

**CALIFORNIA ENERGY COMMISSION**

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California Energy Commission

**DOCKETED**

**12-AB1103-1**

**TN # 68664**

**NOV 27 2012**

To: Docket 12-AB1103-01  
From: Robin M. Mayer, Staff Counsel  
Re: Meetings with CPUC and Investor-Owned Utilities  
Date: November 26, 2012

AB 1103 directs utilities to release energy use data into a nonresidential building owner's U.S. EPA ENERGY STAR® Portfolio Manager account on request. (AB 1103 (Saldaña, 2007), amended by AB 531 (Saldaña, 2009), and codified at Pub. Resources Code, § 25402.10.) The statute further directs owners to measure (benchmark) their building's energy use data and to disclose the data and any ratings to prospective buyers, lessees of the entire building, and lenders financing the entire building.

Prior to formal rulemaking, Energy Commission staff and staff counsel for the AB 1103 rulemaking met regularly with a working group that included participants from Pacific Gas & Electric, Southern California Edison, and SEMPRA/San Diego Gas & Electric, the three major investor-owned utilities (IOUs) overseen by the California Public Utilities Commission (CPUC).

The IOUs had a longstanding concern about protecting customer identity during the release. It is common for tenants in commercial or industrial buildings to pay their own utility bills, that is, to be customers of the IOU, rather than the owner. At the same time, the statute requires an owner to benchmark a building's energy use using Portfolio Manager. Portfolio Manager functions using "whole building" energy use data. If the owner were to measure only the space for which the owner is a utility customer, the data and any ratings would likely be inaccurate. Such results would hinder an owner's understanding of the building's entire energy use and comparison of the building's energy use to similar buildings, frustrating the Legislature's stated purposes. (See AB 1103, § 1.)

After formal rulemaking began, Energy Commission staff and staff counsel discussed the issue in the context of 45-day language with an attorney and staff from the CPUC. Three meetings in person and on the phone took place on April 5, 2012, April 19, 2012, and May 12, 2012. By request of the IOUs, staff and staff counsel also met on May 18, 2012 with attorneys and staff from PG&E, SEMPRA, and Southern California Edison, as well as the CPUC.

The May 18th meeting addressed two main issues. The first concerned potential aggregation of whole building data for release into the owner's Portfolio Manager account. The IOUs frequently cited the so-called "15/15" rule as a limit to aggregation. The 15/15 Rule (CPUC Decision 97-10-031) was developed by the CPUC to enable

utilities to release aggregated data to the public in certain proceedings. The rule requires aggregation to include at least 15 service accounts from different customers and that no individual service account may account for 15% or more of the total energy usage. However, as supported by statements from the CPUC attorney during the meetings, the 15/15 Rule does not apply to the AB 1103 regulations.

Second, the IOUs expressed concern regarding section 8380 of the Public Utilities Code and recent CPUC rules about protecting customer identity in smart grid data. (CPUC Decision (11-07-056), Attachment D.) Staff counsel for the Energy Commission stated that section 8380 allows for release of energy use data to comply with state law, such as AB 1103. (Pub. Util. Code, § 8380, subd. (e)(3).) In its decision, the CPUC explicitly avoided addressing energy efficiency programs overseen by the Energy Commission. Specifically, the CPUC stated it would “determine such access in the context of the program for which information is being sought absent specific Legislative direction.” (CPUC Decision (11-07-056) pp. 47-48.) Other than AB 1103 and the amendments in AB 531 directing the Energy Commission to set a compliance schedule, the Legislature has not offered further direction regarding AB 1103 requirements.

In response to the IOUs’ concerns, however, staff changed the proposed regulations in three key ways: to clarify that an owner may not use tenant energy use data from the owner’s Portfolio Manager account for purposes other than compliance with AB 1103, to allow more flexibility in the methods to protect a customer’s identity during the release into an owner’s Portfolio Manager account, and to give utilities more time to respond to an owner’s request for the data. Staff incorporated these changes into the 15-day language published on June 25, 2012.