

DOCKETED

Docket Number:	15-OIR-05
Project Title:	Building Energy Use Disclosure and Public Benchmarking Program Mandated under Assembly Bill 802
TN #:	211096
Document Title:	Northern California Power Agency Comments: Northern California Power Agency Comments on the Initial Staff Proposal to Implement Building Energy Use Data Access and Public Disclosure Provisions of AB 802
Description:	N/A
Filer:	System
Organization:	Northern California Power Agency
Submitter Role:	Public Agency
Submission Date:	4/15/2016 2:33:24 PM
Docketed Date:	4/15/2016

Comment Received From: Northern California Power Agency

Submitted On: 4/15/2016

Docket Number: 15-OIR-05

Northern California Power Agency Comments on the Initial Staff Proposal to Implement Building Energy Use Data Access and Public Disclosure Provisions of AB 802

Additional submitted attachment is included below.

BEFORE THE CALIFORNIA ENERGY COMMISSION

In the matter of:

*Building Energy Use Benchmarking and
Public Disclosure Program*

Docket No. 15-OIR-05

**RE: Building Energy Use Data Access and
Public Disclosure Provisions of AB 802
(Williams, Chapter 590, Statutes of 2015)**

**THE NORTHERN CALIFORNIA POWER AGENCY COMMENTS ON
THE INITIAL STAFF PROPOSAL TO IMPLEMENT BUILDING ENERGY USE
DATA ACCESS AND PUBLIC DISCLOSURE PROVISIONS OF AB 802**

The Northern California Power Agency¹ (NCPA) appreciates the opportunity to provide these comments to the California Energy Commission (“CEC” or “Commission”) on the initial staff proposal to implement building energy use data access and public disclosure provisions of AB 802 (“AB 802 Program”), as presented in a PowerPoint presentation at the March 25, 2016 AB 802 Benchmarking Staff Workshop.

I. INTRODUCTION

NCPA supports the efforts of CEC staff to solicit input from utilities and other interested stakeholders in the initial crafting of the regulatory language for the AB 802 program. The March 25th staff workshop provided much needed clarity on key pieces of the AB 802 statute. The CEC staff is to be commended for being receptive to oral comments made by NCPA and other utility representatives, and providing constructive responses in turn. Building off of the workshop dialogue, NCPA respectfully submits the following comments in support of the timely implementation of the AB 802 program. To that end, attached to these comments NCPA, developed in collaboration with the Southern California Public Power Authority, is also submitting draft language that seeks to translate our shared perspective into actionable regulations.

II. DEFINITIONS

The staff proposal definition of “building” found on slide 12 is adequate. However, this definition does not address whether or not exterior load – such as parking lot lighting or electric vehicle supply equipment (EVSE) – is included in the building footprint. Consistent with

¹ NCPA is a California Joint Powers Agency established in 1968. Its Members are: the Cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, the Bay Area Rapid Transit Agency, the Port of Oakland, and the Truckee Donner Public Utility District; and one Associate Members: the Plumas-Sierra Rural Electric Cooperative. These Members serve nearly 650,000 electric consumers in Central and Northern California.

ENERGY STAR Portfolio Manager® practices, NCPA recommends that separately metered exterior load, including EVSE, not be included in the definition of a building. For those buildings with exterior loads that are not separately metered, NCPA recommends the regulations comply with Portfolio Manager practices for distinguishing between interior and exterior load.

NCPA is not opposed to the staff proposal idea of a “building identification number”. However, at the workshop the CEC staff indicated that this number would be generated by the Energy Commission. This will require the CEC to develop and maintain a database of building identification numbers, which is no small undertaking. In addition, the CEC will need to provide the building identification number to the utility and/or building owner in order to complete a requested for energy usage data. This represents yet another step in the AB 802 process and could extend the timing between when a building owner requests energy use data and when they receive the data from the utility. NCPA believes that the regulations, and the schedule of implementation in particular, may need to be adjusted to account for the CEC building identification number process.

NCPA supports the staff proposal definition of “disclosable building” on slide 13. Excluding covered buildings with less than 50,000 square feet of gross floor area is consistent with the Legislative intent of AB 802 and focuses the benchmarking and public disclosure program on a more manageable inventory of buildings – a total of 18,062 buildings according to slide 6 of the Energy Commission presentation.

Both “energy use data” and “energy usage data” are used interchangeably in the statute. The regulations should clarify that both refer to “a record of kilowatt hours, therms, or any other measure of energy recognized by Portfolio Manager.”

III. DATA ACCESS

Manner of Delivery

On slide 18, the staff proposal would require utilities with annual demand exceeding 700 gigawatthours of electricity or 30 billion cubic feet of natural gas, as determined on a three-year average commencing January 1, 2013, to implement automated data exchange with ENERGY STAR Portfolio Manager by August 1, 2017. This requirement conflicts with Public Resources Code Section 25402.10(c)(1), which states, “each utility shall...deliver or otherwise provide aggregated energy usage data for a covered building to the owner, owner’s agent, building operator, or to the owner’s account in the ENERGY STAR Portfolio Manager.” The statute clearly allows a utility the **option** of either delivering energy usage data to the owner or to the owner’s Portfolio Manager account, regardless of utility size. While the statute does authorize the Energy Commission, “to specify additional information to be delivered by utilities”, the statute does not authorize the Energy Commission to specify the manner in which the aggregated energy usage data and/or additional information is delivered to the building owner.

To be clear, mid-size and larger utilities may find that it is simpler and a better use of limited staff resources to implement automated data exchange with Portfolio Manager in the future. However, three of the four NCPA member utilities with annual demand exceeding 700 GWh are currently in various stages updating their customer information systems (CIS), which is the main database from which building energy usage data will be derived. During the transition to new CIS, which will take 2-3 years on average, utilities will not be able to accommodate automated data exchange Portfolio Manager by August 1, 2017. However, these utilities – and the rest of the NCPA member utilities – can deliver aggregated energy use data for a building in a spreadsheet template that is compatible with being uploaded into Portfolio Manager.

Given the discretion afforded utilities in statute regarding the manner of delivering energy usage data to a building owner and the technical challenges facing midsize utilities for implementing automated data exchange with Portfolio Manager, NCPA strongly recommends that the regulations adopt permissive requirements that allow a utility, regardless of annual energy demand, to satisfy building owner requests for energy use data by either delivering the data in a spreadsheet template compatible with being uploaded into Portfolio Manager or directly into the building owner's account in Portfolio Manager.

Processing Requests for Building Energy Use Data

The issue of greatest controversy in the AB 802 program, as it was with the preceding AB1103 program, is customer privacy. As has been well-documented by previous comments filed by NCPA, the Southern California Public Power Authority, and the California Municipal Utilities Association, existing statute provides additional privacy protection – and legal obligations – for publicly owned utilities with regards to the California Public Records Act. Specifically, Government Code Section 6254.16 states that “Nothing in this chapter shall be construed to require the disclosure of the name, credit history, utility usage data, home address, or telephone number of utility customers of local agencies,” with limited exceptions of which building owners are included.

NCPA acknowledges that AB 802 attempts to relieve the utility, and the building owner, from legal recourse by the customer. The last sentence in Public Resource Code Section 25402.10(c)(2)(A) states, “The building owner and utility shall not have any liability for any use or disclosure of aggregated energy usage data delivered as required by this section.” The legal protection for utilities could have been stronger had the statute specifically referenced the California Public Records Act, or if AB 802 had amended Government Code Section 6254.16, thereby eliminating any ambiguity. Setting aside the question of legal liability, customers of publicly owned utilities still have an expectation of privacy and publicly owned utilities have a responsibility, if not a legal liability, to uphold our customers' right to privacy.

Publicly owned utilities also have an obligation to building owners and the broader public to provide some manner of aggregated building energy usage data per AB 802. In an effort to

balance customer expectations of privacy and building owner and public access to aggregated building data, NCPA recommends all of the following:

- a) A utility should be allowed to verify a request for building energy usage data is being made by the actual building owner or authorized agent, as noted in slide 22.
- b) A utility should be allowed to require a simple non-disclosure agreement (NDA) with building owners or authorized agents to limit the use of the aggregated building energy use data and prohibit the sale or sharing of the data to third parties. Nothing in the NDA would prohibit the building owner from sharing the building information with a 3rd party for the purpose of making energy efficiency improvements to the building.
- c) A utility shall have two weeks to determine if a request is valid and includes all of the requisite forms and supporting documents.
- d) Upon determining a request is valid, a utility shall have four weeks to deliver aggregated building energy usage data to the requesting entity.

With regard to covered buildings with 1-2 utility accounts and no residential accounts, Public Resources Code Section 25402.10(c)(B) directs utilities to share energy usage data with the building owner “if the accountholder provides written or electronic consent for the delivery of the accountholder’s energy usage data to the owner, owner’s agent, operator, or utility.” NCPA interprets the statute as requiring affirmative action – providing written or electronic consent – on the part of the accountholder. In contrast, the staff proposal states that failure on the part of the accountholder to respond to a utility request to share their energy usage data shall constitute consent. NCPA strongly disagrees with this interpretation of the statute and urges the Commission to reject this portion of the staff proposal.

IV. PUBLIC DISCLOSURE

Schedule

On slide 31, the staff proposal requires the building owner, by February 1st each year, to request building energy use data from the utility for a disclosable building. On slide 32, the building owner is required to submit information on their disclosable building via Portfolio Manager to the Commission by April 1st. According to slide 7, beginning in 2019 for commercial and 2020 for residential buildings, the Commission will then publicly disclose to-be-determined information for disclosable buildings by July 1st. NCPA requests adjusting the schedule by a few months due to the compilation of the annual public power energy efficiency report, which is due to the CEC annually on March 15th. The concern is that publicly owned utility staff, especially for calendar year utilities, will be hard-pressed to satisfy their mandated annual report obligations pursuant to Public Utilities Code Section 9505(a) and building owner requests for energy use data for disclosable buildings at the same time. As an alternative, NCPA proposes the following schedule:

- a) Beginning January 1, 2016 utilities shall maintain records of the energy usage data of all buildings to which they provide service for at least the most recent 12 months.
- b) A utility shall provide a building owner with energy usage data, as specified in Section 1682, according to the following schedule:
 - i) On and after January 1, 2017, for covered buildings.
 - ii) On April 15, 2017, and by April 15th annually thereafter, for disclosable buildings. A utility shall also provide the energy usage data to the Energy Commission.
- c) A building owner shall disclose benchmarking data to the Energy Commission on the following schedule:
 - i) On June 15, 2018, and by June 15th annually thereafter, for disclosable buildings with no residential utility accounts.
 - ii) On June 15, 2019, and by June 15th annually thereafter, for all other disclosable buildings.
- d) By August 15, 2018, and by August 15th annually thereafter, the Energy Commission shall make available on a public website the standard information for all disclosable buildings.

Public Energy Metric(s)

On slides 36-37, the staff proposal includes a list of potential pieces of information that the CEC may make available that does not include the actual building energy usage data. NCPA strongly supports excluding actual energy use data and instead relying on performance metrics generated by Portfolio Manager, such as site and source energy use intensity, which are included in the list on slide 36. As NCPA noted in our comments regarding the *2015 Integrated Energy Policy Report*, there are commercial and industrial customers of NCPA Member utilities who are very concerned about data privacy, including energy use data. This information 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 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.

V. VIOLATIONS AND ENFORCEMENT

With the recommendations provided above, NCPA fully anticipates that its members would be able to comply with the regulations and equip building owners with valuable energy use data on their buildings that they are currently lacking. NCPA believes that building level data can enhance current utility energy efficiency programs and help unlock energy savings in existing buildings in which the building owner and the utility accountholders are not the same people. To realize the goals of AB 802, and the state's broader energy efficiency and greenhouse

gas emission reduction goals, the Commission, utilities, building owners, and tenants will need to successfully collaborate together. With the intent of fostering a more cooperative environment at the CEC, NCPA suggests amending the enforcement provisions to include a 30-day opportunity to cure period for utilities to correct violations identified by the Commission prior to taking actions to enforce penalties.

NCPA reiterates our appreciation for the Commission's consideration of our comments, including the attachment. NCPA looks forward to working further with the Commission and other stakeholders in drafting regulations to implement AB 802 in a manner that balances increasing the transparency of building energy usage without compromising the privacy of the tenants currently located in those buildings.

Regards,

A handwritten signature in blue ink, appearing to read "Jonathan Changus". The signature is fluid and cursive, with a large initial "J" and "C".

JONATHAN CHANGUS
Member Services Manager & Regulatory Affairs

- ATTACHMENT A -

Building Energy Use Data Access and Public Disclosure Program

**California Code of Regulations
Title 20. Public Utilities and Energy
Division 2. State Energy Resources Conservation and Development Commission
Chapter 4. Energy Conservation
Article 9. Building Energy Use Data Access and Public Disclosure Program
Sections 1680-1685**

Section 1680. Purpose

This article implements procedures, pursuant to Public Resources Code Section 25402.10, for providing building energy usage data to the building owner or owner's agent and for benchmarking and publicly disclosing energy usage information for certain buildings.

Section 1681. Definitions

The following definitions apply to this article:

- (a) "Benchmarking" means obtaining information on the energy use in an entire building for a specific period of time to enable that usage to be tracked or compared against other buildings.
- (b) "Building" means any structure used or intended for supporting or sheltering any use or occupancy. Two or more buildings on the same parcel, campus, or site, that are served by one common energy meter without sub-metering, such that their energy use cannot be tracked individually, shall be considered one building.
 - (1) For the purposes of this program, "building" does not include exterior energy consumption.
 - (2) For a building with exterior energy consumption that is not separately metered, the building owner shall characterize the exterior energy consumption consistent with Portfolio Manager best practices.
- (c) "Building Identification Number" means a number developed and maintained by the Energy Commission that is unique across all California utilities serving covered buildings.
- (d) "Building Owner" means a person possessing the current title to a building, or an agent authorized to act on behalf of a person possessing title.
- (e) "Covered Building" means either or both of the following:
 - (1) Any building receiving energy from a utility with no residential utility accounts.
 - (2) Any building receiving energy from a utility with five or more residential utility accounts of any one energy type, including buildings that may have additional non-residential utility accounts.
- (f) "Disclosable Building" means either of the following covered buildings, when used for any occupancy type defined by Portfolio Manager:
 - (1) A covered building with 3 or more utility accounts of any one energy type, no residential utility accounts, and more than 50,000 square feet of gross floor area.

- (2) A covered building with 17 or more utility accounts of any one energy type, residential or non-residential utility accounts, and more than 50,000 square feet of gross floor area.
- (g) “Energy” means electricity, natural gas, steam, or fuel oil sold by a utility to a customer for end uses addressed by the Portfolio Manager system.
- (h) “Energy Use Data or Energy Usage Data” means a record of kilowatt hours, therms, or any other measure of energy recognized by Portfolio Manager.
- (i) “ENERGY STAR Portfolio Manager® or Portfolio Manager” means the tool developed and maintained by the United States Environmental Protection Agency to track and assess the energy performance of buildings.
- (j) “Exterior Energy Consumption” means exterior lighting, equipment, machinery, electric vehicle supply equipment, or any other source of energy consumption on the premises of or supporting exterior services the building but not consumed by the building.
- (k) “Utility” means an entity providing energy to a building. Energy aggregators that do not directly bill an individual customer are not considered utilities for this program.
- (l) “Utility Account” means an agreement between a utility and its customer to provide energy to a pre-determined location.

Section 1682. Data Access

- (a) Prior to submitting a request to a utility for energy usage data, a building owner shall first do all of the following:
 - (1) Open a Portfolio Manager Account
 - (2) Enter the building into Portfolio Manager
 - (3) As needed, complete or update all required fields for the building within Portfolio Manager to generate a complete ENERGY STAR® Statement of Energy Performance, or ENERGY STAR® Scorecard if available for the building’s type.
 - (4) Request a building identification number from the Energy Commission.
- (b) A utility shall develop a standard form for a building owner to use to request energy usage data for a covered building.
 - (1) A utility may require that a request be accompanied by information that verifies with reasonable certainty that the person submitting the request is the building owner or is authorized to act on behalf of the building owner.
 - (2) A utility may require a building owner to sign a non-disclosure agreement to protect building tenants from the inappropriate disclosure or sharing of their aggregated energy usage data. Nothing in the NDA shall prohibit the building owner from sharing the building information with a 3rd party for the purpose of making energy efficiency improvements to the building.
 - (3) If a utility receives a request for energy use data for a covered building that has no residential utility accounts and fewer than three utility accounts of each energy type serving the building, a utility may require written or electronic consent by the accountholder to release energy usage data to the building owner.
- (A) A copy of an executed lease or supplemental agreement in which a customer consents to sharing his/her energy use data with the building owner shall be accepted by the utility as the accountholder having provided consent for the delivery of the accountholder’s energy usage data to the building owner.

(B) A request shall not be considered valid until each accountholder provides written or electronic consent is conveyed to the utility for the delivery of the accountholder's energy usage data to the building owner.

(c) A utility shall have two weeks to determine if a request for energy usage data is valid.

(1) If a utility does not require building owner verification and/or a signed non-disclosure agreement and/or consent by the accountholder to release energy usage data to the building owner, then a request for energy usage data shall be considered valid upon receipt of the completed request form by the utility.

(2) If a utility does require building owner verification and/or a signed non-disclosure agreement and/or consent by the accountholder to release energy usage data to the building owner, a request for energy usage data shall be considered valid by the utility upon the utility's verification of the building owner per the standardized process developed by the utility and/or upon receipt of a signed non-disclosure agreement and/or written or electronic consent by the accountholder to release energy usage data to the building owner.

(3) If a utility determines that a request is not valid, then the utility shall respond to the requester and identify the reason(s) that the request is not valid.

(d) A utility shall, upon receipt of a valid request, provide aggregated energy usage data for the utility's accounts in the covered building to the building owner in at least one of the following formats:

(1) A utility may provide aggregated energy usage data in spreadsheet format that is compatible with being uploaded into Portfolio Manager.

(2) A utility may directly upload the aggregated energy usage data into the building owner's Portfolio Manager, upon consent of the building owner.

(e) For each energy type, the information provided by a utility to the building owner shall include the following:

(1) The Building Identification Number, as developed and maintained by the Energy Commission

(2) The meter number for each meter in the building.

(3) The name of each utility customer associated with the building.

(4) The aggregated energy usage data of all the utility's accounts in the building for the previous 12 calendar months. Due to utility billing cycles, this may include up to 14 months of billing data.

(f) Upon determining a request is valid, a utility shall have four weeks to provide energy usage data, as well as the information required by paragraph (e), to a building owner.

(1) A utility shall be required to process no more than one valid request for energy usage data per covered building per calendar year.

(2) For disclosable buildings, a utility shall also deliver this energy usage data and information to the Energy Commission.

(g) The building owner and utility shall not have any liability for any use or disclosure of aggregated energy usage data delivered as required by this article.

Section 1683. Public Disclosure

(a) By April 15, 2017, and by April 15th annually thereafter, a building owner of a disclosable building shall request energy use data for the building from each utility for which there is at least one utility account in the building, consistent with Section 1682.

(b) The building owner of a disclosable building shall submit building data entered within Portfolio Manager to the Energy Commission per the schedule in Section 1684.

(c) The Energy Commission will compare data for disclosable buildings received from utilities per Section 1682(f)(2) with submissions provided by the building owner through Portfolio Manager to verify the information is correct. The Energy Commission may generate additional standardized metrics for disclosable buildings not deliverable through Portfolio Manager.

(d) A disclosable building meeting any of the following conditions is exempt from the reporting requirements of this program:

(1) The building has not yet had a complete calendar year of utility service.

(2) The building is scheduled to be demolished one year or less from the reporting date.

(3) The building is included in a local building energy use benchmarking program listed on the Energy Commission website.

(4) Other buildings or building types for which the Energy Commission determines the public disclosure of energy usage data for the building would compromise public safety or is otherwise protected by law.

Section 1684. Schedule of Implementation

(a) Beginning January 1, 2016 utilities shall maintain records of the energy usage data of all buildings to which they provide service for at least the most recent 12 months.

(b) Upon the request and written authorization or secure electronic authorization, a utility shall provide a building owner with energy usage data, as specified in Section 1682, according to the following schedule:

(1) On and after January 1, 2017, for covered buildings.

(2) On April 15, 2017, and by April 15th annually thereafter, for disclosable buildings. A utility shall also provide the energy usage data to the Energy Commission.

(c) A building owner shall disclose benchmarking data to the Energy Commission on the following schedule:

(1) On June 15, 2018, and by June 15th annually thereafter, for disclosable buildings with no residential utility accounts.

(2) On June 15, 2019, and by June 15th annually thereafter, for all other disclosable buildings.

(d) By August 15, 2018, and by August 15th annually thereafter, the Energy Commission shall make available on a public website the standard information for all disclosable buildings.

Section 1685. Violations and Enforcement

(a) The Energy Commission may enforce any of the following violations of Section 1683 against a building owner through the measures identified in Public Resources Code Section 25321:

(1) Failure to complete the required submission on time per the schedule in Section 1684.

(2) Providing partial or incomplete information.

(3) Intentionally submitting incorrect data.

(b) The Energy Commission may enforce any of the following violations of Section 1682 against a utility through the measures identified in Public Resources Code Section 25321:

(1) Failure to fulfill a valid request within four weeks.

(2) Intentionally sharing incorrect data.

(c) Prior to levying an enforcement measure on either a building owner or a utility, the Energy Commission shall first notify the building owner or the utility of the violation and allow 30 days for the building owner or utility to correct the violation.