

## DOCKETED

<b>Docket Number:</b>	15-OIR-05
<b>Project Title:</b>	Building Energy Use Disclosure and Public Benchmarking Program Mandated under Assembly Bill 802
<b>TN #:</b>	216922
<b>Document Title:</b>	California Housing Partnership Corp., et al. Comments on Proposed Regulations for Building Energy Use Benchmarking
<b>Description:</b>	California Housing Partnership Corporation, Natural Resources Defense Council, California Coalition for Rural Housing, Efficiency Council, Association for Energy Affordability, Bright Power, and Build It Green Comments on Proposed Regulations for Building Energy Use Benchmarking and Public Disclosure (AB 802)
<b>Filer:</b>	System
<b>Organization:</b>	California Housing Partnership Corporation, et al.
<b>Submitter Role:</b>	Public
<b>Submission Date:</b>	4/10/2017 2:43:51 PM
<b>Docketed Date:</b>	4/10/2017

*Comment Received From: Caroline McCormack*

*Submitted On: 4/10/2017*

*Docket Number: 15-OIR-05*

**California Housing Partnership Corporation et al. Comments on Proposed Regulations for Building Energy Use Benchmarking and Public Disclosure (AB 802)**

*Additional submitted attachment is included below.*

April 10, 2017

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

Subject: Docket Number: 15-OIR-05

**California Housing Partnership Corporation, Natural Resources Defense Council, California Coalition for Rural Housing, Efficiency Council, Association for Energy Affordability, Bright Power, and Build it Green Comments on Proposed Regulations for Building Energy Use Benchmarking and Public Disclosure (AB 802)**

**Introduction and Background**

The California Housing Partnership Corporation (CHPC), Natural Resources Defense Council (NRDC), California Coalition for Rural Housing, Efficiency Council, Association for Energy Affordability, Bright Power, and Build it Green appreciate the opportunity to provide comments in response to the California Energy Commission's (CEC) Proposed Regulations to implement the Building Energy Usage Data Access, Benchmarking, and Public Disclosure Provisions of Assembly Bill 802 (AB 802). Our organizations appreciate the public comment and participation process the CEC has overseen to ensure that AB 802 is implemented in a manner that works for all sectors.

Consistent access to accurate energy usage data is both a fundamental need for operating affordable multifamily 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 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 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.

In addition to supporting the recommendations of the Benchmarking Collaborative, we raise several issues of unique concern to the multifamily housing and affordable housing sectors.<sup>1</sup> While we greatly appreciate the CEC's initial efforts to implement AB 802, in its current form, the Proposed Final Regulations fall short in ensuring that low-income households throughout the state benefit from the value of data access and benchmarking.

**In summary, our recommendations include:**

1. The CEC should amend the Proposed Final Regulations to ensure owners of garden style apartments are able to receive property-level data, as permitted under AB 802. We urge the CEC to address this issue before finalizing the regulations.
2. We urge the CEC to revise how building ownership is defined and verified by utilities to facilitate a reasonable process for owner submission of data requests.
3. We urge the CEC to require utilities to deliver building owners with the customer names, addresses and unit numbers associated with the data request, along with a full list of meter numbers to enable owners to verify the accuracy of provided data, as the CEC provided in its previous version of regulations.

---

<sup>1</sup> CHPC and NRDC also submitted joint comments to 15-OIR-05 on December 31, 2015 and August 12, 2016.

4. The CEC should use authority granted under AB 802 to ensure a streamlined pathway exists for tenant-level data with customer consent.
5. We recommend the CEC develop outreach, training and educational resources that specifically target the low-income multifamily housing sector.
6. We recommend that the CEC look into additional ways to strengthen the value of AB 802 in future phases of the regulations.

**1. The CEC should amend the Proposed Regulations to ensure owners of garden style apartments are able to receive property-level data, as permitted under AB 802. We urge the CEC to address this issue before finalizing the regulations.**

As CHPC and NRDC have described in previous comments, 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.

AB 802 does not restrict the CEC’s ability to allow owners to request aggregated data from multiple buildings, if the request in aggregate is greater than five or more Utility accounts. Further, the CEC’s definition of covered building already extends to parcels, campuses, or sites served by a common energy meter. A simple adjustment would address this issue for parcels or sites with separate metering as well.

**Specific recommendation (proposed additions in underline):**

We urge the CEC to modify the following definition of “covered building:”

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.

Alternatively, we urge the CEC to allow owners to request data for multiple *buildings*, as follows:

Section 1682(a):

The Owner of a Covered Building, or the Owner’s Agent, may request Energy data from each Utility serving a Covered Building or an aggregation of buildings on a single parcel, site or campus with a total of five or more Utility Accounts, by providing the following information.

**Explanation:**

- **It is imperative that the CEC 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 housing, including affordable housing, is physically configured. From the owners’ operational perspective, there is little difference between how energy services are managed and delivered and potentially conserved for a cluster of suburban four-plexes versus a downtown high-rise.
- **Affordable housing outside of densely populated urban areas is often constructed as garden style apartments, which include 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.<sup>2</sup> This problem is particularly acute in rural and suburban areas. For example, Self Help Enterprises in the San Joaquin Valley has 26 ineligible properties (for a total of 1,238 units) due to the five-account building rule even though these buildings reside on properties that collectively have greater than five accounts. Rural communities already fall behind in implementing meaningful energy efficiency retrofits due to a lack of general resources (ex. no Regional Energy Network (REN) in the San Joaquin Valley) and lack of staffing and technical capacity. In order for energy efficiency projects to be implemented in rural California, the data needs to be easily accessible to those building owners.
- **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. A property-wide or aggregated building definition will also ensure all energy usage on a given site is accounted for and that no individual buildings are disproportionately impacted. Consider the following:
  - Many properties have an exterior lighting account tied to an individual address, but any site lighting serves the entire property. When aggregating data at the building-by-building level, this energy usage could get missed, or could show up as disproportionately impacting an individual building.
  - Some multifamily properties have central Domestic Hot Water Systems (DHW) systems that serve multiple buildings. The DHW plant could have its own separate address or could be associated with one residential building address, even though it serves multiple buildings. If aggregating data on the building-by-building level, this energy usage could be overlooked, or would show up as disproportionately impacting an individual building.
  - Many multifamily properties consist of stand-alone buildings providing resident amenities such as laundry rooms, pools, or community rooms. A pool or community room frequently has a stand-alone address, and would get missed at the property level analysis since the building likely has less than five accounts associated with it. A laundry room could either be a stand-alone address or tied to a residential building address, even though the residents in other buildings use the laundry services at this address. If aggregating at the building-by-building level, this energy use could get missed, or would show up as disproportionately impacting an individual building.

**2. We urge the CEC to revise how building ownership is defined and verified by utilities to facilitate a reasonable process for owner submission of data requests.**

Since the last version of Proposed Regulations, the CEC has adopted a number of changes that will make it increasingly difficult for owners to make and receive data requests. For example, the current

---

<sup>2</sup> 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.

definition of owner does not account for the unique arrangements of multifamily affordable properties, as described in more detail below. Another potential owner verification issue arises in Section 1682 (a)(1)(c): by generally requesting that owners submit “information that verifies the Person submitting the request is the Building Owner or Owner’s Agent,” the CEC opens the door to broad interpretation by utilities to impose potentially burdensome rules around establishing ownership or rules that are inconsistent, i.e. vary widely by service territory. We recommend that the CEC provide clear guidelines in the regulations in order to prevent an onerous or unreasonable process for building owners.

### **Specific recommendations:**

We urge the CEC to modify the following:

#### **Section 1681 (d):**

Building Owner – The Person listed as the Building Owner on the current deed or the most recent mortgage statement for the property on which the building for which Energy use data is requested is located, or the Person who can otherwise verify with reasonable certainty ownership of the building, for example, through an electronic or paper waiver signed by the owner or owner’s agent verifying ownership.

#### **1682 (a)(1)(c):**

Information that verifies that the Person submitting the request is the Building Owner or Owner’s Agent. An electronic or paper waiver signed by the owner or owner’s agent should suffice as verification, and should remain valid until there is a change in ownership.

### **Explanation:**

For the purposes of the Proposed Regulations, the CEC is currently defining “Building Owner” as “An individual or entity identified as the current owner on the current deed or most recent mortgage statement for the property on which the building for which energy use data is requested is located” (Section 1681, “Definitions”). As written, this definition does not account for the unique ownership arrangements of multifamily affordable housing. For example, to access the federal Low Income Tax Credit (LIHTC) program, the Internal Revenue Code requires non-profit housing sponsors to develop housing in partnership with for-profit corporations that have the ability to use these tax credits.<sup>3</sup> However, because nonprofit developers must create separate limited partnerships (LPs) or limited liability corporations (LLCs) with an affiliated non-profit corporation serving as the managing general partner or managing member for each new LIHTC development, the parent non-profit affordable housing corporation (in effect, the building owner) is often not listed as the legally recognized general partner, even though the parent corporation controls the general partner it created to manage the development. The implication is that the organization requesting the information may not match the organization on the deed or recent mortgage statement. As a result, multifamily building owners run the risk of not being recognized as building owners by the utilities under the current AB 802 Proposed Final Regulations. Further, the industry standard practice for verifying ownership is for the utility to accept an electronic or paper form signed by the owner or owner’s agent (i.e., property manager).

---

<sup>3</sup> The federal Low Income Housing Tax Credit (LIHTC) program has been the primary source of funding for all affordable rental housing in the nation since 1987.

3. **We urge the CEC to require utilities to deliver building owners with the customer names, addresses and unit numbers associated with the data request, along with a full list of meter numbers to enable owners to verify the accuracy of provided data, as the CEC provided in its previous version of regulations.**

The CEC's most recent regulations, Section 1682(b)(1), significantly reduce the information provided to building owners to verify the accuracy of the whole-building energy usage data provided by utilities. The initial proposal required utilities to provide the Building Owner or Owner's agent with: a) all meters associated with the account, b) a list of all customers associated with the building, and c) the building identification, if available.

The most recent Proposed Final Regulations instead only require utilities to provide the "last four characters of the meter number for each meter serving the building." Many multifamily building owners, who may own and operate thousands of units of housing, do not retain complete records of all the meter numbers associated with their buildings. As a result, using the last four characters of the meter number to verify whether the utilities have in fact included the correct collection of accounts will significantly impair owners' ability to ensure the accuracy of the energy data received.

We urge the CEC to instead provide owners with customer names, addresses, unit numbers, and the complete meter numbers associated with each building to support the verification process. Most owners retain a list of tenant names for their properties and have the ability to physically read each individual physical meter. However, the burden on owners to physically verify this information, including in some cases burdening tenants in their apartment dwellings, will significantly impair most owners' ability to verify the accuracy of energy usage data.

### **Specific recommendation**

We recommend the CEC amend its regulations as follows:

#### **1682(b)(1):**

For each Energy type, the Utility shall deliver the following information to the Building Owner or Owner's Agent:

- (A) ~~The last four characters of the~~ A list of meter numbers for each ~~all~~ meters serving the building.
- (B) The building address and list of all units associated with the building
- (C) A list of all Utility customers associated with the building.
- (D) The Building Identification Number, if available.

4. **The CEC should use its authority granted under AB 802 to ensure a streamlined pathway exists for access to tenant-level data with customer consent for properties of all sizes.**

AB 802 specifically grants the CEC authority to streamline the individual tenant consent process for building owner access to data:

(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.**

However, the CEC's regulations currently remain silent as to how residential and mixed-use buildings of all sizes obtain customer consent for tenant-level data. We strongly urge the CEC to reconsider and to adopt our proposed amendments below.

**Specific Recommendation:**

At a minimum, we recommend the CEC use its authority to require utilities to automate and streamline the tenant consent process for properties of all sizes by developing standard CISR forms that can be used statewide and across utilities. PG&E's CISR form and automated data retrieval process is a potential model that we recommend be replicated by other utilities.<sup>4</sup> Further, we recommend the CEC establish guidelines requiring the utilities to accept alternative forms of tenant consent outside of the CISR form process, such as rental lease language allowing landlords to access tenant energy use data, with consent, for properties of all sizes.

We therefore recommend the CEC modify its regulations as follows:

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

**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 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 cost-effective efficiency improvements and spot and correct maintenance issues, which in turn helps ensure long-term housing affordability; and (2) because it is required by federal and state housing regulations for deed-restricted affordable housing. 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).<sup>5</sup>
- The current process for obtaining tenant consent is burdensome and largely ineffective. 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. Owners also

---

<sup>4</sup> Ideally, IOU CISR forms should authorize the release of tenant energy data indefinitely until the tenant moves out or terminates consent, instead of requiring owners to re-submit the forms every three years.

<sup>5</sup> Please see CHPC's December 31, 2015 comments for more background on the need for tenant data.



report that even when they provide customer signatures on existing CISR forms, they are still encountering barriers to accessing this data that vary by service territory.

- 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.<sup>6</sup>
- By remaining silent on the process to obtain customer permission for tenant-level data, the CEC is potentially creating conflicting and duplicative processes for owners and utilities. Many large building owners both will need whole-building data to publicly benchmark their buildings *and* individual tenant-level data to comply with federal and state requirements or identify more specific tenant-level upgrades. Under the currently proposed regulations, owners would have to undergo two separate data sharing processes.

**5. We recommend the CEC develop outreach, training and educational 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 regulations are implemented.

**6. We recommend that the CEC look into additional ways to strengthen the value of AB 802 in future phases of the regulations**

In the future, as the CEC seeks ways to enhance the value of AB 802, we recommend exploring the following modifications to the regulations:

- **Aggregating energy data by unit type:** For purposes of complying with HUD rules around establishing Utility Allowances in federally subsidized housing, multifamily building owners with HUD subsidies must submit energy usage information that is segmented by bedroom type. In the future, it would be useful if IOUs could also provide data by unit type (one-bedroom units, two-bedroom units, etc.), as long as the total number of accounts exceeds the five-account threshold. This would allow owners to analyze consumption by unit type, update utility allowances based on actual consumption, and use the data more effectively to drive energy efficiency investments.
- **Including aggregated cost data:** Due to the increasing complexity of utility rates, access to cost data will become an increasingly important aspect of understanding energy use and making informed decisions about energy efficiency investments. Demand charges, time-of-use rates, and income-qualified rate categories make it difficult to calculate the cost of energy use when only aggregate electricity and natural gas are reported. Access to the cost associated with energy use has the potential to provide building owners, managers and other relevant stakeholders with the necessary information to make smart decisions about energy management.

---

<sup>6</sup> 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.

## Conclusion

Our organizations appreciate the opportunity to provide these comments regarding the CEC's Proposed Final Regulations. We look forward to continuing to work with the California Energy Commission and interested stakeholders on the implementation of AB 802.

Respectfully submitted,



Caroline McCormack  
Policy Manager, Sustainable Housing  
California Housing Partnership  
369 Pine Street, Suite 300  
San Francisco, CA 94104  
E-mail: [cmccormack@chpc.net](mailto:cmccormack@chpc.net)

*/s/ Melanie Gillette*  
Melanie Gillette  
Senior Policy Director  
California Efficiency Council  
1535 Farmers Lane, Ste. 312  
Santa Rosa, CA 95405  
E-mail: [mgillette@efficiencycouncil.org](mailto:mgillette@efficiencycouncil.org)



Maria Stamas  
Attorney, Energy & Climate  
Natural Resources Defense Council  
111 Sutter Street, CA 94104  
E-mail: [mstamas@nrdc.org](mailto:mstamas@nrdc.org)



Nick Dirr  
Director, Multifamily Technical Services  
Association of Energy Affordability  
5900 Hollis Street, Suite R2  
Emeryville, CA 94608  
E-mail: [ndirr@aea.us.org](mailto:ndirr@aea.us.org)

*/s/ Alicia H. Sebastian*  
Alicia Sebastian  
Director of Housing and Community  
Development Programs  
California Coalition for Rural Housing  
717 K Street, Suite 400  
Sacramento, CA  
E-mail: [Alicia@calruralhousing.org](mailto:Alicia@calruralhousing.org)

*/s/ David Myers*  
David Myers  
Regional Director, Southern California  
Build it Green  
523 W 6<sup>th</sup> Street, #203  
Los Angeles, CA 90014  
E-mail: [david@builditgreen.org](mailto:david@builditgreen.org)

*/s/ Jon Braman*  
John Braman  
Vice President, Strategic Initiatives  
Bright Power  
11 Hanover Square, 21<sup>st</sup> Floor  
New York, New York 10005  
Email: [jbraman@brightpower.com](mailto:jbraman@brightpower.com)

*/s/ Mike Maroney*  
Mike Maroney  
Associate Project Manager  
TRC Companies  
436 14<sup>th</sup> Street, Suite 1020  
Oakland, CA 94612  
E-mail: [mmaroney@trcsolutions.com](mailto:mmaroney@trcsolutions.com)

Dated: April 10, 2017

