

DOCKETED

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On Proposed Regulations Implementing AB 802

Additional submitted attachment is included below.

**APARTMENT ASSOCIATION OF GREATER LOS ANGELES
SANTA BARBARA RENTAL PROPERTY ASSOCIATION**

July 28, 2016

MEMORANDUM FOR: California Energy Commission
Dockets Office MS-4

FROM: Steve Carlson
Steve Carlson and Associates

Tim Coyle
Coyle Consulting Group

SUBJECT: **Comments on Proposed Regulations Implementing AB 802 --
Docket No. 15-01R-05**

The above organizations, representing tens of thousands of rental housing properties in the Southland, have concerns about the proposed regulations of the California Energy Commission ("the Commission") designed to implement AB 802 of last year. Specifically, we believe:

- The Commission' definition of "covered buildings" exceeds statutory authority.
- The Commission's definition of data conflicts with the statute.
- The Commission delays by 30 days the period during which it is to make the energy-use data available.
- The Commission inappropriately requires property owners to maintain the energy use data.
- The Commission inappropriately imposes fines on property owners.

Public Resources Code Section 25402.10(d) states "The commission shall adopt regulations providing for the delivery to the commission and public disclosure of benchmarking of energy use for covered buildings". "Covered Building" is defined in statute as "any building with no residential utility accounts or any building with five or more active utility accounts, residential or nonresidential".

For purposes of these regulations Public Resources Code Section 25402.10(d)(1) states that "This subdivision shall not require the owner of a building with 16 or fewer residential utility accounts to collect or deliver energy use data to the commission." Furthermore, the finding and declarations in Section 1 of AB 802 clearly state that the Commission is to create a benchmarking and disclosure program for all buildings (non-residential and residential) exceeding 50,000 sq. feet in gross floor area.

The organizations above believe that the Commission and its staff have exceeded statutory authority and the legislative intent of AB 802 by altering the definition of covered buildings to include "one or more residential accounts." We recommend the Commission replace the proposed definition with the definition cited above in conjunction with the clear intent of the AB 802, which seeks to only impose these reporting requirements only on nonresidential, mixed used and multifamily (17 or more units) buildings exceeding 50,000 sq. feet.

Section 1681(b)(4), which would require utilities to obtain customer permission for covered buildings with three or more utility accounts, conflicts with the existing state statute. Public Resources Code Section 25402.1 O(c)(2)(A) clearly states that covered buildings with three or more utility accounts, "shall not be deemed customer utility usage information or confidential information by the utility for purposes of delivery to the owner, owner's agent, or operator of the building."

Additionally, Section 1681(4)(8) of the proposed regulation impermissibly delays a building owner's ability to obtain energy data up to 60 days. Public Resources Codes Section 25402.10(c)(2)(C) requires utilities to "deliver, upload, or otherwise provide aggregated energy usage data within four weeks of receiving a request from an owner, owner's agent, or operator of a covered building."

Existing law already requires the utilities to submit data to the Commission, fulfilling the statutory requirements prescribed by AB 802. Subsection 1682(c) of the proposed regulation violates Public Resources Code Section 25320(a)(2). The organizations above oppose any language requiring building owners to upload the energy data into the ENERGY STAR Portfolio Manager and respectfully requests that all data be uploaded by the utilities, into an account opened by building owners or their agents as prescribed by AB 802.

Section 1682(c)(1)(B) of the proposed regulation requires building owners or their agents to request data on an annual basis and is in conflict with Public Resources Code Section 25402.10(c)(2)(D) which clearly states that the burden to upload information is on utilities who must make available the energy use data on a monthly basis. The organizations above recommend the proposed regulations be clarified so that any annual reporting requirements are given to the utilities with a notification to property owners that the data has been uploaded.

The organizations above oppose any requirement seeking to hold building owners or their agents responsible for incorrect or incomplete data submitted to the Commission. The organizations above disagree with the Commission's premise that building owners should be required to report energy use data, as the utility serving the property maintains the data, not the building owner. Public Resources Code Section 25402.1 O(e) states that "The commission may ensure timely and accurate compliance with the data submission requirements of this section by using the enforcement measures identified in Section 25321. An owner of a covered building, or its agents or operators, shall not be liable for any noncompliance due to the failure of a utility to provide the information required for compliance." The intent of this provision and fining authority was to assure that utilities provided data in a timely manner to the building owner and Commission.

The organizations above worked last year to make AB 802 acceptable. However, the Commission's proposed regulations implementing the new law reverse that effort. We appreciate your consideration of the above comments that we believe are intended to follow last year's legislative intent.

cc: Honorable Das Williams