

DOCKETED

Docket Number:	15-OIR-03
Project Title:	Nonresidential Building Energy Use Disclosure Program Certification of Emergency Regulation
TN #:	204004
Document Title:	Randy Walsh Comments: Nonresidential Building Energy Use Disclosure Program
Description:	Against Certification of the Emergency Regulation Establishing the Compliance Schedule for the Nonresidential Building Energy Disclosure Program, Docket #14-EUDP-EMY-01
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Organization:	San Diego Energy Desk
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Comment Received From: Randy Walsh

Submitted On: 3/30/2015

Docket Number: 15-OIR-03

Rulemaking Docket Number 150-OIR-03

Additional submitted attachment is included below.

30 March 2015

California Energy Commission
Dockets Office, MS-4
1516 Ninth Street
Sacramento, California 95814-55112

Regarding: Rulemaking Docket Number 15-OIR-03:
Nonresidential Building Energy Use Disclosure Program,
Certification of Emergency Regulation
Recommendation: Against Certification of the Emergency Regulation Establishing the Compliance
Schedule for the Nonresidential Building Energy Disclosure Program, Docket #14-
EUDP-EMY-01.

Dear Commissioners:

Thank you for the opportunity to present comments and suggestions for consideration as you review the staff recommendation to make permanent the postponement of the already delayed implementation of the AB 1103 compliance schedule for buildings between 5,000-10,000 square feet.

I recommend the California Energy Commission not postpone any further the delayed implementation of the 5,000-10,000 square foot building size classification threshold for the following reasons:

1. There was and is no emergency related to the full implementation of California AB 1103 according to the final version of the regulation dated February 2014. According to the CEC, the overall AB 1103 compliance rate for the first six months of the initial enforcement period beginning January 1, 2014, was approximately 17% of the total eligible transactions on record. Factoring in potentially eligible lease transactions reduces the compliance rate further. It is reasonable to expect a similar compliance rate for buildings between 5,000 and 10,000 square feet. This level of compliance does not represent an emergency or a scenario that is contrary to the interest of the public. Without established fines or penalties for non-compliance, the level of cooperation from the smaller buildings may end up being inconsequential. The postponement of such a significant part of the regulation at such an early time in the life of AB 1103 creates market confusion and continues to convey to a sense of ambivalence and equivocation in full implementation.
2. The California Energy Commission has created the greatest barrier to full implementation of AB 1103 by unilaterally defining a data confidentiality protocol that is in direct conflict with established and recognized codes and regulations protecting customer confidentiality of data released by utilities. As a result, the utilities and energy providers are requiring individual account holder authorizations before data is released, adding both time and costs to a compliance project. This barrier impacts all buildings attempting to comply with AB 1103 and a workable solution to these conflicts should be the highest priority of the Commission until a solution can be found and implemented. The utility companies have clearly communicated to the Commission for years that they are prevented from complying with the

language of AB 1103 due to the conflicts with existing data confidentiality regulations and lack of clear direction.

3. The California Energy Commission may be misreading the market when it comes to costs, capacity or resources available to the smaller building owners undertaking AB 1103 compliance. The CEC has no definitive or conclusive market information about project pricing or the level of utility cooperation and has not built a compelling case to support continued postponement. The four barriers identified in the Notice of Proposed Action, Amendment of Section 1682 of Title 20 of the California Code of Regulations, Page 4, Summary of Existing Laws and Regulations (Government Code Section 11346.5(a)(3)(A)) are not unique to buildings in the 5,000-10,000 square foot classification, but are, in fact, inherent in all AB 1103 compliance projects.
4. The decision making process behind the postponement is lacking transparency. There is a growing feeling among key stakeholders who have contributed input and suggestions to the CEC, based on real-world experiences of performing AB 1103 compliance, that their feedback and guidance is being ignored - especially with the latest round of revisions to AB 1103 being considered as part of Substantive Rulemaking, Docket 14-EUDP-01. As AB 1103 continues to develop, it is important that the CEC develop a productive working relationship with these Key Stakeholders who can provide valuable insight.
5. This postponement gains us nothing and the structural deficiencies of the regulation remain.

Please know that in this letter I have outlined what I consider to be a “working disagreement” with the California Energy Commission, submitted in the spirit of full and complete implementation and compliance of AB 1103 throughout the State of California. Regardless of the outcome of this process, San Diego Energy Desk will remain at the forefront of AB 1103 implementation and will continue to work closely with all stakeholders to refine and enhance the legislation at every opportunity. It is also important to note that San Diego Energy Desk has crafted a successful business model for thorough, accurate and complete compliance with AB 1103 regulations as they exist today – despite the imperfections in the language of the legislation or the impediments to adoption in the marketplace.

Thank you for your consideration of these comments.

Sincerely,



Randy J. Walsh, CCIM, LEED AP
Chief Efficiency Optimizor