FINAL STATEMENT OF REASONS

AB 1103 NONRESIDENTIAL BUILDING ENERGY USE DISCLOSURE PROGRAM RULEMAKING

CALIFORNIA CODE OF REGULATIONS, TITLE 20 DIVISION 2, CHAPTER 4, ARTICLE 9, SECTIONS 1680-1684

CALIFORNIA ENERGY COMMISSION DOCKET NUMBER 12-AB1103-01 NOTICE FILE NUMBER Z-12-0323-03

MARCH 2013

INTRODUCTION

This document is the Final Statement of Reasons required by Government Code sections 11346.9(a). AB 1103 (Stats. 2007, ch. 533, §2), codified in pertinent part in Public Resources Code, section 25402.10, requires owners of nonresidential buildings to disclose to prospective buyers, lessees, and lenders the previous twelve months of the building's energy use in advance of the sale of the building, or the leasing or financing of the entire building, and to "benchmark" that data by providing a comparison of the building's energy use to that of other similar buildings. AB 531 (Stats. 2009, ch. 323, §1) amended section §25402.10 to require the Energy Commission to set the schedule for disclosures by building owners.

The intent of AB 1103 is to facilitate a benchmarking system that provides energy consumption information for all nonresidential buildings in the state. (See AB 1103, §1, subd. (a).) The system would allow "building owners and operators to compare their building's performance to that of similar buildings and to manage their building's energy cost." (*Ibid*.) The benchmarking results are expected to "motivate building operators to take actions to improve" a building's energy use and to help justify the cost of those improvements. (*Id*., §1, subd. (b).)

The regulations accomplish the following: specify what building characteristics and energy usage information must be provided in Portfolio Manager (the benchmarking program required by statue), and what disclosure documents must be supplied to prospective buyers, lessees of the entire building, and lenders financing the entire building; set a deadline for utility releases of data to owners and specify that utilities must protect the confidentiality of customer data; enable the

Energy Commission to access the data submitted to Portfolio Manager; set a schedule for compliance; and define terms.

PROCEDURAL HISTORY OF THE RULEMAKING

45-Day Language

On March 23, 2012, the Office of Administrative Law published a Notice of Proposed Action (NOPA) concerning the potential adoption of these regulations. The NOPA, Initial Statement of Reasons (ISOR), and the express terms (45-Day Language) were made available to interested persons, and posted on the Energy Commission's AB 1103 website. The NOPA was mailed to representative small businesses and additionally e-mailed to subscribers of the AB 1103 and Efficiency listserves and members of the pre-rulemaking working group.

The first public hearing listed in the NOPA, before the Energy Commission's Lead Commissioner for Energy Efficiency, was held on April, 9, 2012, for the purpose of receiving public comments. Seven interested members of the public offered oral comments. The NOPA further announced a hearing date of May 9, 2012 for Commission consideration and possible adoption of the proposed regulations. On May 1, 2012, pursuant to Government Code section 11346.8(b), the Commission issued a Notice of Postponement of Hearing for Consideration and Possible Adoption, announcing that the proposed regulations would not be considered for adoption on May 9th and that the future date for such a hearing would be noticed in compliance with applicable law. The Notice of Postponement was distributed and published by the Commission in the same manner as the NOPA. The Energy Commission received comments on the proposed regulations throughout the 45-day comment period, which ended on May 9, 2012.

15-Day Language

On June 25, 2012, pursuant to Government Code, Section 11346.8(c), the Energy Commission published a Notice of Hearing for Possible Adoption, Notice of Changes to Proposed Regulations, Additional Documents Relied Upon, and Notice of 15-Day Comment Period. The Commission published the Notice and the full text of the proposed regulations with the changes clearly indicated (15-day language) to its website. The Commission e-mailed notice of the postings to AB 1103 Listserve subscribers and to all persons who made comments during the 45-day comment period. The Commission also mailed the Notice to the same persons that received the mailing of the NOPA.

The changes identified in the 15-day language included several edits suggested during the 45-day comment period as well as additional clarifications.

The changes made in the 15-Day Language specify that the regulations do not permit a building owner to use tenant energy use data beyond compliance with Public Resources Code, Section 25402.10; adding more time for utilities to release the data; clarify technical aspects of Portfolio Manager; and make non-substantive or solely grammatical changes. The comment period ended on July 11, 2012 upon adoption of the regulations.

Subsequently, the Energy Commission determined that additional changes to the regulations were necessary and released additional 15-Day language, discussed in more detail below.

Second 15-Day Language

On November 27, 2012, pursuant to Government Code, Section 11346.8(c), the Energy Commission published a Notice of Hearing for the Possible Adoption of Amended Regulations for the Nonresidential Building Energy Use Disclosure Program, Notice of Availability of Additional 15-Day Language, [and] Notice of Availability of New Documents Added to the Rulemaking Record. The Energy Commission published the notice and the full text of the revised proposed regulations with the changes clearly indicated to its website. The Energy Commission also e-mailed notice of the postings to AB 1103 regulations listserve subscribers and mailed the notice and revised regulations to persons who made comments during the 45-day comment period.

Changes made in the Second 15-Day Language included changes to and deletions of the definitions to add clarity; deletion of a section describing the scope of the regulations that the Energy Commission ultimately determined to be unnecessary; a delay in the compliance schedule to maximize notice of the regulations as law to those affected; modification of language identifying when disclosures must be made to prospective buyers, lessees of the entire building, and lenders financing the entire building; changing language used to refer to the U.S. EPA ENERGY STAR Portfolio Manager program in response to a request by the EPA; provision of additional detail about the Energy Commission's treatment of any collected information from Portfolio Manager as confidential; and the placement of the Disclosure Summary Sheet in Appendix A.

The 15-day comment period ended on December 12, 2012, upon adoption of the proposed regulations.

On December 12, 2012, after considering public comment and the comments submitted during the noticed comment periods, the Energy Commission unanimously adopted the express terms, as modified by the second 15-Day language, at a public meeting.

UPDATE TO THE INITIAL STATEMENT OF REASONS

Government Code section 11346.9(a)(1) requires the Energy Commission to update the information in the Initial Statement of Reasons. The following represents the necessary update.

Update to Studies, Reports, and Documents Relied Upon. The following additions to the rulemaking record were noticed on November 27, 2012:

A. Regnier, Energy Commission Staff, "Nonresidential Building Energy Use Disclosure Program." July 11, 2012. Docketed November 26, 2012.

B. Mayer, Energy Commission Staff, Memo Regarding CPUC Meetings. November 26, 2012. Docketed November 26, 2012.

C. Southern California Edison, Comments on the California Energy Commission's proposed regulations related to nonresidential building energy use benchmarking and disclosure. April 19, 2012. Docketed April 19, 2012.

D. Pacific Gas and Electric Company, Comments on the Nonresidential Building Energy Use Disclosure Program Proposed Regulations. May 8, 2012. Docketed May 8, 2012.

E. Pacific Gas and Electric Company, Comments on Draft Regulation to Implement the Nonresidential Building Energy Disclosure Program. June 14, 2012. Docketed June 14, 2012.

F. U.S. Environmental Protection Agency, Comments on the California Energy Commission's proposed regulations related to nonresidential building energy use benchmarking and disclosure. July 9, 2012. Docketed July 9, 2012.

G. ACEEE, *Case Study – Austin Energy Conservation Audit and Disclosure (ECAD) Ordinance*, 2011. Docketed November 26, 2012.

H. Efficiency Valuation Organization, *International Performance Measurement and Verification Protocol Concepts and Options for Determining Energy and Water Savings*, Volume 1, 2012. Docketed November, 26, 2012.

I. Eichholtz, P. et. al, *The Economics of Green Building*, 2011. Docketed November 26, 2012.

J. Institute for Market Transformation, *Comparison of U.S. Commercial Building Energy Rating and Disclosure Policies*, 2011. Docketed November 26, 2012.

K. Institute for Market Transformation, *Building Energy Transparency: A Framework for Implementing U.S. Commercial Energy Rating and Disclosure Policy*, 2011. Docketed November 26, 2012.

L. Mahone, D. et. al, *Universal Energy Benchmarking for Commercial Buildings: Making It a Reality in California*, 2008. Docketed November 26, 2012.

M. NMR Group, Optimal Energy, *Statewide Benchmarking Process Evaluation*, 2012. Docketed November 26, 2012.

N. Pivo, Fisher, *Income, Value and Returns in Socially Responsible Office Properties*, 2009. Docketed November 26, 2012.

O. PlaNYC, *Energy Benchmarking Report for New York Municipal Buildings*, 2011. Docketed November 26, 2012.

P. Roland-Holst, David, *Energy Efficiency, Innovation, and Job Creation in California*, 2008. Docketed November 26, 2012.

Q. Sharp, Terry, *Energy Benchmarking In Commercial Office Buildings*, 1996. Docketed November 26, 2012.

R. U.S. Environmental Protection Agency, *Summary of the Financial Benefits of ENERGY STAR® Labeled Office Buildings*. Feb. 2006. Docketed November 26, 2012.

S. Vaidya, et al, *Commercial Benchmarking: Will They Manage It Once They've Measured It?* Summer 2012. Docketed November 26, 2012.

Update to the Purpose, Rationale and Necessity for Each Proposed Regulation:

As noted previously, the problem the Commission intends to address with this rulemaking is that many nonresidential building owners lack information regarding their building's energy use. The U.S. EPA estimates that on average, 30% of the energy consumed in commercial buildings is wasted. The wasted energy increases costs for owners, may interfere with proper valuation of their buildings, and results in the needless release of greenhouse gas emissions. Raising awareness of a building's energy use may lead to changes in how energy is used in the building and perhaps to investments in energy efficiency improvements.

The adopted regulations will educate owners of nonresidential buildings about their building's energy use, and educate potential buyers, lessees, or lenders of nonresidential buildings of the existing energy use of the building in which they are about to invest. And by requiring benchmarking, building owners will be able to compare their building's energy efficiency performance in two ways: against the performance of similar buildings, and as a baseline to demonstrate changes in building performance over time. Once owners understand their building's energy use, they can take actions, including getting an energy audit, to determine how best to lower their energy use.

Benchmarking is an inexpensive and accessible first step toward making energy improvements that over time may help reduce energy use. Use of the U.S. EPA's Portfolio Manager website is free. The regulations further allow an owner who would like to supplement Portfolio Manager data to use other industry standard benchmarking programs to do so. Once the data is received,

the owner then may take steps to improve the building's energy efficiency, including getting an energy audit to determine whether conservation or the installation of energy-efficient measures would be beneficial in reducing the building's energy use. Cutting energy use in turn leads to reduced greenhouse gas emissions. Commercial buildings consume 36 percent of the state's electricity. (AB 1103 Senate Floor Analysis (Sept. 5, 2007).) Disclosures of benchmarking data and Portfolio Manager scores of energy efficiency also increase openness and transparency in business. Additionally, an owner who has taken further steps to improve a building's energy use may benefit financially. Energy efficient buildings can command premium rents and higher sales values. (Center for the Study of Energy Markets, "Doing Well by Doing Good? Green Office Buildings," p.1. (Aug. 2009).)

Section 1680. Purpose

The following changes were made to this section: the words "benchmarking and" were deleted as not necessary to explain the purpose of the regulations; the term "energy use ratings" was updated to "Energy Performance Scores" in response to comments from the U.S. EPA (July 9, 2012) regarding a change in Portfolio Manager terminology; the sentence "The disclosed energy use ratings will include the Portfolio Manager Energy Performance Rating," originally added in the first 15-Day Language, was ultimately deleted as unnecessary.

Former Section 1681. Scope.

This section was deleted as unnecessary and potentially misleading, as the regulations do not apply to nonresidential buildings under 5,000 square feet.

Section 1681. Definitions

The definition of "Commission" was deleted as it was no longer determined necessary to define the term.

The definition of Compliance Report was modified as follows: 1) "an" was deleted from "electronic submission" as unnecessary and potentially ambiguous. A building owner may make more than one submission (click of the mouse) to report data within the Portfolio Manager website according to how the website is structured. 2) "a copy of" was deleted as unnecessary. There is no need to create a copy of the original data. 3) "submitted" was deleted as redundant to "submission." 4) "from the building owner's account to the Energy Commission's account" was deleted as unnecessary and potentially inaccurate. The data is not submitted to the Energy Commission's Portfolio Manager account.

The definition of Disclosure Summary Sheet was modified as follows: 1) "to California buildings" was added to clarify that the Disclosure Summary Sheet discusses only buildings in California and not buildings nationwide, and 2) "as represented in Appendix A" was added to refer to the Disclosure Summary Sheet's location in the regulations.

The definition of Energy Provider was modified as follows: 1) "an entity" replaced "any non-electric and gas utility," "any source of" was added before "energy," and "other than electricity or natural gas, to a nonresidential building" was added. These changes clarified that "energy providers" are distinguished from utilities by the types of energy they supply, not by their type of business. It is possible that a company could be both a utility and an energy provider. 2) "as defined by Section 25109, Public Resources Code, used by a nonresidential building" was deleted as no longer necessary. 3) "sources" replaced "any source" for clarity. A utility or an energy provider may provide more than one source of energy. 4) "recognized by Portfolio Manager" was added for clarity. The statute and regulations use Portfolio Manager as the benchmarking technology, and the types of energy are limited to what Portfolio Manager accepts.

The definition of ENERGY STAR® Energy Performance Score is identical to the deleted definition of "Portfolio Manager Energy Performance Rating" previously found in subdivision (m). The term being defined was changed at the request of U.S. EPA.

The definition of Energy Use Data was modified as follows: "recognized by Portfolio Manager" replaced "used by a nonresidential building" to aid clarity and accuracy. The statute and regulations use Portfolio Manager as the benchmarking technology, and the kinds of data accepted are limited by Portfolio Manager.

The term Entire Building and its definition were deleted as unnecessary.

The term EPA and its definition were deleted as unnecessary.

The definition of Facility Summary was modified as follows: 1) "and energy" was added to "usage of a building" for accuracy. The Facility Summary also summarizes energy use of a building. 2) "medians" replaced "averages" in response to comments from PG&E (May 8, 2012). The change was necessary for accuracy. The Facility Summary compares a building's energy use to national medians.

The definition of Nonresidential Building was modified as follows: 1) "or" replaced "and" for accuracy. A nonresidential building can be of only one occupational type under Title 24.

The definition of Portfolio Manager was modified as follows: “U.S. Environmental Protection Agency’s” replaced “EPA’s” to eliminate the need to define the acronym.

The definition of Prospective Buyer was added to clarify at what stage a potential buyer of a nonresidential building is entitled to receive energy use disclosures.

The definition of Prospective Lender was added to clarify at what stage a potential lender financing an entire nonresidential building is entitled to receive energy use disclosures.

The definition of Prospective Lessee was added to clarify at what stage a potential lessee of an entire nonresidential building is entitled to receive energy use disclosures.

The term Square Feet and its definition were deleted as unnecessary because section 1682 was modified to include an explanation for the term, thereby obviating the need for a separate definition.

The definition of Statement of Energy Performance was initially modified to replace “energy use rating” with “Portfolio Manager Energy Performance Rating.” Subsequent to that change, “ENERGY STAR®” replaced “Portfolio Manager” and “Score” replaced “Rating” per comments from the U.S. EPA regarding updated terminology for the Portfolio Manager program.

In the Reference section the citation to “Sections 302 et seq., Title 24, California Building Code” was deleted as the regulation does not implement, interpret, or make specific the sections in Title 24. In addition, the citation to “Section 25116 of the Public Resources Code” was added to implement the definition of “person” in the Warren-Alquist Act as “any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company... any city, county, public district or agency, the state or any department or agency thereof, and the United States to the extent authorized by federal law.” Adopted subdivisions (a), (k), (l) and (m) include the term “person.”

Section 1682. Schedule of Implementation

1) “and” replaced “or” in each subdivision to clarify that the first day of compliance is included in the schedule. 2) The schedule of compliance was delayed by six months in each subdivision to allow adequate notice to the public of the start of compliance.

Section 1683. Disclosures

Subdivision (a): 1) “according to implementation schedule in Section 1683” was deleted as unnecessary. 2) “for the building” was added to clarify that the owner is making disclosures relevant to the specific building.

Subdivisions (a)(1), (2), and (3): 1) “Or” was deleted in subdivisions (1) and (2), and replaced with “and” in subdivision (2) to clarify that an owner is responsible for making disclosures under all three transactions; 2) “Entire” was deleted from “prospective buyer of the building” to match the statutory language. 3) “No later than 24 hours prior to” replaced “as soon as practicable” in subdivisions (1) and (2). This change was necessary to supply a specific deadline for disclosures. 4) “No later than” replaced “as soon as practicable” in subdivision (3). This change was necessary to provide a specific deadline for disclosures. The “lender” deadline is simultaneous with the submission of the application because the owner is in full control of that timing. 5) “and” was struck in subdivision (2) and semicolons replaced periods in subdivisions (1) and (2) to better express that an owner is responsible for making disclosures under all three transactions.

Subdivision (b) was added to specify that an owner’s disclosure of tenant energy use data is restricted to only that necessary to comply with Public Resources Code, section 25402.10. The regulation is necessary to ensure a building owner does not use any tenant data received for any other purpose.

Subdivision (c): “Building” was added to “owner” for clarity

Section 1684. Data Releases, Report

“Benchmarking” was deleted from the section title as unnecessary.

Subdivision (a): 1) “On or after the dates specified in Section 1683 and” was deleted as duplicative of the language in Section 1683. 2) “or update an existing account for the same building” was added. This change was necessary because an owner may already have opened a Portfolio Manager account. 3) “on” replaced “at” as the more customary preposition associated with websites.

Subdivisions (a)(1)-(a)(4): Semicolons replaced periods and “and” was added to the end of subdivision (a)(4) to clarify that a building owner must comply with all requirements listed in subdivisions (a)(1) to (a)(5).

Subdivision (a)(3): 1) “including but not necessarily limited to active and inactive utility meters, onsite generation, district thermal energy, and fuel serving the building”, a portion of which was proposed in the first 15-Day Language, was ultimately deleted as unnecessary because Portfolio

Manager offers a menu of different sources of energy that may be entered, obviating the need to itemize them in the regulations. 2) “and fuel” replaced “or fuel(s)” to prevent ambiguity. This change was necessary because a building may use more than one source of energy. The (s) was deleted as unnecessary, as the singular also represents the plural, and vice versa. (E.g., Cal. Code of Civil Proc., §17.)

Subdivision (a)(4): 1) “All space types in the entire building” was added in response to comments by PG&E (May 8, 2012) and to clarify that space use characteristics entered in Portfolio Manager must be for the entire building. 2) “the building type, if the type is available” was deleted as unnecessary in response to the same comments from PG&E. There is no need to limit the requirement to list the building type only if it is available because Portfolio Manager building types include an “other” category as a catchall.

Subdivision (a)(5): 1) “utilities” and “energy providers” replaced “utility and energy provider companies” to match revised definitions in Section 1681. 2) “at least” was added to “the most recent 12 months” to clarify that releasing more than 12-months’ worth of data is acceptable for compliance. 3) “For specified meters or accounts” was added in response to comments (Southern California Edison, April 19, 2012) that the owner may need to list meters associated with the building for the utility to release the data.

Subdivision (b): 1) “As soon as practicable and no later than 30” days replaced “Within 15” days, and “after” receiving a request replaced “of” receiving a request, in response to comments by PG&E (June 14, 2012) asking for a greater window of time to respond to building owner requests. This change was necessary for utilities to meet request deadlines and deal with any problems associated with particular requests, such an e-mail address that fails. 2) “under subdivision (a) of this section” replaced “from a building owner to release a building’s energy use data” as a more precise way to refer to the request. 3) “a utility or energy provider” replaced “a utility company” to match revised definitions in Section 1681. 4) “shall upload all energy use data for the entire building from the most recent 12 months” replaced “shall upload at least the most recent 12 months of the entire building’s energy use data” to reinforce that all energy use data must be included and to clarify that 12 months’ of data is sufficient. 5) “utility” was deleted from meters and accounts as unnecessary and because an energy provider -- which may not be a utility -- may be the entity requested to release data. 6) “a utility or energy provider account for which the owner is not the customer of record” replaced “more than one account” to clarify that the privacy protections extend to any non-owner that is a customer of the utility or energy provider. 7) “the” utility” replaced “a” utility as the regulations address a specific utility in this context. 8) “or energy provider” was added because the regulations address energy providers as well as utilities. 9) “the confidentiality of the customer” replaced “each account holder’s data from uses other than compliance with Public Resources Code, section 25402.10” as the it is the

confidentiality of the customer that is to be protected from release. 10) "or energy provider" was added because the regulations address energy providers as well as utilities.

Subdivision (c): 1) "Utilities" replaced "utility" because more than one utility may serve a building. 2) Energy "providers" replaced energy "companies" for consistency throughout the regulations. 3) "complied with subdivision (b) of this section" replaced "uploaded and/or provided a building's energy use data" to avoid ambiguity. 4) "the" building owner replaced "a" building owner because a specific building owner will have received the energy use data at this point in the regulations. 5) Semicolons replaced periods in subdivisions (a)(1)-(a)(3) and "and" was added to subdivision (a)(3) to clarify all duties listed are required. 6) "Before the disclosures required pursuant to" replaced "in sufficient time to comply with the schedule specified" to aid clarity. This change was necessary because "in sufficient time" is vague.

Subdivision (d): 1) "An individual" was replaced with "the data" as it is the data that is confidential. 2) "Compliance Report" was changed to lowercase "compliance report" as the data released into the Portfolio Manager system is not a single document and does not have a title within Portfolio Manager. 3) The discussion of aggregation was deleted as unnecessary due to the fact that confidentiality can be maintained by means other than aggregation. 4) "In the event that the Energy Commission accesses the data submitted pursuant to subdivision (c)(3) of this Section" was added to clarify that the Energy Commission has the option to access the data according to the particular subdivision. "The data" replaced "compliance report" as a more specific description of what the Energy Commission may access. 5) "Consistent with state and federal laws" was added to clarify that the Energy Commission will follow the Public Records Act, the Information Practices Act, its confidentiality regulations, and other relevant law when accessing the data.

Subdivision (e): 1) "If there is information missing from a disclosure" replaced "In lieu of any missing information in the disclosure" to express the option in plainer English; "and" and "then" were added to aid clarity. The use of "if" and "then" was necessary to clarify that an owner may not employ this option unless required information is missing from the disclosure. 2) "a disclosure" replaced "the disclosure" to clarify that the regulation could apply to any disclosure for which the owner is approximating data.

APPENDIX A. Disclosure Summary Sheet

The Disclosure Summary Sheet was added as "Appendix A." Authority and reference citations were added as required by Gov. Code, section 11346.2(a)(2) and Title 2, section 14(d).

The Disclosure Summary Sheet explains the documents in plain English to parties who may not be sophisticated in building operations, engineering, energy use, or energy efficiency. It provides

an overview of the Portfolio Manager documents, explains the main methods of measuring a building's energy efficiency, and explains that that Portfolio Manager cannot rate all buildings. A table provides the median Energy Use Intensity values for space types in the state of California.

The Disclosure Summary Sheet is necessary to help educate nonresidential building owners, and prospective buyers, lessees, and lenders about the information in the Portfolio Manager documents. It is also necessary to help a nonresidential building owner understand whether a building's energy use is efficient in the absence of a rating, and how the building compares with similar buildings in California, information that is not available from Portfolio Manager.

DETERMINATION WHETHER REGULATIONS IMPOSE A MANDATE UPON LOCAL AGENCIES OR SCHOOL DISTRICTS

As stated in the December 12, 2012 adoption order, the regulations do not impose a mandate on local agencies or school districts. While the regulations apply to local agencies and school districts, they do so because local agencies and school districts own nonresidential buildings that may become eligible for benchmarking and disclosures under AB 1103 requirements. However, these requirements do not rise to the level of constituting a new program or an increased level of service to the public. Mandated activities involve the provision of governmental services and must apply uniquely to local agencies. *(City of Sacramento v. State of California* (1990) 50 Ca1.3d 51, 66.) The regulations apply to all nonresidential building owners, not just those that are public agencies, and do not involve the provision of a governmental service. The costs entailed in making the benchmarking information available to the Energy Commission are not unique to local government as they affect nonresidential building owners statewide, in both the private and the public sectors. (See *id*., at pp. 68-69 [holding costs of regulation were not unique to local governments and therefore not entitled to state reimbursement].)

CONSIDERATION OF ALTERNATIVE PROPOSALS

The Energy Commission incorporates the discussion of consideration of reasonable alternatives, requirements for specific technologies and equipment, and consideration of performance standards from the Initial Statement of Reasons.

As stated in the December 12, 2012 adoption order, pursuant to Government Code, section 11346.9 (a)(4), the Energy Commission has determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed action,

or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Commission considered different approaches during the rulemaking such as alternative disclosure schedules and limiting the types of energy data that would be reported to the Portfolio Manager program. The Commission also received specific suggestions about the regulations. The Commission incorporated many of the suggestions, such as allowing utilities more time to release data, more flexibility in how the data should be protected during the upload, and making the addition of California-specific energy use ratings or data from other benchmarking programs a voluntary part of the disclosure.

The Commission rejected requests by utilities to require owners to get tenant consent for the release of data when tenants pay their own utility bills. This would have made the regulation unduly burdensome on building owners, many of which function as small businesses. The Commission also rejected suggestions to expand the application of the regulations to buildings of less than 5,000 square feet as potentially confusing, due to the fact that many space types for those buildings are not represented, rendering the ratings for buildings of that size not very meaningful.

The Commission also considered excluding energy providers from the regulations, as they may incur greater costs from these regulations than the utilities, who are already statutorily required to retain and upload energy use data for nonresidential buildings. However, because energy providers supply energy to up to 25% of nonresidential buildings (the majority of which also use utility-provided electricity), without measuring the energy use attributed to those fuel sources, the Statement of Energy Performance could be highly inaccurate, thus undermining the purpose and efficacy of the regulations.

Although the Energy Commission found that the regulations would impact small businesses, it determined that such impacts would not rise to the level of being an adverse economic impact. The Commission considered an alternative that would lessen this non-adverse impact on small businesses, namely not including energy providers in the regulations, but rejected that alternative, as discussed above. No other alternatives were proposed that would lessen impacts to small businesses.

SUMMARY OF COMMENTS RECEIVED AND ENERGY COMMISSION RESPONSES

A. 45-DAY LANGUAGE, WRITTEN COMMENTS

Due to the deletion of a section originally proposed, the section numbers referenced in 45-Day comments have changed. Therefore, for clarity, references to section numbers below have been changed to refer to the section numbers as they were ultimately adopted.

COOPER OATES AIR CONDITIONING, INC., BILL SCHMALZEL:
Written comment submitted April 12, 2012.

a. Other than the parties in the transaction, e.g., building owner and prospective buyer, is there an entity that would act as the gatekeeper to make sure the required documents are disclosed, such as an escrow officer? (Schmalzel Comment, p. 1.)

RESPONSE: No change to the regulations. No, the building owner or the building operator is responsible for supplying the disclosures under Public Resources Code, section 25402.10 (the codified version of AB 1103 AB (Stats. 2007, ch. 533, §2) and AB 531 (Stats. 2009, ch. 323, §1). Under the regulations, an owner may authorize an agent (such as a building operator, real estate broker, or escrow officer) to disclose on the owner's behalf. The term "agent" here is not limited to real estate agents, but applies to agents in general as recognized under the law. An agent's acts within the scope of authority bind the owner, but the owner remains responsible for the acts of the agent. (See Cal. Civ. Code, §2330.) However, there is no entity that would act as a gatekeeper.

b. In the case of a tenant/landlord transaction would the real estate broker(s) be held accountable for the adhering to AB 1103? (Schmalzel Comment, p. 1.)

RESPONSE: No change to the regulations. The responsibility remains with the building owner, and a broker is not liable for complying with AB 1103.

c. Please verify the entity or entities that would be responsible for making sure the documents are disclosed. (Schmalzel Comment, p. 1.)

RESPONSE: No change to the regulations. The building owner would be responsible for making sure the documents are disclosed.

SOUTHERN CALIFORNIA EDISON (SCE), STEVE GALANTER:
Written comment submitted April 19, 2012.

a. SCE stresses the importance of protecting consumer confidentiality of energy use data, and suggests a clarifying edit to section 1684, subdivision (b) as follows: "If a building has more than one account, a utility shall aggregate or use other means to reasonably protect each account

holder's data for the purpose of complying with Public Resources Code, section 25402.10." (Galanter/SCE Comment, pp. 2-3.)

RESPONSE: Change to the regulations. The Energy Commission accepted the suggestion along with modifications to clarify the language. Hence, Section 1684, subdivision (b) was amended to incorporate most of the suggested language.

b. SCE argues that aggregation of energy use data is not sufficient for as few as two customer accounts, citing the California Public Utility Commission's (CPUC's) 15/15 rule for publication of energy use data. 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. In situations where the 15/15 Rule cannot be met, SCE requires submission of written authorization by the customer (i.e., tenant) to release the data to a third party (i.e., building owner). (Galanter/SCE Comment, pp. 3-4.)

RESPONSE: Change to the regulations. 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. AB 1103 confidentiality concerns the utility release of building energy use data into the building owner's secure U.S. EPA Portfolio Manager account, *not a release of individual data to the public*. Under AB 1103, utilities are responsible for releasing data to the owner in a manner that preserves the confidentiality of the customer. (Pub. Resources Code, § 25402.10, subd. (b).) Utilities may use any method for providing the specified data in order to maximize efficiency and minimize overall program cost. (*Id*., subd. (c).) The owner then benchmarks and discloses whole building energy use information to prospective buyers, lessees of the entire building, or lenders that would finance the entire building. (*Id*., subd. (d).) This is distinctly different than the situation addressed by the 15/15 rule. Therefore, the 15/15 Rule does not apply to these regulations. Nevertheless, given SCE's and the other IOU's concerns about the confidentiality of the data, the Energy Commission added subdivision (b) to Section 1683 to clarify that the regulations do not permit an owner to use data for purposes other than compliance with Public Resources Code section 25402.10.

Additionally, Section 1684, subdivision (b) provides utilities flexibility to choose aggregation or other reasonable means to protect data during the upload. With respect to obtaining customer permission, to effectuate the purposes of the statute, the owner must have the entire building's energy use data. (AB 1103 (Stats. 2007, ch. 533, §1).) Unless prospective buyers, lessees, and lenders can confidently compare the energy usage of similar buildings, the statute's purposes are defeated.

It would be unduly burdensome and in many situations wholly impracticable for the owner to collect consent from each tenant from the previous 12 months. At the minimum, tenants move away; acquiring consent can be time-consuming as the owner is dealing with a major transaction while complying with AB 1103 deadlines; and even the most energy-efficiency supportive tenants have no motivation to offer consent under existing leases. The statute says the utilities may use "any" method to secure the data, but surely that flexibility is tied to reasonableness and compliance with the statute. Moreover, the data is being uploaded into a secure online account, the owner's Portfolio Manager account. The only person to possibly view individual data is the owner or the owner's agent.

Finally, a subsequent law supports the release of data to fulfill the requirements of AB 1103. SB 1476 (2010, Padilla) allows utilities to release data to comply with state law. (Pub. Util. Code, §§ 8380, subd. (e)(3), 8381, subd. (e)(3).) AB 1103 is state law and these regulations will become state law.

c. SCE requests an edit to Section 1684, subdivision (a)(5) to clarify that the building owner identifies the sources of energy use data for the building, and given SCE's billing practices, that may require identification of meters serving the building, as well as or instead of utility accounts. (Galanter/SCE Comment, pp. 4-5.)

RESPONSE: Change to the regulations. The Energy Commission accepted the modification for the regulation, and inserted "for specified meters or accounts" in Section 1684, subdivision (a)(5).

CALIFORNIA ENERGY EFFICIENCY INDUSTRY COUNCIL, STEVEN R. SCHILLER:
Written comment submitted May 2, 2012.

a. We encourage the Energy Commission to view the AB 1103 regulations as a first step in helping to facilitate wider availability of benchmarking and rating information. (Schiller Comment, p. 2.)

RESPONSE: No change to the regulations. The AB 1103 program is indeed a first step. AB 758 (2009, Skinner) requires the Energy Commission to develop a comprehensive energy efficiency program for existing residential and nonresidential buildings, and the Commission is doing so. Currently, the AB 758 program is in the pre-rulemaking phase.

b. The Efficiency Council urges the Commission to offer more comprehensive rating systems and more user-friendly disclosure formats that supplement AB 1103 requirements. A

colorful, graphical, and intuitive rating report that covers more building types will facilitate more effective disclosure by building owners in financial transactions and create a widely recognizable format for owners who wish to communicate energy ratings to prospective renters and buyers. (Schiller Comment, p. 2.)

RESPONSE: No change to the regulations. The Commission is currently exploring the potential effectiveness of a rating system for California buildings that meets these criteria.

c. The Efficiency Council also recommends that the Energy Commission consider guidance for a number of commercial building uses that are not well-represented in the ENERGY STAR Portfolio Manager and especially clarify how to treat mixed-use buildings where occupancy is non-residential as well as residential. (Schiller Comment, p. 2.)

RESPONSE: No change to the regulations. This is an important aspect of benchmarking, and the Commission plans to issue general, non-regulatory guidance about AB 1103 compliance. However, these regulations do not apply to mixed-use (residential and nonresidential) buildings. The statute (codified at Public Resources Code, section 25402.10) applies to nonresidential buildings in California. Regulation section 1682 describes the applicable types of nonresidential buildings according to the California Building Code, Title 24, Section 302 et seq. (2007). Those types do not include residential occupancy.

PACIFIC GAS & ELECTRIC (PG&E), CLAIRE HALBROOK:

Written comment submitted May 8, 2012.

a. PG&E expressed concern that the privacy protections and data disclosure requirements in Section 1684 do not completely align with CPUC and state data privacy requirements. For example, the CPUC privacy rules require customer consent before a utility may disclose customer-specific energy usage data to a third-party (including the CEC or a third-party building owner) for a use that is not a "primary use" by the utility. (Halbrook/PG&E Comment, p. 1.)

RESPONSE: Change to the regulations. Please see prior discussion under Southern California Edison comments, subpart (b). Although the regulations do not mirror requirements adopted in a different context by the CPUC and do not include a requirement for customer consent, the Commission did adopt additional privacy protections in the final regulatory package.

b. The Information Practices Act requires that when a state agency collects personal information from individuals, it must provide specific notice to the individuals from whom it is collecting the information. The information for disclosure under Section 1685 is personal information about the utility's customers. (Halbrook/PG&E Comment, p. 2.)

RESPONSE: No change to the regulations. The Energy Commission appreciates PG&E's concern, but the Information Practices Act (Civ. Code, §1798 et seq.) does not apply to these regulations. The definition of "personal information" in the Act does not include nonresidential/commercial energy use data. (See §1798.3.) Furthermore, the Commission may collect energy use data from individuals as part of its mandate to form energy policy. (Pub. Resources Code, §25216.5(d) [Commission may collect information from all sources, including private industry, utilities, private individuals, and any other source deemed necessary].) Collection also helps the Commission gauge compliance on a statewide basis. However, if the Commission accesses an individual's data on the Portfolio Manager website, the Commission shall treat the data as confidential consistent with state and federal law, including the Information Practices Act. (§1685, subd. (d).)

c. PG&E discourages approaching compliance on a case-by-case basis, or manual entry by owners on a wide scale, and encourages compliance methods to be compatible with the U.S. EPA's Automated Benchmarking System ("ABS"). Under the ABS, building energy data is uploaded each month, keeping benchmarking results current, improving accuracy, and lessening the administrative and cost burden. Although customers may opt-out of ABS, PG&E believes a robust ABS is an essential element of full-scale, effective AB 1103 implementation. (Halbrook/PG&E Comment, p. 2.)

RESPONSE: No change to the regulations. The Commission strongly supports automated uploading of data, especially to promote robust and efficient compliance with the AB 1103 statute and these regulations. Building owners, however, need the option of manual entry where utilities or energy providers have not yet fully automated their systems. Therefore, it would be premature to mandate automated benchmarking.

d. PG&E: In Section 1681, subdivision (h): Replace "averages" with "medians" to match recent changes by the U.S. EPA. (Halbrook/PG&E Comment, p. 2.)

RESPONSE: Change to the regulations. The Commission accepted the suggestion and replaced "averages" with "medians" in the definition of "Facility Summary."

e. In Section 1682, subdivision (c): Change application of regulations from buildings with a total floor area measuring at least 5,000 square feet to buildings with a total floor area measuring at least 1,000 square feet to better capture all nonresidential buildings. Many buildings under 5,000 square feet are currently eligible for ENERGY STAR scores. (Halbrook/PG&E Comment, pp. 2-3.)

RESPONSE: No change to the regulations. ENERGY STAR scores depend on survey data of nonresidential buildings from Department of Energy (the Commercial Building Energy Consumption Survey), with the majority of buildings over 5,000 square feet. In fact, the only commercial buildings between 1,000 - 5,000 square feet that can obtain ENERGY STAR ratings are banks and houses of worship. This means that most buildings in that size range would not be able to get a meaningful rating. Therefore, the Energy Commission determined that reducing the size threshold to 1,000 square foot threshold was not justified given the small percentage of buildings that could obtain a meaningful rating in that size range.

f. In Section 1684, subdivision (a)(4): Change the provision of space use characteristics in Portfolio Manager "for the building type, if the type is available" to "for each space type making up the total building square footage." The space type "Other" is available and should be used when a building's usage cannot be categorized according to the types available in Portfolio Manager. (Halbrook/PG&E Comment, p. 3.)

RESPONSE: Change to the regulations. The Commission accepted the suggestion and changed "for the building type, if the type is available" to "for all space types in the entire building" in the first 15-Day Language.

g. In Section 1684, subdivision (a)(5): Change "or the owner may manually enter all energy use data" to "and/or the owner may manually enter all energy use data." Meters within the same building may need to use the manual option while others may not. Having the flexibility to select the most appropriate reporting option will be important to owners. (Halbrook/PG&E Comment, p. 3.)

RESPONSE: No change to the regulations. The use of "and/or" is ambiguous. Under the statute and the regulations, the utilities must upload energy use data for the entire building. The regulation as adopted allows an alternative so that owners who prefer to manually enter the energy use data or who cannot receive a utility upload into the owner's Portfolio Manager account may nevertheless benchmark the building. A mixed manual and automated approach for generating a building's data may lead to confusion as to who is responsible for inputting the data or may lead to incomplete data that does not measure the entire building's energy use.

h. In Section 1684, subdivision (b): Change "If a building has more than one account a utility shall aggregate or use other means to reasonably protect each account holder's data" to "If a building has one or more accounts for which the building owner is not the customer of record a utility shall aggregate or use other means to reasonably protect each account holder's data." Removing the stipulation of "more than one account" will ensure that all buildings will be able to comply with the regulation while being assured that their information is protected.

(Halbrook/PG&E Comment, pp. 3-4.)

RESPONSE: Change to the regulations. The Commission accepted the suggestion and removed the phrase "more than one".

B. 45-DAY LANGUAGE, LEAD COMMISSIONER HEARING, April 9, 2012

PACIFIC GAS & ELECTRIC (PG&E), CLAIRE HALBROOK:
Oral comment.

PG&E has reviewed the customer data disclosure requirements included in the current draft language and we believe that it is much improved from previous drafts, and may address some of our concerns about the appropriate protection of customer data. As PG&E and other investor-owned utilities must comply with the CPUC's data privacy requirements, we suggest that the Commission and the CPUC work together to ensure the regulations meet CPUC data privacy requirements. Once the CPUC's data privacy requirements are met, PG&E will be able to provide the information required under the regulation. (April 9, 2012 Hearing Transcript, p. 14.)

RESPONSE: No change to the regulations. As described above in our response to SCE's April 19, 2012 comment, not all of the CPUC's rules governing confidentiality of data are applicable to the data at issue in this rulemaking, Nonetheless, as previously noted, the Energy Commission allows utilities flexibility for addressing confidentiality during uploads while at the same time ensuring the purposes of the statute are met.

SOUTHERN CALIFORNIA EDISON (SCE), MATT EVANS:
Oral comment.

SCE supports PG&E's previous statements and SCE is concerned about the regulations as then written regarding data privacy. SCE looks forward to working with the attorneys from the IOUs, the CEC, and the CPUC to make sure that we're following the proper procedures for the release of confidential customer data. (April 9, 2012 Hearing Transcript, pp. 14-15.)

RESPONSE: See response immediately above.

BOONE ENERGY, SAN FRANCISCO, DANIEL CONSIDINE:
Oral comment.

It would be helpful if the utilities would increase their staffing to help us help our customers get the data. (April 9, 2012 Hearing Transcript, p. 16.)

RESPONSE: No change to the regulations. While the Commission has no control over staffing levels at the utilities, the schedule contained in Section 1682 phases in compliance to give utilities as well as building owners additional time before compliance is required.

MEISSNER JACQUÉT, SAN DIEGO, RANDY WALSH:
Oral comment.

a. How may a new owner access energy use data for the period of time before purchase? What if the new owner wants to sell within the year, e.g. six months after the owner bought it? (April 9, 2012 Hearing Transcript, pp. 17-19.)

RESPONSE: No change to the regulations. A prospective buyer receives the data no later than 24 hours prior to execution of the contract. In the unlikely event of two sales in a year, the owner should request the previous 12 months of data from the applicable utilities and energy providers. If the full 12 months of data is not available, the regulations allow an owner to approximate data that the owner cannot otherwise collect. (§1684, subd. (e).) The disclosures received during the first sale would be a reasonable basis to approximate data for the missing months.

b. As implementation of energy conservation measures takes time before they have a positive impact on an ENERGY STAR score, or on energy use intensity calculations, please clarify the impact of benchmarking by itself. It is not the benchmarking that is going to increase the sales value of a building, it is the process of benchmarking and implementing conservation measures that results in a more efficient building, and that is more valuable in the marketplace. Owners need to understand that benchmarking is part of a process. (April 9, 2012 Hearing Transcript, pp. 19-21.)

RESPONSE: No change to the regulations. The Energy Commission agrees that benchmarking is a first step that may, but is not guaranteed to, lead to a range of changes to promote a more efficient building, from simpler conservation efforts to cut energy costs to more elaborate measures such as installation of new equipment. However, studies show a strong correlation between benchmarking and energy savings. A study of California benchmarking programs by the NMR Group found more than half of those surveyed said their organization changed its management of energy use following benchmarking, and more than 80% had implemented or plans to implement energy efficiency improvements following benchmarking. A study by the Global Real Estate Sustainability Benchmark Foundation found that benchmarking alone raises

awareness to the point that energy costs were lowered through conservation by about one percent.

c. Will the ENERGY STAR Data Checklist show overall building energy data use, and not individual use? The Data Checklist may break down spaces which are more revealing of individual energy use. If so, the utilities should be mindful of that. (April 9, 2012 Hearing Transcript, pp. 21-22.)

RESPONSE: No change to the regulations. The Data Checklist provides a comprehensive review of the physical and operating characteristics of a building, such as square feet, with details about energy consumption such as the types of fuel and monthly consumption. In a few situations, such as one tenant occupying the entire building, it may be possible to discern a nonresidential tenant's energy use. However, the Data Checklist does not identify tenants. The statute requires disclosure of a building's energy use characteristics as delineated by Portfolio Manager. (Pub. Resources Code, §25402.10, subd. (d)(1)). Additionally, the regulations limit disclosure of the data to the purposes contained in Public Resources Code, section 25402.10. (See §1683, subd. (b).) The owner may not use the data for other purposes. The Energy Commission believes these safeguards are sufficient to ensure privacy requirements are met.

d. Do you need to require owners to comply with Energy Star data input guidelines, beyond using Portfolio Manager? How will the Commission determine the integrity of the data? (April 9, 2012 Hearing Transcript, p. 23-24.)

RESPONSE: No change to the regulations. By requiring the use of Portfolio Manager, the statute incorporates the website's requirements, including how to enter data in order to create the disclosure documents. The regulations need not replicate the details of entering data. The Energy Commission does not plan to verify individual reports on an ongoing basis or judge the quality of every single person's input. As the regulations are complied with over time, parties will get a sense of what detail is required for adequate disclosure and the market will start demanding that level of detail.

e. Will a particular release form be required or would each party create their own acknowledgment of receipt of these documents? (April 9, 2012 Hearing Transcript, pp. 24-25.)

RESPONSE: No change to the regulations. While an owner may voluntarily offer an acknowledgement form during the transaction, the Energy Commission does not view it as essential to understanding the building's energy use data and scores and, therefore, is not including such a requirement in the regulation.

LORD GREEN STRATEGIES, DALLAS, TEXAS, ADDISON DELK:

Oral comment.

a. How does Portfolio Manager handle mixed use, for example, an industrial building that accommodates a refrigerated warehouse, light manufacturing, and storage? Or a retail center with a grocery anchor, restaurants and retail store use in one building and the resulting skewed energy metrics? (April 9, 2012 Hearing Transcript, pp. 26-27.)

RESPONSE: No change to the regulations. The Energy Commission acknowledges the limitations of Portfolio Manager in evaluating similar building types that have different process-related energy use. The Energy Commission recommends that owners in such a situation consider including an supplemental explanation along with the disclosure documents (pursuant to subdivision (c) of Section 1683) explaining why the rating is the way it is. This information, along with the required disclosure documents, will give prospective buyers, lessees, and lenders a basic understanding of the building's energy use and why it obtained the rating it did.

b. Will buildings be required to enter into Energy Star Portfolio Manager actual operating characteristics for each and every tenant or be able to use defaults? (April 9, 2012 Hearing Transcript, p. 35.)

RESPONSE: It appears that the commenter meant to refer to energy use data. As specified in Section 1684, subdivision (e), an owner may only approximate data after reasonable efforts to find the missing information, and only if the approximation is identified as such in the disclosures, is reasonable, is based on the best information available, and is not used for purposes of avoiding compliance with the regulations. There are no defaults available for space use characteristics or building type, but there is an "other" category in the program if the specific characteristic or type needed is not listed.

MIKE HACKETT:
Oral comment.

Does a separately owned portion of a mixed use property larger than 50,000 square feet have to comply with AB 1103? (April 9, 2012 Hearing Transcript, pp. 27-28.)

RESPONSE: No change to the regulations. If the separately owned portion is a part of the whole building transaction, and if the building is exclusively nonresidential and over 5,000 square feet, then it is subject to the statute's and the regulations' requirements. If it does not meet one of these criteria, it would not be subject to those requirements. The regulations do not apply to buildings with mixed residential and nonresidential use because the statute applies exclusively to nonresidential buildings. For more information, see the above response to the California Energy Efficiency Industry Council, subpart (c).

BARRY HOOPER, CITY AND COUNTY OF SAN FRANCISCO:
Oral comment.

a. Comparing AB 1103 regulations to San Francisco's law, which requires a much more limited, but public, energy performance disclosure on an annual basis, Mr. Hooper supports the comments that PG&E and Southern California Edison have made to promote working with the CPUC to clarify the release of energy use information. It is common in retail outlets, for example, for tenants to be seasonal, if an owner did not receive the energy use data or consent for release it would be difficult to obtain it later. While interval meters can reveal much about the "moment-by-moment" functioning of a facility, monthly data is different, especially when aggregated. Obtaining consent may involve having the tenant offer a service ID number or account number. (April 9, 2012 Hearing Transcript, pp. 28-31.)

RESPONSE: No change to the regulations. The Energy Commission supports San Francisco's efforts to require benchmarking on an annual basis. Please see the responses to Southern California Edison's written comments to the 45-Day language, subpart (b), regarding the release of tenant data. The Commission agrees that it is unduly burdensome to expect an owner to get consent from tenants that are no longer renting with the owner, and the regulations do not require this. Additionally, an owner is disclosing annual energy use data, not daily data. (See Pub. Resources Code, §25402.10, subd. (d)(1).)

b. Mr. Hooper encourages the publication of guidelines to clarify how to reasonably estimate missing data. (April 9, 2012 Hearing Transcript, pp. 31-32.)

RESPONSE: No change to the regulations. Section 1684, subdivision (e) requires an owner to make diligent efforts to ascertain the information, approximate on a reasonable basis, disclose that the information is approximated, and not use approximate data to neglect other duties under the regulations. The Energy Commission finds that these requirements provide sufficient guidance on when approximating data is appropriate. The need to approximate data will be infrequent and unique to the situation and the Energy Commission does not believe regulations describing how to do so are currently warranted.

c. How will the Energy Commission track the transactions that are affected and, therefore, be able to enforce the requirement? Is there a penalty for noncompliance other than the potential for disagreement among the parties to the transaction? (April 9, 2012 Hearing Transcript, p. 32)

RESPONSE: No change to the regulations. The Energy Commission does not intend to track every transaction that triggers these regulations. The Energy Commission does have a complaint

process whereby anyone who suspects an entity of being non-compliant with any Energy Commission regulation may file a complaint asking the Energy Commission to investigate the alleged non-compliance. (Cal. Code of Regs., tit. 20, §1230 et seq.). The statutes that these regulations are implementing did not give the Energy Commission the authority to impose monetary penalties for non-compliance, and the Energy Commission's authority is limited to ordering a recalcitrant party comply with the requirements and seeking judicial enforcement.

C. Comments Received Outside 45-Day Comment Period

PG&E, VALERIE J. WINN:
Written comment submitted June 14, 2012.

PG&E requests an edit to Section 1684, subdivision (b) to lengthen the time between the owner request for data and the upload from 15 days to 30 days. Fifteen days is insufficient for the utilities to validate or clarify building owner requests for energy use data and to upload data. Thirty days is a reasonable period that will accommodate numerous challenges that may arise during this process and allow parties a reasonable time period to complete the process without fear of non-compliance. (Winn/PG&E Comment, p.1.)

RESPONSE: Change to the regulations. The Energy Commission incorporated the increased time frame for utilities to respond in the first 15-Day Language.

D. 15-DAY LANGUAGE, Comment Period Ending July 11, 2012

U.S. EPA, ENERGY STAR® PROGRAM, TRACY NAREL:
Written comment submitted July 9, 2012.

a. Mr. Narel provided a summary of ENERGY STAR® program history and benefits: The ENERGY STAR program of the U.S. Environmental Protection Agency (EPA) helps American consumers and businesses save money and protect the environment through energy efficient products and practices. In 2011, the ENERGY STAR program helped prevent about 210 million metric tons of greenhouse gas emissions--equivalent to the annual emissions from approximately 41 million vehicles--and saved consumers nearly $23 billion on their utility bills. EPA, through ENERGY STAR, has worked with tens of thousands of building owners and managers to reduce energy use in buildings. In California, more than 3,300 commercial buildings representing nearly 480 million square feet of space have earned the ENERGY STAR, a process that begins with benchmarking energy use with Portfolio Manager. (Narel/EPA Comment, pp. 2-3.)

RESPONSE: No change to the regulations. The Commission thanks Mr. Narel for his comments and his long support of the AB 1103 rulemaking.

b. EPA encourages the use of "ENERGY STAR Energy Performance Score" rather than "Portfolio Manager Energy Performance Rating" in the regulations. (Narel/EPA Comment, pp. 3-4.)

RESPONSE: Change to the regulations. The Energy Commission updated "ratings" to "scores" and updated "Portfolio Manager Energy Performance Rating" to ENERGY STAR Energy Performance Score" in the Second 15-Day Language.

E. 15-DAY LANGUAGE HEARING, JULY 11, 2012

No oral comments were received.

F. 15-DAY NOTICE OF DOCUMENTS RELIED ON, Comment Period Ending July 11, 2012

No comments were received regarding the noticed documents.

G. SECOND 15-DAY LANGUAGE Comment Period Ending December 12, 2012

MYRON CRAWFORD, BERG & BERG ENTERPRISES, INC., Cupertino, CA
Written comment submitted Sept. 25, 2012 and resubmitted Nov. 27, 2012.

Mr. Crawford questions the wisdom of putting the regulations into effect and calls for the "nullification" of AB 1103 and AB 531. He objects to the statute and regulations because the selection of nonresidential buildings by would-be owners or tenants is based more on factors such as location, floor plan, rent, and utility rate structures than energy use. He also points out new buildings tend to be more energy efficient, that new tenants in existing buildings will make energy efficiency improvements on their own initiative, and that the State is already initiating a Green Building Code. Mr. Crawford states ENERGY STAR® ratings [scores] are not useful or beneficial for industrial buildings and that the benchmarking rating cannot predict what the energy use of the new tenant will be. He generally objects that the regulations will be burdensome, not meaningful, and costly. (Crawford Comment, pp. 1-2.)

RESPONSE: No change to the regulations. The provisions in the regulations regarding benchmarking and disclosures are required by statute. The Energy Commission has endeavored to ensure the regulations are as minimally burdensome for building owners as possible. Additionally, the economic impacts of the regulation are very low, approximately $20 per disclosure by building owners. The statutorily-directed duty of benchmarking is also low, conservatively estimated at $250 per benchmark, based on a U.S. EPA survey of costs. (Federal Register, Vol. 75, p. 360, Jan. 5, 2010.) Use of Portfolio Manager is free. There is ample evidence of the usefulness and value of ENERGY STAR® benchmarking data and ratings. (See, e.g., U.S. EPA, *Summary of the Financial Benefits of ENERGY STAR® Labeled Office Buildings*. Feb. 2006.)

LORD GREEN STRATEGIES, DALLAS, TEXAS, TEMA YARAVITZ:
Written comment submitted December 7, 2012.

Ms. Yaravitz acknowledges the difficulty in requiring owners to obtain tenant consent for the release of data, and that it would be meaningless to require whole building consumption data without tenant energy use data. Lord Green Strategies would like to ensure the process of receiving aggregated data will not be burdensome, and notes that different utility companies across the country have different processes for obtaining data. Lord Green Strategies encourages the Energy Commission to require utilities to provide whole building data without asking owners to provide proprietary tenant information. (Yaravitz Comment, pp. 1-2.)

RESPONSE: No change to the regulations. Utilities vary in their approach regarding tenant energy use data not only across the country, but across California. The major investor-owned utilities asked that the Energy Commission incorporate flexibility for protecting the identity of customers beyond aggregation, and the Energy Commission granted that request by allowing them to use any means to reasonably protect the confidentiality of the customer. The Energy Commission concludes this will ensure the confidentiality of tenants' identities.

See also the above discussion addressing Southern California Edison written comments to the 45-Day language, subpart (b), regarding the requirements of AB 1103 and the allowance for the release of "smart grid" data to comply with the law under SB 1476 (Pub. Utilities Code, §8380 subd. (e)(3) and §8381, subd. (e)(3)).

H. 15-DAY LANGUAGE HEARING, DECEMBER 12, 2012

SOUTHERN CALIFORNIA EDISON (SCE), MATT EVANS:
Oral comment.

Mr. Evans commented that Staff's estimate of the operation and maintenance costs for the Automated Benchmarking System for the major IOUs of approximately $1 million a year are high and encompass costs for a broad range of energy efficiency programs, such as marketing, training, and IT development. Mr. Evans estimated that annual operation and maintenance costs run from $30,000 to $50,000 a year and that PG&E might incur similar costs. (Dec. 12 Business Meeting Transcript, pp. 8-9.)

RESPONSE: No change to the regulations. The Energy Commission modified the estimated costs used in the fiscal analysis. Although PG&E was not able to comment during the hearing, a later phone call confirmed its IT operation and maintenance costs were similar to that of SCE, about $50,000 a year.

I. SECOND 15-DAY NOTICE OF DOCUMENTS RELIED ON, Comment Period Ending December 12, 2012

No comments were received regarding the noticed documents.