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Additional submitted attachment is included below.

August 12, 2016

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

Re: Docket Number: 15-OIR-05

California Benchmarking Collaborative Comments on the Initial Proposal to Implement Building Energy Use Data Access, Benchmarking, and Public Disclosure Provisions of Assembly Bill 802 (Williams) (2015)

On behalf of the California Benchmarking Collaborative [henceforth “Collaborative”] the Center for Sustainable Energy® (CSE) respectfully submits these public comments in response to the Initial Proposal [henceforth “proposal”] presented at the California Energy Commission (Energy Commission) staff workshop on July 22, 2016, for the Building Energy Use, Data Access, and Public Disclosure Provisions of Assembly Bill (AB) 802.

The Center for Sustainable Energy (CSE; www.energycenter.org) is a mission-driven nonprofit organization accelerating the adoption of clean and renewable energy technologies, policies, and practices. The Collaborative is comprised of CSE, the Natural Resources Defense Council (NRDC), the California Housing Partnership Corporation (CHPC), the Institute for Market Transformation (IMT), Green Cities California (GCC), San Francisco Department of the Environment, the City Energy Project, Berkeley Office of Energy and Sustainable Development, Los Angeles Mayor’s Office of Sustainability, the California Energy Efficiency Industry Council (CEEIC), the National Electrical Manufacturers Association (NEMA), the Sierra Club, the Local Government Sustainable Energy Coalition (LGSEC), Zachary Brown: BOMA San Francisco Energy & Environment Committee Chair, US Green Building Council California (USGBC CA), and Bright Power. The Collaborative has received technical advice from the U.S. Environmental Protection Agency (EPA), the National Renewable Energy Laboratory (NREL), and the U.S. Department of Energy (DOE).

In addition to these comments, parties may also submit individual comments.

AB 802: Whole-Building Data Access, Building Energy Benchmarking, and Public Transparency

The Collaborative strongly supports AB 802 and the Energy Commission's development of implementing rules for a statewide, time-certain benchmarking and transparency program. These comments build on the recommendations provided in public comments filed by the Collaborative on December 22, 2015 and April 14, 2016. In these comments, we:

1. Strongly support the draft regulations released on July 18, 2016;
2. Offer recommendations to streamline customer permissions and building owner data requests;
3. Comment on inclusion of condominium buildings and proposed disclosure metrics; and
4. Provide specific recommendations for education, outreach, and training starting in 2016.

These comments are organized into four sections: The Collaborative Strongly Supports the Draft Regulations Shared on July 18, 2016 (**Section 1**); Implementing Regulations Should Ensure Streamlined Access to Data (**Section 2**); Implementing Regulations Should Support a Comprehensive Statewide Benchmarking and Transparency Program (**Section 3**); and AB 802 Implementation Needs to Begin in 2016 (**Section 4**).

For the purposes of these comments, "building owner" refers to an owner, manager, operator, or agent of the owner.

Section 1: The Collaborative strongly supports the draft regulations shared on July 18, 2016.

The Collaborative thanks the Energy Commission for addressing critical items to ensure that implementing regulations provide broad access to energy usage information in support of the Existing Buildings Energy Efficiency Action Plan goals to increase energy efficiency by 50%. We also note that the Energy Commission responded to the Collaborative's request to address 'ramifications of noncompliance' in the latest draft regulations and appreciate the inclusion of this important program element.

We strongly support the following elements of the latest proposed regulations:

- Definition of a Utility Account;
- Inclusion of buildings with 1 and 2 meters in the statewide benchmarking and transparency program;

- Inclusion of public buildings in the statewide benchmarking and transparency program;
- Annual benchmarking and reporting of up-to-date building characteristic information and utility data for the year specified;
- Allowing compliance with an Energy Commission-approved local ordinance in place of the statewide program; and
- Requiring utilities to provide building owners with meter numbers when delivering aggregate energy usage information.

In particular, the proposed definition of ‘utility account’ ensures the broad data access intended in AB 802:

SECTION 1. It is the intent of the Legislature to support strategies that enhance energy efficiency. Building owners should have access to their buildings’ energy usage information, which enables understanding of a building’s energy usage for improved building management and investment decisions. It is the intent of the Legislature that the State Energy Resources Conservation and Development Commission create a benchmarking and disclosure program through which building owners of commercial and multifamily buildings above 50,000 square feet gross floor area will better understand their energy consumption through standardized energy use metrics. (Underline added)

The Collaborative strongly supports this definition as it reflects the intent of AB 802 and provides a pathway to implement a successful statewide benchmarking program that serves as a building block to meeting the State’s goals to double energy efficiency in existing buildings.

Finally, the Collaborative notes that annual benchmarking is only accurate, for the purposes of energy management and reporting to the Energy Commission, if building characteristic information is current for the time period being reported.

Section 2: AB 802 Implementing Regulations Should Ensure Streamlined Access to Data.

2.1 We recommend that the Energy Commission require utilities to provide electronic systems for owners’ data requests, customer permissions, and verification of ‘owner’s agent’ status.

AB 802 envisions utilities using modern systems to deliver information to building owners, accept requests from building owners, and to obtain customer permissions required. This requirement is expressed in two specific sections.

(a) First, the Act directs utilities to use modern systems to handle and process customer permission in Section 25402.10(c)(1).

(c)(1) Subject to the requirements of paragraph (2), beginning no later than January 1, 2017, each utility shall, upon the request and written authorization or secure electronic authorization of the owner, owner's agent, or operator of a covered building, deliver or otherwise provide aggregated energy usage data for a covered building to the owner, owner's agent, building operator, or to the owner's account in the ENERGY STAR Portfolio Manager. The commission may specify additional information to be delivered by utilities to enable building owners to complete benchmarking of the energy use in their buildings and in other systems or formats for information delivery and automation. (Underline added)

It is critical to first establish that nothing in current law or the Act (AB 802) requires utilities to "obtain" a physical form containing customer permission to share information with any party, or to retain a paper copy of permission with a "wet signature."

AB 802 specifically approves customers giving owners permission to receive energy usage information in the lease – a contract between the owner and the customer. The utility is not a party to the lease and does not "obtain" permission. The utility's important role is to reasonably satisfy that the permission was conveyed.

Similarly, customers should be given the ability to electronically authorize other parties to receive their usage information.

AB 802 conveys to the Energy Commission broad discretion to direct utilities to implement systems that fulfill these requirements and expedite the overall process. The benefits of AB 802 – the benefits derived from making energy usage information usable – will not be realized if the process used by utilities to obtain and verify customer permissions is cumbersome, paper-based, and overly protective. The legislature affirmed the directive to facilitate information exchange in the Act at Section 5, 25402.10(f), essentially stating that whenever customer permission is required, the Energy Commission may specify utilities use modern, electronic processes:

(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. (Underline added)

We encourage the Energy Commission to include specific regulatory directives to accomplish this clear legislative requirement. At 1681(b)(4), we suggest the changes shown below in strike-through deletions and underlined additions:

(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, the Utility shall ~~not only~~ provide the information listed in subdivision (b)(1) & (2) for unless each customer other than the Building Owner that has given permission in accordance with the following: ~~is obtained from each utility customer other than the Building Owner.~~

(A) (i) For a request that is not made for compliance with the Benchmarking and Public Disclosure requirements pursuant to section 1682, a utility shall provide either the following options: ~~constitute customer permission:~~

1. The utility has used processes and procedures to reasonably assure the owner has obtained customer permission to receive customer's energy usage information in the form of a A current lease or waiver form, which has been accepted, executed or signed by the Utility customer or a person authorized to act on behalf of the Utility customer. , in which the customer gives permission to the sharing of his or her Energy use data with the Building Owner or Owner's Agent.
2. Use of an online system for the customer to authorize the utility to deliver the customer's usage information to the designated party (including the Building Owner or Owner's Agent).

32. In the absence of such a lease or waiver, the Utility shall notify the customer within 14 calendar days of receiving a data request that the customer's Energy use data has been requested by the Building Owner or Owner's Agent, and ask whether the customer allows the Utility to share his/her Energy use data with the Building Owner or Owner's Agent. For buildings subject to subdivision (b)(4), the Utility may only share the Energy use data with the Building Owner or Owner's Agent if the customer has provided permission.

2.2 AB 802 sets a four week timeline from owner request to provision of data.

The Energy Commission's rule should make clear systematic delivery of information and of assuring customer permissions should be the norm so that, after an initial set-up, monthly

or other periodic information delivery occurs without delay. Any lengthy timelines for utility action should be limited specifically to initial set-up and exceptions.

AB 802 set a legislative mandate of four weeks for the provision of data following an initial request from an owner or agent.¹ Yet, as currently drafted, the Energy Commission's regulations set a six week timeline. We strongly recommend the overall time between request and provision of data be limited to the four weeks required by AB 802 and ultimately with little to no delay once automated processes are up and running.

We therefore urge the following changes shown below in strike-through deletions and underlined additions:

(3)(A) If the request contains all of the information specified in subdivision (a)(1), the Utility shall notify the person who submitted the request that the request is complete, and that the Building Owner or Owner's Agent will receive the requested information within an additional 14 ~~28~~-calendar days, unless the request is one for which customer permission is required pursuant to subdivision (b)(4).

2.3 Ensure data is provided to owners in monthly, not annual, intervals

Section 2(A) of AB 802 provides that utilities shall deliver information in a building for "each of the 12 prior months." Yet, the Energy Commission's regulations imply a utility may only have to provide data for an annual period. Portfolio Manager requires data to be uploaded in intervals of less than 65 days. To comply with AB 802 and the technical requirements of Portfolio Manager, we recommend the following changes shown below in strike-through deletions and underlined additions:

(b)(2) For each Energy type, the Utility shall identify, aggregate, and provide all monthly Energy usage for the requested building for at least the previous calendar year and all available usage for the year in which data is requested by one of the following methods:[...]

2.4 If customer permission is obtained, owners should have the option to receive access to customer-specific data that is not aggregated, as current policy allows.

Utilities already offer customer-specific (disaggregated) data to building owners with customer permission. We strongly urge the Energy Commission to modify its language so it

¹ Cal. Pub. Resources Code Section 25402.10(C): Each utility shall deliver, upload, or otherwise provide aggregated energy usage data within four weeks of receiving a request from an owner, owner's agent, or operator of a covered building.

does not preclude owners from receiving unit-specific data where customer permission has been received.

We suggest the changes shown below in strike-through deletions and underlined additions:

4(C) The Utility shall provide to the Building Owner or Owner's Agent Energy use data for those Utility Accounts for which customer permission has been received. When possible, the Utility shall aggregate usage of each Energy type across Utility Accounts for which permission has been provided. Nothing within this statute removes or replaces the ability for the Building Owner to request and receive customer-specific utility usage information when customer permission has been obtained.

2.5 Utilities need to provide meter numbers to building owners for quality assurance.

At a minimum, utilities should provide building owners with a list of meter numbers for all meters serving the building when providing aggregated usage information. The Collaborative supports this requirement in Section 1681, (b) (1) (C).

Meter numbers are not sensitive customer information and can be read directly off the meter by onsite building managers and operators. However, building owners need utilities to provide a list of meter numbers in addition to aggregate WBUI to complete quality control checks on the data provided. By reviewing the list of meter numbers and the data provided, owners can verify that the correct data has been provided for their building and can evaluate whether meters are missing or incorrectly included.

One solution that was discussed at the July workshop is for utilities to provide building owners with partially-masked meter numbers for all meters serving the building when providing aggregate usage information. The Collaborative supports this compromise so long as owners are provided with digits that can be easily matched to onsite meter numbers.

2.6 Signature authorization by an owner or agent of an owner is sufficient authorization for data access.

Section 1681 (a)(1)(C) proposes that building owners verify their authority to receive data by submitting a deed, lease, or mortgage statement. These are unreasonable hurdles for customers to obtain data, particularly given the complex nature of building ownership. Utilities should use reasonable procedures to assure that customer information is only shared with parties authorized to receive it. The recommended industry standard practice is for the utility to accept an electronic or paper form signed by the owner or owner's agent (i.e., property manager). We therefore recommend the following changes:

(C) Information that verifies with reasonable certainty that the person submitting the request is the Building Owner or Owner's Agent. ~~A copy of the current deed or lease, or a recent mortgage statement for the property on which the building is located, along with~~ An electronic or paper waiver signed by the Building Owner or Owner's Agent shall be accepted as sufficient documentation to showing that the person submitting the request is authorized to act on behalf of the person identified as the Building Owner ~~on any of these documents~~ and shall be sufficient to demonstrate the validity of a request for no less than three years.

2.7 We recommend developing uniform statewide templates.

Stakeholders including utilities and building owners expressed a desire for standardized language for building owner data requests and customer permission requests. The Collaborative agrees that standardized templates for these common forms should be developed with the goal of voluntary statewide adoption. The Collaborative recommends that the Commission and stakeholders work together to develop these templates starting no later than Q4 2016. This will ensure they meet the needs of all parties, including local governments with existing and emerging ordinances that align with the statewide program.

We further recommend the regulations specify that the Energy Commission may require a review and approval process for utility forms that do not use the standardized template.

Section 3: Implementing Regulations Should Support a Comprehensive Statewide Benchmarking and Transparency Program.

3.1 Multifamily buildings with individually-owned units should be included in the statewide benchmarking and transparency program.

The Collaborative recommends that the Commission include condominiums with four or more units in the benchmarking and transparency program. None of the existing local benchmarking policies exclude condominiums from benchmarking and transparency requirements. In addition, utilities have no easy visibility into the ownership of multifamily properties, and therefore would have no way of differentiating between buildings that are operated as condominiums vs. rental apartments. Exempting condominiums from the data access and reporting provisions of AB 802 could place an additional and unnecessary verification burden on utilities.

With respect to condominiums, six cities define the association or organization of unit owners responsible for management of the condominium as the building owner responsible for benchmarking reporting. Those cities are Berkeley, CA; Boston, MA; Cambridge, MA; New York, NY; Portland, OR; and Seattle, WA. The remaining jurisdictions with

benchmarking requirements that apply to multifamily buildings do not directly address condominiums in their ordinance or regulations, nor do they exclude them.

Seattle's benchmarking rules serve as an example of how a city manages the participation of condominiums in a benchmarking program. The owners' association, or if applicable the master association, is responsible for establishing a record in Portfolio Manager for the entire condominium, including common spaces and all individual condominium units and benchmarking, disclosing, and reporting its aggregate performance. Owners of individual condominium units must provide the association with any authorization or billing/metering information needed to comply with these requirements.

3.2 Disclosures should support market transformation goals and academic research.

The primary purpose of publishing benchmarking results for individual buildings is to provide sufficient information so that potential buyers, tenants and financiers can evaluate and compare the relative performance of similar buildings. Metrics that relate to the way in which a building is operated are less germane and are unlikely to provide meaningful information to the primary users of this information. We suggest that the following proposed data fields be removed from the list of fields to be published:

- (N) Number of occupants
- (Q) Hours operated per week

Notwithstanding the above, there are additional data fields that can be of value to the Energy Commission and academic researchers, on a controlled basis, to assist with program evaluation and future policy design. Therefore, the Collaborative suggests that the Energy Commission define an additional set of data fields, such as (N) and (Q), which would be collected but not publicly shared.

We applaud the Energy Commission for the inclusion of an open "comments" field, provided that the primary purpose of this field is to allow building owners themselves to include information that could paint a more complete picture of their building's current and project performance. This field could, for example, be used to list any unusual, high intensity uses that impact the building's performance, or near-term plans already underway to improve the building's performance.

Section 4: AB 802 Implementation Needs to Begin in 2016.

4.1 Meter mapping sets the foundation for successful implementation of the data access and benchmarking provision of AB 802.

As the Collaborative has underscored in earlier comments, successful utility-led meter mapping is a critical first step for a successful utility data access and benchmarking program. We applaud the efforts of the Energy Commission's utility working group, which will allow for regular check-ins with utilities on the progress of their meter mapping execution throughout 2016. The Collaborative strongly encourages the Energy Commission to organize webinars and other types of educational technical assistance so that California utilities required to provide whole-building data will be fully immersed in the technical nuances of meter mapping (please refer to the EDA Best Practices for Providing Whole-Building Energy Data: Guide for Utilities).

As outlined in the draft regulations, building owners must provide sufficient information to the utility, and vice versa, so that both utility and building owner can verify building information (building address, meter numbers, or account numbers). The partnership of the utility and building owner in developing a streamlined and efficient process to create a comprehensive and accurate building-to-meter data set will be particularly important in the first few years.

4.2 Public buildings should be included in initial outreach to encourage early compliance to test meter mapping and customer permission processes.

Increased government leadership in energy efficiency is Goal 1 in the Existing Buildings Energy Efficiency Action Plan. As noted in the Collaborative's April 2016 comments, we agree with the approach of not requiring public disclosure in the initial reporting year for commercial buildings. We do however advocate for publicly-owned facilities to disclose in the initial year to demonstrate leadership by example and suggest that public agencies work closely with the Energy Commission to beta test compliance tools.

We also recommend the revival of local government coordination calls so that the Energy Commission and local governments with existing and emerging ordinances can identify the requirements for an approved local program to be listed on the Energy Commission website, identify protocols for 'reporting up' compliance, and develop secure data transfer processes.

4.3 Outreach, training, and education must begin in 2016 to avoid market confusion and build goodwill for the statewide program.

Stakeholders representing diverse constituencies including utilities, property owners, and energy and environment organizations all commented on the need for an increase in

training, outreach, and technical assistance resources to successfully implement the statewide benchmarking and transparency program. The Collaborative concurs and, as discussed in previous comments, strongly encourages the Energy Commission to create a Benchmarking Help Center, establish an Implementation Advisory Group with stakeholder representatives, create a benchmarking website with key information and training materials, and offer live trainings.

Planning for these activities needs to begin in 2016. At a minimum, the Collaborative recommends that the Energy Commission move quickly to launch an easy-to-locate, dedicated website by December 2016 with basic information about data access provisions that go into effect January 1, 2017, as well as the final regulations.

Statewide outreach and benchmarking training should begin no later than Q1 2017 to ensure that stakeholders have sufficient time to learn about the statewide reporting requirements. Outreach and training that is 'early and often' is critical to ensure continued support of statewide benchmarking by building owners and managers and will help to prevent confusion and a rush to access training as February 2018 approaches.

The Collaborative thanks the Energy Commission for this opportunity to provide public comments.

Submitted on behalf of the CA Benchmarking Collaborative.

Regards,

A handwritten signature in cursive script that reads "Hanna Grene".

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