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California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

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California Housing Partnership Corporation and Natural Resources Defense Council Comments on Initial Proposal for Building Energy Use Benchmarking and Public Disclosure (AB 802)

The [California Housing Partnership Corporation](#) (CHPC) and the Natural Resources Defense Council (NRDC) appreciate the opportunity to provide comments on behalf of the [Green Rental home Energy Efficiency Network \(GREEN\)](#) and [Energy Efficiency for All](#) (EEFA) regarding the California Energy Commission's (CEC) Initial Proposal to Implement Building Energy Usage Data Access, Benchmarking, and Public Disclosure Provisions of Assembly Bill 802 (AB 802).¹

In addition to endorsing the recommendations of the Benchmarking Collaborative, we raise several issues of unique concern to the multifamily affordable housing sector. We greatly appreciate the CEC's initial efforts to implement AB 802; however, in its current form, the proposal falls short in ensuring that low-income households throughout the state benefit from the value of data access and benchmarking.

The GREEN-EEFA coalition's comments cover the following topics:

1. The GREEN-EEFA Coalition strongly supports certain components of the July 18th Draft Regulations.
2. We recommend the CEC amend the draft regulations to ensure owners of garden-style apartments are able to receive property-level data.
3. We urge the CEC to ensure a streamlined pathway exists for tenant-level data with customer consent.
4. Developing outreach, training and educational resources that specifically target the low-income multifamily housing sector.

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 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, benchmarking is

¹ In 2010, CHPC created 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. EEFA is a national partnership dedicated to linking the energy and housing sectors together in order to tap the benefits of energy efficiency for millions of low-income families. In California, we work together with multifamily property owners and managers and numerous other partners to ensure that low-income households benefit from cleaner, healthier, and more affordable housing.

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 GREEN-EEFA coalition urges the CEC to take the following issues into consideration for its next draft proposal.

1. The GREEN-EEFA Coalition strongly supports several components of the July 18th Draft Regulations.

The GREEN-EEFA coalition appreciates the CEC’s efforts to release a comprehensive set of regulations that meet the original intent of AB 802. The following elements of the legislation are of particular benefit to owners and operators of affordable housing and the low-income residents they serve, and the draft regulations implementing these provisions should be maintained in the final proposal:

- Section 1680(m): defining utility account to include separate addresses within the same building.
- Section 1681 (b)(1): (A) utility requirement to provide building owner with meter numbers for all meters serving the building and (B) A list of all Utility customers associated with the building
- Section 1681(b)(2): (B) Choice of ENERGY STAR Portfolio Manager as the Data Exchange Services, but also reserving a Building Owner option to receive data via ENERGY STAR Portfolio Manager spreadsheet. This is a standard platform that owners and energy efficiency benchmarking services are familiar with.
- Section 1682 (a): Allowing compliance with local benchmarking ordinances to count as compliance with AB 802.
- Section 1682 (c): April 1, 2019 multifamily benchmarking reporting timeline, and September 1, 2020 multifamily public disclosure timeline.

2. We recommend the CEC amend the draft regulations to ensure owners of buildings with fewer than five utility accounts, such as garden style apartments, are able to receive property-level data.

By narrowly defining residential “covered buildings” as buildings with “five or more Active Utility Accounts or any one Energy type,” the CEC’s proposal excludes Building Owners with garden or campus style apartment properties from the benefits of AB 802’s data access provisions. The interpretation places undue burden on this property type, many of which are low-income deed-restricted buildings that are owned and managed by nonprofit organizations that lack the staff capacity to collect large numbers of consent forms.

Explanation:

- The CEC defines gross square footage for purposes of public disclosure at the property level; see section 1680(i). To facilitate compliance with this requirement, it’s imperative the CEC also require utilities to provide property-level data to multifamily owners that meet the five account threshold. This will enable inclusion of a substantial number of buildings that are currently excluded on the basis of a structural technicality that fails to recognize the reality of how contemporary affordable housing is physically configured. From the owners’ operational perspective, there is little difference between how energy services are managed, delivered and potentially conserved to a cluster of suburban four-plexes vs. a downtown high-rise.

- While there is limited comprehensive data on the number deed-restricted affordable housing buildings with less than five utility accounts, GREEN members have estimated that the vast majority of affordable housing outside of densely populated urban areas is constructed of garden style apartments, including multiple buildings of three-or-four-plexes on one property. Further, there are over 600,000 renter-occupied multifamily buildings in California comprised of four units or under.²
- A secondary reason for supporting a broader definition that includes garden-style properties is that most state and Investor Owned Utility (IOUs) energy efficiency programs adopt a property-wide definition for program eligibility. Energy Efficiency Program Administrators and building owners need consistent and accurate energy use data to improve audit accuracy and enable targeting of the most cost effective energy upgrades. Program Administrators and energy consultants also use data to target the poorest performing properties within a portfolio and/or territory. Additionally, data is critical to enable evaluation efforts, establish metrics of success, and determine the outcome of a retrofit, or an energy efficiency program. Under the current CEC proposal, residential building owners with less than five accounts will have to still pursue collection of individual tenant consent forms, which is a barrier to participation in various energy efficiency programs.

Specific recommendation:

Section 1680(e):

Two or more Covered 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 Covered Building.

Two or more Covered Buildings on the same parcel or site with a total of five or more Utility Accounts, even if Energy use can be tracked individually, shall be considered one Covered Building.

- 3. We urge the CEC to ensure a streamlined pathway exists for tenant-level data with customer consent, and at minimum, ensure its regulations do not supersede utilities’ existing authority to provide owners with tenant-level data with customer consent.**

As currently proposed, the CEC provides a streamlined consent process for commercial owners with less than three units. However, it remains silent as to how residential and mixed-use buildings of all sizes obtain customer consent for tenant-level data, or how residential or mixed-use buildings with five or fewer accounts obtain customer consent.

We strongly urge the CEC to reconsider and to adopt our proposed amendments below.

Explanation:

- While access to whole building energy usage data will provide significant benefits, most owners of garden style apartments (with buildings less than 5 units) and deed restricted affordable housing of all sizes will continue to need more granular data on energy usage at their properties for two main reasons: (1) owners need more granular data on energy usage in order to identify

² United States Census Bureau/American Fact Finder. “B25032: Tenure by Units in Structure: California.” 2014 *American Community Survey 1-year estimates*. Web. 9 August 2016.

cost-effective efficiency improvements, which in turn helps ensure long-term housing affordability; and (2) because it is required by federal and state housing regulations. **The data is needed to calculate tenants’ “Utility Allowance” necessary to comply with the requirement that** 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).³

- The current process for obtaining tenant consent is extremely burdensome and largely ineffective for owners with large properties. Under current practice, owners have to request and obtain written customer signatures on individual “CISR” forms from each utility service territory that their buildings fall within.
- Unfortunately, building 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.⁴
- By remaining silent on the process to obtain customer permission for tenant-level data, the CEC is creating conflicting and duplicative processes for owners and utilities. Many large building owners both will need whole-building data to publicly benchmark their building and individual tenant-level data to comply with federal and state requirements and identify more specific tenant-level upgrades. Under the currently proposed regulations, owners would have to undergo two separate data sharing processes, which is confusing for tenants and owners alike.

AB 802 specifically grants the CEC authority to streamline the tenant consent for the use case described above:

(f) For buildings that are not covered buildings, and for customer information that is not aggregated pursuant to subparagraph (A) of paragraph (2) of subdivision (c), the commission may adopt regulations prescribing how utilities shall either obtain the customer’s permission or determine that a building owner has obtained the customer’s permission, for the owner to receive aggregated energy usage data or, where applicable, individual customer usage information, including by use of electronic authorization and in a lease agreement between the owner and the customer.

Specific Recommendation:

At minimum, the CEC should ensure its regulations do not supersede existing utility policy to share customer-level data with all owners that have obtained customer consent.

More specifically, the CEC should include all buildings in its customer permissions process. We recommend the following specific changes to the draft regulations:

Section 1681 (b)(4) If a Utility receives a request for Energy use data for a building that has: (1) fewer than three Utility Accounts of any Energy type the Utility provides, none of which are residential, ~~or~~ (2) fewer than five Utility Accounts of each Energy type the Utility provides, at least one of which is residential, or (3) any size building seeking tenant-level data, the Utility shall not provide the information listed in subdivision (b)(1)

³ Please see CHPC’s December 31, 2015 comments for more background on the need for tenant data.

⁴ 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.

& (2) unless customer permission is obtained from each utility customer other than the Building Owner.

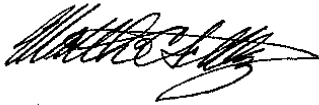
Section 1681 (b)(4)(C) The Utility shall provide to the Building Owner or Owner's Agent Energy use data for ~~each~~ those Utility Account for which customer permission has been received. If requested possible, the Utility shall aggregate usage of each Energy type across Utility Accounts_ for which permission has been provided.

4. Develop outreach, training and education resources that specifically target the low-income multifamily housing sector.

AB 802 has the potential to offer many benefits to multifamily buildings owners and the low-income residents they serve. However, understanding how to request energy usage data from utilities and how to comply with the state-benchmarking component will be a learning process, and building owners often lack the time and staff capacity to seek out this information. We recommend that the CEC develop an AB 802 outreach strategy to provide building owners who serve low-income communities with extra resources and support as the law is implemented.

The GREEN-EEFA Coalition appreciates the opportunity to respond to the CEC's Initial Proposal to Implement Building Energy Usage Data Access, Benchmarking, and Public Disclosure Provisions of AB 802, and looks forward to assisting with the implementation process. Please let CHPC Policy Manager Caroline McCormack (cmccormack@chpc.net) or NRDC Project Attorney Maria Stamas at (mstamas@nrdc.org) know if we can provide any assistance with AB 802's implementation.

Sincerely,



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