

## DOCKETED

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**Southern California Edison Company's Comments on AB 802 Benchmarking Express Terms (Proposed Regulations)**

*Additional submitted attachment is included below.*

**BEFORE THE CALIFORNIA ENERGY COMMISSION**

In the matter of:

Building Energy Use Disclosure Program

Docket No. 15-OIR-05

STAFF WORKSHOP

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

**SOUTHERN CALIFORNIA EDISON COMPANY’S COMMENTS ON AB 802  
BENCHMARKING EXPRESS TERMS (PROPOSED REGULATIONS)**

**I.**

**INTRODUCTION**

Southern California Edison Company (SCE) respectfully provides the following comments on the California Energy Commission’s (CEC) Assembly Bill (AB) 802 (Williams, Chapter 590, 2015 Cal. Stats.) Benchmarking Express Terms (Proposed Regulations), filed into the above-referenced docket on or about February 23, 2017.

SCE generally supports CEC staff’s proposed draft regulations, with certain modifications as addressed below. Specifically, SCE recommends:

- Modifying the definition of “active utility account” to avoid confusion that could arise over tracking down permission from any vacated tenants of a building; and
- Eliminating the currently proposed second option for obtaining customer permission in favor of the currently proposed first option.

**II.**  
**DISCUSSION**

**A. Proposed Revisions to the New Definition of “Active Utility Account”**

The Proposed Regulations revise the definition of “Active Utility Account” to “[a] Utility Account ... [that] receives Energy in each month during the time period for which Energy use data is requested.”<sup>1</sup> SCE believes this definition was revised primarily because the CEC was attempting to address three issues regarding the definition of “Active Utility Account” that have arisen since the Initial Draft Regulations were filed<sup>2</sup>: (1) the CISR threshold; (2) covered buildings; and (3) the amount of data to be provided per active account.

SCE suggests that retaining the term “at any time” in the definition from the July 22, 2016 Draft Regulation is preferable to “in each month” because the latter may require the utility to seek customer permission from a tenant who has already vacated the property (and possibly the utility territory) in any given month on behalf of a building owner, which SCE believes is not intended by the CEC. Therefore, SCE recommends the final definition of “Active Utility Account” be revised to read as follows (subject to edits as needed, agreed upon between the IOUs and CEC):

*“Active Utility Account” – A Utility Account is considered “Active” if it receives Energy at any time during the time period for which Energy use data is requested, AND is currently active at the time of request.”*

This recommended definition does not result in a scenario where the utility would have to consider accounts that are no longer active at the time of request (but were active within the benchmarking timeframe) as accounts that need to be considered within the CISR threshold or Covered Building determination – it would allow the utility to provide aggregated usage for

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<sup>1</sup> Proposed Regulations at p. 2, Section 1681(a).

<sup>2</sup> AB 802 Draft Regulations Initial Staff Proposal, filed in this docket on July 18, 2016. The definition of “Active Utility Account” in the Initial Draft Regulations was: “A Utility Account under which a building received Energy at any time within the time period for which Energy use data is requested.”

these accounts (which are considered non-active utility accounts). In addition, this recommended definition would eliminate all scenarios where the utility would need to seek customer permission from a tenant that has already ended their tenancy. This recommended definition will allow the utility to strictly look at current active accounts on the day of the request to determine thresholds, instead of on a monthly basis.

**B. Utility Notification Process to Obtain Customer Permission Upon Building Owner's Request for Energy Use Data**

The Proposed Regulations require that, if a Utility receives a request for Energy use data from a Building Owner that requires customer permission but the request is not made for compliance with the Benchmarking and Public Disclosure requirement pursuant to section 1683, either of the following two options constitute customer permission:

- (1) “A current lease or waiver, executed or signed by the Utility customer or a Person authorized to act on behalf of the 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;” or
- (2) “In the absence of such a lease or waiver, the Utility shall notify the customer with 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 their Energy use data with the Building Owner or Owner’s Agent. For buildings subject to subdivision (b)(4) of this section, the Utility may only share the Energy use data with the Building Owner or Owner’s Agent if the customer has provided permission.”

SCE recommends that the option (2) above for Utility to notify the customers directly and obtaining customer permission to share their energy use data within 14 calendar days of receiving a data request from the Building Owner or Owner’s Agent be removed since the

associated cost of supporting this option combined with the expected low response rate is not an effective use of rate payer resources and will lead to building owners not obtaining the data they need for benchmarking purposes. Requiring the Utility to notify the customer and obtain customer permission will result in costly system and operational process changes for SCE. In order for SCE to facilitate outreach to customers on behalf of building owners, SCE would likely (1) incur incremental system cost related to automatically identifying the customer's mailing address, sending postal mail, and tracking responses; (2) incur costs for paper and postage for each mailing; and (3) incur ongoing incremental manual labor costs for reviewing responses and updating tracking systems. These additional steps are projected by SCE to be time-consuming and inefficient within the currently required timeframe, with limited chance of success compared to other alternatives. For example, postal mail will be SCE's default means of customer notification, since SCE does not currently have a comprehensive database of electronic (e-mail) contact information. It is also anticipated that only a small percentage of customers will view and respond to the notifications from the Utility. According to the Direct Marketing Association<sup>3</sup> in 2015 the average response rate for direct mail in letter sized envelopes was 3.5% for both business-to-business and business to consumer mailings. Given the low response rate, SCE believes it would be more effective for the Building Owner rather than SCE to obtain customer permission, or provide a current lease or waiver signed by the customer. The burden on the Utility and the use of ratepayer resources in obtaining customer permission directly by the Utility may outweigh the intended benefit.

As it relates to building benchmarking, the building owners are the most incentivized to obtain customer permission. The building owner will have a better chance of obtaining customer permission through direct contact versus utilities sending a direct mailer. Furthermore, SCE can

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<sup>3</sup> Direct Marketing Association via <http://www.marketingcharts.com/traditional/direct-media-response-rate-cpa-and-roi-benchmarks-53645/attachment/dma-direct-mail-response-rate-benchmarks-apr2015/>

make it easier on building owners to obtain customer permission by providing pre-populated forms that will reduce the amount of time it takes to complete.

Thus, SCE recommends that Section 1682(b)(4)(A)(i)(2) be removed from the proposed regulations. Alternatively, SCE recommends that Section 1681(b)(4)(A)(i)(2) be modified to have the Utility work with the Building Owner or Owner's Agent to facilitate the process of obtaining the appropriate customer permission, instead of requiring the Utility to notify the customer directly. For example, upon receiving a request for Energy use data from a Building Owner or Owner's Agent, the Utility could provide a letter template and prepopulated Customer Information Standardized Request (CISR) form (*e.g.*, SCE CISR Form 14-796) – or similar form authorizing a third party to receive customer information – to the Building Owner or Agent to obtain the appropriate permission directly from their tenant(s) in the absence of a previously executed lease provision or waiver. This approach would increase efficiency in the process by eliminating the notification period (14 calendar days plus possible additional time waiting on the customer's response to the notice), and would also eliminate the risk of customer non-responsiveness.

### **III.**

#### **CONCLUSION**

SCE appreciates the opportunity to provide comments on the Proposed Regulations. SCE looks forward to continuing to work with the CEC, the other utilities, and other interested stakeholders in finalizing these regulations to implement the building energy use data access, benchmarking, and public disclosure provisions of AB 802.

Respectfully submitted,

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*/s/ Ania M. Wojtyna-Machon*

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