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Comments On Scoping Discussion For The Building Energy Use Disclosure Program

Additional submitted attachment is included below.

BEFORE THE CALIFORNIA ENERGY COMMISSION

In the Matter of:

Building Energy Use Disclosure Program

Docket No. 15-OIR-05

**RE: Benchmarking Provisions of AB 802
(Williams, Chapter 590, Statutes of 2015)**

**CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION COMMENTS ON SCOPING
DISCUSSION FOR THE BUILDING ENERGY USE DISCLOSURE PROGRAM**

The California Municipal Utilities Association (“CMUA”) appreciates the opportunity to provide these comments to the California Energy Commission (“Commission”) on the *Staff Workshop, Scoping Discussion for the Building Energy Use Disclosure Program (AB 802)* held on November 10, 2015. At the workshop, Commission staff gave a presentation providing an overview of the benchmarking provisions in Assembly Bill (“AB”) 802 (2015).

CMUA is still engaged in the process of working with its members to understand the requirements of AB 802 as well as collect information and input on the best ways to implement those statutory requirements and to develop regulations. While this is a top priority for the publicly owned electric utilities (“POUs”), it raises new and complex challenges that CMUA’s members are still working to understand and so that they can develop more comprehensive initial recommendations. CMUA looks forward to a collaborative process where, with further clarification from the Commission, it will be better able to provide the the data the Commission needs to implement AB 802. These comments reflect the initial input that CMUA has received from its members.

I. INTRODUCTION

Energy efficiency is a key greenhouse gas (“GHG”) reduction tool and will continue to play an important part in achieving the state’s GHG reduction goals. However, even with the aid of government subsidies and utility rebates, energy efficiency deployment is primarily governed by individual consumer choices. The state’s vision and benefits of energy efficiency can only be realized to the extent that electricity consumers employ these tools.

Because consumer choice is such an integral part of successful energy efficiency deployment, CMUA supports measures that continue efforts to educate customers on the benefits of energy efficiency and develop ways to increase the penetration of energy efficiency technologies in both new and existing buildings. The intent language of AB 802, cited in the Commission staff presentation, declares that “Building owners should have access to their buildings’ energy usage information, which enables understanding of a building’s energy usage for improved building management and investment decisions.”¹ CMUA supports this overarching premise of AB 802, and agrees that equipping building owners with energy usage data on their buildings can help drive energy-saving investments in existing buildings, and thus support the state’s broader GHG reduction goals. CMUA and its member utilities look forward to continuing to work with the Commission on developing a balanced regulatory process that meets the needs of building owners, protects the privacy of individual customers, and recognizes the varying technical capabilities of different utilities.

II. AB 802 PROVISIONS RELATED TO BENCHMARKING AND DEMAND FORECASTING SHOULD BE IMPLEMENTED IN SEPARATE PROCEEDINGS

AB 802 consists of three distinct provisions intended to spur investments in energy efficiency in existing buildings: (1) energy savings from below-code energy efficiency improvement projects; (2) building owner access to whole building energy usage data; and (3) a

¹ Assembly Bill 802, Chapter 590, Statutes of 2015, Section 1.

statewide benchmarking program. While all three provisions support the broader vision of the *Existing Buildings Energy Efficiency Action Plan*,² the specific challenges facing the successful implementation of each these unique programs requires that each be addressed separately.

CMUA recommends that the Commission establish separate proceedings, or at the very least sub-proceedings, to separately address implementation of each provision, instead of conflating issues within the same regulation. Each of the following distinctions highlights the need for individual implementation tracks:

- The provisions related to below-code energy savings³ do not apply to POUs and involve decision-making by the California Public Utilities Commission that will also not apply to POUs.
- The requirement that utilities provide whole building data access to building owners applies to a larger class of buildings than the buildings that will be subject to the public and Commission disclosure requirement.
- The collection, maintenance, and provision of energy usage data to building owners is a clearly specified responsibility of *utilities* whereas the responsibility for disclosure of energy usage information to the Commission and to the public is at the discretion of the *Commission* to decide.
- Building owner access to whole building energy usage data is a necessary first step to the disclosure of usage data to the Commission and to the public. The sequential nature of these two requirements supports a parallel, but separate promulgation of regulations.

III. THE DEFINITION OF “BUILDING” IS UNCLEAR

The lack of a clear definition of what constitutes a “building” makes it challenging for utilities to determine how to aggregate data from multiple meters to develop building-level data or to identify the number of covered buildings in their service territories (as requested by Commission staff). Whether the Commission pursues separate proceedings or combines implementation of AB 802 under a single proceeding, it is imperative that the Commission focus on developing a definition of “building,” which was not defined in AB 802. This definitional certainty is needed

² *Existing Buildings Energy Action Plan*. California Energy Commission. September 2015. CEC-400-2015-013-F.

³ Sections 2, 3, 6, and 8 of AB 802.

because each of the following common scenarios cannot be properly addressed without a clear definition of “building”:

- Does exterior load – such as parking lot lights, agricultural pumps, or electric vehicle supply equipment – count as load that should be associated with a building?
- If a campus setting has multiple buildings under a single meter, what constitutes a separate building and how should energy usage data be allocated to individual buildings?
- How are buildings with zero, one, or multiple street addresses accounted for, and what is the impact on building owners’ requests to utility providers for information?

In general, with regard to issues like the definition of “building” and other program design questions, CMUA encourages the Commission to incorporate Portfolio Manager and established benchmarking practices, when feasible. Portfolio Manager is a nationally recognized tool that building owners throughout the state are already utilizing. For example, San Francisco’s benchmarking program relies on Portfolio Manager. Similarly, Leadership in Energy & Environmental Design, or LEED®, requires benchmarking in Portfolio Manager for certification. Furthermore, as a broadly accepted industry tool, Portfolio Manager has a large vendor network that provides support services for the use of Portfolio Manager by building owners, utilities, and local/state governments. This extensive support network can be a huge asset to utilities, especially smaller POUs with limited staff resources, in complying with the requirements of AB 802.

IV. CUSTOMER PRIVACY

Customer privacy was a controversial and unresolved issue throughout the implementation of AB 1103, and remains a concern for CMUA’s members. The requirements of AB 1103 directing utilities to provide customer data to building owners stands in tension with Government Code section 6254.16, which protects customers of local agencies from having their utility usage data publicly disclosed. AB 802 attempts to absolve utilities of any liability for any use or disclosure of

aggregated energy usage data.⁴ However, this language does not absolve utilities of the *responsibility* to protect their customers' privacy, nor does it address customers' concerns regarding the disclosure or subsequent use of that information.

POUs have an obligation to serve the interests of their customers, an obligation shared by the Commission as a public agency of the state. AB 802 provides a great deal of discretion to the Commission regarding the disclosure of energy usage data, and CMUA strongly urges the Commission to exercise this discretion prudently. As the results of a recent nationwide survey show, customers are already leery of collection and disclosure of their personal information, as well as the ability of governmental agencies to protect that data:

- In May 2015, the Pew Research Center published the results of a nationwide survey on privacy.⁵ 93% of respondents said that is important to be in control of who can get information about them. Similarly, 90% of respondents said that it is important to control what information is collected about them.
- The same Pew report found that just 6% of Americans say they are very confident that government agencies can keep their records private and secure, while 25% are somewhat confident.

AB 802 provides for the aggregation of tenant energy usage data prior to submission to building owners, such that a utility is not required to provide customer-by-customer usage data to building owners with three or more tenants with active utility accounts.⁶ In buildings with a larger number of tenants, this should provide sufficient privacy protection to tenants. However, based on previous Commission presentations, the vast majority of "covered buildings" have fewer than five tenants. In these covered buildings, the concern is that the aggregated usage data may be disaggregated back to the customer level.

⁴ Cal. Pub. Res. Code § 25402.10(c)(2)(A), (E).

⁵ Pew Research Center, May 2015, *Americans' Views About Data Collection and Security* (available at http://www.pewinternet.org/files/2015/05/Privacy-and-Security-Attitudes-5.19.15_FINAL.pdf).

⁶ Cal. Pub. Res. Code § 23402.10(c)(2)(A).

This concern has been expressed by commercial and industrial customers of POU. Energy usage data is vital to their successes as competitive businesses in California and in a world market. These customers go to great pains to protect all operational data, including and especially energy use, as it reflects greatly on the status of the business such as production increases/slowdowns, shift schedules, retooling, testing cycles, and other competitive intelligence factors. The high level of international competition in certain industries and sensitivities to potential impacts on publicly traded stocks and securities, demand operational data privacy.

This importance of protecting operational data privacy has led some POU customers to request that even when discussing the results of energy efficiency projects, information not be publicly disclosed that could lead to an understanding of the amount of electricity used at a facility. For example, several large POU customers have requested that in press releases regarding efficiency projects, energy use not be disclosed either by stating the amount of savings in kilowatt hours and/or as a percentage of the customer's load. These requests were purposefully made to ensure that competitors were not able to obtain any information about their energy usage that could create a competitive disadvantage for their customers.

Given the myriad of concerns regarding the privacy of customer/constituent/industry usage data, CMUA recommends the following:

- For the purposes of providing building owners with access to whole building usage data, allow utilities to seek tenant consent prior to providing energy usage data to owners of covered buildings with five or fewer tenants.
- Alternatively, allow utilities to require a signed non-disclosure agreement (“NDA”) with all building owners of covered buildings that limits the use of the usage data by the building owner to the purposes of AB 802. NDAs are a common utility form and are currently used widely when sharing customer data with third party administrators of utility programs, such as energy efficiency programs.
- For the purposes of a statewide benchmarking program, only require the submission of the Energy Star score generated by Portfolio Manager for a covered building, and not the actual energy usage data.

- Proactive outreach by the Commission to organizations that represent tenants whose energy usage data will be provided to building owners, and for which some manner of energy use information may be publicly disclosed, is essential. Even if customer privacy is protected, the broad sensitivity to even the concept of the government collection and disclosure of customer data warrants a preemptive public campaign by the Commission to avoid adverse public response after implementation.

V. SUCCESS OF THE PROGRAM HINGES ON ENGAGED BUILDING OWNERS

One of the major questions left to the Commission to decide is to determine who will deliver the energy usage data and related information for any covered building to the Commission.⁷ Building owners, or their designated representatives, are essential to the success of benchmarking programs as meaningful tools that drive investments in energy efficiency improvements. Building owners need to enter building characteristics – information that utilities do not possess and cannot collect – into Portfolio Manager in order to generate accurate performance data. If building owners are exempted from participating in the collection and upload of data into Portfolio Manager, then the score produced will not have relevance for the building owner. If the purpose of providing access to whole building usage data to building owners is to inform them and spur action on their part, then the building owner must be engaged in the process, and must understand the Portfolio Manager tool and the analysis it provides. This understanding will not occur if building owners are excluded from the Portfolio Manager process.

CMUA recognizes that building owners, like utilities, represents a spectrum of entities with varying resources and capabilities for complying with AB 802. CMUA strongly supports a simple compliance pathway for both utilities and building owners:

- CMUA urges the Commission to develop spreadsheet templates in a format compatible with Portfolio Manager to support utility delivery of aggregated energy usage data for a covered building to the owner⁸ and facilitate a simple upload by the building owner to their account in Portfolio Manager.

⁷ Cal. Pub Res. Code § 23402.10(d)(3).

⁸ As authorized by Cal. Pub. Res. Code § 23402.10(c)(1).

- In order to realize energy savings from actions informed and encouraged by building owner access to whole building data, CMUA urges the Commission to develop regulations that provide a straightforward pathway for building owners to deliver the energy usage data and related information for covered buildings to the Commission.

VI. RESPONSES TO WORKSHOP QUESTIONS

In the workshop presentation, Commission staff posed four questions specifically to electric utilities. Based on initial input from its members, CMUA provides the following responses:

1. How many covered buildings are in your service territory? (Please provide multi-family, mixed-use, and nonresidential numbers separately.)

In responding to this question, the POU's noted that it is impossible to provide an answer without a clear definition of "building." As described above, there are a variety of situations where the same physical location could be interpreted as having several, one, or no "buildings." Further, under some definitions of "building," POU's do not currently have access to sufficient data to be able to respond to this question. In order to provide an accurate response to this question, the Commission must clearly define "building." Additionally, the Commission must give guidance on what sources of data (such as City GIS databases) are recommended for identifying buildings. CMUA will continue to work with its members to enable the Commission to get the information that it needs.

2. What is your anticipated cost for fulfilling data requests (1) with Portfolio Manager Data Exchange Services, and (2) with manual upload to Portfolio Manager*? Please provide details on how these costs were derived.

The overwhelming response from CMUA's members was that it is too soon and too difficult to accurately estimate the costs of either Portfolio Manager Data Exchange Services or manual upload. This is due in large part to the fact that POU's do not know how many buildings would actually be subject to the new requirements of AB 802.

An additional concern that will affect costs is the process for determining if the individual or entity requesting the information is indeed the building owner, agent, or operator. The

ownership of a building may be verified using data from a county tax roll, tax bills, or by presentation of the title to the property, however, it is not clear at this point what requirements and verification processes may be placed on a utility when making the determination, particularly when the data requested is intended to eventually be released publicly.

While the POU's encourage the use of Portfolio Manager and established benchmarking tools when feasible, it is important to note that the existing tools are still complex and do not interface seamlessly with existing practices and programs. As such, POU's also raised concerns with the complexity of Portfolio Manager and commented that the costs to utilities will depend on the building owner's understanding of the process. When the building owner needs the utility's help and each request requires special attention, the result can be costly and time consuming for the utility. Other options, such as a "bulk" data upload process could reduce these costs.

3. What aggregation protocols do you plan to use? Please provide technical specifications if developed.

The clear response from CMUA's members is that it is too soon to be able to provide a detailed response to this question. Indeed, the technical nature of inquiry and the need to better and more fully understand the scope of the process requires additional time to develop the necessary tools. This issue will need to be explored in greater detail during the rulemaking process.

4. What is your implementation plan for matching buildings to meters by January 1, 2017?

The POU's have a variety of plans to meet this requirement, but the plans are very dependent on the specific requirements and definitions developed in this rulemaking process. The POU's will coordinate collectively through CMUA, as well as through the Northern California Power Agency and the Southern California Public Power Authority, which will both work with their members to offer support.

VII. CONCLUSION

CMUA appreciates the opportunity to provide these comments to the Commission, and looks forward to working with staff on developing regulations for the Building Energy Use Disclosure Program.

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Respectfully submitted,



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