

DOCKETED

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SMUD Comments AB 802 Benchmarking Express Terms (Proposed Regulations)

Additional submitted attachment is included below.

**STATE OF CALIFORNIA
BEFORE THE CALIFORNIA ENERGY COMMISSION**

In the matter of:)	Docket No. 15-OIR-05
)	
Building Energy Use Disclosure Program)	SMUD Comments On AB 802
)	Benchmarking Express Terms
)	(Proposed Regulations)
)	
)	
		April 10, 2017

**Comments of the Sacramento Municipal Utility District
on Proposed Regulations Implementing AB 802**

Thank you for the opportunity to provide comments on the Proposed Regulations for the building energy use, benchmarking and public disclosure process to be implemented by the California Energy Commission (“CEC” and “Commission”) pursuant to Assembly Bill No. 802 (Williams, Chapter 590, Statutes of 2015)(“AB 802”).

The Sacramento Municipal Utility District (“SMUD”) supports increased energy efficiency in existing buildings and promotes the efficient use of energy by its customer-owners. Environmental leadership is one of SMUD’s core values, and we believe that the comprehensive benchmarking structure envisioned by AB 802 may enhance this directive. SMUD has worked well with our customers in fulfilling the more limited, “time-of-sale” benchmarking structure established by Assembly Bill No. 1103 (Saldana, Chapter 533, Statutes of 2007)(“AB 1103”) and commits to working with the Commission and stakeholders to successfully implement the AB 802 structure.

SMUD notes that the benchmarking and disclosure process being proposed by the CEC envisions significant actions and interactions with our customers. While there is not a direct relation to the Proposed Regulations, utility energy efficiency program and outreach efforts may be useful as a vehicle to encourage tenant participation in the benchmarking structure. SMUD also expects our customers to have questions about the AB 802 requirements as they are established, similarly to questions we have received for the AB 1103 benchmarking effort. While SMUD expects to provide similar information, education and outreach; using our website, informational fact sheets, etc. to our commercial and larger multi-family customers to help facilitate participation, the significantly increased number of buildings covered by AB 802 is expected to result in a material cost of such assistance borne by SMUD.

SMUD submitted comments on the Staff Proposal for Draft Regulations on August 12, 2016. SMUD appreciates CEC staff's response to our comment regarding Section 1682(a)(1) – previously Section 1681(a)(1) in the July 2016 Draft Regulations – in which it was unclear what the Owner, or Owner's Agent, of a cover building should provide the Utility when making a data request. SMUD recommended deleting "An indication of..." and starting the regulatory language simply with "Whether..." and SMUD thanks the CEC staff for clarifying this language and including SMUD's suggestion in the Proposed Regulations.

However, SMUD is still concerned that a number of the issues voiced in our comments dated August 12, 2016 were not addressed by CEC staff in the Proposed Regulations. SMUD would like to take this opportunity to reiterate our continued concerns, as well as present additional comments for CEC consideration.

Section 1682(a)(1)(C): SMUD is not equipped to verify that the Person submitting the request is the Building Owner or Owner's Agent. In implementing AB 1103, SMUD transferred the information to the ENERGY STAR Portfolio Manager's Data Exchange Services. Our processes do not track nor verify the identity of all building owners. We have a direct relationship with each customer-owner as the customer of record and unlike other public agencies do not have immediate access to property records.

Section 1682(b)(1): It is not clear that Utilities can in all cases provide meter numbers for a building simply based on an address provided by the Building Owner or the Building Identification Number, if available. SMUD recommends that the words "... if available..." be added to the provisions in this section to take into account instances where the requested information is unavailable. As mentioned above, our desire is to continue to provide the information using the ENERGY STAR Portfolio Manager's Data Exchange Services where verification as to Building Owner or Owner's Agent takes place on the portal and is performed by someone other than the Utility.

Section 1682(b)(2): The amount of Energy use data required by Section 1682(b)(2) seems to vary between a minimum of 12-13 months and a maximum of 23-24 months. The language says for "at least the previous calendar year and all available usage for the year in which data is requested..." A request in December, then, may be for 23 or 24 months of data, while a request in January may be for just 12 or 13 months. This data should be more uniformly required for just the most recent 12 months. The most recent 12 months should be sufficient information to establish an approximate calendar year set of Energy use data for individual Covered Buildings. SMUD suggests that there would not be any verifiable accuracy in benchmarking data by including data varying between 12 and 24 months for each building.

Further, SMUD suggests adding a Section 1682(b)(2)(C), which would grant a Utility the option to provide a usage history report, in the ENERGY STAR Template format, to applicable Utility customers. In cases where securing permission is problematic, this option could streamline the process and remove privacy/permission issues since the Utility would be simply releasing summarized usage data to the existing customer of

record. This change would grant the Building Owner the ability to successfully benchmark a building in the event technical difficulties, or inability of the Utility to secure permissions, interrupts the process. ENERGY STAR Portfolio Manager would continue to function as intended and would allow the Building Owner to enter the data manually (after receiving it from the tenant), if needed.

Section 1682(b)(3): The requirement that Utilities determine whether a data request is complete or not within 14 calendar days may be difficult to meet since most data requests are expected in January and February (since the mandatory requests for disclosable buildings are required by March 1st of each year). SMUD recommends that 30 days be allowed for this requirement to ensure that Utilities are best able to comply with the requirement.

Section 1682(b)(4): Since the Building Owner is required to initiate the request for Energy use data, and the Building Owner has direct knowledge of and contact with the tenants of any Covered Building they own, the Building Owner should be the entity to obtain tenant permission for release of Energy use data, and include their information about the number of tenants and the status of tenant permission in the initial request. There may be cases where the Utility has better information about the number of accounts, but the process will be assisted by the Building Owner providing relevant information in the initial request. This will also reduce the number of contacts the Utility has to attempt with tenants/accounts that the Building Owner indicates have not yet given permission to release their Energy use data. Placing the burden on Utilities to seek customer permission is misplaced. SMUD is not equipped to determine a current lease or waiver is signed by a customer and should not be required to track and maintain this information. There may be situations where a tenant does not want their Energy use information disclosed to their Building Owner. SMUD considers Energy use data confidential and tenants have a right to privacy in this data. The Building Owner is better positioned to make the consent part of a lease or avail themselves to a Consumer Notice process. Two changes are appropriate to address this issue. First, the CEC should add Section 1682(a)(F) that reads:

1682(a)(F) If the Covered Building has (1) fewer than three Active Utility Accounts of any Energy type provided by a Utility, none of which are residential, or (2) fewer than five Active Utility Accounts of each Energy type provided by a Utility, at least one of which is residential, the Building Owner shall provide evidence that customer permission has been obtained from each Utility customer other than the Building Owner, or indicate that they have not been able to obtain such permission.

Second, Section 1682(b)(4) should also include language indicating that the information provided by the Building Owner pursuant to 1682(a)(F) constitutes adequate evidence that tenant permission has been obtained.

Section 1683(c): SMUD is concerned that without a proper acknowledgement that energy consumption is highly complex and variable, a high degree of public exposure

could result in “energy shaming” that conflicts with SMUD’s sense of community. Additionally, public disclosure of this information could have an adverse impact to economically challenged areas since investment in development/upgrades will be shifted away to buildings that are more easily retrofitted irrespective of the types of businesses that operate in those buildings and could have a negative impact on economic development.

Thanks again for the opportunity to comment on the Proposed Regulations.

/s/

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cc: Corporate Files [LEG 0168]