

**DOCKETED**

<b>Docket Number:</b>	18-OIR-01
<b>Project Title:</b>	Energy Data Collection - Phase 2
<b>TN #:</b>	235589
<b>Document Title:</b>	PACENation Comments - on Phase 2 Rulemaking
<b>Description:</b>	N/A
<b>Filer:</b>	System
<b>Organization:</b>	PACENation
<b>Submitter Role:</b>	Public
<b>Submission Date:</b>	11/13/2020 3:16:42 PM
<b>Docketed Date:</b>	11/13/2020

*Comment Received From: PACENation  
Submitted On: 11/13/2020  
Docket Number: 18-OIR-01*

**on Phase 2 Rulemaking**

*Additional submitted attachment is included below.*



Colin Bishopp  
Executive Director, PACENation  
colin@pacenation.org  
202.550.7570

---

November 13, 2020

California Energy Commission  
1516 9th Street  
Sacramento, CA 95814

Andrew McAllister, Commissioner  
Bryan Early, Advisor  
Fritz Foo, Advisor

[docket@energy.ca.gov](mailto:docket@energy.ca.gov)

### **RE: Docket 18-OIR-01, Phase 2 Rulemaking**

Dear Commissioners,

Thank you for the opportunity to comment on the California Energy Commission's upcoming rulemaking process that would establish annual data reporting requirements for Property Assessed Clean Energy ("PACE") programs. We appreciate the Commission's implementation of SB 350 (De León 2015) and its ambitious energy savings goals, as well as the Commission's recognition of the important role of PACE in the implementation of these goals. We are grateful for the collaborative approach the Commission has embraced for this rulemaking. On behalf of the PACE stakeholder community, we offer these comments on the proposed regulations.

Overall, PACENation believes the proposed regulations provide a workable framework for PACE administrators to report information to the Commission on PACE programs for the previous year. However, there are two areas of concern where the proposed rules, as written, would adversely impact residential PACE customers and programs, and one area of concern that would adversely impact both residential and commercial PACE programs. We have offered some alternative approaches that would be equally effective in carrying out the same policy objectives of the proposed rulemaking.

We request the Commission carefully consider these concerns and proposed alternatives. PACENation is committed to working with the Commission to ensure the final rulemaking meets the needs of the Commission and the State's energy efficiency goals.

### **CONCERNS**

1. § 1312. Energy Efficiency Program Data Collection from Non-Utility Programs
  - **Current Language:** *"(d) Assessor's Parcel Number (APN): the county name and assessor's parcel number (APN) of the site at which the project was implemented;*

*(e) Project Address: the street address of the project;”<sup>1</sup>*

- **Policy Objective:** The proposed fields for reporting require PACE program administrators to provide the APN and Project Address in order to use analytical methods, similar to the CalTRACK platform, in order to provide a before and after view on how PACE changes energy consumption at a location.
- **Concerns:** This language is uniquely problematic for residential PACE programs. The proposed language, as written, requires disclosure of Nonpublic Personal Information (“NPI”) or information that is not publicly available and that a PACE administrator obtains in confidence from a consumer in connection with providing PACE financing products. PACENation’s policy is that in order to preserve customer confidentiality and maintain effective information security policies and procedures, any nonpublic personal information relating to consumers will not be shared with third parties, unless an exception applies.
- **Suggested Alternative:** The California Public Records Act (“CPRA”) does not require disclosure of any of the following records: (i) personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy; and (ii) geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person<sup>2</sup>. Unless required to complete the Policy Objective, PACENation recommends the Commission collect residential PACE administrator data in an aggregated form.

If the APN and Project Address are required in order to achieve the Policy Objective, PACENation believes that disclosure of nonpublic personal information is not in the public interest and should be kept confidential. PACENation recommends the Commission not disclose and take all commercially reasonable measures to protect any nonpublic personal information in accordance with applicable laws, including, but not limited to, the Gramm-Leach Bliley Act of 1999, title V, its implementing regulations, and other similar laws and regulations (collectively, the “GLBA”) received from the PACE administrator and will not disclose to (i) any third party or (ii) any employee, officer, or partner who is not engaged in the implementation and execution of the Commission’s compliance with SB 350.

Further, PACENation recommends that the Commission develop, implement and maintain at all relevant times as contemplated by this rulemaking, effective information security policies and procedures in accordance with applicable law that include administrative, technical and physical safeguards designed to (i) ensure the security and confidentiality of NPI, (ii) protect against anticipated threats or hazards to the security or integrity of NPI, (iii) protect against

---

<sup>1</sup> CEC Proposed Data Requirements § 1312.(d)(e)

<sup>2</sup> Cal. Gov. Code § 6254(c), (e)

unauthorized access or use of NPI, and (iv) ensure the proper disposal of NPI. All personnel handling NPI shall be appropriately trained in the implementation of such information security policies and procedures.

2. § 1312. Energy Efficiency Program Data Collection from Non-Utility Programs<sup>3</sup>
  - **Current Language:** *“Beginning in 2021, and every year thereafter, each PACE program administrator shall report no later than March 15 to the Commission its annual investments in energy efficiency programs for the previous fiscal year.”*
  - **Policy Objective:** The proposed data regulations require that beginning 2021, PACE program administrators provide their annual reports to the Commission no later than March 15.
  - **Concerns:** The proposed language as written requires that beginning 2021, the last day to submit the PACE administrator annual report to the Commission as March 15. This date falls on the same date the Department of Financial Protection and Innovation (DFPI) annual report is due and because of the unique nature of each report, may create an undue burden for residential PACE administrators.
  - **Suggested Alternative:** Unless required to comply with SB 350, PACENation recommends that the last day for each PACE program administrator to provide the Commission with its annual report is no later than May 1.
  
3. § 1312. General Concern Regarding Methodology

As presented by the Commission during the October 27<sup>th</sup> workshop, the Commission proposes using a site-level metered savings methodology to perform a pre/post analysis, similar to CALTRACK methods, of energy usage on a particular property that completed a PACE project. This approach presents several challenges in order to accurately measure the energy savings of an improvement financed by PACE, but not limited to the following.

First, PACE programs provide financing for a variety of measures that include energy efficiency, renewable energy, water conservation, electric vehicle charging infrastructure, and seismic and wildfire resiliency. In many cases, a property owner may finance the installation of multiple measures in various categories on their property using PACE. The installation of multiple measures that may not offset energy usage in the same way, at the same rate, or at the same time may complicate the ability to perform an accurate pre/post analysis using interval-meter data. This challenge is even more important when an efficiency improvement is installed that shifts usage from one resource to another. For example, when a gas furnace is replaced with a high efficiency electric heating measure there is an increase in the electricity usage and a decrease in gas usage. The total net energy usage may drop, but this shift must be accounted for.

---

<sup>3</sup> CEC Proposed Data Requirements § 1312.

Second, an important aspect in performing a pre/post metered energy savings analysis is establishing a confident baseline usage to measure against for the property being analyzed. How will the Commission approach this given different property types, their usage levels, independent energy usage changes in the building over time, behavioral usage changes over time, etc.? For example, if a commercial building has been vacant or underutilized for years and is then retrofitted with energy efficient measures to bring in a new tenant or make use of the newly benefited portion of the property, the overall usage of the property will go up. However, the installation of the energy efficient measures will reduce the overall energy usage as compared to the alternative had efficient measures not been installed during the retrofit. Thus, the change in how the building is being utilized over time must be accounted for in analyzing the efficiency impact, especially within the context of efficient measures versus less efficient measures installed during that property improvement. There may be no one way to address this issue, but the Commission may consider incorporating a deemed savings methodology in parallel to a metered savings methodology to more accurately measure energy savings in these and other scenarios and to present an alternative analysis methodology more broadly in tracking the state's targets as set in SB 350.

Third, the integrity of any analysis or methodology is the transparency in which it is presented and performed. With that principle in mind, PACENation strongly urges the Commission to present their proposed methodology or methodologies for how the Commission will perform this analysis now and over time in full transparency to relevant stakeholders. Stakeholders will have input and insight with respect to the underlying data requested, but possibly equally important is the ability to provide input on how that data will be analyzed, so that the process by which that analysis is performed is the result of stakeholder collaboration.

## **MINOR CORRECTIONS**

PACENation also wishes to offer a minor correction to the Justification document published by the Commission on October 13, 2020. It currently states "The PACE program is a California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) sponsored approach for financing energy efficiency retrofits for residential and non-residential properties." In fact, PACE was authorized by the California Legislature initially in 2008 (AB 811, Levine) and has since been expanded upon in many other pieces of state legislation. PACE programs are authorized and sponsored by cities, counties and joint powers authorities thereof throughout California. CAEATFA manages a PACE Loss Reserve Program which protects first mortgage lenders against direct losses in the event of a foreclosure or forced sale on a property that participates in PACE.

PACENation also offers another correction to the Justification document, which states: "property owners can borrow up to ten percent of the value of the property to finance energy efficiency projects." Yet, the Streets and Highways Code provides that the total of any annual property

taxes and assessments (including PACE assessments) may not exceed 5 percent of the property's market value. Streets & Highways Code section 5898.16."

Thank you for the opportunity to submit our comments to the proposed rulemaking. We look forward to continuing to work with the California Energy Commission to review our concerns and suggestions in more detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Colin Bishopp". The signature is stylized and cursive.

Colin Bishopp  
Executive Director