

DOCKETED

Docket Number:	15-OIR-05
Project Title:	Building Energy Use Disclosure and Public Benchmarking Program Mandated under Assembly Bill 802
TN #:	211094
Document Title:	California Municipal Utilities Association Comments: Initial Staff Proposal to Implement the Building Energy Use Data Access and Public Disclosure Provisions of AB 802
Description:	N/A
Filer:	System
Organization:	California Municipal Utilities Association
Submitter Role:	Public
Submission Date:	4/15/2016 2:16:30 PM
Docketed Date:	4/15/2016

Comment Received From: California Municipal Utilities Association

Submitted On: 4/15/2016

Docket Number: 15-OIR-05

Initial Staff Proposal to Implement the Building Energy Use Data Access and Public Disclosure Provisions of AB 802

Additional submitted attachment is included below.

BEFORE THE CALIFORNIA ENERGY COMMISSION

In the Matter of:

Docket No. 15-OIR-05

Building Energy Use Disclosure Program

**RE: Building Energy Use Data Access and
Public Disclosure Provisions of AB 802
(Williams, Chapter 590, Statutes of 2015)**

**CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION COMMENTS ON INITIAL STAFF
PROPOSAL TO IMPLEMENT BUILDING ENERGY USE DATA ACCESS AND PUBLIC
DISCLOSURE PROVISIONS OF AB 802**

The California Municipal Utilities Association (“CMUA”) appreciates the opportunity to provide these comments to the California Energy Commission (“Commission”) on the *Staff Workshop, Initial Proposal to Implement the Building Energy Use Data Access and Public Disclosure Provisions of AB 802* held on March 25, 2016. At the workshop, Commission staff provided an initial proposal for regulatory provisions regarding energy usage data access and disclosure, and sought stakeholder input in the development of the draft regulations. CMUA appreciates the efforts of CEC staff to provide their initial thoughts on AB 802 implementation, and provides these comments on the issues raised during workshop discussion. CMUA supports the proposed draft regulatory language provided by the Northern California Power Agency and the Southern California Public Power Authority, which are included with these comments as Attachment A.

I. DATA ACCESS

At the workshop, CEC staff described a multi-step process by which an owner of a covered building would request energy use data from a utility serving the covered building.¹ First, CMUA believes that flexibility in the provision of this use data is important, and for this reason suggests

¹ See Workshop Slides 17-26 (for description of process).

that the proposed Portfolio Manager data exchange be an available option rather than a regulatory requirement. Though some utilities have found Portfolio Manager useful, AB 802 does not require utilities of any size to implement a Portfolio Manager data exchange. Section 25402.10 of the Public Resources Code states that a utility shall “deliver *or otherwise provide*” aggregate data.² For this reason, utilities should be able to satisfy building owner data requests through a simplified spreadsheet template as an alternative to the Portfolio Manager approach. Permitting, but not requiring, the use of Portfolio Manager would better enable utilities to comply with AB 802’s data access provisions within the relatively short timeline specified, as well as foster the development of Portfolio Manager within utility programs.³

Protection of customer data and private information is of the utmost importance for CMUA and its utility members, and CMUA is concerned that the existing staff proposal may result in scenarios where customer data is disseminated by a third party beyond the intended recipients. CMUA requests the CEC to consider how building energy use data may be disseminated once provided to a building owner to ensure – to the greatest extent possible – that this data is not misused.

II. PUBLIC DISCLOSURE

As proposed, the owner of a disclosable building must provide the CEC with benchmarking data for nonresidential buildings in 2018 and annually thereafter for all disclosable buildings.⁴ The CEC has also proposed a verification component where the utility delivers to the CEC the same information delivered by the building owner.⁵ CMUA requests that this disclosure schedule be adjusted several months from the proposed July 1st disclosure date to permit sufficient time for publicly-owned electric utilities to contribute to and prepare the annual efficiency report, which is

² Cal. Pub. Res. Code § 25402.10(c)(1) (emphasis added).

³ See Workshop Slide 18 (proposed August 2017 implementation of data exchange).

⁴ Workshop Slide 29.

⁵ See Workshop Slides 33-38 (for verification process).

submitted in March.

III. DEFINITIONS

As noted in by stakeholders in the workshop comments, it is still not clear whether the energy use data pertains to interior load, or also includes exterior load (such as parking structure lighting). There are also outstanding issues with how building square footage will be assessed and verified in “disclosable buildings,” as well as how data confidentiality will be preserved through aggregation in disclosable buildings where the owner owns most or all of the accounts associated with the building. CMUA encourages the Commission to further review these issues through continued stakeholder workshops and discussions.

IV. ENFORCEMENT

CMUA understands that the AB 802 implementation process is a collaborative effort. To encourage this collaboration and cooperation between utilities and CEC staff, CMUA requests that the proposed violation and enforcement provisions include an opportunity for utilities correct any violations identified by the Commission prior to commencement of any formal enforcement action.

V. CONCLUSION

CMUA appreciates the opportunity to provide these comments to the Commission, and looks forward to continue working with staff on developing regulations for the Building Energy Use Disclosure Program.

Respectfully submitted,



Dan Griffiths
Braun Blaising McLaughlin & Smith, P.C.
915 L Street, Suite 1480
Sacramento, CA 95814
(916) 326-5812 (office)
griffiths@braunlegal.com

- ATTACHMENT A -

Building Energy Use Data Access and Public Disclosure Program

California Code of Regulations
Title 20. Public Utilities and Energy
Division 2. State Energy Resources Conservation and Development Commission
Chapter 4. Energy Conservation
Article 9. Building Energy Use Data Access and Public Disclosure Program
Sections 1680-1685

Section 1680. Purpose

This article implements procedures, pursuant to Public Resources Code Section 25402.10, for providing building energy usage data to the building owner or owner's agent and for benchmarking and publicly disclosing energy usage information for certain buildings.

Section 1681. Definitions

The following definitions apply to this article:

- (a) "Benchmarking" means obtaining information on the energy use in an entire building for a specific period of time to enable that usage to be tracked or compared against other buildings.
- (b) "Building" means any structure used or intended for supporting or sheltering any use or occupancy. Two or more buildings on the same parcel, campus, or site, that are served by one common energy meter without sub-metering, such that their energy use cannot be tracked individually, shall be considered one building.
 - (1) For the purposes of this program, "building" does not include exterior energy consumption.
 - (2) For a building with exterior energy consumption that is not separately metered, the building owner shall characterize the exterior energy consumption consistent with Portfolio Manager best practices.
- (c) "Building Identification Number" means a number developed and maintained by the Energy Commission that is unique across all California utilities serving covered buildings.
- (d) "Building Owner" means a person possessing the current title to a building, or an agent authorized to act on behalf of a person possessing title.
- (e) "Covered Building" means either or both of the following:
 - (1) Any building receiving energy from a utility with no residential utility accounts.
 - (2) Any building receiving energy from a utility with five or more residential utility accounts of any one energy type, including buildings that may have additional non-residential utility accounts.
- (f) "Disclosable Building" means either of the following covered buildings, when used for any occupancy type defined by Portfolio Manager:
 - (1) A covered building with 3 or more utility accounts of any one energy type, no residential utility accounts, and more than 50,000 square feet of gross floor area.

(2) A covered building with 17 or more utility accounts of any one energy type, residential or non-residential utility accounts, and more than 50,000 square feet of gross floor area.

(g) “Energy” means electricity, natural gas, steam, or fuel oil sold by a utility to a customer for end uses addressed by the Portfolio Manager system.

(h) “Energy Use Data or Energy Usage Data” means a record of kilowatt hours, therms, or any other measure of energy recognized by Portfolio Manager.

(i) “ENERGY STAR Portfolio Manager® or Portfolio Manager” means the tool developed and maintained by the United States Environmental Protection Agency to track and assess the energy performance of buildings.

(j) “Exterior Energy Consumption” means exterior lighting, equipment, machinery, electric vehicle supply equipment, or any other source of energy consumption on the premises of or supporting exterior services the building but not consumed by the building.

(k) “Utility” means an entity providing energy to a building. Energy aggregators that do not directly bill an individual customer are not considered utilities for this program.

(l) “Utility Account” means an agreement between a utility and its customer to provide energy to a pre-determined location.

Section 1682. Data Access

(a) Prior to submitting a request to a utility for energy usage data, a building owner shall first do all of the following:

(1) Open a Portfolio Manager Account

(2) Enter the building into Portfolio Manager

(3) As needed, complete or update all required fields for the building within Portfolio Manager to generate a complete ENERGY STAR® Statement of Energy Performance, or ENERGY STAR® Scorecard if available for the building’s type.

(4) Request a building identification number from the Energy Commission.

(b) A utility shall develop a standard form for a building owner to use to request energy usage data for a covered building.

(1) A utility may require that a request be accompanied by information that verifies with reasonable certainty that the person submitting the request is the building owner or is authorized to act on behalf of the building owner.

(2) A utility may require a building owner to sign a non-disclosure agreement to protect building tenants from the inappropriate disclosure or sharing of their aggregated energy usage data.

Nothing in the NDA shall prohibit the building owner from sharing the building information with a 3rd party for the purpose of making energy efficiency improvements to the building.

(3) If a utility receives a request for energy use data for a covered building that has no residential utility accounts and fewer than three utility accounts of each energy type serving the building, a utility may require written or electronic consent by the accountholder to release energy usage data to the building owner.

(A) A copy of an executed lease or supplemental agreement in which a customer consents to sharing his/her energy use data with the building owner shall be accepted by the utility as the accountholder having provided consent for the delivery of the accountholder’s energy usage data to the building owner.

(B) A request shall not be considered valid until each accountholder provides written or electronic consent is conveyed to the utility for the delivery of the accountholder's energy usage data to the building owner.

(c) A utility shall have two weeks to determine if a request for energy usage data is valid.

(1) If a utility does not require building owner verification and/or a signed non-disclosure agreement and/or consent by the accountholder to release energy usage data to the building owner, then a request for energy usage data shall be considered valid upon receipt of the completed request form by the utility.

(2) If a utility does require building owner verification and/or a signed non-disclosure agreement and/or consent by the accountholder to release energy usage data to the building owner, a request for energy usage data shall be considered valid by the utility upon the utility's verification of the building owner per the standardized process developed by the utility and/or upon receipt of a signed non-disclosure agreement and/or written or electronic consent by the accountholder to release energy usage data to the building owner.

(3) If a utility determines that a request is not valid, then the utility shall respond to the requester and identify the reason(s) that the request is not valid.

(d) A utility shall, upon receipt of a valid request, provide aggregated energy usage data for the utility's accounts in the covered building to the building owner in at least one of the following formats:

(1) A utility may provide aggregated energy usage data in spreadsheet format that is compatible with being uploaded into Portfolio Manager.

(2) A utility may directly upload the aggregated energy usage data into the building owner's Portfolio Manager, upon consent of the building owner.

(e) For each energy type, the information provided by a utility to the building owner shall include the following:

(1) The Building Identification Number, as developed and maintained by the Energy Commission

(2) The meter number for each meter in the building.

(3) The name of each utility customer associated with the building.

(4) The aggregated energy usage data of all the utility's accounts in the building for the previous 12 calendar months. Due to utility billing cycles, this may include up to 14 months of billing data.

(f) Upon determining a request is valid, a utility shall have four weeks to provide energy usage data, as well as the information required by paragraph (e), to a building owner.

(1) A utility shall be required to process no more than one valid request for energy usage data per covered building per calendar year.

(2) For disclosable buildings, a utility shall also deliver this energy usage data and information to the Energy Commission.

(g) The building owner and utility shall not have any liability for any use or disclosure of aggregated energy usage data delivered as required by this article.

Section 1683. Public Disclosure

(a) By April 15, 2017, and by April 15th annually thereafter, a building owner of a disclosable building shall request energy use data for the building from each utility for which there is at least one utility account in the building, consistent with Section 1682.

(b) The building owner of a disclosable building shall submit building data entered within Portfolio Manager to the Energy Commission per the schedule in Section 1684.

(c) The Energy Commission will compare data for disclosable buildings received from utilities per Section 1682(f)(2) with submissions provided by the building owner through Portfolio Manager to verify the information is correct. The Energy Commission may generate additional standardized metrics for disclosable buildings not deliverable through Portfolio Manager.

(d) A disclosable building meeting any of the following conditions is exempt from the reporting requirements of this program:

(1) The building has not yet had a complete calendar year of utility service.

(2) The building is scheduled to be demolished one year or less from the reporting date.

(3) The building is included in a local building energy use benchmarking program listed on the Energy Commission website.

(4) Other buildings or building types for which the Energy Commission determines the public disclosure of energy usage data for the building would compromise public safety or is otherwise protected by law.

Section 1684. Schedule of Implementation

(a) Beginning January 1, 2016 utilities shall maintain records of the energy usage data of all buildings to which they provide service for at least the most recent 12 months.

(b) Upon the request and written authorization or secure electronic authorization, a utility shall provide a building owner with energy usage data, as specified in Section 1682, according to the following schedule:

(1) On and after January 1, 2017, for covered buildings.

(2) On April 15, 2017, and by April 15th annually thereafter, for disclosable buildings. A utility shall also provide the energy usage data to the Energy Commission.

(c) A building owner shall disclose benchmarking data to the Energy Commission on the following schedule:

(1) On June 15, 2018, and by June 15th annually thereafter, for disclosable buildings with no residential utility accounts.

(2) On June 15, 2019, and by June 15th annually thereafter, for all other disclosable buildings.

(d) By August 15, 2018, and by August 15th annually thereafter, the Energy Commission shall make available on a public website the standard information for all disclosable buildings.

Section 1685. Violations and Enforcement

(a) The Energy Commission may enforce any of the following violations of Section 1683 against a building owner through the measures identified in Public Resources Code Section 25321:

(1) Failure to complete the required submission on time per the schedule in Section 1684.

(2) Providing partial or incomplete information.

(3) Intentionally submitting incorrect data.

(b) The Energy Commission may enforce any of the following violations of Section 1682 against a utility through the measures identified in Public Resources Code Section 25321:

(1) Failure to fulfill a valid request within four weeks.

(2) Intentionally sharing incorrect data.

(c) Prior to levying an enforcement measure on either a building owner or a utility, the Energy Commission shall first notify the building owner or the utility of the violation and allow 30 days for the building owner or utility to correct the violation.