

## DOCKETED

<b>Docket Number:</b>	15-OIR-05
<b>Project Title:</b>	Building Energy Use Disclosure and Public Benchmarking Program Mandated under Assembly Bill 802
<b>TN #:</b>	211112
<b>Document Title:</b>	San Diego Gas & Electric Company and Southern California Gas Company Responses
<b>Description:</b>	To the March 25, 2016 "Initial Staff Proposal to Implement Building Energy Use Data Access and Public Disclosure Provisions of AB 802"
<b>Filer:</b>	System
<b>Organization:</b>	Southern California Gas Company (SDGE)/Tamara Rasberry
<b>Submitter Role:</b>	Public
<b>Submission Date:</b>	4/15/2016 5:18:22 PM
<b>Docketed Date:</b>	4/18/2016

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*Submitted On: 4/15/2016*

*Docket Number: 15-OIR-05*

**San Diego Gas & Electric Company and Southern California Gas Company  
Responses to the March 25, 2016 Initial Staff Proposal to Implement Building  
Energy Use Data**

*Additional submitted attachment is included below.*



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California Energy Commission Dockets Office, MS-4  
Docket No. 15-OIR-05  
1516 Ninth Street  
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**RE: Docket: 15-OIR-05.** San Diego Gas & Electric Company and Southern California Gas Company Responses to the March 25, 2016 “Initial Staff Proposal to Implement Building Energy Use Data Access and Public Disclosure Provisions of AB 802”

San Diego Gas & Electric (SDG&E) and Southern California Gas Company (SCG) respectfully submit these comments on the Commission’s Staff presentation, “Initial Staff Proposal to Implement Building Energy Use Data Access and Public Disclosure Provisions of AB 802” held on March 25, 2016. Our comments are organized by topic with slide references to facilitate CEC Staff review.

SDG&E and SCG appreciate your consideration of these responses.

Sincerely,  
*Tamara Raspberry*

**SAN DIEGO GAS & ELECTRIC COMPANY  
SOUTHERN CALIFORNIA GAS COMPANY  
Comments**

SECTION	SLIDE #	ISSUE	COMMENT
General	--	<b>Interested Parties and Stakeholders</b>	CEC needs to engage building owners, large commercial and industrial customers, and governmental institutions such as the military and universities for review and input to the development of the regulations.
General	7	<b>Tentative Program Timeline</b>	Due to the time and effort required to develop, test and implement the necessary systems to meet the regulations, the effective date of the regulations should be no earlier than 12 months after the regulations have been promulgated.
<b>1. Definitions</b>			
1. Definitions	5	<b>Definition of "operator" (This issue also applies generally to all following slides which use this term, including Slides 17, 19, 20, 25, 26, 28, 29, 30, 33, 34, and 40)</b>	A definition for "operator" needs to be included in this Section 1. Definitions. However, the term "operator" could be redundant. If a building's operator is employed by, or under contract to, the building owner, then they would effectively be the owner's authorized agent for the purposes of the statute. The only time "operator" would not be redundant is when the building operator is the tenant or the tenant's contractor, in which case the operator is not the owner's agent, and should not be covered by the statute or regulation.
1. Definitions	10	<b>Definition of "active" as used in the term "active utility accounts" and other places within the statute</b>	The CEC needs to provide a definition for "Active" as it has an impact on the number of buildings considered to be Covered Buildings as well as the utilities' determination as to whether account holder authorization is required or not. The energy usage data for all accounts, whether active or inactive, must be used when benchmarking a building. It may also affect on-going monthly updates, should an account's status change. A utility account should be considered Active on the date of the request. It is noted that the "active" qualifier is not used in the Commission's presentation from the March 25 workshop; it is assumed that this was a simplification made by the commission, and that a determination as to whether an account is "active" or "inactive" will still need to be made.

SECTION	SLIDE #	ISSUE	COMMENT
1. Definitions	10	<b>Covered Building</b>	The CEC should explicitly address if government buildings are included in the regulation as a covered building. Benchmarking of government buildings such as college campuses and military facilities do not appear to meet the intent and spirit of the statute.
1. Definitions	10	<b>Covered Building</b> <b>2. Any building with five or more active utility accounts of any one energy type, residential or nonresidential.</b>	The clarification proposed by the Commission may cause compliance issues for the owners of buildings in areas where electric and gas service is provided by separate utilities. It is possible that buildings exist that would be defined as a Covered Building by one utility, but not by the other. This situation could result in different authorization requirements and/or incomplete energy usage data information.
1. Definitions	12	<b>Building</b>	This definition of "building" is so broad that it would encompass most energy-using structures such as street lamps, cellular towers, remote pumping stations, etc. This definition also doesn't exempt facilities such as shipyards, manufacturing plants, amusement parks, and sports venues for which benchmarking would be problematic and not in alignment with the statute's apparent intent.
1. Definitions	12	<b>Building identification number</b>	The CEC needs to determine the process for creating, communicating and maintaining building identification numbers for existing and new buildings.
1. Definitions	13	<b>Disclosable Building</b> <b>1. A covered building with 3 or more utility accounts, no residential utility accounts, and more than 50,000 square feet of gross floor area.</b> <b>2. A covered building with 17 or more utility accounts and more than 50,000 square feet of gross floor area.</b>	1. Definition No. 1 implies that Covered Buildings having two or fewer utility accounts are not required to disclose their benchmarking information to the Commission or the public, regardless of gross square footage. 2. The lack of the "residential" qualifier in definition No. 2 implies that any Covered Building having 3 to 16 utility accounts, including one or more residential accounts, is exempt from the disclosure requirement, which doesn't appear to be in agreement with the proposed language for PRC 25402.10(d)(1).
1. Definitions	14	<b>Covered and Disclosable Buildings</b> <b>3+ Utility Accounts and 50,000+ Square Feet</b>	Definition No. 1 implies that Covered Buildings having two or fewer utility accounts are not required to disclose their benchmarking information to the Commission or the public, regardless of gross square footage.

SECTION	SLIDE #	ISSUE	COMMENT
1. Definitions	15	<b>Utility Account -- An agreement between a utility and its customer to provide energy to a pre-determined location.</b>	It is unclear whether the word "agreement" is being used in a generic manner, or if the CEC has a specific definition in mind. For SDG&E and SCG, the electric and gas tariff to serve the customer is the only "agreement" that we have. Moreover, the statute's privacy protection feature, (as expressed in the proposed language for PRC 25402.10(c)(2)(A)) for an individual entity's energy usage data would become ineffective for buildings with three or more service accounts all in the name of a single account holder.
1. Definitions	15	<b>Definition of "account" as in the term "utility accounts"</b>	With respect to the threshold for aggregation without authorization (three or more active utility accounts), it is clear to SDG&E and SCG that "account" must be interpreted as "account holder" in order to protect the privacy of individual customer usage data which we believe is the statute's intent. Otherwise, the energy usage data of individual account holders could be publicly exposed without the account holder's permission. A building's sole tenant could potentially have three or more "accounts" in their name in the same building.
<b>2. Data Access</b>			
2. Data Access	19	<b>UTILITY REQUIREMENTS: PROVISION OF INFORMATION (2) Utilities shall deliver the meter numbers, customer names, number of utility accounts, and building ID through the method of the building owner's agent's, or operator's choice.</b>	<ol style="list-style-type: none"> <li>1. While the statute allows the Commission to specify "additional information to be delivered by the utilities," it does not explicitly state what information this would be. The statute only provides liability protection to building owners and utilities for the use or disclosure of "aggregated energy usage data," and not for the "additional information" that the Commission is proposing. 25402.10(c)(2)(A).</li> <li>2. Customer name is Personally Identifiable Information (PII) and is not relevant information for the purposes of determining energy efficiency of a building. Customer privacy needs to be maintained.</li> <li>3. The building owner or his/her representative, and not the utility, is given the option as to what method is utilized for receiving energy usage data and other required additional information. The utilities may need to create multiple delivery mechanisms, possibly both formal and ad hoc, for providing the required information to the building owner. At least two delivery channels will always be required, as some of the additional information cannot be delivered through Portfolio Manager. In addition, "owner's choice" is not required by AB802 statute.</li> <li>4. Covered information to any entity needs to be done via a secure method of</li> </ol>

SECTION	SLIDE #	ISSUE	COMMENT
			transmission.
2. Data Access	20	<b>UTILITY REQUIREMENTS: PROVISION OF INFORMATION (3) "...unless otherwise specified by the building owner, owner's agent, or operator."</b>	The building owner or their representative, and not the utility, is given the option as to what method is utilized for receiving energy usage data. The utilities may need to create multiple delivery mechanisms, possibly both formal and ad hoc, for providing the required energy usage data. We suggest adopting a single, standard output format, such as Portfolio Manager upload, from which the requestor can extract the necessary data and re-format as needed.
2. Data Access	21	<b>UTILITY REQUIREMENTS: PROVISION OF INFORMATION (1)Refer to Slide 19. (2)The energy delivered to the building by the utility by energy type for the 12 calendar months prior to the date of the request, aggregated for each calendar month.</b>	1. While some utilities have the ability to utilize interval meter data for some meters included in the benchmarking exercise, not all meters or utilities have interval meter capability. This could mean that energy usage data for a particular month may not be available to the utility until near the end of the following month, which may impact the utility's ability to meet the four-week response requirement. We suggest the Commission consider using the wording "The energy delivered to the building by the utility by energy type over the most recent 12 calendar month period for which billed or billable energy usage data is available for all meters at the time of the request, aggregated for each calendar month". 2. The comments for Slide 19 also apply to this slide.
2. Data Access	21	<b>UTILITY REQUIREMENTS: PROVISION OF INFORMATION</b>	Items B and D (name of each utility customer and building identification number, respectively) are not used in Portfolio Manager.

SECTION	SLIDE #	ISSUE	COMMENT
2. Data Access	21	<b>UTILITY REQUIREMENTS: PROVISION OF INFORMATION</b>	<p>“Covered information” is being provided by the IOU to a 3rd party which triggers the CPUC Smart Grid Phase I and Smart Grid Phase II Decisions that require the utilities to comply with Privacy Requirements.</p> <p>For reference, the definition of “covered information” is as follows:  “Covered information” is any usage information obtained through the use of the capabilities of Advanced Metering Infrastructure (AMI) when associated with any information that can reasonably be used to identify an individual, family, household, residence, or nonresidential customer, except that covered information does not include usage information from which identifying information has been removed such that an individual, family, household or residence, or non-residential customers cannot reasonably be identified or re-identified. Covered information, however, does not include information provided to the Commission pursuant to its oversight responsibilities.</p>
2. Data Access	23	<b>A utility shall provide the information required by these regulations within four weeks of receiving a valid request.</b>	<ol style="list-style-type: none"> <li>1. The proposed regulations need to provide a definition for "valid request." The current lack of clarity could potentially result in disputes between building owners and the utilities as to what constitutes a valid request.</li> <li>2. The regulations do not provide allowances to the building owner or to utilities for downtime due to Portfolio Manager outages, or due to changes in the Portfolio Manager web services data exchange mechanism.</li> <li>3. The "allowance" for utilities to verify the building owner and/or the owner's authorized representative must be made a mandatory component of a valid request in order for the utilities to require it.</li> </ol>
2. Data Access	23	<b>(6) A utility shall provide the information required by these regulations within four weeks of receiving a valid request.</b>	A request should be considered "valid" when all necessary information has been received by the utility.

SECTION	SLIDE #	ISSUE	COMMENT
2. Data Access	24	<b>"...the utility may require customer permission..."</b>	The customer's (account holder's) permission is not being required by the proposed language, but simply acknowledges that the utility either could ask for it or is allowed to ask for it. This is in disagreement with the statute which clearly requires that the "account holder provides written or electronic consent for the delivery of the account holder's energy usage data" under the stated situation (25402.10(c)(2)(B)). This could potentially result in disputes between building owners and the utilities as to whether or not accountholder permission is required.
2. Data Access	24	<b>(7) If a utility receives a request..., the utility may..."</b>	"May" should be replaced by "must."
2. Data Access	25	<b>An executed lease or supplemental agreement in which a customer consents to sharing his/her energy use data with the building owner, owner's agent, or operator.</b>	<p>1. Such leases or supplemental agreements may vary in form or language, and may only require that the tenant share their energy usage data with the building owner. They may or may not include sharing such data with authorized parties, and may not explicitly authorize the utility to share such data with the building owner or other parties.</p> <p>2. An issue may arise if a tenant/customer provides written notice to the utility prohibiting it from sharing their energy usage data with the building owner or others.</p>
2. Data Access	26	<b>(1)"...the utility shall notify the customer within seven calendar days..." (2)"No customer response to this notification within fourteen calendar days shall constitute permission to share the data."</b>	<p>This section violates a fundamental tenant of privacy and is not in compliance with CPUC 8380(b)(1): "A [utility] shall not share, disclose, or otherwise make accessible to any third party a customer's electric or gas consumption data, except as provided in subdivision (e) or upon consent of the customer." Customers should either explicitly opt in or opt out. Silence should not be considered consent. SDG&amp;E and SCG recommend that this model be changed to obtain the customer's written or electronic consent to match precedence set by PUC 8380, the Smart Grid Privacy decision and older privacy laws. Further, all the IOUs appear to be working on various solutions to make it easier for third parties to obtain consent. This work should be allowed to continue. Privacy should not be sacrificed for the sake of expediency. The CEC should consider developing an opt-out model.</p>

SECTION	SLIDE #	ISSUE	COMMENT
2. Data Access	26	<b>(1)"...the utility shall notify the customer within seven calendar days..." (2)"No customer response to this notification within fourteen calendar days shall constitute permission to share the data."</b>	<p>1. All responsibility for obtaining account holder permission when required is placed on the utility. As the utility would only seek out account holder permission after receiving a valid request, the 14-day customer response period could adversely impact the utility's four-week allowance for delivering the required information.</p> <p>2. The approach proposed by the Commission is that the utility has permission to disclose customer data by default, unless the customer explicitly opts-out within 14 days. This is in disagreement with the statute which clearly requires that the "accountholder provides written or electronic consent for the delivery of the accountholder's energy usage data". The proposed "opt-out" approach is not explicitly allowed by the statute; the liability protection afforded by the statute may not be available if the utility complies with this proposed regulatory requirement.</p>
<b>3. Public Disclosure</b>			
3. Public Disclosure	28	<b>Compliance with a Local Ordinance</b>	The utilities are concerned about benchmarking compliance against a wide range of different jurisdictions. A minimum set of requirements should be established.
3. Public Disclosure	31	<b>By February 1 of the first reporting year, and by each February 1 thereafter, request energy use data for the building.</b>	The requirement will likely cause most building owners to perform their annual benchmarking exercise around the same time each year. Utilities may end up receiving the most requests for energy usage data in the same month (January) each year, rather than having requests spread out over the year. Likewise, most deliveries of information to both the building owners and the Commission (refer to Slide 33) will likely fall within the same timeframe. An approach to distribute the requests throughout the year should be considered.
3. Public Disclosure	36	<b>List of Specific Items, A through M</b>	Many of these do not comport with Portfolio Manager and appear to be PII. The utility should not be required to provide these data fields.
<b>4. Violations and Enforcement</b>			

SECTION	SLIDE #	ISSUE	COMMENT
4. Violations and Enforcement	40	<b>Violations by a Building Owner, Owner's Agent or Operator Intentionally sharing incorrect data with the Energy Commission</b>	The meaning of this requirement can be mis-interpreted. It should be revised to read "Intentionally sharing with the Energy Commission data that is known to be incorrect."
4. Violations and Enforcement	41	<b>Violations by a Utility Intentionally sharing incorrect data with the Energy Commission</b>	This requirement can be misinterpreted and should be revised to read "Intentionally sharing (with the Energy Commission) data that is known to be incorrect." "Valid request" needs to be defined and should be when the utility has all the necessary information to fulfill the request.
4. Violations and Enforcement	43	<b>Anticipated Data Flow</b>	1. Requires building owner to go through the entire benchmarking and disclosure process even in situations where the utility is unable to provide energy usage data due to lack of customer authorization (buildings with less than three active utility accounts). 2. Suggests that building owners will request energy usage data by providing a Building ID number. This is in conflict with Slide 17, which indicates that building owners will request energy usage data by providing a street address.