

DOCKETED

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Public Comments, CEC Monthly Business Meeting, March 9, 20156, Item 14: CoStar Agreement - Opposition

Additional submitted attachment is included below.

March 9, 2016

Dr. Robert B. Weisenmiller
Chair, California Energy Commission
1516 Ninth Street, MS-33
Sacramento, California 95814

Re: California Energy Commission, Business Meeting, March 9, 2016
Agenda Item: 14. CoStar Realty Information, Inc.
Position: Oppose

Dear Chairperson Weisenmiller:

As follow up to my public comments at today's CEC Monthly Business Meeting, I reiterate my opposition to the passage of Agenda Item #14. Commissioner McAllister and the California Energy Commission have proven themselves to be unreliable business partners and for that reason, I request the California Energy Commission not move forward with the proposed contract agreement with CoStar Realty Information, Inc.

Before the Commission considers spending any money on energy use disclosure programming research or development, the Commission needs to first make financial reparations to the small businesses blind-sided by the repeal of AB 1103 and to financially recompense those compliant commercial real estate owners who have experienced direct and quantifiable reductions in commercial real estate investment returns and property values as a result of the Commissions inability to bring to market viable energy use disclosure regulations.

I think anyone with interest in this topic would agree that the unmeasured cannot be effectively managed. In the absence of data, or the demonstration of fact-based decision-making or complete transparency into the efforts of the California Energy Commission to ensure access to data in order to facilitate fact-based decision-making by the commercial real estate industry so that we can compare building performance and so you can require transparency in the market through public disclosure, I can rely only on persuasion, empirical evidence and subjective evaluation of process.

Based on the results of my extensive research over the past 6 months into the repeal of AB 1103, as a citizen, a taxpayer, a ratepayer, a small business owner and as a key stakeholder for many years in the development and implementation of the state-wide commercial building energy use disclosure program, I feel compelled to again put forth my complete opposition to the repeal of AB 1103; again register my grave concern about the appropriateness of actions and decisions by Commissioner McAllister on behalf of the California Energy Commission resulting in repeal of AB 1103 and causing immediate and continued economic hardship to a number of small business owners across the State of California; again express my vote of "no-confidence" in the ability of the California Energy Commission to properly, effectively, efficiently and productively manage our collective resources in their continued unsuccessful efforts to bring to market a viable commercial building energy use disclosure program in a timely fashion; and, finally, again, I request the immediate dismantling of any internal organizational structures devoted to the energy use disclosure program and the immediate resignation of Commissioner McAllister.

California has never stopped being great; with your immediate action, we can make California great again.

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Let me explain.

Assembly Bill 802: Energy Efficiency was first introduced in February of 2015 by Assemblymember Das Williams. The original language expanded State-wide incentive and rebate program eligibility by redefining ‘baseline’ energy performance. The bill made slow progress until the month of September of 2015, when Assembly and Senate rules were suspended so the bill could be considered after the end of the legislative session, so language to repeal AB 1103, language to defer energy use programming for the year 2016 and language to introduce new disclosure program guidelines effective January 2017 could be inserted. The final revised bill was then rushed to the Governor’s desk for signature – without the benefit of public review or comment – and was signed by Governor Brown in October 2015. The passage of AB 802 caused an immediate drop in available projects for my growing consultancy, and caused severe economic hardship. In my opinion, none of this was necessary.

Some new information uncovered as part of my own research over the past 6 months into this secretive, exclusionary and expedited process facilitated by special interest groups, Assemblymember Das Williams office, the California Energy Commission and Governor Brown’s office and conducted without the benefit of broad stakeholder engagement has turned up some stunning revelations and reinforces my recommendation to completely overhauling those pieces of the California Energy Commission devoted to energy use disclosure programing.

First, in response to a general request for records, I received an undated internal document from the California Energy Commission on February 4, 2016, showing an AB 1103 compliance rate as high as 67% in February 2015, a significant increase from a dismal 4% compliance rate in December 2013. This increased participation rate paralleled the growth of my own consulting practice, specializing in providing AB 1103 compliance documents. These internal metrics show that the AB 1103 energy use disclosure program was become more and more successful.

With such significant growth in participation in just over 12 months, it is interesting that the CEC [Proposed] Finding Emergency for Proposed Regulations to Amend the Compliance Schedule for the Nonresidential Building Energy Use Disclosure Program of the California Energy Commission, dated July 22nd, 2014, on page 1, supports the Finding of Emergency as *“necessary to avoid potential market confusion, which could cause delays and drive up transaction costs in commercial real estate transactions.”* In that same document, on page 4, the author, in response to my concerns about and opposition to delaying the implementation of the disclosure requirements for buildings between 5,000 to 10,000 square foot, states, *“There is no evidence that the delay will “exacerbate market confusion” or “convey a sense of ambivalence and equivocation” about the program.”* So, an emergency delay was required in order to avoid creating potential market confusion in a market that wasn’t experiencing confusion, but rather was showing steadily growing compliance rates.

Wait! What?

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In that same document, on page 3, the California Energy Commission justified the postponement of compliance for the lowest sized-based tier of buildings because, *“The Commission did not learn about the barriers to compliance with the Program with sufficient time to amend the schedule set forth in Section 1682 (c) of Title 20 through a non-emergency rulemaking before July 1, 2014, when the Program expanded to include non-residential buildings greater than 5,000 square feet up to 10,000 square feet.”* In the following paragraph on the same page, readers are informed that *“The Commission did not realize the extent of the barriers to compliance with the existing program until after the Program had been effective for a few months.”* The paragraph continues, *“...throughout May and June 2014, the Energy Commission received extensive information from stakeholders about barriers to compliance with the program.”* It wasn't until July 2nd, 2014 – a day after the final phase scheduled implementation date – that the CEC held a public meeting to formally gather feedback from stakeholders.

In complete contradiction to the official statements made by the CEC in the above referenced document claiming to be unaware of implementation challenges until just before the July 1st implementation date of the smaller sized tier, Mr. Matthew Hargrove of the California Business Properties Association (CBPA) sent an email dated March 27th, 2014 to Joe Loyer (formerly of CEC) with the subject, *“AB 1103 Implementation – Compliance is Causing Real Problems for Companies.”* Mr. Hargrove informed the CEC that the CBPA, *“was receiving daily phone calls about AB 1103...”* and stated that *“The law/reg is causing severe problems with businesses and interfering with leases and sales transactions in a manner that is simply unacceptable. The major issues revolve around 1) most of the major utility companies refusing to provide information as they are required under the law; 2) Energy Star not being designed for these purposes for most building types/issues; and 3) unnecessary and cumbersome CEC reporting requirements. Even companies that are very familiar with Energy Star and have been using the program voluntarily for years, are having trouble with AB 1103 regulations.”*

During the period of time to which Mr. Hargrove is referring, I was able to successfully complete several AB 1103 compliance projects without any difficulty, without experiencing any technical issues with Energy Star Portfolio Manager and without impacting the timing of client transactions, so my direct experience differs from Mr. Hargrove's summary assessment. He provides no conclusive evidence to support his statements, but that is not important here. What is important is the reply from Mr. Erik Jensen of the California Energy Commission to Mr. Hargrove and dated March 27th, 2014, where Mr. Jensen acknowledges, *“Kourtney Vaccaro shared a summary of the meeting you had with her and Patrick Saxton, and I am aware of many of the concerns you raise. We have meetings planned in the next few weeks with utility providers, the purpose of which will be to make the process of requesting energy usage data and getting it into Portfolio Manager smother.”*

Mr. Hargrove, in his next response, dated March 28th, 2014, expresses his appreciation for the efforts to *“...resolve issues with the utilities.”* He then continues, *“However, what about all the all issues that have been raised in the four months that this reg(ulation) has been in effect? Specifically, the cumbersome and unnecessary reporting and the issues related to Energy Star? Our association, with over 12,000 members –*

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directly impacted by this issue – would like to be more involved in the conversation at CEC. We warned of many of these issues over the past six years, and know we can provide helpful advice moving forward.”

Throughout this process, the major challenges and impediments to full implementation have been constant over a period of years and remain basically the same today. So what exactly did the Energy Commission not know, and when did they not know it? Of what benefit was misleading stakeholders, regulators and the general public about their direct knowledge of the major issues impacting full compliance in order to delay further implementation of a program that was growing in success?

Wow! A lot of tedious detail which again clearly illustrates the Commission’s long-standing failure to correctly interpret and respond to market signals, failure to support corrective, but unwarranted, regulatory actions with clear and accurate justifications, and failure to manage the successful implementation of a highly-visible and significant piece of legislation to even minimal standards – while compliance rates were increasing, despite more than 7 years of lead time, with the benefit of stakeholder predictions and real-time feedback from commercial real estate owners around the State who had direct experience in successfully complying with AB 1103 requirements.

Next, to help understand who, how and why AB 1103 had to be repealed so urgently, the Assembly Rules Committee responded to my request and on February 9th, 2016, provided copies of Fact Sheets, Floor Alerts and Correspondence from Assemblymember Williams' office, various energy service providers, and a number of private special interest groups representing real estate, environmental, civic, trade and energy efficiency industry concerns and the City of Berkeley. While I recognize some of the companies or organizations represented by these groups, I researched those unfamiliar to me and as far as I can tell, none of these companies or groups represent individuals or organizations with expertise in using Energy Star Portfolio Manager, none of these companies or special interest groups claim to have experience in benchmarking building energy use performance and none of them shared case studies of their own experience in successfully – or unsuccessfully – preparing and submitting AB 1103 compliance documents.

Filled with anecdotes, there is no evidence in any of these documents that any of the represented organizations supporting the revised AB 802 legislation have attempted to collect data from the utility companies or that any of them had developed client relationships that required a deep or even superficial understanding of the details of AB 1103 compliance requirements. Other than space owned or leased to conduct business operations and with the exception of the major utilities, none of these organization purported to have any experience in commercial real estate investment or management. Again, with the exception of the energy service provider and utility companies/organizations, what exactly is the claim these special interest groups are staking in this discussion?

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Some of these documents voiced support for the repeal of AB 1103, the deferring of any energy use disclosure program for 2016 and the introduction of the replacement energy use disclosure program scheduled for implementation in January 2017. The dozen documents received that expressed support are either undated or dated between September 8th through 10th. Some include logos from multiple organizations on the letterhead and a few came from paid lobbyists representing multiple clients so the actual representation may be greater than the number of documents received.

The similarity in the text and point of view in the documents leads me to believe that a letter writing campaign was generated from a single source. Because of the repetitive and common themes, I will summarize, in my own words, what I believe to be the main rationale for support:

- Recognition of the potential value of benchmarking energy use performance at the building level and the potential value of broad adoption of energy use benchmarking practices across the State of California.
- Recognition of the importance of regular, reliable and readily-accessible whole-building energy use data that can potentially facilitate more economically and environmentally positive business decisions.
- Recognition that California has lost its position of national leadership in energy use disclosure programming due to the extended delays in implementation and structural challenges in existing regulations, and that repealing AB 1103 - a private, transaction-based disclosure program, with the new language in AB 802 - a mandatory public disclosure program, was the only way to regain this first position.

Distilled even further, I believe these statements of support seem to be centered on informed and analytical decision-making, broad stakeholder engagement and expectations of transparency.

While I generally agree with this line of reasoning, despite the strong interest in collecting data espoused in the correspondence, these documents are void of any compelling facts or analysis presented to support the claims or positions. Rather than broad stakeholder engagement, the revisions to the legislation were crafted and promulgated by a small number of special interest groups, and there was no opportunity for public review or comment that would demonstrate the level of transparency these groups expect from commercial building owners. Unfortunately, by acting as they have, unified, in secret and without communicating their intentions ahead of time and encouraging dialogue amongst all stakeholders, this group of supporters have undermined their own credibility, and these letters of support should be set aside.

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I am not suggesting that any of these private entities or interests had any obligation to include me in their activities or conversations. But I do believe that a smart, savvy and politically astute California Energy Commission Commissioner or Assemblymember that was truly interested in representing the best interest of their constituencies would have taken the time to reach out to those of us with a direct financial interest in the continuation of AB 1103 disclosure requirements – at a minimum, out of appreciation and regard for the commitment we have made to implementing the regulation. Small business are the backbone of our economy.

In the absence of this outreach, or any information to support the actual reason for not reaching out, I can assume a few possible scenarios. 1.) Commissioner McAllister does not have the style of leadership that lends itself to sensitive and respectful collaboration that can successfully combine both voices of support and voices of opposition into a winning solution for all involved; or, 2.) If Assemblymember Williams' asked if there was any possible opposition to the repeal of AB 1103 that he was either not informed of the several small businesses working in the compliance space who would face negative consequences from the repeal of AB 1103, or he was informed in such a way that our voices were immediately marginalized to the degree that he saw no value in reaching out directly; or 3.) inviting one or many of the small business owners with expertise in benchmarking energy use and who were successfully and cost-effectively providing accurate, complete and timely compliance documents for clients would undercut the preferred impression of a failed regulation.

The remaining 13 documents, representing approximately the same number of entities, either oppose the new disclosure language incorporated into AB 802 or are completely silent on the matter. Most of these documents are very clear in supporting the original intention and language of AB 802 – and not the revised language. Because of the range of groups, companies or public agencies represented and because many of the represented are affiliated with energy service providers or utility companies, I will share some brief, but salient details of each communication.

- Beginning with a letter dated **June 30th, 2015** from the **Office of Ratepayer Advocates of the California Public Utilities Commission** and addressed to **Assemblymember Das Williams**, that expresses **complete opposition** to AB 802 in its original form and outlines their justification. Because this letter was received before the proposed revisions were introduced, there is **no reference to energy use disclosure programming**.
- A letter dated **September 8th, 2015**, from **Pacific Gas and Electric Company** to **Assemblymember Das Williams**, ***withdrawing sponsorship for AB 802*** based on *“concerns with recent amendments requested by the California Energy Commission that compel disclosure of our customer’s confidential energy usage and financial billing information.”* (PG&E, in the same letter listed several suggested amendments to AB 802 and **expressed their continued support of AB 802** – but without their name listed as sponsor.)

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- A letter dated **September 8th, 2015**, from Carter, Wetch & Associates, a paid lobbying group, on behalf of the **California State Association of Electrical Workers, the California State Pipe Trades Council, the Western States Council of Sheet Metal Workers and the Coalition of California Utility Employees**, expresses **support for the "legislation as amended September 4, 2015."** The rest of the letter explains their reasoning - but **makes no reference to energy use disclosure programming.**
- A letter dated **September 8th, 2015**, from the **Institute of Heating & Air Conditioning Industries, Inc.** and addressed to **Assemblymember Das Williams**, **supports AB 802**, outlines the broad base of trade and mechanical contractors from around the State of California. There is **no mention or reference to energy use disclosure programming.**
- A letter dated **September 9th, 2015**, from **California State Council of Laborers** addressed to **Assemblymember Das Williams**, **supporting AB 802** - but specifically the aspects of the language related to energy efficiency savings. There is **no comment about energy use disclosure programming.**
- A letter dated **September 9th, 2015**, from **SoCalGas** and addressed to **Assemblymember Das Williams**, **supporting AB 802**, specifically responded to the insertion of the new language by stating, "However, the Sempra Energy Utilities **are concerned with recent amendments** that require the disclosure of our customers' confidential energy usage and financial billing information" and, "*Other amendments to the building benchmark program that discloses customer usage data to building owners for the purpose of calculating an energy usage score would weaken the program's privacy provisions by defining the aggregation of meters for both commercial and residential customers. That provision is simply not consistent with the aggregation standards adopted by the CPCU.*"
- A Letter dated **September 9th, 2015**, from **Sempra Energy (SoCalGas and SDG&E)** to **Assemblymember Das Williams**, **supporting AB 802** but expressing **concerns "with recent amendments** that require the disclosure of our customer's confidential energy usage and financial billing information....does not provide adequate protections of confidential customer usage and financial billing data from being disclosed to a third-party without customer consent...other amendments to the building benchmark program that discloses customer usage data to building owners for the purpose of calculating an energy usage score would weaken the program's privacy provisions by defining the aggregation of meters for both commercial and residential customers. That provision is simply not consistent with the aggregation standards adopted by the CUPCC."

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- A letter dated **September 9th, 2015** from **California Municipal Utilities Association** and addressed to **Assemblymember Das Williams**, **opposes the last minute insertion of energy use disclosure language** and begins, *"The California Municipal Utilities Association (CMUA), representing over 40 locally owned electric utilities and utility districts writes in **opposition to the latest version of AB 802**, a bill that originally only focused on energy efficiency programs by the state's investor owned utilities, but was amended last Friday [September 4, 2015], to include new definitions for benchmarking existing buildings for energy efficiency and requiring that non-residential customer billing and usage data be handed over to the California Energy Commission."*

The second paragraph of the letter states, *"CMUA **strongly opposes** amendments on page 9 through 12, adding Sec. 5 of the bill. These new amendments circumvent an entire process that has been underway for several years that were initiated by AB 1103 (Saldana; Chp. 533, Statutes 2007), a bill to facilitate benchmarking and the collection of customer data. However, implementation of AB 1103 remains on going via a public process by the California Energy Commission (CEC)."*

Paragraph 3, continues to **oppose AB 802**, *"At issue, and of particular concern to CMUA are the expanded powers given to the CEC to order specified individual customer usage data to be handed over to them by electric utilities. CMUA believes that that customer data belongs to the customer and who they choose to share that information with is best left to the individual customer, not a compulsory requirement by each utility to share it with the CEC."*

The seventh paragraph reads, *"CMA hopes the Legislature would agree, that protecting a customer's right to privacy, whether they are residential or commercial customers, supersedes the need for a state agency to compel individual utility customer's usage or financial billing data be handed over the state."* And the letter closes with a simple restatement, *"For these reasons, **CMUA now must oppose AB 802.**"*

- A letter dated **September 9th, 2015**, from Shaw / Yoder / Antwich, on behalf of their clients, **City and County of San Francisco**, **supports AB 802 as it relates to energy efficiency** - the original intent of the legislation - but **makes no mention of supporting or opposing energy use disclosure programming.** The City and County of San Francisco were silent on the revised language inserted into the pending bill.
- A letter dated **September 14th, 2015**, from the **City of Santa Monica** and addressed to **Governor Brown** **supports his signature of AB 802 according to the original language but is silent on their support or opposition of the inserted language related to energy use disclosure programming.**

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- A letter dated **September 16th, 2015**, from **School Energy Coalition** and addressed to **Governor Brown**, **requests his signature on the revised bill**, outlines their support for the aspects of the legislation related to improving energy efficiency, but **expresses neither support or opposition to the revised language**.
- A letter dated **September 17th, 2015**, from **Southern California Edison** and addressed to **Governor Brown**, **requesting his signature** on the revised bill, very clearly **supports only the original language of AB 802** - and not the final revised language related to energy use disclosure programming - by **omitting any reference to the inserted language** in the correspondence.
- A letter dated **September 21st, 2015**, from **Sempra Energy Utility (SoCalGas and SDG&E)** and addressed to **Governor Brown**, **requests his signature** on the revised bill, very clearly supports only the original language of AB 802 - and not the final revised language related to energy use disclosure programming - by **omitting any reference to the inserted language** in the correspondence.

In the end, we are left with a disparate group of special interests, with an unidentified claim to stake, expressing their strong support for the urgent and necessary repeal of AB 1103, a belief that rights to privacy and data afforded to commercial property owners are irrelevant, that a year long hiatus from any energy use disclosure programming would benefit the State and that the replacement and future energy use disclosure program language offers superior opportunities or benefits. I recognize the push for and the power behind their desires to effect positive change, but replacing words in one law with equally powerless words in another law doesn't move the process forward and I believe that the manner in which this was accomplished has moved us several years – backwards. It has also interjected a sense of growing suspicion.

This contrasts directly with the conditional support, complete opposition or absolute silence on the issue of energy use disclosure programming from the key group of stakeholders whose full cooperation is required to successfully implement any type of energy use disclosure program at any level. AB 1103 had language that clearly obligated the energy service providers to provide customer energy use data and for more than 8 years, in meeting after meeting, they have declined to cooperate on the grounds that the directives by the CEC conflicted with other established and recognized regulatory language. Despite the scheme developed by CEC staff and inserted into AB 802, to release data while protecting the customer's confidentiality, the utility companies are already united in their retrenchment and have again clearly communicated this to the CEC. All we need is agreement to abide by their understanding of data collection and confidentiality practices and we could simply and easily benchmark thousands of buildings across the State. This would give the CEC, the CPUC and the legal advisors to the utility companies time to work together to resolve any regulatory conflicts or misunderstandings, that when resolved, would expand access to energy use data exponentially.

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Then, in reviewing the Vote History of AB 802-Energy Efficiency (2015-2016) available online through the California Legislative Information website, I found no opposition to the original AB 802 language recorded through a series of 7 votes beginning in April 2015 and ending in August 2015. Beginning September 10th, 2015, once the revised language was introduced, Senate members began to register their opposition to the new language and “no” votes were registered for 3 of the remaining 4 votes tallied.

Watching the archived video of the very brief Senate Energy, Utilities and Communications Committee meeting held on September 10th, 2015, an organized effort to bring bodies to the hearing in order voice support for AB 802 was evident. It is still not clear who organized this effort, but I can confirm that I knew nothing about it. Because the initial scope of the legislation was not on my radar, and because the introduction, review and approval process breezed through Senate Committees, the Senate Floor and the Assembly Floor overnight, there was no way I would have known about these changes. When I reached out to Assemblymember Williams’ office to express my concern about this expedited and closely-held process, I asked how I would have known of the revisions under consideration. Their response was to direct me to the California Legislative Information website to track a bill’s progress. Am I really expected to monitor and track every piece of legislation under consideration and in which I have no interest, in case there are last minute revisions that may make the revised bill ultimately more relevant?

Is this reasonable? Why would I be monitoring so many bills so closely? I am not a paid lobbyist and I was participating, in good faith, in the on-going and public staff workshops designed to improve the language of AB 1103 – so had no concept that this end run would be attempted. Is it reasonable to expect some timely outreach from the CEC staff to alert those of us who were committed to this public review and comment process that the Commission, despite our engagement in their workshops, was now supporting a complete repeal of AB 1103? I think it is – especially when my livelihood could suffer immediate and long-term financial harm once AB 1103 was repealed. This was an opportunity for Commissioner McAllister to champion small businesses – that appears to have passed unnoticed.

When I first learned of the revisions to AB 802 on or about September 11th or 12th, I reached out to CEC staff and left several voice mail messages asking for some clarification. No response. I sent emails to Erik Jensen September 26th and Galen Lemei on October 2nd, again asking for clarification. No response. At this time, I have no recollection or record of any response from the CEC to my queries. On September 29th, 2015, I corresponded with the Governor’s office recommending veto of the bill in its revised form. The bill arrived on his desk on September 23rd, 2015 and was signed into law on October 8th, 2015.

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Once signed, CEC staff hurried to schedule a Staff Workshop on November 10th, 2015 to discuss AB 802 implementation. I attended remotely and participated through the entire meeting. I was shocked to learn the following:

1. The Staff seemed really excited to announce that we “were at square one.” After more than 8 years of a revolving list of CEC staff, after more than 8 years of frustrated stakeholder engagement, after the hundreds of hours I had already spent on providing feedback, promoting AB 1103 and preparing compliance documents for my clients, we were at square one(?)!!
2. Still, nobody at the California Energy Commission had direct experience using the Energy Star Portfolio Manager software application to benchmark energy use;
3. CEC staff did not have basic knowledge about the performance metrics included in the Data Verification Checklist;
4. Despite years of discussing the structure of a triple-net lease and how these lease terms create a split-disincentive in a multi-tenant building, the CEC staff still did not have an understanding of this very basic concept; and,
5. None of the utility company representatives, except maybe PG&E, were able to identify with any accuracy, the current level of technical readiness of their company to comply with the new language, the potential costs of installing the necessary technologies to allow easy data transfers or the possible additional demands on staff by supporting owner data collection requests.

For years now, I, and others, have been providing articulate, comprehensive and practical editorial and insightful feedback to the CEC staff. I challenge anyone at the CEC to demonstrate that my contributions have been considered and to any degree, incorporated into the planning process. I don’t think any can be found. This is consistent with my experience of the information conveyed or communicated by the CEC as subjective and having no traceable origin to stakeholder recommendations or advice. There should be a clear and transparent path between stakeholder input and CEC outputs – or a justification for the exclusion.

For a while now, when I wasn’t able to offer praise or encouragement in my communications, I tried to write from a “constructively oppositional” viewpoint. But since the disappointing experience at the Staff workshop in November, my tone has grown coarser and out of frustration I am becoming much more oppositional and even adversarial toward the CEC and their performance and State-wide energy use disclosure programming in general. Apparently, this is unsatisfactory to the CEC as several of my document submittals in November of 2015 to the still open 15-OIR-04 docket and before the 15-OIR-05 docket was opened, were received, but not published and distributed via the ListServe. After a few days of monitoring their non-release, I placed calls to Galen Lemei to learn why they were held up. I also registered my concerns in writing through the



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same docket on November 10th. It wasn't until the morning of November 12th that Galen returned my phone call – and only after he learned that I had registered to speak at the Monthly Business Meeting being held that same day. I assume that he assumed that I was going to speak about the missing documents. I didn't speak with him for more than a minute because I was preparing my remarks and committed to returning the call after the meeting. I called him days later on November 16th. During that conversation, it was explained to me that somehow a box was unchecked or checked mistakenly in the software and it prevented my documents from publishing to the docket. Interesting that my inquiry into the status of the documents was processed overnight, but the other pieces of correspondence was somehow not able to be processed. He suggested that I submit the documents to the freshly opened 15-OIR-05 docket, which I did while I was on the phone with Galen. I then followed up with an email the same day, November 16th, thanking him for his explanation but setting a deadline of EOD November 17th to release the documents or that I would conclude that the decision to not distribute the communications was a discretionary decision and an attempt to censor an oppositional point of view. By the end of the 1th, there were complete sets of both documents in both dockets.

Isolated incidents? No.

Part of an exclusive master plan? Doubt it.

In the big picture – there isn't a big picture.

On many levels, the failure of the CEC to properly engage the most committed stakeholders with a direct interest in the success of State-wide energy use disclosure programming, a lack of leadership in marshalling scarce resources towards a common goal, the willingness to negotiate and craft policy with special interest groups that do not insist on inclusivity and by making strong and definitive statements in public that are relied upon to set public policy but that lack any solid facts to support his comments, lies completely on the shoulders of Commissioner McAllister. Especially when it comes to supporting small businesses, he has continually squandered opportunities to become our champion, and instead relies on special interest groups to formulate an agenda that appears favorable only to himself and creates greater animosity between valued and important allies. His repeated and disparaging comments towards consultants over many years only serves to shine light on the complete absence of robust and aggressive engagement with all key stakeholders. I have yet to hear him publically declare his support and concern for small business owners and commit to improving these relationships in order to build a strong and viable coalition of supporters representing all sizes of business enterprises and all facets of industry and commerce. Surely, a missed opportunity.

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In fact, I am comfortable expanding the intensity and severity of these comments in order to accuse the California Energy Commission, by their lack of productive outreach to small businesses, of open hostility towards small businesses. The disregard of the CEC for the interests of small businesses, struggling to survive despite the uncertainty of energy use disclosure programming, demonstrated by Commissioner McAllister's support of the repeal of AB 1103 and a 12-month hiatus from any energy use disclosure programming, caused immediate economic and financial hardship to a number of us – without an explanation, without an apology and without any expression of concern. Commissioner McAllister knows who I am. He knows my name, my phone number and my email address. I'm pretty accessible and am obviously interested in this topic as evidenced by the volumes of thoughtfully researched writings I've shared with the California Energy Commission, the general public and commercial real estate professionals around the State over the years.

Finally, there is no evidence that tough negotiations between parties required the sacrifice of AB 1103 in order to gain greater leverage and benefit for any one stakeholder or for the State as a whole. There is no evidence that the energy use disclosure language secretly and urgently inserted into AB 802 would have survived public scrutiny or would have passed at all without the strength, scope and intention of the original language focused on funding more energy efficiency projects. It appears that the volume and number of voices in support of the revised programmatic language were intentionally rallied – and probably reluctantly accepted by the utility companies, because which utility company proposing any legislation would turn down the support of major environmental groups - to offset the already recognizable opposition by major and key stakeholders. There are no signs of convergent validity, but rather clear indicators of a weak, and poorly executed, political strategy.

In closing, it's time for fresh leadership, a clean house and a broader coalition of commercial real estate practitioners and benchmarking professionals to bring their expertise and creativity to the energy use disclosure programming process. I recommend that the power and influence of the California Energy Commission in this matter be checked and that those with the greatest interest in a State-wide energy use disclosure program, those who will most benefit from a State-wide energy use disclosure program and those who may be most harmed by a State-wide energy use disclosure now take a seat at the table.

1. I ask all in the real estate industry in whatever manner suits your organization or fits within your established communication protocols, both individually and collectively, express a written 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 that balances the public good while adequately protecting the rights and interests of the commercial real estate industry and aggressively protecting our valuable small businesses.
2. Request the immediate defunding and dismantling of any internal organizational structures with the California Energy Commission devoted to the energy use disclosure programming and the immediate resignation of Commissioner McAllister.

Dr. Robert B. Weisenmiller

Chair, California Energy Commission

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3. Request the Governor place an official 5-year moratorium on the implementation of any State-wide energy use disclosure program.
4. Conduct a performance assessment of the efforts by the California Energy Commission to develop the AB 1103 program and audit the financial resources expended on this effort so that the Citizens of California can be assured that the lack of subject specific leadership has not spilled over into waste.
5. Request the Governor assemble a "Blue-Ribbon" advisory panel made up of commercial and corporate real estate attorneys, legal counsel representing both the data privacy and the data access constituencies and experts in the existing legislative and regulatory requirements of data management placed on energy service providers and utility companies. To this panel, invite a select group of real estate owners and operators, real estate brokers, financial specialists (i.e., accountants, asset managers, etc.), representatives from the Environmental Protection Agency, energy performance benchmarking professionals, information technology experts and representatives from the operational and informational technology side of the utility companies. There may be some sustainability advocacy groups which can add some additional perspective to the conversation.
6. Charge the "Blue-Ribbon" panel with at least: determining the need for and feasibility of a State-wide energy use disclosure program; determining the cost-effectiveness of such a program and present reasonable alternatives; identifying the contractual and regulatory barriers to and liabilities resulting from an energy use disclosure program and present workable solutions; surveying the energy data infrastructure within the State and among energy service providers and utility companies to determine overall level of readiness and to prepare a cost estimate for undertaking any technology upgrades including custom interfaces required for full implementation of prescribed energy use disclosure program.

Thank you for your time and consideration of these very important matters. I stand ready to move forward to implement these recommendations and achieve these goals and hope to do so with the full support of the California Energy Commission.



Randy J. Walsh CCIM, LEED AP

Chief Efficiency Optimizer, San Diego Energy Desk

Copy: Governor Jerry Brown
Deputy Legislative Secretary Martha Guzman-Aceves, Governor's Office
Commissioner Andrew McAllister
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