

DOCKETED

Docket Number:	15-OIR-05
Project Title:	Building Energy Use Disclosure and Public Benchmarking Program Mandated under Assembly Bill 802
TN #:	212776
Document Title:	CMUA, SCPPA, and NCPA Comments: On AB 802 Draft Regulations Workshop
Description:	N/A
Filer:	System
Organization:	CMUA, SCPPA, and NCPA
Submitter Role:	Public
Submission Date:	8/12/2016 3:59:53 PM
Docketed Date:	8/12/2016

Comment Received From: CMUA, SCPPA, and NCPA
Submitted On: 8/12/2016
Docket Number: 15-OIR-05

On AB 802 Draft Regulations Workshop

Additional submitted attachment is included below.

BEFORE THE CALIFORNIA ENERGY COMMISSION

In the Matter of:

Building Energy Use Disclosure and Public Benchmarking Program Mandated under Assembly Bill 802

Docket No. 15-OIR-05

STAFF WORKSHOP

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

**CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION, SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, AND NORTHERN CALIFORNIA POWER AGENCY
JOINT COMMENTS ON AB 802 DRAFT REGULATIONS WORKSHOP**

The California Municipal Utilities Association (“CMUA”), Southern California Public Power Authority (“SCPPA”), and Northern California Power Agency (“NCPA”) (“Joint POU’s”) appreciate the opportunity to provide these comments to the California Energy Commission (“Commission”) on the *Initial Staff Proposal on AB802 Draft Regulations Workshop* (“Workshop”) held on July 22, 2016. The Workshop included a presentation from staff as well as comments and input from agencies, utilities, researchers, and other stakeholders on the proposed regulations for the implementation of the state’s Energy Use Disclosure and Public Benchmarking Program (“Program”), as mandated under AB802. The Joint POU’s believe that the proposed regulations are a “good starting point” and we commend the staff for incorporating many of recommendations previously provided by the Joint POU’s in their effort to create a workable solution to meet the statutory requirements. In the comments below, we address certain issues that remain unsettled in the proposed language, as well as voice our support for many of the key provisions in the Initial Staff Proposal for Draft Regulations.

I. DISCUSSION

A. Section 1680. Definitions

The Joint POU's support the Commission's proposed development of a building identification numbering system that is unique across California as part of the Benchmarking protocol. In addition, we support the most recent definition that indicates that this numbering system will only be applicable and used for disclosable buildings, rather than all covered buildings.

The Joint POU's also appreciate and support the clarification provided in the definition of "Utility Account" regarding buildings with multiple postal addresses that are served by the same Utility Account for a single energy type, as well as situations where a Utility customer has multiple Utility Accounts for service of a single energy type. There has previously been confusion as to how to address these situations and the proposal provides much needed clarification.

B. Section 1681. Data Access

The proposed Data Request protocols defined in subsection (a) include a limited set of information that Building Owners would need to submit to the utility to request usage data. While these can be considered as the "minimum requirements", the regulations should also include recognition and an allowance for utilities to also request additional information, as they may deem appropriate, to allow proper usage data gathering (such as customer/tenant names, addresses, and meter numbers).

The Joint POU's also believe that the regulations in subsection (a)(1)(C) should clarify and confirm that the Utility retains the right and discretion to determine with "reasonable certainty" that the person submitting a request for usage data is in fact the Building Owner or Owner's Agent, as defined in Section 1680.

Subsection (a)(2) correctly requires data requests to be “made in writing or by secure electronic method, **specified by the Utility.**”¹ The Joint POU’s also recommend that the Commission work with all stakeholders to develop a set of templates/forms that could be used by any utilities to “standardize” the data request process, as much as possible, across the state. This standardization will simplify the data request process for Building Owners with properties in multiple utility service territories and ultimately improve the benchmarking process for all parties. However, by no means should any forms or templates be required for utility data requests. Instead, the Joint POU’s recommend that any forms that are developed in this implementation process be made available to utilities to use as they may each deem appropriate. During the workshop, an example of a possible form that could be considered for use by Building Owners to request usage data was the Customer Information Service Request form that is currently employed by and for IOUs and their customers. The Joint POU’s do not endorse or support the use of this form specifically, but instead recommend that a “standardized” data request form template be created for the Program that can be used by Utilities for their respective purposes and compliance with the final regulations.

Subsection (b) includes the Utility Requirements for Data Access under the proposed regulations. The Joint POU’s recommend amending the requirement under Subsection (b)(1)(A) to only require the last four to six digits of the utility meter numbers as some utilities may rely on a customer’s meter number in the log-in to the customer’s utility account information on the utility’s website.

Subsection (b)’s requirement for customer permission prior to energy use data disclosure for buildings with fewer than three nonresidential accounts, or with fewer than five utility

¹ Section 1681(a)(2) (emphasis added).

accounts if one is residential, is consistent with Public Resources Code Section 25402.10(c)(2)(A)-(B) and Section 25402.10(a)(2)(A)-(B). The customer permission requirement aligns with Section 25402.10(a)(2)(A)-(B)'s definition of a covered building, which includes a building with five or more active accounts (residential or nonresidential), and prevents unauthorized disclosure or disaggregation of sensitive energy usage information of mixed-use commercial customers.

Subsection (b)'s information processing requirements are also consistent with the requirements in AB 802. The four-week delivery requirement in Section 25402.10(a)(2)(C) pertains to information required to be delivered under Section 25402.10(a)(2)(A). The Commission is correct that when customer permission is required under Section 25402.10(a)(2)(B), the Utility must first receive permission from the customer before the four week processing timeline begins. However, the proposed ordering of these requirements is incongruous. Specifically, the Joint POU's recommend that subsection (3) be moved to the beginning as subsection (b)(1) to specify the timing of the usage data processing requirements before the regulations specify what data has to be provided.

In addition, the current subsection (b)(1) should specify that Utilities are not required to deliver usage data to a specific building's Owner or their Agent more than once per year under this Program (i.e., data reporting is only required once per year for each building).

On a related issue, the Joint POU's recognize the Commission's limited jurisdiction and oversight of benchmarking for covered buildings, as opposed to disclosable buildings as specified in AB 802. That is, while the statute provides for the Commission to develop appropriate benchmarking protocols for disclosable buildings, the Commission cannot mandate or control the benchmarking practices or protocols for non-disclosable buildings.

While the Joint POU's recognize the potential value and importance of benchmarking to help building owners increase the efficiency in their buildings' operations, all Utilities, particularly the smaller POU's, will be limited to varying degrees in their ability to offer and provide "unlimited access" to building-level energy usage data for all commercial customers/covered buildings. Because of this limitation, the Joint POU's respectfully request that the regulations be modified to reflect this fact and include language, to the degree possible, to allow Utilities to offer access to usage data "as often as each utility deems possible" – but with no requirements to provide such data more than once per year.

The Joint POU's strongly support and endorse the proposed regulations' allowance for utilities that are not using the ENERGY STAR Portfolio Manager Data Exchange services to provide usage data to Building Owners or Owner's Agent using the ENERGY STAR Portfolio Manager spreadsheet template. The Joint POU's recommended this position in previous oral and written comments and very much appreciate that the proposal incorporates the recommendation as it accurately reflects the flexibility afforded Utilities in Section 25402.10(c)(1). The Joint POU's are committed to creating a standard form and process for conveying aggregated usage data from utilities to Building Owners or Owner's Agents in such a way that facilitates an easy upload by the Building Owner to ENERGY STAR Portfolio Manager.

Subsection (b)(5) seeks to limit the ability of Utilities to require additional information from a Building Owner or the Owner's Agent. However, AB 802 did not authorize the Commission to set such limitations regarding covered buildings. Therefore, the regulations should be amended to remove subsection (b)(5). Our concern is that subsection (b)(5) as currently drafted prevents a Utility from requiring the Building Owner or Owner's Agent of a

Covered Building to enter into a legally binding non-disclosure agreement that will restrict the sharing of building energy usage data, so as to protect potentially sensitive information from being shared inappropriately with 3rd parties. At the Workshop, Commission staff emphatically stated that the statute does not afford the Commission authority to regulate a Building Owner or Owner's Agent use of Covered Building data. The Joint POUs concur with this interpretation of statute and argue that the same is also true regarding the authority, or lack thereof, of the Commission to regulate the requirements Utilities place on Building Owners or Owner's Agents regarding the use of Covered Building aggregated Energy usage data.

C. Section 1682. BENCHMARKING AND DISCLOSURE

Subsection (a) speaks to compliance with local ordinances. As Commission staff explained in the Workshop, this is an area of the regulations that needs further development. The Joint POUs, and the local governments they serve, look forward to working with the Commission on expanding this section and better understanding how local energy use benchmarking programs interact with this statewide program.

The Joint POUs support the proposed schedule for benchmarking and reporting disclosable buildings outlined in Subsection (b). This schedule allows all stakeholders, including the Commission, a reasonable timeframe for understanding how the program will work, as well as provide an appropriate window for the Commission to determine which building information will be disclosed and in what manner.

The Joint POUs support Subsection (c)'s benchmarking and disclosure requirements as consistent with Public Resources Code Section 25402.10(c)(1)'s vision of Building Owners acting "to complete benchmarking of the energy use in their buildings and in other systems or formats for information delivery and automation." Benchmarking buildings in ENERGY

STAR Portfolio Manager requires entering information, in addition to the energy usage data, that is not collected by Utilities. Building Owners or Owner's Agents are the mostly likely to possess the additional information and the proposed regulations appropriately vest the responsibility for benchmarking and disclosure with the Building Owner or Owner's Agent. The protection of trade secrets provision in subsection (c)(1)(E)(ii) allows for a Building Owner to "File a request for determination by the Energy Commission Executive Director that disclosure of the Building Owner's Energy use data would result in the release of proprietary information which can be characterized as a trade secret." However, the Building Owner may not understand or share the building tenant's sensitivity to the disclosure of building usage data. The regulations should be amended to include a similar process for tenants of Covered Buildings or Disclosable Buildings to file a request for determination by the Energy Commission Executive Director. The Commission may also want to compare how their trade secret process aligns with a similar process at the California Air Resources Board to promote continuity for regulated entities across agency programs.

D. Section 1683. VIOLATIONS AND ENFORCEMENT

Subsection (b) established violations for a utility under benchmarking and disclosure programs. The Joint POU's had advocated for a 30-day period to correct a violation upon notification from the Commission. The Joint POU's very much appreciate and support the inclusion of this recommendation in the proposal. Allowing utilities, and Building Owners, an opportunity to correct a violation emphasizes a focus on collaboration, not punishment, and the Joint POU's strongly believe that this program, and many other state programs, are much more likely to succeed when it first and foremost treats regulated entities as partners, not fugitives.

II. CONCLUSION

The Joint POU's appreciate the opportunity to provide these comments to the Commission, and look forward to working with Commission staff and other stakeholders to finalize the implementation process in compliance with AB 802.

Respectfully submitted,

/s/ Dan Griffiths

Dan Griffiths
Braun Blasing McLaughlin & Smith, P.C.
915 L Street, Suite 1480
Sacramento, CA 95814
(916) 326-5812
Attorneys for the
California Municipal Utilities Association

/s/ Bryan Cope

Bryan Cope
Director of Program Development
Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
(626) 793-9364

/s/ Jonathan Changus

Jonathan Changus
Member Services Manager and Regulatory Affairs
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678
(916) 781-4293