

DOCKETED

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on Proposed AB 802 Regulations

Additional submitted attachment is included below.

BEFORE THE CALIFORNIA ENERGY COMMISSION

In the Matter of:

Docket No. 15-OIR-05

***Building Energy Use Disclosure Program
Mandated Under AB 802***

**RE: Express Terms of Proposed
Regulations for AB 802
(Williams, Chapter 590, Statutes of 2015)**

**CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION, SOUTHERN CALIFORNIA
PUBLIC POWER AUTHORITY, AND NORTHERN CALIFORNIA POWER AGENCY
COMMENTS ON THE EXPRESS TERMS OF PROPOSED REGULATIONS FOR AB 802**

The California Municipal Utilities Association (“CMUA”), Southern California Public Power Authority (“SCPPA”), and Northern California Power Agency (“NCPA”) (collectively, “Joint POU”) appreciate the opportunity to provide these comments to the California Energy Commission (“Commission”) on the express terms of the proposed regulations for Assembly Bill (“AB”) 802 implementation, released on February 14, 2017. These proposed regulations were released following an initial draft from Commission staff on July 22, 2016. The Joint POU and other utility stakeholders provided feedback on this initial draft in advance of the proposed regulation’s release. Unfortunately, many of the concerns raised by the Joint POU and other utility stakeholders on the initial draft are unaddressed in this release of the proposed regulations. The Joint POU provide below a discussion of these issues. The Joint POU thank the Commission and Commission staff in advance for this review and urge the Commission to make the following changes ahead of the planned July 12, 2017 hearing date.

I. DISCUSSION

A. Section 1681. Definitions

The Joint POU support the Commission maintaining the state generated Building Identification numbering systems as provided in proposed Section 1681(c). In previous comments, the Joint POU noted that the identification numbering system was better utilized for Disclosable

Buildings, and now observe that the numbering system will also be used by Covered Buildings to the extent available. This qualification for Covered Buildings is important given that there may be instances when such information is unavailable.

The Joint POUs are concerned with the present definition of Utility Account, which is still in need of revisions, particularly in Section 1681(o). Presently, Utility Account is defined as an agreement between a Utility and its customers to provide Energy to a pre-determined location. Multiple postal addresses served by the same Utility Account for a single Energy type are treated as separate Utility accounts. This approach is problematic because multiple postal addresses within a “building” (such as a strip mall) might not be sub-metered or individually metered and thus cannot be treated as individual or separate utility accounts. The Commission should revise Section 1681(o)(1) to provide include multiple postal addresses as separate utility accounts “so long as separate metering exists.”

Similarly, the definition of Covered Building remains overly broad, in the face of legitimate concerns raised by stakeholders in the prior round of comments.¹ Presently, a non-residential Covered Building generally consists of “any structure used or intended to support or shelter any use or occupancy” so long as the structure received energy. This definition is still in need of modification as it could include metered parking structures, remote pumping stations, and other structures not in alignment with the AB 802’s express intent to improve *building management* and investment decisions.²

B. Section 1682. Data Access

i. Tenant Customer Permission

In Section 1682(b)(4), the proposed regulations require the Utility fill an inappropriate role

¹ See, e.g., SDG&E Comments at 3 (August 12, 2016); CMUA Comments at 5 (December 31, 2015).

² See AB 802, Section 1 (for legislative intent).

on data access issues between a Utility customer, who is not the Building Owner (“tenant” for ease of reference), and the Building Owner. Under the regulations, the Utility must request permission from a tenant customer in response to a Building Owner’s interest, track these requests, notify the Building Owner of the status of a request, and follow up with both the Building Owner and tenant customer related to the requests. The Joint POU’s do not recommend that the Utility attain tenant customer approval on behalf of a Building Owner. The Building Owner is well positioned to request tenant customer permission and follow up on that status. The Joint POU’s see a proper role for Utilities in processing customer permission information, but it is inappropriate and impractical for Utilities to follow up on behalf of a Building Owner’s interest with the Owner’s tenants. The Joint POU’s also assume that the timeline for request processing expressed in Section 1682(b)(3) does not apply prior to any tenant approval received in Section 1682(b)(4) given that the regulations acknowledge at Section 1682(b)(4)(B) that customer permission could take at least 60 days. The Joint POU’s would appreciate any clarification from the Commission to that effect.

ii. Utility Data Access – Point of Request

The Joint POU’s request a greater ability to retrieve information from Building Owners to process a data request from a Covered Building Owner under Section 1682(a). As acknowledged in the same Section 1682(a), sometimes the building identification number is not available, and it may not always be possible to discern the correct Covered Buildings requested by the Building Owner based solely on the information provided under Section 1682(a)(1). Section 1682(b) should be amended to allow utilities to request any additional necessary information (such as customer/tenant names or meter numbers), which will assist with proper usage information identification and gathering.

Also, the Joint POU’s reiterate the concern that Section 1683(b)(5) unnecessarily restricts the ability of Utilities to request additional information from a building owner. AB 802 did not

authorize the Commission to set such limitations regarding covered buildings, and the regulations should be amended to remove the language in subsection (b)(5). Further, subsection (b)(5) as currently drafted prevents a Utility from requiring the Building Owner or Owner's Agent of a Covered Building to enter into a legally binding non-disclosure agreement that will restrict the sharing of building energy usage data, so as to protect potentially sensitive information from being shared inappropriately with third parties. The Joint POU's urge the Commission to replace the existing language in subsection (b)(5) with language allowing a Utility to require a Building Owner or Owners Agent to sign a legally binding nondisclosure agreement that restricts the sharing of Tenants' energy usage data with third parties, outside of the Commission Benchmarking and Disclosure program.

iii. Utility Data Access – Request Frequency

Section 1682(b)(2) requires that the Utility provide the information in monthly intervals “for at least the previous calendar year, and all available data for the year in which data is requested.” The Joint POU's recommend that the Commission should specify in the regulation that Utilities should not be required to supply usage data more than once per year or “as often as each utility deems possible.”

iv. Portfolio Manager

Under Section 1682(b)(2)(A), a Utility not using the ENERGY STAR Portfolio Manager's Data Exchange Services shall send the data to the Building Owner using the spreadsheet template provided by the ENERGY STAR Portfolio Manager. The Joint POU's encourage Commission staff to link or attach a portfolio manager spreadsheet template for easy access by all impacted stakeholders. Additionally, the Joint POU's suggest the Commission provide ENERGY STAR Portfolio Manager training resources to stakeholders. Some users may be unfamiliar with this platform and in the absence of training, may well turn to their local Utility. This places Utilities in

a role that was never contemplated, for which they may have little expertise. Therefore, the Joint POU's suggest the Commission include training or support information such as a website or a phone number when disseminating ENERGY STAR Portfolio Manager information.

Also, the Joint POU's appreciate the removal of the requirement that a Utility deliver a list of all utility customers associated with the building. Keeping the last four characters of the meter number protects customer privacy better and is more consistent with utility practice.

C. Section 1683. Benchmarking and Disclosure

After a review of the benchmarking regulatory changes, the Joint POU's recommend that staff continue to engage with building owners, commercial and industrial customers, and other stakeholders in Benchmarking development. For Section 1683(b)(4), the Joint POU's support the condition that a tenant, as well as a Building Owner, should have rights to request usage data to be held as proprietary.

D. Section 1684. Exemptions

The Joint POU's support the Commission's efforts to clarify the exemption process contained within Section 1684. As part of this exemption process discussion, the Commission should include a timeline for how long the Commission is allowed to make the determination if a local program meets or exceeds Commission requirements. This timeframe will assist with and provide greater certainty for utility benchmarking planning efforts.

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II. CONCLUSION

The Joint POU's appreciate the opportunity to provide these comments to the Commission, and look forward to continue working with staff ahead of the July 12, 2017 hearing date.

Respectfully submitted,

/s/ Dan Griffiths

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