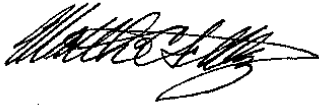
4. Provide owners and operators of multifamily affordable rental properties with a three-year period to comply with AB 802 benchmarking reporting requirements to ensure that there is sufficient time to consult and coordinate with HUD and state housing agencies.

CHPC recommends a three-year phase-in period for affordable multifamily properties. Because these properties operate in a unique regulatory environment and large segments of this market have not implemented energy management programs, a longer phase in time may be needed. In this regard, the Energy Commission should consult and coordinate with the U.S. Department of Housing and Urban Development, the U.S Department of Agriculture Office of Rural Development , and the California Tax Credit Allocation Committee on appropriate phase-in strategies.

² *Data Access Challenges: Owner Testimonials* (CHPC, NRDC, 2015) documents issues experienced by multifamily building owners.

CHPC appreciates the opportunity to respond to the CEC's Rulemaking Scoping Questions. Please let CHPC Policy Director Wayne Waite (wwaite@chpc.net) or CHPC Sustainable Housing Policy Associate Caroline McCormack (cmccormack@chpc.net) know if we can be of any assistance in the design and development of this important law.

Sincerely,



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