

DOCKETED

Docket Number:	15-OIR-05
Project Title:	Building Energy Use Disclosure and Public Benchmarking Program Mandated under Assembly Bill 802
TN #:	221512
Document Title:	Resolution Adopting Building Energy Use Data Access, Benchmarking, and Public Disclosure Regulations
Description:	N/A
Filer:	Cody Goldthrite
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	10/16/2017 10:40:51 AM
Docketed Date:	10/16/2017

STATE OF CALIFORNIA

STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:

**Building Energy Use Data Access,
Benchmarking, and Public Disclosure
Regulations**

Docket No. 15-OIR-05

Resolution No. 17-1011-07

RESOLUTION ADOPTING BUILDING ENERGY USE DATA ACCESS,
BENCHMARKING, AND PUBLIC DISCLOSURE REGULATIONS

WHEREAS, on February 14, 2017, the Energy Commission submitted to the Office of Administrative Law (OAL), and on February 23, 2017, the Energy Commission made available to the public, the following:

- A. the Notice of Proposed Action (NOPA) for the proposed regulations; and
- B. the Express Terms of the proposed regulations; and
- C. the Initial Statement of Reasons (ISOR); and

WHEREAS, on February 24, 2017, OAL published the NOPA for the proposed regulations in the California Notice Register; and

WHEREAS, the Energy Commission mailed the NOPA to:

- A. The Energy Commission's *Benchmarking, Efficiency, and Existing Buildings* electronic mailing lists; and
- B. A representative number of small business enterprises or their representatives; that are likely to be affected by the regulations; and
- C. Every person who had requested notice of such matters; and
- D. The Secretary of the California Natural Resources Agency; and

WHEREAS, the NOPA provided for a public comment period of 45 days, from February 24, 2017 through and including April 10, 2017; and

WHEREAS, the NOPA, Express Terms, ISOR, revised Express Terms (discussed below), and Addendum to the ISOR (discussed below) were posted on the Energy Commission's website; and

WHEREAS, on September 14, 2017, the Energy Commission made available to the public revised Express Terms (15-day language) of the proposed regulations for a period of 15 days; and

WHEREAS, the revised Express Terms (15-day language) of the proposed regulations were sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action; and

WHEREAS, on September 14, 2017, the Energy Commission made available to the public an Addendum to the ISOR for a period of 15 days; and

WHEREAS, on September 14, 2017, the Energy Commission notified the persons described in Government Code, section 11347.1(b) and California Code of Regulations, title 1, section 44 that the revised Express Terms (15-day language) and Addendum to the ISOR were available for public comment from September 14, 2017 through and including September 29, 2017;

THEREFORE BE IT RESOLVED, that the Energy Commission finds, based on the entire record for this proceeding, as follows:

A. The Warren-Alquist Act. The adopted regulations:

- (1) provide for the delivery to the Energy Commission and public disclosure of benchmarking of energy use for certain covered buildings, as required by Public Resources Code, section 25402.10(d);
- (2) do not require the owner of a building with 16 or fewer residential utility accounts to collect or deliver energy usage information to the Energy Commission, consistent with Public Resources Code, section 25402.10(d)(1);
- (3) clarify who will deliver the energy use data and related information for covered buildings to the Energy Commission, consistent with Public Resources Code, section 25402.10(d)(3);
- (4) specify the use of enforcement measures identified in Public Resources Code section 25321, consistent with Public Resources Code, section 25402.10(e); and

- (5) prescribe how a utility will determine that a building owner has obtained the customer's permission and under certain circumstances how a utility will obtain the customer's permission, in cases where a customer's permission is required for the building owner to receive aggregated energy usage data, consistent with Public Resources Code, section 25402.10(f)

B. The Administrative Procedure Act. The adopted regulations:

- (1) are not inconsistent or incompatible with existing state regulations;
- (2) are not inconsistent or incompatible with existing federal law;
- (3) impose a mandate on local governments or school districts (publicly owned utilities [POUs] and building owners who are local entities), but this mandate will not require reimbursement under Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the mandates are not unique to POUs and local government building owners and affect both the private sector and public sector equally;
- (4) will result in costs to a state agency (the Energy Commission), as described in the NOPA;
- (5) will not result in savings to any state agency;
- (6) will result in nondiscretionary costs to local agencies or school districts, as described in the NOPA;
- (7) will not result in nondiscretionary savings to local agencies or school districts;
- (8) will not result in costs or savings in federal funding to the State of California;
- (9) will not have significant effect on housing costs;
- (10) will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with other businesses in other states, as described in the NOPA;
- (11) will have cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the regulations, as described in the NOPA;

- (12) will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars;
- (13) will have an impact on the creation of jobs within the state, as described in the NOPA;
- (14) will not have an impact on the elimination of jobs within the state, as described in the NOPA;
- (15) will not have an impact on the creation or elimination of businesses within the state, as described in the NOPA;
- (16) will have an impact on the expansion of businesses currently doing business within the state, as described in the NOPA;
- (17) may result in benefits to the health and welfare of California residents, worker safety, and the state's environment, as described in the NOPA;
- (18) will require a report; the Energy Commission further finds that it is necessary for the health and welfare of the people of the state that the adopted regulations apply to businesses, for the reasons described in the NOPA;
- (19) have no alternatives that would be more effective in carrying out the purposes of the Warren-Alquist Act, that would be as effective and less burdensome to affected private persons in carrying out those purposes, or that would be more cost effective to affected private persons and equally effective in implementing those purposes; and
- (20) will provide increased clarity to the regulated community; and
- (21) are reasonably necessary to carry out the purpose and address the problem for which they are proposed for each adoption, amendment, or repeal, as described in the ISOR and ISOR Addendum.

C. The California Environmental Quality Act (CEQA). The adopted regulations:

- (1) are not a “project” subject to CEQA pursuant to CEQA Guidelines, section 15378 (b)(2) and (5), in that they deal with general policy and procedural activities or organizational and administrative activities and do not involve commitment to any specific project that may result in a potentially significant physical impact on the environment;
- (2) are exempt from CEQA because they fall within the so-called “common sense” exemption pursuant to CEQA Guidelines, section 15061(b)(3), which indicates that CEQA only applies to projects that have a “significant effect on the environment” as defined in Public Resources Code section 21068 and in CEQA Guidelines, section 15382, as being a substantial, or potentially substantial, adverse change in the environment;
- (3) are categorically exempt from CEQA as an action taken to maintain natural resources pursuant to CEQA Guidelines, section 15307; and
- (4) are categorically exempt from CEQA as an action taken to protect the environment pursuant to CEQA Guidelines, section 15308.

BE IT FURTHER RESOLVED, based on the entire record of this proceeding, the California Energy Commission hereby adopts the herein described amendments. We take this action under the authority of Public Resources Code sections 25213, 25218(e) and 25402.10, and to implement, interpret, and make specific Public Resources Code sections 25116 and 25402.10; and

BE IT FURTHER RESOLVED, the Energy Commission directs the Executive Director, or an authorized designee, to take, on behalf of the Energy Commission, all actions reasonably necessary to have the adopted regulations go into effect, including but not limited to making any appropriate non-substantive changes to the regulations and preparing and filing all appropriate documents, such as the Final Statement of Reasons with OAL, and making any changes to the rulemaking file required by OAL.

CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly and regularly adopted at a meeting of the California Energy Commission held on October 11, 2017.

AYE: Weisenmiller, Douglas, McAllister, Hochschild, Scott

NAY: None

ABSENT: None

ABSTAIN: None

Original Signed by:

Cody Goldthrite
Secretariat