

DOCKETED

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CALIFORNIA ENERGY COMMISSION

STAFF WORKSHOP

In the Matter of:)	Docket No. 15-OIR-04
Nonresidential Building Energy Use)	
Disclosure Program Rulemaking)	
Staff Workshop)	
_____)	

CALIFORNIA ENERGY COMMISSION

FIRST FLOOR, ART ROSENFELD HEARING ROOM

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

TUESDAY, AUGUST 25, 2015

9:00 A.M.

Reported by:

Kent Odell

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INDEX

PAGE

Welcome, Schedule, and Housekeeping	1
Section 1681 - Definitions	4
Section 1682 - Schedule	10
Section 1683 - Data Releases, Report	19
Section 1684 - Disclosures	103
Section 1685 - Exemption from Disclosure	117
Open Comment Period	118
Adjournment	143
Reporter Certificate	144
Transcriber Certificate	145

P R O C E E D I N G S

9:00 A.M.

SACRAMENTO, CALIFORNIA, TUESDAY, AUGUST 25, 2015

(The meeting commenced at 9:00 a.m.)

MR. JENSEN: Okay, let's get started. Okay.

Housekeeping. Once again, I don't know if this was me or someone else, but emergency exit information is at the end here. So if we have an emergency while I'm explaining the restrooms and snack bar, you'll just have to hang on until I get to the emergency exit information.

Restrooms are right out here, so go out through the door you came in, right across the hall there. Snack bar, head up the stairs about that way. Head up the stairs, there's a snack bar. Emergency exits, head out the door you came in or the door right back here and head either out the main entrance that you came in, or there's another exit over here which is alarmed, so only use that one if it's an emergency. We'll meet up at the park diagonally across the intersection and then figure out where to go from there.

Okay, here's the -- here's the schedule for today. Welcome, schedule, and housekeeping, I guess I did the welcome and housekeeping. I'm doing the schedule now. So I'll do the first three -- the plan is to do the first three sections before the break, then the break, then the next two

1 sections. The plan is that we'll take questions and
2 comments for each section during the scheduled time for that
3 section, and then also have an open comment period at the
4 end. If it looks like it's taking too long to get -- for me
5 to get through my material for each section, we may not --
6 not take questions for each section during that section and
7 try to handle all of that at the end. But hopefully we will
8 be able to talk about each section when that section comes
9 up.

10 So one -- one thing to mention here, as you'll --
11 as you'll see later, we have switched Sections 1683 and
12 1684. So previously we had disclosure in the reg language
13 coming before the release of data. And so we've got that in
14 what seems a more appropriate order now.

15 So these are three -- three big issues that we
16 wanted to address as a result of the February 20 workshop.
17 One was difficulty for building owners to request data. And
18 we hope we've addressed that, at least in the language,
19 by -- by proposing meter matching. We had a call with some
20 of the utilities yesterday, and that matter certainly has
21 not concluded. It was -- it was a productive call and we're
22 going to keep working with the -- with the utilities on
23 that.

24 It's not -- not always straightforward, the -- the
25 method and format for building owners to receive data from

1 utilities. And so we're proposing that the utilities
2 connect to Portfolio Manager's web services. And we also
3 have guidance in the -- in the new language to more
4 specifically instruct the utilities on how to preserve
5 confidentiality. And I want to talk about that a little
6 bit.

7 So in the -- some of the comments that we received
8 for the -- for the February 20th workshop, for example,
9 PG&E's comments, they mentioned their concern on re-
10 identification of customer data. And they requested a fact-
11 based aggregation threshold for -- for -- that would be
12 sufficient to preserve customer confidentiality. And so we
13 have addressed both of those things. And you'll see in the
14 regulations the particular things we're proposing to do so.
15 And then Laith is going to explain a little later our
16 justification for -- for making those particular choices.

17 And then the -- a specific comment from Southern
18 California Edison was concerned about being able to
19 authenticate that a request for data is coming from someone
20 who is, you know, authorized and appropriate to be
21 requesting this data within the -- within the context of
22 this program. And you'll see that we added -- added a
23 method for doing that as well. So you'll -- you'll see that
24 when we get into the -- into the regs.

25 And I think I'm going to get started now. So

1 let's see here, okay, so first Section is 1681, definitions.
2 So we've added -- so I'll read the definition.

3 "Building owner means a person possessing title or
4 deed to a nonresidential building or any party authorized to
5 act on behalf of a person possessing title or deed."

6 So title is not a specific document. It's a
7 concept of -- of the -- the rights that are associated with
8 building ownership. Deed is a specific document that --
9 that the building owner can either produce or produce a copy
10 of to show that they are, in fact, the owner of the
11 building.

12 A new definition is complete calendar month which
13 means a period of time corresponding to one month of the
14 calendar starting on the first day of the month and ending
15 on the last day of the month. This is because Portfolio
16 Manager requires from -- requires 12 cycles of the beginning
17 of one month to the end of one month. And so if someone --
18 someone's billing cycles do not correspond with the
19 beginning and end of the month, and if they submit 12
20 billing cycles that's not seen by Portfolio Manager as 12
21 complete months. And so if we -- this definition addresses
22 that.

23 Removing entirely the Data Verification Checklist
24 because we'll be -- we are proposing to use the Statement of
25 Energy Performance instead which is another Portfolio

1 Manager report, and you'll see that later.

2 And removing the definition of energy use data
3 and -- because that's merged with whole-building energy use
4 data, and you'll see that later as well.

5 Definition of nonresidential building, simply
6 updating the version of the California Building Code that
7 we're referring to from 2007 to 2013.

8 The definition of prospective buyer changes to a
9 person whose offer to purchase a building has been accepted
10 by the building owner. So previously, anyone who had
11 submitted a written offer would fit the definition of a
12 prospective buyer, and this is a higher standard.
13 This -- the offer would have had to be approved by the
14 building owner.

15 Very similar for prospective lessee. Prospective
16 lessee means a person whose application to lease an entire
17 building has been accepted by the building owner, and the
18 reason for that is the same.

19 New definition, Statement of Energy Performance
20 means a Portfolio Manager report that lists a property's
21 annual energy consumption, benchmarking score, if available,
22 and energy use intensity.

23 And this -- I'll talk about that a little. So --
24 so the Data Verification Checklist included multiple fields
25 that were not relevant to our program, caused a lot of

1 confusion, for example, things about indoor air quality,
2 asked people to verify other information that wasn't --
3 wasn't part of the program. So the -- and had individual --
4 showed consumption by meter and by month. A Statement of
5 Energy Performance is much -- it's essentially sort of a
6 summary of some of those things. And so it's -- it's a lot
7 more -- a lot more consolidated and the information is more
8 appropriate for this program.

9 New definition, whole-building energy use data
10 means a record of kilowatt hours, therms, or any other
11 measure of energy fuel type recognized by Portfolio Manager
12 submitted for all the meters and fuel types associated with
13 the building. And so this clarifies the intent from the
14 statute to use data for the entire building for disclosure
15 purposes.

16 So -- so now -- okay, I forgot to explain how
17 we're going to do comments. So first thing, anyone in the
18 room who would like to can come up to the microphone and
19 make comments or ask questions. Next we'll open it up to
20 WebEx. And lastly, we'll -- we'll do the phone.

21 So anyone in the room who would like to make a
22 comment on the definitions?

23 MS. WINN: Good morning. Valerie Winn with PG&E.

24 We did have a question with respect to how you
25 would define -- let me look for this definition -- the

1 whole-building energy use data. Because for the utilities,
2 if we are loading data into Portfolio Manager we are going
3 to have net load. I'm not sure that we would have -- if
4 there's other customer generation on site, it's not clear
5 that we would have that information to be able to give
6 someone whole-building. The utilities would have their
7 meter data, but that may not reflect the whole-buildings
8 energy usage.

9 MR. JENSEN: Okay. Got it.

10 MS. WINN: One second question is you've defined
11 nonresidential building, that's 1681(f). You have a number
12 of building occupancy types there. Those are not
13 characteristics that are contained in utility billing data.
14 So I presume that nonresidential for us from a billing
15 perspective would include anyone who is not a residential
16 customer. But the categorizations that you have, A, B, E,
17 I-1, those are not utility characteristics.

18 MR. JENSEN: Great. Thank you. Well, thank you,
19 Valerie. We'll look at -- look at that and possibly make
20 revisions. And, yeah, we'll definitely clarify the
21 definition of whole-building data too. Clearly, the
22 utilities shouldn't be responsible for something that's
23 generated onsite.

24 Okay, we will now -- Laith, do we have any hands
25 up on the WebEx? Okay, let's -- so if you can un-mute him

1 only.

2 Randy, is that you on the phone or on the WebEx?

3 MR. WALSH: Yeah. I wasn't sure if I connected or
4 not. The -- Randy Walsh, San Diego Energy Desk.

5 Looking back at the original legislation, and
6 looking at the dictionary to define prospective, there seems
7 to be a much broader interpretation of that word
8 prospective, which I think -- I'm sorry, that's in 1681(h).
9 This seems to be drilling down to one specific point in time
10 with really only two parties involved. And the whole point,
11 as my understanding after years of reading and listening to
12 people, was that this legislation was designed to bring
13 transparency to the market, and with that transparency
14 hopefully some competition, and therefore some incentive to
15 improve the energy efficiency of the building.

16 So I think this -- this definition, and it seems
17 to get tighter and tighter, is not within the intent or the
18 spirit of the legislation. And I would suggest that this be
19 reinterpreted much more broadly, according to a more
20 familiar use of the word prospective.

21 Thanks.

22 MR. JENSEN: Thank you, Randy.

23 Okay, folks, we're going to next un-mute everyone
24 on the WebEx. And so if anyone has a comment or question --
25 okay, we'll just -- we'll go ahead and un-mute the WebEx.

1 If anyone has a comment or question, go ahead and speak up
2 and let's try that.

3 MR. VERA: This is Chris Vera from SDG&E. Can you
4 hear me okay?

5 MR. JENSEN: Yes, we can. Go ahead.

6 MR. VERA: Very well. The question I had referred
7 to over on page six of the document that we're reviewing,
8 this is in -- in Section C, subsection (c), I guess, under
9 1684. It refers to the regulations, nothing in the
10 regulations permits an owner to use un-aggregated tenant
11 energy data. And I'm wondering then if we should have a
12 definition of aggregated data in this section so that we
13 know what that's referring to when we get to that section?

14 MR. JENSEN: I think that's --

15 MR. VERA: Thank you.

16 MR. JENSEN: Thank you, Chris. I think that a
17 good comment. We will -- we're going to -- when we -- we'll
18 get to that, you know, what we mean by aggregated later.
19 And if it seems like -- if it seems like it's not -- if like
20 what we have in the text is insufficient to explain that, we
21 can certainly look at defining that. Thank you.

22 MR. NESBITT: How's this, can you hear me?

23 MR. JENSEN: Yes, we can.

24 MR. NESBITT: I guess my question would be, I was
25 looking to buy a part of a building as a condo, or as a

1 tenant to rent part of a building. Would I be interested in
2 the whole-building energy use or the portion of the building
3 I'm buying or renting to the extent that it is sub
4 metered --

5 MR. JENSEN: This --

6 MR. NESBITT: -- versus meters at a higher level?

7 MR. JENSEN: This program only applies when the
8 entire building is being transacted, nonresidential.

9 MR. NESBITT: Yeah? Okay.

10 MR. JENSEN: Okay. It looks like we don't have
11 anything -- anyone else on the WebEx.

12 Anyone on -- on the phone who's not on WebEx who
13 would like to comment or question? Okay.

14 Okay, we're going to move on. Let's mute the
15 WebEx.

16 And folks who are on WebEx, we're -- we're muting
17 you on this end. If you don't have a comment or question,
18 please also mute yourself on your end so that when we --
19 when we un-mute the lines we don't hear what's going on, on
20 your end.

21 Okay, Section 1682, schedule of implementation.
22 This is a new requirement in the schedule which is for --
23 which reads,

24 "Utilities and energy providers shall connect with
25 Portfolio Manager's web service according to the following

1 schedule, by July 1, 2016 for utilities and energy providers
2 with over 100,000 service accounts, and by July 1, 2017 for
3 utilities and energy providers with over 50,000 service
4 accounts."

5 I'd like to make a comment here. Because of the
6 time it takes for our rule-making process these -- these
7 dates almost certainly would be pushed back. They would
8 not -- not go into effect at these times. The reason for
9 this -- this requirement is that it's -- it makes it -- make
10 it easier and less -- less error prone for the -- for the
11 data, energy use data, to go directly from the utilities to
12 Portfolio Manager and not have the utilities send a
13 spreadsheet to the building owner who then has to either --
14 either upload the -- upload the spreadsheet or enter the
15 data manually into Portfolio Manager.

16 We had -- in the comments we heard from POUs
17 particularly that the -- that smaller -- smaller utilities
18 might not have the resources to implement this, and so
19 that's why we have these size thresholds.

20 So we are -- oh, one other thing I should mention.

21 So some of you were at our February 20th workshop and we
22 did not -- we're not making a distinction here between
23 things that -- that we showed at the February 20th workshop
24 and changes we've made since then. All we're showing here
25 is changes from -- distinction between what we're proposing

1 today and the current regs. So we looked at, you know,
2 trying to make a distinction among all three of those and it
3 was mess. Both -- here at the Energy Commission we thought
4 it would be very confusing for you, as well, so we're --
5 we're not doing that. So anyway, some things that I'm
6 talking about today will be -- some will be things that I
7 already talked about on February 20th.

8 So we're proposing to remove the buildings from
9 5,000 to 10,000 square feet. They represent a very small
10 percentage of California commercial floor space and we --
11 and they are likely to be -- and we'd like to exempt
12 these -- these owners from the -- from the reporting
13 requirement.

14 Okay, that's -- that's it for the changes for
15 Section 1682. Do we have comments and questions in the
16 room?

17 MR. ANDREONI: Hi. This is Tony Andreoni with the
18 California Municipal Utilities Association.

19 Just a clarifying question on Section 1682. The
20 numbers you're providing by July 1st, 2016 and 2017, you say
21 100,000 service accounts and over 50,000 service accounts.
22 Is that nonresidential service accounts?

23 MR. JENSEN: Our intention here was --
24 was total service accounts, to use -- and our intention was,
25 you know, to use that as a proxy for the resources that a

1 utility has in general. If you -- if you want to talk about
2 whether -- whether you think that's not an appropriate way
3 to do it and if you've got another suggestion, we'd -- we'd
4 be open to hearing that.

5 MR. ANDREONI: Okay. And one other comment, I
6 didn't mention anything on definitions, but it would be good
7 to get a clarification as well. On Section 1681(b) you have
8 complete calendar month and you go into a description of,
9 you know, 12 months of data. But the billing cycles for
10 many of our members are not on a 12-month cycle. Their
11 billing system is not necessarily adaptable to a 12-month
12 cycle. So it seems like there needs to be some adjustment
13 and maybe some flexibility that you might want to consider,
14 given the structure of how these billing cycles occur.

15 MR. JENSEN: I'm not -- okay. I'm not -- maybe we
16 can talk later.

17 MR. ANDREONI: That's fine.

18 MR. JENSEN: I'm not quite following, but we'll
19 talk later about that.

20 MR. ANDREONI: That's fine. Thank you.

21 MR. JENSEN: Okay. Thank you.

22 MS. WADHWA: I can answer that. I think that's
23 what we are trying to say in the definitions. But maybe it
24 needs different wording. For the people on the WebEx and
25 phone, this is Abhi Wadhwa from Energy Commission. So

1 that's exactly what we are trying to address, Tony, so that
2 you don't have to adjust the billing cycles. It just needs
3 to be 12 complete calendar months. So if you need to go and
4 do the 13th billing cycle to accommodate that, that's
5 perfectly okay. You don't have to align it into monthly.

6 MR. ANDREONI: All right. Thank you.

7 MR. JENSEN: So, Tony, does that address your
8 concern with --

9 MR. ANDREONI: Well, I think that needs to just be
10 better clarified.

11 MR. JENSEN: Right. Okay. Good.

12 MR. ANDREONI: Because right now it just says 12
13 months and basically shows 30 days within the month. You
14 may have partial months to extend, 13 or 14 months to get
15 your actual 12 months of data.

16 MS. WADHWA: Okay. Thank you.

17 MR. JENSEN: It looks like we don't have anything
18 else in the room.

19 Any -- and Laith can take us through the WebEx.

20 MR. WALSH: Randy Walsh again.

21 A question: Is it -- is this language necessary?
22 The -- as far as I know the big three utility companies are
23 already connected to web services. Is there a reason why
24 this language is being added and why this additional time is
25 being given if they're not already connected?

1 MR. JENSEN: When you say the big three, what are
2 you referring to?

3 MR. WALSH: Southern California, (inaudible) and
4 PG&E.

5 MR. JENSEN: Okay. I mean, I don't mean to be
6 facetious but there are several -- okay, I'm sorry.
7 Let's -- what was the -- so, Randy, the -- the issue is that
8 we have several large utilities that are still not connected
9 and several mid-size utilities who we would like to be
10 connected. So that's why we included this.

11 MR. WALSH: Okay. Thanks.

12 MS. ERDELY: Hello. This is Marika (inaudible).

13 MR. JENSEN: Good morning, Marika. Go ahead.

14 MS. ERDELY: Yeah. I think the problem with the
15 12 months is that we do -- we receive quite a bit data from
16 Edison for the 12-month period. But because it's not a full
17 12 months Portfolio Manager, it won't give a rating. So we
18 end up having to estimate the 13th month. So the software
19 itself is pretty particular. I'm not sure if you guys know
20 that. And it would be more helpful to actually have 13
21 months downloaded so we don't have to estimate that 13th
22 month.

23 MR. JENSEN: Okay. Thank you.

24 MS. WADHWA: Marika, this is Abhi Wadhwa from
25 Energy Commission. That was our intent. We didn't want to

1 put it as 13 months just so the intent is clear, in line
2 with the statutory intent. And that's why we tried to phase
3 it like 12 complete calendar months. And if for that you
4 need to go into the 13th month, that is okay. And I think
5 in the body of the regs it also says at least 12 complete
6 calendar months, so that you have the option of requesting
7 13 months on your end. But we'll try to clarify that for
8 you.

9 MS. ERDELY: So that means that the forms, the
10 utility authorization forms, need to be changed. I'm just
11 saying it's something that doesn't work in the software
12 because the software is very particular. So why don't you
13 just make it seem -- make it always 13 months? Because that
14 period of time you're now requesting the utility to have to
15 be able to program that and, I mean, they're having enough
16 trouble getting the data itself. If you just say 13 billing
17 cycles, then you don't have a problem.

18 MR. JENSEN: So we don't know what the length of
19 billing cycles is that each utility is using. This language
20 that we are using is consistent with -- with what Portfolio
21 Manager requires. And so that's why we went with this.

22 MS. ERDELY: Well, if that's the language that
23 Edison has been -- been using to comply with this, it
24 doesn't work. And most of the time we have to add a 13th
25 months and we're estimating it.

1 MR. JENSEN: Do you --

2 MS. ERDELY: So I'm a user and I'm just telling
3 you the frustrations I have with this. So I'm just trying
4 to explain that because you guys aren't using it.

5 MR. JENSEN: Yeah.

6 MS. ERDELY: I'm using it and it is -- does not
7 work when -- if Edison is following that protocol of the
8 wording that the EPA has, Portfolio Manager, it still most
9 of the time will not give a rating because it's not a full
10 12-month cycle when they give 13 billing periods.

11 MR. JENSEN: Okay. Thank you.

12 Is there anyone else on WebEx or phone who would
13 like to ask a question or make a comment?

14 MR. WILLIAMS: Hi, this is Rick Williams,
15 CommEnergy.

16 I would concur with the fact that if we just make
17 it 13 months we can get more accurate data and a lot less
18 estimating.

19 MR. JENSEN: Thank you, Rick.

20 Okay, we're going to move on. Okay, so what we're
21 showing here, so you don't see -- as you can see on the
22 screen, the colors are lovely. It didn't -- we printed in
23 gray scale. So if you're just looking at the -- at the
24 printout you won't get the full effect. But I think we all
25 have either -- whether we're in the room or on the -- on

1 WebEx anyway you can see the colors.

2 So what we're -- what we're showing here is a
3 gradient from most confidential to least confidential data.

4 And I don't know if those -- I haven't cleared those terms
5 with our attorney, but the idea here is the, you know,
6 the -- at the top, this is -- this is information that --
7 that the, you know, the -- the closest to actual customer
8 usage data, and the farthest from that at the bottom.

9 So two columns here, data description and who
10 either has or will have access to that data. Excuse me a
11 minute. So building owners currently can go look at meter
12 data for a building that they own. And so that is un-
13 aggregated meter-specific energy consumption data. Building
14 owners also already have personally identifiable information
15 for the tenants in their building. So they have this
16 information already. What we want to do is make it easier
17 for them to get the consumption data without having to go
18 and go around and get -- either go read the meters in person
19 or request -- you know, get all the meter numbers or account
20 numbers from each of the tenants, which we'll get to a
21 little later. And so on the -- the who will have access
22 column, you know, we see the building owner already has
23 access to these -- to this -- this information.

24 Next is systematic access to aggregated or
25 obfuscated energy consumption data for transaction-based

1 disclosure. And just to be clear, when we say systematic
2 here we just mean that there's a system in place where it's
3 -- it's fairly easy and straightforward for a building owner
4 to request data and for the utility to provide that data.
5 We don't mean that -- that is an ongoing upload. And so
6 this is something that only the building owner would have
7 access to.

8 The next level is one-time annual aggregated or
9 obfuscated energy consumption data. And this is what we're
10 proposing that the buyer, lessee or lender get as part of
11 this program.

12 And then lastly, the least confidential data
13 description would be benchmark -- a benchmark derived from
14 the aggregated whole-building energy use data described
15 above. And this would be public, you know, this would be
16 data that would be accessible to the public. And this is
17 not applicable under -- under this program. So we're just
18 showing the -- sort of the complete range here.

19 Okay, so starting into Section 1683, which again,
20 because we switched 1683 and 1684, 1683 is now data releases
21 and report. 1683(a) now reads,

22 "As early as possible or soon after a building
23 becomes available for sale or lease or a loan application is
24 submitted the building owner shall request all utilities and
25 energy providers serving the building to release whole-

1 building energy use data from at least the most recent 12
2 complete calendar months."

3 So we're removing a lot of the detail about how to
4 set up a Portfolio Manager account and certain general data
5 that needs to be entered into it. That's -- that's -- those
6 are straightforward things. We don't want to have to
7 describe those things in regulations. And we're -- we're
8 making this -- making it possible for the building owner to
9 request the data earlier. It can be, with the current
10 language, 30 days before a disclosure is required. Well,
11 the building owner may not know when a disclosure is going
12 to be required, so it's difficult to determine when 30 days
13 prior to that would be. So that's 1683(a). So this is just
14 removing the -- the steps on how to set up an account and
15 enter general information into it.

16 There's an addition here,

17 "The energy use data can be used for disclosure
18 pursuant to Section 1684," which is the disclosure section,
19 "for up to one year from the data of request."

20 And so that's a current -- in the current regs
21 it's 30 days, now it's one year. And so the -- the owner,
22 if the building, you know, doesn't sell as quickly as the
23 owner had hoped, they've got that -- that data that they can
24 use for up to a year. They don't need to go request it
25 again from the utility.

1 So 1683(b) now reads,

2 "As soon as practicable and no later than 30 days
3 after receiving a request under subdivision (a) of this
4 section, a utility or energy provider shall upload whole-
5 building energy use data for the specified building address
6 from at least the most recent 12 complete calendar months to
7 the building owner's Portfolio Manager account aggregated by
8 fuel type."

9 So we're removing for the specified meters or
10 accounts and adding for a specified address. So under the
11 current regs the building owner would need to either get
12 every account number for -- for a tenant in the building or
13 every meter number and request the energy usage data for
14 those. Now we would like the building owner simply to be
15 able to provide an address to the utility and receive the
16 energy usage data for that address.

17 Okay, so, for buildings,

18 "For buildings with two or fewer service accounts
19 of any fuel type the utility shall provide a randomly
20 generated number that is within ten percent of actual
21 monthly usage. A utility or energy provider that is not
22 required to use Portfolio Manager's web services, according
23 to Section 1682(b), may provide the energy use data to the
24 building owner electronically using the spreadsheet template
25 provided by the U.S. Environmental Protection Agency."

1 So three or more service accounts, we want the
2 utility to provide aggregated energy use data by fuel type,
3 two or fewer service accounts, randomly generate a number
4 within ten percent of actual usage.

5 Still -- still within 1683(b),

6 "A utility or energy provider may request a copy
7 of the current title or deed for a building for which energy
8 use data is requested as verification of ownership."

9 1683(c),

10 "Utilities and energy providers shall not require
11 tenant consent or any information that is not under the sole
12 control of the building owner."

13 So we do not want tenant participation to be a
14 requirement of this program, so we're making that clear
15 here. And we don't want the owner to have to run around
16 getting, you know, meter or account information, as I
17 mentioned earlier, or tenant consent. We want the owner
18 just to be able to request -- request the data directly from
19 the utilities.

20 And we're removing 1683(d) which was,

21 "In the event that the Energy Commission accesses the
22 data submitted pursuant to subdivision (c) of this section
23 the Energy Commission shall treat the data as confidential,
24 consistent with state and federal laws."

25 This is because the Energy Commission will not --

1 will no longer be receiving actual energy consumption data,
2 which we will get to later in Section 1684.

3 And I'm now going to turn it over to Laith. He's
4 going to talk about how we arrived at some of this -- some
5 of these numbers.

6 MR. YOUNIS: Thank you, Erik.

7 My name is Laith Younis. I'm the Data Lead for
8 the Existing Buildings Unit. And I'll be going over some of
9 the data that supported the changes that Erik presented.

10 As you can see by the slide, everyone knows the
11 privacy concerns that exist with sharing the data. There
12 are just some of the items here. And if the right data was
13 made available to the right people it could potentially
14 cause harm. I will be focusing on what we propose to mask
15 the data so that it's critical -- these critical items won't
16 be discovered.

17 All right, so as you can see here, this is hourly
18 time series data at a tenant level. At this hourly level it
19 is clear where the heavy energy draw exists. Using these
20 peaks and valleys, someone understanding the site's
21 processes or the industry's processes could identify
22 something unique about this site. What's very important to
23 recognize here is that the variability of the points is what
24 makes this data valuable, and the number of points that you
25 see in the series.

1 This next slide shows monthly level data. As you
2 can see, there's much less granularity. We're looking at
3 one data point per month versus the previous slide's 700.
4 That less detail makes that data less valuable. What you're
5 seeing here is each tenant's meter. We have a total of five
6 meters, each one colored differently with the average right
7 through the middle there. And the average represents what
8 the building owner would see, either taking the total and
9 dividing by the number of meters to get the average. And as
10 you can see, that average line loses that variability
11 against the number of meters, so essentially masking using
12 your monthly building total or average.

13 This is another example of that. The average is
14 denoted by the red line. Again, that would be what the
15 building owner sees. And the meters would be the tenant.
16 Again, you're losing the variability that was shown in the
17 first example. This is an office where the previous slide
18 was a retail outlet.

19 So using these examples we define re-
20 identification as, number one, to identify accurately within
21 one percent and with near certainty the hours and/or --
22 excuse me, the hourly and/or daily energy usage profile of
23 an individual service account from the summated energy usage
24 of all accounts within that building. Number two, just as
25 important, associate the energy usage profile within -- with

1 personal identifiable information, as Erik mentioned.

2 This next slide, as Erik brought up, talks about
3 the randomization piece. What you see along the bottom
4 there is a range of randomization thresholds. And along the
5 vertical axis, the change in the Portfolio Manager score.
6 Randomization of energy use at sites below the aggregation
7 threshold is critical in keeping longer -- a larger
8 population of sites.

9 Working with EPA we built an in-house Portfolio
10 Manager calculator. And I ran various building types,
11 warehouse, offices and retail, all while randomizing the
12 energy usage. Graphed here are those results, an average of
13 all those results. So, for example, if you have the ten
14 percent randomization range of their energy consumption you
15 will see an average of a plus or minus change to the score
16 of three in Portfolio Manager.

17 This next slide is a stacked bar chart showing
18 data from the Commercial End-Use Survey. We obtained it
19 with special permission from CPUC, and it's only showing IOU
20 data. It takes a while to take it all in, but basically
21 you're looking at three buckets, starting on the left with
22 small sites, medium sites, and large on the right. Down
23 below you have a definition. A site is a single location
24 with a business that can make energy decisions. Each color
25 represents the number of service accounts per site. This

1 data is very important for understanding the loss of sites
2 underneath the aggregation threshold.

3 For example, the top left you have 50 percent.
4 That is a small site with one service account. Small is
5 broken up by the kilowatt hours reading above the -- along
6 the top. And if you wanted to you can sum the percentages.

7 So a small site is 80 -- 80 percent of the sites are two or
8 fewer. On the large column, two or fewer would be 68
9 percent of total large sites. So we broke it up to get an
10 understanding of what the size plays into.

11 These are various statistical models that we uses
12 to attempt re-identification. I'm going to kind of breeze
13 through these quickly. But as you can see --

14 MS. BROOK: (Off mike.) Laith, excuse me --

15 MR. YOUNIS: Yeah?

16 UNIDENTIFIED FEMALE: -- can you explain
17 (inaudible) --

18 MR. YOUNIS: Uh-huh.

19 MS. BROOK: -- explain, like were you looking at
20 the monthly time period when you did these tests?

21 MR. YOUNIS: These tests, yes, on the monthly.

22 MS. BROOK: So -- so that (inaudible)?

23 MR. YOUNIS: Sure. Sure. So these are the -- the
24 monthly time series -- thank you for pointing that out --
25 that we were using various statistical models to try to re-

1 identify from this point. So taking that redline average,
2 what the building owner would have, what is the possibility
3 of him or her re-identifying any single tenant. So what we
4 found is that most of these statistical models, very
5 important, they would do analysis of the building average or
6 total, not an attempt at disaggregating the usage into
7 different pieces.

8 Other tools, as you can see, would show similarity
9 between two data sets. But the building owner would really
10 only have the single data set, the single time series
11 building consumption total. So you can't know a comparison
12 because you have nothing to compare to.

13 So lastly, in summary -- I knew this was going to
14 happen, sorry -- in summary you have usage, using average or
15 total energy consumption to proxy an individual's usage
16 cannot with certainty give an accurate representation of
17 variability over the year as you saw with the graphs of
18 consumption.

19 Number two, monthly energy consumption data
20 doesn't provide any detail regarding usage patterns which
21 may be considered proprietary by certain businesses. And
22 lastly, according to the PNNL study in 2014, energy profile
23 matching is one step removed, a very important step removed,
24 from re-identification.

25 And now I believe we'll go to the room for

1 questions.

2 MS. DERIVI: Tanya DeRivi with the Southern
3 California Public Power Authority.

4 We had raised issues with privacy and
5 confidentiality concerns back in February at a workshop, one
6 of which was being that we would like to get some sort of
7 confirmation, a legal opinion, that sharing information with
8 the Energy Commission isn't going to get us in trouble with
9 our customers, referencing that we have a number of lawyers
10 back at our municipal utilities who have looked at potential
11 contradictions between federal privacy laws from 1984, as
12 well as Public Resources Code, the Government Code, the
13 Civil Code, and the Public Utilities Code.

14 So we would like to get something in writing from
15 a legal source that it's going to be okay in the future that
16 we do share information, even if it is aggregated, and that
17 we're not going to be running contradictory with other state
18 and government rules. We've noted that in our comments
19 previously.

20 On Section 1683, we would also recommend that
21 property owners be allowed to upload their usage data and
22 not just the utilities. That would help with a number of
23 our smaller and even medium-sized members who might not have
24 the staffing -- staffing resources to do that.

25 And we're also particularly concerned with Section

1 1683(c), that utilities do not need to get tenant consent
2 for usage of data release and how that might run
3 contradictory to Privacy Act laws and other potential
4 state/government codes. Once again, a reason why we would
5 like to get some sort of legal confirmation that sharing
6 this isn't going to get our utility members into trouble.

7 Other of our members have also still expressed
8 concern that beyond the plus or minus ten percent for
9 buildings with one or two service connections, that that
10 might not actually provide enough masking for others to go
11 in and actually identify which buildings or tenants are
12 actually using that information.

13 Those are our comments. Thank you.

14 MR. ANDREONI: Hi, this is Tony Andreoni with
15 CMUA.

16 We support the comments that -- that SCPPA just
17 raised. I mean, some of the privacy issues were also
18 mentioned in our letter. It doesn't seem like it's been --
19 I see you guys are trying to adjust and trying to bring in
20 the privacy aspect, or at least adjust it accordingly. But
21 it's not clear yet how this information can actually be
22 provided to the building owner who is not a customer of our
23 members. So that still becomes a question here. And we
24 definitely want to get some type of reading from the CEC
25 again on how that would be handled, mainly to 1683(c).

1 The other concerns, now that you're bringing up
2 statistical analysis in the presentation here, it would be
3 good to share how you did the complete analysis and, you
4 know, within your initial statement of reasons, when you're
5 ready to put that out, I mean, it would be nice to see that
6 ahead of time. I'm not exactly sure who's providing the
7 average. Obviously, there's a number of buildings or a
8 number of tenants that can be within a building, providing
9 that data. And the way you've shown it in this graph may or
10 may not make sense in every instance. So it definitely
11 would be good to see that information. The plus or minus
12 ten percent, looking at the slide here, I'm still not
13 completely following why the plus or minus ten percent or
14 the randomization is being used in this -- in this example.

15 I also noticed on your customer end use survey
16 data, you actually have some ranges for small, medium and
17 large that go well below the square footage threshold that
18 are within the AB 1103. You're -- you're basically not
19 going below 10,000 square feet, but yet your data is
20 stretching all the way down to the hundreds of square
21 footage, and then the large scale, you're only down around
22 5,000. So again, the range of data that you're using here
23 does not match with the AB 1103 requirements that you guys
24 are moving forward on. So I'm not exactly sure how this
25 data supports the ranges.

1 So any additional analysis you can provide to
2 provide clarification for our members would be very useful.
3 Thank you.

4 MS. BROOK: This is Martha Brook, Energy
5 Commission.

6 So that's the best data that we have. It's very
7 difficult to get square footage data. The utilities don't
8 have it. The PUC doesn't have it. The Energy Commission
9 doesn't have it. So what we did here was best available
10 information. And you can tell from this chart that the
11 range, it doesn't matter if they're small buildings or large
12 buildings, there's a lot of -- the point here is that
13 there's many, many buildings with two accounts or less per
14 building. And that's why we needed to have something under
15 the -- the treatment for all the buildings that are covered
16 under 1103 that are under the aggregation threshold that
17 we're proposing.

18 That's why we're proposing the randomization,
19 because we do have a tenant -- a principle that this law
20 does not -- does not require tenant consent. And so we're
21 proposing the randomization in lieu of tenant consent. And
22 we've clarified what we think is appropriate for personal
23 identification and energy usage identification. And then we
24 tested that above the aggregation threshold we're safe
25 because no statistical tests that we found and used were

1 able to re-identify a meter based on the average or total of
2 multiple meters. And then we're proposing that we really
3 need to hear feedback on what the right percent of
4 randomization is. We think ten percent is adequate. If you
5 think it needs to be a higher level of randomization, we
6 need to hear from you a justification for why. So that's
7 sort of where we're at right now.

8 MR. ANDREONI: So in order for us to provide that
9 kind of detail we do need the information that you're
10 providing here in this presentation in much more detail. I
11 understand this survey is done every so many years. And my
12 guess, this data is not that current. I don't know what
13 year.

14 MS. BROOK: It's pretty current. And buildings --
15 the ownership of buildings does not change --

16 MR. ANDREONI: Sure.

17 MS. BROOK: -- annually.

18 So, I mean, I think the point of this slide is
19 that it doesn't matter if we're looking at small buildings
20 or large buildings --

21 MR. ANDREONI: Sure.

22 MS. BROOK: -- we have to deal with the number of
23 buildings that are under the aggregation threshold. We
24 don't want them just to drop out of the law completely. We
25 don't think that's appropriate.

1 MR. ANDREONI: So if we can have more detail on
2 that so we can evaluate that. Obviously, we don't know plus
3 or minus ten percent is going to work in every instance.
4 And in some cases that's just too close of a margin.

5 MS. BROOK: What we -- what we need to hear from
6 you is why? And what we -- what we've put on the table is a
7 definition for re-identification. If you -- if you say ten
8 percent is not good enough, we really need to understand the
9 details of why that's not good enough.

10 MR. ANDREONI: And if you all share the data with
11 us, hopefully we can provide that to you.

12 MS. BROOK: Okay. Great.

13 MR. ANDREONI: Thank you.

14 MS. BROOK: Perfect.

15 MS. WINN: Good morning. Valerie Winn with PG&E.

16 I share many of the comments that have been shared
17 with -- by CMUA and by SCPPA. We are also concerned with
18 some of the confidentiality and data privacy issues.

19 I did want to go through a number of your slides
20 and --

21 MS. BROOK: Can I just interrupt you for a second,
22 Valerie?

23 So we were requested by SCPPA, to document from a
24 legal authority within the Commission why we think what we
25 were proposing is okay. Is that what you're asking for also

1 when you say you have confidentiality concerns?

2 MS. WINN: Well, that would certainly be helpful
3 in sharing with, I think, the affected parties your
4 philosophy. I think there may be a fundamental disagreement
5 between some of the utilities and the CEC as to whether
6 the -- the proposals here appropriately protect privacy.
7 But certainly, if we have more insight into why you think it
8 protects, then that can help us better understand each
9 other's perspectives.

10 But certainly, if we start on say slide 15 where
11 you talk about the data description and who will have
12 access, the un-aggregated meter-specific energy consumption
13 data and the PII that's noted, and it's indicated that the
14 building owner already has access to this data. That -- I'm
15 a little confused by that. Because if the building owners
16 actually had access to the meters, then why aren't they able
17 to benchmark their buildings without utility involvement?

18 MR. JENSEN: We don't think that requiring them to
19 go and look at the meters in person is acceptable. We would
20 like to make it easier for them to get the -- to have -- to
21 access the energy usage data without having to do this. So
22 just because they have -- they have this access doesn't mean
23 that we want that to be a requirement for program
24 participation.

25 MS. WADHWA: Otherwise they would have to have

1 somebody assigned to read the meters every month at a
2 certain date just so they can benchmark the building at the
3 end of the year. Don't you think that would be rather
4 cumbersome?

5 MS. WINN: That's -- that's a fair question. I
6 guess I'm just -- I'm not understanding I guess whether they
7 do actually have access to it and some of the legal
8 protections that customers may have. I don't know if it's
9 lawful even for a building owner to go look at this data
10 without customer consent. That would be a question. I'm
11 just -- I'm just questioning your premise.

12 MS. BROOK: I think that's a question for your
13 lawyers, not ours.

14 MS. WINN: Yeah.

15 MS. BROOK: We're not going to be able to say
16 whether or not it's legal for a building owner to look at a
17 tenant's meter.

18 MS. WINN: Yeah. I'm just -- I'm just questioning
19 that premise because it is presented as a factual, the
20 building owner already has it. And so I don't know that
21 that's --

22 MS. BROOK: Well, some -- I think there's probably
23 sometimes it's -- it's available to them and sometimes it's
24 not. We do know, we have heard from building owners that
25 they hire consultants to read meters because of the

1 unavailability of whole-building data access from the
2 utilities.

3 MS. WINN: I'm going on to the next slide, slide
4 16. You also note requesting all the utilities and energy
5 providers to release whole-building energy use. And again,
6 as we indicated earlier, we may not have information on the
7 whole-building energy use. So that is certainly an area
8 that the same question/issue with whole-building energy use
9 would also apply to slide 19.

10 MS. WADHWA: And just to clarify, Valerie, you're
11 saying that utilities don't have access to what is generated
12 onsite; is that correct?

13 MS. WINN: That's correct. We may have some
14 information but we may not have all of the information on
15 customer site generation.

16 I share some of the concerns expressed by CMUA. I
17 think, you know, given we're seeing some of the rationale
18 just now for your levels of aggregation, that seeing this in
19 a report that we have adequate time to review and provide
20 comment on would be really helpful and I think very
21 meaningful to this discussion. I mean, we're seeing very
22 high-level slides here. And it gives us some inkling as to
23 how you're moving things or the direction you're moving them
24 in. But something that's a bit more robust that we can
25 actually have people go through and kick the tires on would

1 be helpful.

2 We do have concerns, of course, about the ten
3 percent of actual monthly usage, because this would be for
4 buildings with two or fewer service accounts. So as you've
5 noted, many of our buildings are single-tenant buildings.
6 And even providing a ten percent bandwidth, that's still
7 provides -- it doesn't protect the customer's privacy
8 perhaps in any meaningful way.

9 MS. BROOK: Okay, so that's what we need better
10 information about. We've proposed what we think is re-
11 identification --

12 MS. WINN: Uh-huh.

13 MS. BROOK: -- and personal identification. So
14 vague comments about it doesn't protect the customer
15 confidentiality is not helpful at this point. We need much
16 better information from the utilities about what we're all
17 trying to protect.

18 MS. WINN: Right. Well, and I was curious,
19 actually, as to the definition of re-identification that you
20 proposed. And it was that the -- and I'm not quite certain
21 how -- how it was determined that aggregated data was less
22 meaningful or less confidential to a customer than their
23 hourly data usage. I don't know if there's been any sort of
24 a survey of customers that would say, you know, I don't want
25 people to know that I'm peaking at 8:00 and peaking at 5:00.

1 But if you -- if you give a monthly number, then that's
2 okay. I don't know that there's been any sort of
3 determination. Some customers, I understand if they're
4 running say a data farm they might be very consent -- very
5 concerned about any information on their usage being public,
6 even if it's aggregated because they might have a load
7 that's not so peaky, it could just be flat all the usage
8 periods.

9 MR. JENSEN: Valerie, would it be possible, and
10 you've got, of course, some of the same data --
11 confidentiality issues on your end, would it -- is there any
12 chance you could connect with us some tenants who might --
13 might cite those concerns that we could -- and we could talk
14 to them about that?

15 MS. WINN: I can certainly check with our folks
16 and see if there are people who would be willing to have
17 that discussion.

18 MR. JENSEN: Great.

19 MS. WINN: Yes.

20 MS. WADHWA: Do you have any knowledge, if you've
21 been in conversations with them already, why they have not
22 been participatory in the 1103 public work process?

23 MS. WINN: I'm sorry, which process?

24 MS. WADHWA: I'm just curious, if they had this
25 concern, this is the third time we have discussions just on

1 the regulations, this is the third time the regulations
2 would be revised, and we have not heard from them directly.
3 So since you're in conversations with them, could you pass
4 that note, that we'd really like to?

5 MS. WINN: Uh-huh. We will do that.

6 MS. WADHWA: And just to clarify, our definition
7 of re-identification comes from our research of having
8 studied the PNNL study which was docketed by SCE, looking at
9 other studies, looking at other industries such as
10 insurance. And we felt that this is what the customers are
11 trying to preserve. They don't want their energy
12 consumption details to be known. They don't want their
13 equipment information to be known. Like you speak of data
14 centers, data centers have certain equipment that they like
15 to guard in terms of trade secrets. So that's how this
16 definition has come about.

17 So from our perspective it does address the data
18 farms that you're talking about. But again, without any
19 further information from your end or from those customers
20 directly, this is the best we can come up with.

21 MS. WINN: Okay. No, that's -- that's helpful to
22 know. And again, you know, having a report that's more
23 fulsome that we can comment upon and know the background of
24 the findings, then that would be very helpful.

25 I'm curious, when we turn to slide 21 where -- and

1 these are things that I have questions about. I need to
2 confirm more with some of the folks. But the whole question
3 of the utilities could request a copy of the current title
4 or deed for a building for which energy use data is
5 requested as verification of the ownership, I guess I have
6 some concerns there. And I'm thinking -- thinking out loud
7 as I say this, but this would actually put the utilities in
8 kind of an audit function to make sure that they're being
9 asked to appropriately benchmark a building by someone. And
10 I need to better understand what our controls are on our
11 end. But I'm not sure that this is necessarily appropriate,
12 but I need to explore that more.

13 MS. BROOK: So I think what's important, it says
14 "may." So we heard from utilities that they wanted some
15 verification that the building owner was the building owner.
16 And that's why we're proposing this because we're trying to
17 address those comments. So it says "may," doesn't say must.
18 So you can talk with your utility about how you want to
19 implement this part. But it's not a requirement, it's --
20 it's a proposal that addresses comments.

21 MS. WINN: Okay. Thank you.

22 And lastly, I would say that we share the same
23 concern about Section 1683, subparagraph (c) where the
24 utilities and energy providers shall not require tenant
25 consent. And we share the concerns that have already been

1 expressed, that this would likely violate numerous data
2 privacy statutes. And it would also conflict, at least with
3 how we have interpreted the AB 1103 provisions to protect
4 customer private information.

5 MS. WADHWA: Valerie, can I interject? It's been
6 as much as six months, I remember when Commissioner had
7 asked, and this was again your comment at that time --

8 MS. WINN: Uh-huh.

9 MS. WADHWA: -- he wanted to know what specific
10 laws you reference. Because every time utilities are
11 referencing these laws we are looking at the laws on our
12 back end. And our legal counsel is here and comment on our
13 research on that. But without you giving specifics it makes
14 it difficult for us to even understand if you and us are
15 looking at the same laws.

16 MS. WINN: No, I --

17 MS. WADHWA: And his comment last time was that
18 you should document in your comments what specific laws do
19 you think are getting breached? Because in our perspective
20 this statute already accommodates them and requires that
21 building owners be given access to that data.

22 MS. WINN: No. And I believe that we have
23 addressed this -- a variety of statutes, both in the
24 California and the federal law. I'll look back through our
25 comments, but we have noted this in the IEPR when we talked

1 about building benchmarking there. And we've had numerous
2 references in our comments on this draft regulation as well.

3 So perhaps we should, you know, sit down and I'll
4 go through them. Maybe that will help move us forward.

5 Thank you.

6 Do you have other questions? Go ahead.

7 MR. LEMEI: I wanted to make sure you were
8 finished. I wasn't necessarily going to make comments now.
9 I wanted to let the stakeholders who are speaking to
10 (inaudible) issue is finished.

11 MS. DERIVI: Tanya DeRivi with SCPPA again.

12 I just wanted to clarify really quickly on actual
13 specific code sections. We put it in our letter before, but
14 the specific code sections or laws that we're referencing is
15 the Federal Privacy Act of 1984, of course the California
16 Public Records Act since we are municipally-owned utilities,
17 and specific sections would be Public Resources Code
18 25402.10(b), Government Code Section 6254.16, Civil Code
19 Section 1798.98, and the Public Utilities Code Section 8381.
20 I'm happy to provide that in writing to you as well.

21 MR. JENSEN: Thank you, Tanya.

22 MR. LEMEI: Can you provide a code section for the
23 Federal Code?

24 MS. DERIVI: Not in my notes, but I can get that
25 for you.

1 MR. LEMEI: Thank you.

2 MR. CHANGUS: This is Jonathan Changus with the
3 Northern California Power Agency.

4 And I think to truncate the comment a little bit
5 on the privacy concerns, I think it would do us all in the
6 room a good deal of effort moving forward to have something
7 that's more of a legal opinion. I believe the CEC has gone
8 to great lengths to make the case.

9 The reality is for the agencies and local
10 governments that NCPA represents is that it's going to come
11 down to a legal issue and a lawsuit is going to be
12 adjudicated, not by whether or not utilities and the CEC
13 agree that this satisfied, but what the court of law. And
14 so whatever we can do to reinforce the CEC position that
15 disqualifies and covers the confidential concerns with some
16 sort of legal opinion I think would go a long way towards
17 addressing a number of our concerns as well. And I think
18 that's where I'll leave it on the confidentiality piece.

19 I wanted to make comments kind of things that we
20 saw that we liked, as well, and support some places where
21 we're looking for clarification, as well as some outstanding
22 concerns. And so on the positive note, we think the changes
23 to 681(h) through (j) about prospective buyer, lender and
24 lessee, and limiting disclosure to entities in bona fide
25 transactions is a positive development.

1 Continuing to support the CEC's efforts to protect
2 the smaller property owners. So the less than 10,000 square
3 feet, that's kind of been proposed and accepted in the past,
4 and we're glad to see it continue, as well as the validity
5 of the data for 12 months in case transactions take longer
6 than anticipated. That is also a provision that NCPA
7 supports.

8 And no longer requiring the building owner to
9 submit the disclosure report to the CEC, I think that
10 relieves a lot of concerns as what we've been talking about
11 earlier.

12 There was some clarification bits. In 1682(a)
13 when we're talking about what different utilities of
14 different sizes need to do, we support clarification in
15 paragraphs one and two, that when we say service accounts
16 we're talking about nonresidential service accounts. It
17 wasn't quite clear if we mean all service accounts, or
18 because this is a nonresidential building we're just talking
19 about if you have this many nonresidential service accounts,
20 which we would very much support. If it's all accounts,
21 that's -- we'll have to go back and take a look at that.

22 And then in 1683(b) regarding data releases and
23 the requirement to get a hold and possess building owner's
24 login information and passwords, because in most cases --
25 many cases NCPA members are part of a citywide bit. There

1 are other limitations on whether or not they're allowed to
2 access customers personal login and password information.
3 The spreadsheet option, which download and take a look at
4 and I'll get to in a little bit, I think is something, we
5 can provide the data. I suspect there's going to be square
6 footage and building usage data that the building owner will
7 still need to -- that the utility might not have.

8 So if we can get the energy -- you know, fill this
9 out as much as you can with information that's collected by
10 the utility and providing the spreadsheet on a more common
11 basis. I know we're trying to make this as easy we can for
12 building owners. Judging from the tone and tin of the
13 comments now for the last couple of years, if we can make
14 this also slightly more manageable for the utilities it
15 might make all of our lives a little bit easier. So being
16 able to provide the spreadsheet and avoiding that -- that
17 final step of direct upload to a customer would make a big
18 difference for NCPA members as far as ease of compliance on
19 their end.

20 The other issue that we wanted to bring up, I
21 think it's more holistic, and maybe I should have led with
22 this, is just the way customer information systems are
23 designed for most NCPA members, and I believe for most
24 utilities, is on an account and customer basis, not
25 necessarily on the building. And so in many cases the CIS

1 doesn't have an automatic function where it gathers data on
2 the building uses. The account and the customer moves,
3 trying to keep track longitudinally of who's been in that
4 building, you know, from this data seven years forward.
5 Turnover is going to be a technical challenge because the
6 CIS doesn't do that. And so it requires a manual kind of
7 query and search function, and you can start to automate
8 some of that.

9 But in general the -- the software and the design
10 is not on a building basis on accounts that have the billing
11 system set up. And we're trying to figure out how we
12 maintain the building-level data as the accounts change
13 within it. And so that's -- it's a higher level just kind
14 of perspective of what we're trying to deal with in accounts
15 on a technical side. In many cases customer information
16 systems are being updated.

17 You know, the sales-force environment, if we're
18 doing other CRM programs, has kind of the project, the site,
19 the customer, there's different layers. And that is -- it's
20 valuable information if and when you can get it in your
21 system designed to collect it. But it is a huge new effort
22 then to account -- it's not tied to the billing anymore,
23 it's tied to just data collection and management.

24 MS. BROOK: Yeah. This is Martha.

25 I think that the -- the utilities that seem to

1 have pulled this off the easiest did not work with their
2 billing system. So they got a data dump, so they're working
3 on a separate database that could get -- could get trued up
4 with their building system annually or something. But then
5 they did all of the program tracking and the mapping to
6 addresses all separately because we understand that billing
7 system is basically your key, you know, data collection
8 method and revenue collection method. And it's almost never
9 possible to make massive changes to that, so we understand
10 that.

11 MR. CHANGUS: Yeah. And for smaller -- I mean,
12 not that this isn't a cost for larger utilities as for
13 smaller utilities. And IT and database in which it's -- you
14 know, the more customers you have to spread the costs over
15 as far as rate helps.

16 And I'm -- you know, on energy efficiency we have,
17 I believe, four current database tools and such that are
18 regularly updated and maintained. So it's trying to figure
19 out then another one that's across the customer -- I mean,
20 that's -- that's a significant new piece. And so trying to
21 figure out how that fits in with our other efforts to
22 actually manage and provide programs to customers is -- is
23 not a -- and we're working on trying to qualify that because
24 I know it's hard when we just say this is expensive and
25 difficult without any kind of more specific data. So we'll

1 try and get you some more details on not just that effort,
2 but how it fits into kind of like with reporting in general,
3 there is a wide range of activities. And it's never just
4 one that breaks the back of the utility, it's the collective
5 whole.

6 MS. WADHWA: This is Abhi Wadhwa.

7 I also want to add, Jonathan, yesterday CEC kicked
8 off a working group with all the utilities to help
9 facilitate and resolve this, do this together. We
10 understand that this is not a problem with anyone specific
11 utility. And at that same time, a lot of the programs,
12 including AB 1103, require data access, either to the
13 building owner or for EM&V purposes. So if you were not in
14 that group we are very happy to forward that invite, and we
15 look forward to solving this together.

16 MR. CHANGUS: Yeah, I appreciate it. Yes, I
17 was -- I was very much on the call. And this and Prop 39
18 and AB 758 and the related and larger efforts is something
19 I'm sure we'll be talking about for years to come. So I
20 thank you for the full employment.

21

22 Other areas --

23 MS. WADHWA: Hope not.

24 MR. CHANGUS: Yeah. Other areas of concern, and I
25 think it was addressed, I apologize, I was a little late, on

1 the complete calendar month, you've heard it before as far
2 as how our billing systems, especially for those that don't
3 have a full smart meter deployment to all their
4 nonresidential buildings, it's just not possible to get, you
5 know, date 1 to date 30. So the 13-month option would allow
6 us to cover the full 12. But given the limitations of
7 Portfolio Manager, it could be a solution but wanted to make
8 sure we got that.

9 As I mentioned earlier, the spreadsheet template
10 for the most part is pretty straightforward. There are a
11 couple of fields that I know we don't have that data. So as
12 long as the expectation isn't necessarily that we're going
13 to have to go and get -- as we're filling out what we can on
14 the monthly billing data, that which is not currently
15 collected by the utility isn't required. And I believe that
16 kind of dovetails to the "may" on the verification. If
17 you're verifying that they're the actual owner, there might
18 be some information in there, as well, that could help. But
19 just making sure that there wasn't like non-utility data
20 that we needed to go collect to facilitate that.

21 MR. JENSEN: Jonathan, you're talking about the --
22 the spreadsheet that's available from Portfolio Manager --

23 MR. CHANGUS: Yes.

24 MR. JENSEN: -- which -- absolutely. Okay. So
25 that has things that -- that goes beyond what we're asking

1 for. So we can -- we can certainly clarify that.

2 MR. CHANGUS: Okay.

3 MR. JENSEN: Thank you.

4 MR. CHANGUS: That would be great.

5 And we've covered, I think, tenant consent in
6 spades. I echo a lot of the comments and really would urge
7 us to find some sort of legal opinion to support and
8 substantiate, much the same as do we have legitimate
9 concerns, do we not have legitimate concerns, it's much more
10 can we get sued or can we not get sued? And that is the --
11 the threat of legal action as a local agency, something I'm
12 sure the CEC can appreciate, as well, is something that we
13 have a zero tolerance for. So whether that's statute or
14 whether that is legal opinion, whatever it takes to make
15 that the case would be incredibly helpful.

16 MS. WADHWA: Jonathan, one last comment. I think
17 what would be really helpful for us to get from you is if
18 the utilities on an individual basis or as a collective
19 group that you represent can give some kind of a cost
20 estimate, if they've looked into what it takes to connect to
21 data exchange services and prove that it is actually much
22 more cost effective to do the spreadsheet method for all the
23 transactions that are expected to occur, given that, you
24 know, the transaction data is -- at least a volume of
25 transactions is fairly easily accessible. And then show to

1 us that it's actually more difficult to set up data exchange
2 services, what are the cost challenges there.

3 MR. CHANGUS: Yeah. It's going to be -- it's
4 going to be cost and time. And I think if it's -- if
5 there's something to the extent where the spreadsheet needs
6 additional data anyway and it's -- I've looked at it. It
7 seems like it's a pretty simple upload once you have the
8 energy usage data. I'm just trying to find that sweet spot.
9 So I'm happy to look into that a bit more. It's usually a
10 matter of time and dollars. And as noted in the legislative
11 analysis, this doesn't save energy, it's an information
12 tool. It's important, like an audit, to make those
13 investments, but it comes from that same pool of resources.
14 So I'm happy to try and provide more details on what that
15 looks like.

16 MR. ANDREONI: This is Tony Andreoni again, CMUA.
17 I just wanted to follow up on a couple points CEC just made.

18
19 Just on the data collection that was mentioned by
20 NCPA, it seems like the CEC, you know, going back to the
21 original rule when it was adopted, I don't recall seeing any
22 cost impacts evaluated on how some of our utility members
23 are going to be impacted from being able to provide this
24 information. You know, obviously you've adjusted some of
25 the building sizes to make it a little bit easier. We still

1 are allowed to use an Excel spreadsheet to provide the
2 information on an individual building basis or customer
3 basis. But as you get into evaluating systems, as you just
4 mentioned, there is a cost associated.

5 And it seems like it would be appropriate for the
6 Energy Commission to make sure that that information is part
7 of your report and the cost evaluation is known, whether you
8 set up a working group with -- with our members or the
9 utilities in general, I think it would be very useful to do
10 because it's going to vary across the various members that
11 we represent.

12 And just as a point of clarification, I actually
13 brought up our original -- our last comment letter that we
14 submitted to the Energy Commission on March 5th. We did
15 mention Section 1684(b) which is now 1683(c). So it's the
16 exact same language that went from 1684(b) to 1683(c) which
17 is states,

18 "Utilities and energy providers shall not require
19 tenant consent to provide energy use data to the building
20 owner or operator."

21 We mentioned in our comments and we have not heard
22 back on how this is being dealt with. But we saw this as a
23 violation of the California existing customer privacy
24 requirements, Government Code Section 6254.16, which also
25 referenced Civil Code section 1798.98 and PUC section 8381.

1
2 So I think going back to a previous comment, this
3 is what we are still waiting to get, some type of
4 clarification, because this is where the privacy issue for
5 our members becomes much more challenging.

6 Thank you.

7 MS. BROOK: So this is Martha.

8 I just wanted to mention that it will be
9 appropriate and actually required for the Energy Commission
10 to -- when we go into a rule making we have to complete an
11 economic impact report, and that's where we will need to
12 understand the costs for the utilities because those are
13 really significant changes to the regulations.

14 So we did that last time. But we were asking the
15 building owners to do more of the heavy lifting last time.
16 And now we're asking the utilities to do that heavy lifting.
17 So we will have to evaluate the cost to the utilities as
18 part of that economic impact report that's required to be
19 filed with the regulations --

20 MR. ANDREONI: So --

21 MS. BROOK: -- at the beginning of the
22 regulations.

23 MR. ANDREONI: Sure. If I recall, the original
24 rule did have a component from the utilities to still
25 provide 12 months of building data energy usage. And if --

1 I don't have that original report in front of me, but I
2 don't recall there being really any analysis as far as --

3 MS. BROOK: It might not have. But all I'm saying
4 is that you're on the record of saying that we should do
5 that.

6 MR. ANDREONI: We would --

7 MS. BROOK: And I'm now on the record of saying --

8 MR. ANDREONI: Okay.

9 MS. BROOK: -- I agree.

10 MR. ANDREONI: Okay.

11 MS. BROOK: That's part of what our obligations
12 are.

13 MR. ANDREONI: Great. So we'll look forward to
14 working with you on that.

15 MS. BROOK: Uh-huh. Ok

16 MR. ANDREONI: Thank you.

17 MR. LEMEI: And just to clarify what Martha just
18 said, we are obligated for analyzing the impacts, the
19 economic impacts of our regulations and our, in this
20 juncture, our proposed regulatory changes. We are not
21 obligated to analyze the economic impacts or take ownership
22 of the economic impacts of the raw statutory mandate. So
23 the distinction there is that the legislature made a
24 decision that -- that this disclosure program was
25 appropriate. It's not in our discretion to -- to disregard

1 that legislative determination. We need to analyze the
2 economic impacts of our implementation of that program, and
3 at this point analyze the economic impacts of any changes to
4 the existing, for lack of a better word, baseline.

5 MR. ANDREONI: And I agree with what you're
6 saying. It really comes down to the small business and our
7 members' impacts as far as what is going to be, you know,
8 accounted for. Obviously, if they're doing a one-off Excel
9 report, there's some employee costs associated with doing
10 that, there's some data separation that's going to be
11 required. But as these increase and as you look at
12 automation, as was suggested, that creates a whole new
13 nuance for the costs associated with our members meeting the
14 requirement.

15 MR. LEMEI: And we'll appreciate your help going
16 forward and analyzing and quantifying and explaining those
17 costs.

18 MR. ANDREONI: Thank you.

19 MR. LEMEI: I'm not seeing anyone else standing up
20 right now to speak to the privacy and confidentiality
21 issues. And I wanted to respond to some of the legal
22 concerns that were raised, but I didn't want to jump in
23 before everyone had a chance to speak.

24 Oh, maybe the phones?

25 MR. JENSEN: Yeah, we'll -- we'll do that first.

1 Thanks.

2 MR. VERA: Hi, this is Chris Vera from SDG&E. Can
3 you guys hear me okay?

4 MR. JENSEN: Yes, we can. Go ahead.

5 MR. VERA: First of all, I really want to commend
6 you guys for trying to solve this problem. I think this is
7 going to be a pretty tough nut to crack, I think we all
8 realize that going forward, but a very important one, I
9 think, to further California's energy goals. So thanks for
10 taking this on. And I hope you don't view a lot of this
11 discussion that we're having as any kind of raw criticism
12 against this effort that you've put together. Really, we're
13 just trying to find the best solution for our customers and
14 trying to get building owners what they're looking for to --
15 to comply with their own mandates.

16 And so one of the things I want to do is separate
17 out the difference between confidentiality and privacy. So
18 I think that you guys had a slide that spoke to the
19 different levels of confidentiality and how that data would
20 be protected. I think that's important. Yeah, that's the
21 one right there. Those -- that's a very important slide
22 right there. But that's a little bit different than the
23 privacy aspects of it. And it really comes down to, from a
24 privacy perspective, when we talk about confidentiality
25 we're really talking about security. How are we going to

1 protect the data? How do we ensure that data can only be
2 viewed by the very smallest group of people possible that
3 are authorized and need and are required to view that
4 information?

5 I think that from a privacy perspective we also
6 have to take in other aspects, things like choice. That's
7 where that consent piece comes in, and I'll get back to that
8 in a second. There was a slide there that you guys talked
9 where you defined re-identification. And re-identification
10 really is about being able to pinpoint a customer and not so
11 much the level of granularity one can pinpoint their data.

12 So if I were to equate that to -- instead of
13 talking energy usage, if we're talking about a salary, if I
14 tell you that a baker makes \$1 million a year, it doesn't
15 really matter whether or not that baker made, you know, 90
16 percent of that in February and the rest of it just kind of
17 trickled in afterwards. The fact is that that particular
18 person has been identified to make that particular salary.
19 And I think that's what our customers are going to be
20 sensitive to.

21 Someone said earlier about customers not really --
22 I, myself, have not had any customers come to me saying it's
23 okay to share my monthly or my annual data, but please don't
24 share my -- my interval data. They're not -- they haven't
25 been that granular with me. Customers typically are binary

1 about it, either they don't mind that the data is being
2 shared or they don't want the data being shared. And it
3 just depends on their own business needs and what their
4 particular use cases are. And we don't go into detail with
5 them about that.

6 But, you know, I do want to make that point, that
7 re-identification isn't necessarily about the granularity of
8 the data, it's about the ability to either pinpoint who the
9 customer is or not pinpoint that customer.

10 And so when we look at that -- that new method
11 that you guys are using, it sounds like the plus or minus
12 ten percent of two or fewer customers, I think that's a very
13 interesting idea. It's basically what we would call in the
14 privacy industry, you're adding noise. We're trying to add
15 a little bit of noise to the data in order to make it more
16 difficult to uniquely identify a specific group out of that.

17 But again, if we go back to kind of that salary
18 example, if I've got a room with two people in it, one is a
19 baker and one is a sandwich maker, and I tell that their
20 aggregated data with, you know, plus or minus ten percent is
21 \$1 million, it's really not going to make a difference from
22 that perspective. Whether you add 5 percent or 10 percent
23 or 15 percent noise, it's going to be pretty clear where
24 that skew is coming from and who is using -- who is
25 consuming all of that resource.

1 And by the same token, if it's two sandwich makers
2 inside a small room and I know, you know, and I tell you
3 that the aggregated plus or minus ten percent is \$25,000 a
4 year, again, it's really not providing any level of
5 difference between a third party on the outside who's going
6 to be able to have some good idea of what each one of those
7 individual organizations is doing. And the reason is, is
8 that we are not simply providing a number of the data, but
9 people will be able to pinpoint, because of that building
10 location, who is in that building. So they're going to know
11 who the players are and they're going to tell. It's not
12 just me telling you that two people together make \$1
13 million, it's going to be me telling you one is a baker and
14 one is a sandwich maker and they -- and they make \$1
15 million. And so I think that difference is what makes
16 this -- this algorithm right here a little bit more
17 difficult to work with.

18 And then I think the complication we're going to
19 have, perhaps from a legal perspective, and this is
20 something I'll need to take back to my legal team, is the
21 fact that when we look at CPUC 8380, which is what really
22 requires us to take a look at aggregated data -- you know,
23 we can only share individual customer data for a primary
24 purpose without their consent -- it doesn't say anything
25 about adding noise to the data.

1 So I think that that salting the information,
2 while very interesting, and I think that that methodology
3 has some merit to it that we should examine further, I think
4 that it's -- it may not meet the legal definition of
5 aggregation, which is why I think that aggregation
6 definition becomes so important that we add to the beginning
7 of this -- of this issue of this discussion that we're
8 having. And so I think that that's -- that's going to
9 potentially introduce a problem that we're not going to be
10 able to surmount.

11 I think ultimately what it comes down to is if we
12 have an organization, a building that's got fewer than
13 whatever number is eventually decided by the mathematicians
14 and the experts in the room, I think that consent is going
15 to end up being the only way that we can meet our privacy
16 obligations, not necessarily confidentiality, I'm not
17 worried about that at this point. But from a privacy
18 perspective, consent ultimately is what's going to be
19 required in order to make the transaction work from a
20 privacy perspective. And it sounds to me like we need some
21 mechanisms to make it easier to get the consent of those
22 customers so that building owners don't feel like they're
23 under the gun to get either one or two tenants data in order
24 to -- to share it.

25 Thank you, guys.

1 MR. JENSEN: Thank you, Chris. I've got a
2 clarifying question. In the example you gave of a baker and
3 a sandwich maker in the same building, the approximate
4 breakdown of energy use for that building could be known
5 before any energy use for that particular building is
6 revealed. So seeing a number -- so you mentioned that if --
7 if energy usage, whether it's, you know, aggregated and
8 actual and aggregated and also randomized, we'd know the --
9 we're going to know the approximate breakdown between those
10 two tenants. Well, we -- we're going to know that
11 approximate breakdown between a baker and a sandwich maker
12 anyway. We can get average usage for those types of
13 operations prior to energy usage for that actual building
14 being provided.

15 Do you feel that that privacy is further
16 compromised when we then look at actual or randomized data
17 for that building?

18 MR. VERA: This is Chris.

19 I think that's a fantastic question. And I think
20 where the issue will come in -- and now I'm trying to wear
21 the hat of a customer, especially one in a very competitive
22 environment -- the average may be known. But if a customer
23 has come up with a really clever way to reduce their energy
24 usage that gives them some kind of a competitive advantage,
25 or in the case of let's say the military where they're just

1 doing stuff, or a defense contractor that just doesn't want
2 other people to know what's going on in that facility,
3 whether it's an hourly basis or an annual basis, I think
4 that's where the complications arise is that they can look
5 and say it's easy for specific customer to say, yeah, that's
6 what the average may be but that's not necessarily what
7 we're doing here in our own facility.

8 And so whether or not they are the average or
9 whether they've come up with some clever way to save energy
10 that for some reason they don't care to share, and I don't
11 understand why that would be but I'm not in that kind of
12 business so I don't really know, I think that those are
13 those -- those are the customers that are going to be the
14 most sensitive to the fact that their data has been shared
15 without their consent and will be the ones most likely to
16 come back, whether it is to the utility or to a court or to
17 a regulator and say, why was my data shared, why is this
18 known? There's various -- there's a lot of scenarios.

19 I think the big scenario coming right now from the
20 water utility space is the name and shame thing. I think
21 that there may be customers that are sensitive to that kind
22 of a thing as well. And so I think that that's where we're
23 going to see this -- this requirement for customer consent
24 be so important.

25 MR. JENSEN: Okay. Great. Thank you.

1 Same -- that brings me to the same request I had
2 for Valerie. Is there a chance you could put us in touch
3 with some of your customers who -- and we could -- we could
4 talk to them, both about -- about what their privacy
5 concerns are and what they -- they feel might be -- what
6 they're comfortable with technically?

7 Chris, are you still on? Okay.

8 MR. VERA: Yes, this is -- this is -- was that for
9 Chris Vera? That was for me, that question?

10 MR. JENSEN: Correct. Yeah.

11 MR. VERA: Yeah, I can -- I'll work with my
12 commercial-industrial teams. And absolutely, we'll see
13 if -- I will work with them to find out if we -- if there
14 are some customers that would be willing to talk a little
15 bit more about that. I would think that there are --
16 although there are some in San Diego for sure, most
17 military, some bio, and some other industries that might be
18 sensitive to that, I would also think further north in the
19 Silicon Valley, there may be other customers in that area
20 that would be interested in talking about that.

21 So I can certainly speak to the ones down here in
22 the San Diego County area and see if we can find some for
23 you.

24 MR. JENSEN: Great. Thank you.

25 MR. CHANGUS: This is Jonathan with NCPA again.

1 And to that very point, we've heard from some
2 customers, as well, in reaching out to some of the folks in
3 Silicon Valley, as was mentioned, on what their specific
4 concerns were. And we'll absolutely help facilitate that
5 conversation.

6 MR. JENSEN: Great. Thank you.

7 Anyone else in the room?

8 MR. WALSH: This is Randy. Am I up?

9 MR. JENSEN: Sure. Go ahead.

10 MR. WALSH: A couple -- Randy Walsh, San Diego
11 Energy Desk. Just a couple of things.

12 The less complete and the less accurate and the
13 older this information is the less useful it is. And I
14 understand the need for protecting confidentiality. But the
15 way this is written now, I guess I'd like to hear from
16 somebody on -- within the CEC of what value is a disclosure
17 document, according to what you're proposing here, to a
18 current owner and to -- and to the next owner?

19 MR. JENSEN: So our intention, as Laith showed, we
20 are able to adjust actual energy usage by an amount that we
21 feel both protects the confidentiality of the customer and
22 keeps the Energy Star score pretty close to what it would be
23 with actual energy usage. And this allows the, for example,
24 a perspective tenant to see how a building that they're
25 considering moving into would compare to a national average

1 building, or if he somehow has access to other -- this
2 information for other buildings he can -- he can compare
3 pretty accurately the energy performance of these buildings.

4 MR. WALSH: Okay. Okay. Can I -- can I jump in
5 here?

6 MR. JENSEN: Please do.

7 MR. WALSH: Because what you've just -- and I'm,
8 you know -- I don't -- I missed the introductions. Is this
9 Commissioner McAllister with a cold or is this David
10 Ashuckian?

11 MR. JENSEN: This is Erik Jensen with a sore
12 throat.

13 MR. WALSH: Third choice. Sorry about that.

14 So what you just described, which I think is the
15 spirit and intent of AB 1103 legislation, is not what you're
16 defining in your regulation. You just described having
17 options and choices and comparisons. The way you're writing
18 this, again, is just getting this down to one particular
19 point in time when this is simply a check-off box of a
20 document that has no value and it brings no -- no value to
21 the marketplace.

22 So -- and I -- this is -- you know, the
23 conversations between the utilities and the CEC, you know, I
24 don't -- I don't think that the -- the content of that has
25 changed for at least the four years I've been involved with

1 this. But I don't know where this other information is
2 coming in, but I think what you're doing is working against
3 the spirit and intent of AB 1103. Timing is an issue. The
4 quality of the data is an issue. The freshness of the data
5 is an issue. And if you look at everything happening in the
6 energy efficiency side, you can't manage what you don't
7 measure. There's just so many roadblocks being put in our
8 way here, again to where I think the sense of being useless,
9 and I think it's going to come up a little bit later.

10 Right now the carrot and the stick approach that
11 you guys are taking, there are owners that are owners that
12 are paying money for consultants, including me, to come in
13 and bring their building into compliance. That's money out
14 of their pocket. They have no opportunity to recoup that
15 expense. They have no opportunity to negotiate that
16 expense. That's -- that -- and so essentially you have
17 reduced the profit that that -- that that owner has made on
18 that building. You know, I think these real-world
19 considerations that, you know, that really need to be
20 factored in here, and I don't see them. So a huge concern
21 there.

22 Just two other quick things.

23 EPA, Energy Star Portfolio Manager, still
24 continues to use the Data Verification Checklist as the
25 report name option. But when the report is coming out it's

1 now changed to be an Energy Star label application, and so
2 they have changed that formatting a little bit. So
3 essentially the Data Verification Checklist as you know it I
4 would say doesn't exist anymore. I don't know how that
5 impacts you.

6 And then the -- the importance of the 12 full
7 calendar months versus 13 months, you know, I can throw some
8 ideas out there about how to clarify that. But we really
9 want to see that data on the -- the billing basis on a
10 monthly -- on a monthly basis so that Energy Star Portfolio
11 Manager can do its normalization, I think more accurately.
12 So I think it's important to get that on a monthly basis.

13 And I think it's fair to say from the utilities,
14 give us what you have, you know, as -- you know, give us as
15 many billing cycles as you need to give us in order for us
16 to pull 12 full calendar months of data.

17 So just some thoughts, and other things, too.
18 But, you know, let me see where we go with the rest of this
19 and then -- I'm sorry, let me jump back.

20 So right now with SDG&E, unless they've changed it
21 recently, SDG&E will only let you use web services for
22 purposes of complying with AB 1103. And their user
23 agreement specifically says that you as the user agree that
24 it is in -- is -- it's in everybody's best interest for the
25 utility to access the information, your Portfolio Manager

1 account.

2 So when we talk about confidentiality and privacy,
3 I'd like to look at this other way, too. To me there's -- I
4 don't -- if I'm an owner and I'm getting ready for AB 1103,
5 that may -- may or may not be something I want to divulge to
6 anybody at the utility company. So I'd like to some
7 language in here that specifically prohibits the utility
8 companies from making that requirement at two levels, one,
9 making it a requirement that you only use web services for
10 AB 1103 compliance and, two, that they have access to the
11 final report. If my client is paying for that report, you
12 know, there's no reason to just turn it over to SDG&E,
13 especially be it's so late in the transaction that nobody is
14 going to be able to do anything anyway.

15 I'm thinking that might be enough of a rant for
16 now. I'll just try to sit back and listen.

17 MR. JENSEN: Okay. Thank you, Randy. You made
18 quite a few points. Could I ask you to submit those in
19 writing, as well, to the docket?

20 MR. WALSH: Yeah. And you know what, the
21 scheduling of this actually caught me completely off guard.
22 I was not -- I mean, I was able to talk to you and Abhi, I
23 don't know, several weeks ago, so I owe you some stuff.

24 MR. JENSEN: Yeah.

25 MR. WALSH: And then my -- my hard drive crashed

1 last week.

2 MR. JENSEN: Oh.

3 MR. WALSH: So I just have not had enough time to
4 pull it together. But, yes, I will.

5 MR. JENSEN: Great. Thank you.

6 Anyone else on WebEx or on the phone?

7 MR. HOOPER: Hi, this is Barry Hooper with the
8 City and County of San Francisco. Can you hear me?

9 MR. JENSEN: Yeah, we can.

10 Folks, we've got -- if you're not Barry Hooper can
11 you please put your phone on hold or on mute?

12 Okay, Barry, go ahead.

13 MR. HOOPER: It's been a great -- it's been a
14 great presentation this morning. Thank you to the
15 Commission staff, and I really appreciate the rich
16 discussion.

17 The -- I really appreciate how the -- both the
18 presentation and the proposed regulations begin to bring in
19 some actual data and statistical analysis to the discussion
20 of what it would mean to implement this law, and
21 particularly what -- how should a threshold be set. Because
22 as a community we've really been stymied with -- by
23 discussing it very abstractly without clear information
24 about what's the -- how frequently do buildings have more
25 than a given number of meters? And what portion of the

1 market would be served if the threshold -- if a threshold
2 (inaudible) access were set, including the classical one in
3 California of the 1515 rule?

4 But really appreciate the Commission's effort to
5 demonstrate that as a practical matter benchmarking could
6 only be meaningful across an entire market if the threshold
7 was set and if there was a practical means for the building
8 owner to comply, regardless of the number of meters, and
9 that there be specific rules tailored for the number of
10 meters.

11 To just expand a tiny bit beyond the data
12 presented by the Commission, this issue, we have data --
13 data is publicly available in the study, the PNNL study that
14 PG&E participated in, and five other very large-scale,
15 national-scale utilities participated in. And while we can
16 all debate the underlying statistics about re-
17 identification, and that's a rich conversation, there was
18 also a basic fact that was presented which was that if the
19 data access threshold is set below the threshold that the
20 Commission is aiming for of two to three meters, then a very
21 large fraction of the market is excluded and potentially
22 unable to benchmark and comply with this law in the absence
23 of a willing and supportive tenant, which is not a
24 reasonable expectation to place on compliance with the law.

25 Similarly, we've worked with PG&E and we've mapped

1 meter addresses through the resources of the city and our
2 contractual relationship with them. We, as a portion of
3 that scope of work, mapped meters to addresses across San
4 Francisco. And, you know, the result of that sampling
5 effort is very similar, even when we limit it -- limit the
6 effort to looking at buildings that are of 10,000 square
7 feet or larger, which happens to be the threshold for San
8 Francisco's benchmarking ordinance.

9 So my main point there just being the distribution
10 of meters among buildings is basically pretty consistent as
11 the size of the buildings increases. And definitely
12 buildings with one, two and three meters are the predominant
13 configuration for a given utility type.

14 The last point, you know, there's been a lot of
15 discussion and legal questions. And it just really -- I
16 think that you might consider Section 1683(c) actually
17 including a reference to the CPUC decision, perhaps in the
18 notes, that directly, you know, recognizes the authority of
19 the Energy Commission to interpret Section 8380 of the
20 California Public Utilities Code and 8381 with regard to
21 implementing this law. So, I mean, that's, you know, been a
22 very explicit deference to the Commission and shouldn't be
23 something you need to re-debate.

24 And the last (inaudible) to that is, you know,
25 within 8380, California Public Utilities Code 8380, the

1 California Online Privacy Act, the California Professional
2 Business Code 22576, and numerous pieces of federal
3 legislation including the Confidential Information
4 Protection Statistical Efficiency Act of 2002, the Fair
5 Credit Report Act, the FTC's standards for applying its
6 enforcement authority, the White House's Consumer Privacy
7 Bill of Rights, and the restatement of torts that really
8 tends to guide decisions within the California courts about
9 liability, in every one of those instruments of law the word
10 "reasonable" or "unreasonable" appears to specifically
11 provide some -- some guidance that that is -- the standard
12 to be met is reasonableness.

13 And that's a great thing for us all to work out
14 together, what would be reasonable in interpreting the
15 intent of the legislature? And I think the proposed
16 regulations that the CEC has put forward are consistent with
17 that leeway to recognize reasonableness in meeting the
18 intent and requirements of the legislature.

19 Thank you.

20 MR. JENSEN: Great. Thank you, Barry.

21 MR. NESBITT: George Nesbitt. Can you hear me?

22 MR. JENSEN: Yes. Go ahead, George.

23 MR. NESBITT: You can't have disclosure without
24 revealing what we're calling confidential information.
25 That's just -- you know, that goes -- that goes -- that's

1 (inaudible).

2 And if I'm understanding right, what the Energy
3 Commission is asking for at this point is essentially just
4 energy use intensity, the score, real high-level re-
5 identification based on the whole-building. And if I
6 understand Portfolio Manager correctly, I believe you can
7 enter one annual number and still get that -- that kind of
8 data.

9 So I like the idea of a building owner being able
10 to get data without -- when they have tenants who have the
11 actual accounts, to be able to actually get data to be able
12 to -- for the purpose of the benchmarking under 1103. That
13 data should probably then be aggregated if there are
14 multiple gas or electric meters, otherwise it has to just be
15 the single meter for each. And it could be an annual total,
16 which would give us what we want.

17 I'm trying to think what I'm -- again, I just -- I
18 just -- the idea of taking data and randomly making stuff up
19 is not a good idea. It just now means the data is bad. And
20 what -- so what we want is -- is actual use.

21 And the issue of net metering was brought up.
22 Although, in Portfolio Manager you're supposed to
23 (inaudible) whether or not the meter --

24 (WebEx background noise.)

25 MR. JENSEN: Sorry, George, go ahead.

1 MR. NESBITT: Sorry. Not -- someone is not muted.

2 Yeah, so, I mean, and the other thing about your
3 sort of threshold on the number of meters on a building,
4 while it would be true if you have a single building with
5 either a single gas or electric meter or a gas and electric
6 meter with a single tenant, you would be then getting their
7 data, but that's data you're supposed to have and be able to
8 disclose under the law. But a lot of buildings have a
9 single gas and/or electric meter with multiple tenants.

10 So it's really -- it's not really the number of
11 meters. You know, obviously the more tenants, separate
12 tenants there are the less likely -- you know, the less
13 revealing that data is. But at some point we have to reveal
14 something. So think about whether annual data works, and
15 whether if without consent the building owner should get,
16 you know, an aggregate and not the individual meters. But,
17 you know, I think the whole issue of privacy is slightly
18 overblown.

19 Anyway, thanks.

20 MR. JENSEN: Thank you, George.

21 MS. WADHWA: This is Abhi Wadhwa from Energy
22 Commission.

23 George, I just wanted to clarify one issue you
24 raised. I'm not sure if I didn't come across clearly. The
25 annual aggregated data is what becomes available to the

1 buyer. But the building owner gets monthly aggregated data
2 from the utilities. So because the Statement --

3 MR. NESBITT: Okay. Well --

4 MS. WADHWA: -- of Energy Performance aggregates
5 it annual and normalizes it, and we need some sort of a
6 report format that then the owner submits to the buyer,
7 that's what the buyer sees. The annual number is what the
8 buyer sees. The monthly aggregate is what is provided to
9 the building owner through Portfolio Manager.

10 MR. NESBITT: Right. Okay. Well, I guess what --
11 the question I would have, okay, if the -- if the buyer gets
12 an aggregated annual EUI, Energy Use Intensity, and a score,
13 and if that's also what the Energy Commission potentially
14 wants to see, also, or has the right to see, the question
15 is: Would an annual meter data, whether it's aggregate or
16 the specific meter depending on how many meters, is that
17 adequate in Portfolio Manager to come up with that? Does
18 that skew it versus having monthly data?

19 And actually the other issue with monthly data is
20 because the billing cycle is not a calendar month usually,
21 let's say your billing cycle is the 15th of the month, in
22 order for Portfolio Manager or for myself to convert that to
23 a calendar month, I then I have to average those billing
24 cycles and put it in bins. Although with smart --
25 especially with smart meters, it would be easy enough, I

1 would think, for the utilities to provide that data on a
2 calendar month basis. Even though -- even though you may
3 get billed on a billing cycle, they certainly have that
4 data.

5 And I agree that having time-of-use data is
6 certainly not necessary. The question would be: Is monthly
7 data necessary? So think -- think about that.

8 MR. JENSEN: Okay. Thanks, George.

9 Let's -- do we have anyone else on WebEx or on the
10 phone?

11 MR. EVANS: Hi, yes. Hello, this is Matt Evans,
12 Southern California Edison.

13 I really appreciate the Energy Commission's
14 effort, especially in addressing the confidentiality issues
15 regarding energy usage data. They've done a lot of great
16 work here.

17 And I just did want to follow up on some of the
18 points we heard earlier, such as the whole-building energy
19 usage data. Again, just to reiterate, our billing systems
20 are not centered on -- you know, buildings are centered on
21 individual meters. But I look forward to the working group
22 that's being put together to see if we can come up with a
23 solution for that issue.

24 Also, address matching is very problematic from
25 our experience. So we would have to take a look at that

1 very closely as well. And I think as part of that working
2 group.

3 One other approach to aggregation we may want to
4 consider would be to use the annual number and then just
5 divide it by 12. So you would have the same monthly usage
6 for 12 months for the purposes of AB 1103. That may provide
7 an additional level of confidentiality compared to just
8 averaging on a monthly basis.

9 So for two or fewer tenants, and this is in
10 relation to Section 1683(c), we still feel that, you know,
11 tenant consent would still be required. So one possible
12 solution could be to use an affidavit, coupled with a green
13 lease, so encouraging building owners, property owners out
14 there, and I think Kilroy is one who is already doing this,
15 and I heard several others are considering it, as well, but
16 basically build into their leases a provision where the
17 tenant agrees that the building owner can receive data from
18 the utilities.

19 So in that case it could be a fairly
20 straightforward solution where the terms and conditions or
21 the affidavit itself is part of the Portfolio Manager terms
22 and conditions. That may be a checkbox or something like
23 that that the building owner says, yes, I, you know, I have
24 a green lease, I have these provisions, so therefore we'd be
25 able to provide the data. I think for two or fewer tenants

1 we would still want to provide a level of anonymization.
2 We'd still do the aggregate and then divide that over 12
3 months. So I just wanted to present that for consideration.

4 And I would very much like to see, as others have
5 requested, the -- more details regarding the statistical
6 analysis, especially for the ten percent threshold.

7 One other area I haven't heard mentioned yet, I
8 would like for the team to consider, you know, mitigating
9 risk on behalf of the utilities, especially if we go down to
10 providing whole-building energy usage data, I think anything
11 we come up with will not be foolproof. And so it would be
12 possible to, for example, miss one meter out of ten for a
13 particular building, you know, when we're trying to do this
14 whole -- whole-building level indicator in our systems. So
15 perhaps something just to mitigate that risk that all the
16 utilities are now bearing should be incorporated as well.

17 MR. JENSEN: Okay. Thanks, Matt. So --

18 MR. EVANS: And that's it.

19 MR. JENSEN: Okay. So the last couple callers
20 sort of suggested the utilities providing annual -- a single
21 annual usage number. If -- in order for Portfolio Manager
22 to perform weather normalization the intervals that are
23 uploaded need to be either every two months or finer. So if
24 the intervals are longer than that, weather normalization
25 can't be applied. And so that's why we're asking for

1 monthly.

2 In response to requests, just to be clear we're
3 going to provide more information on the statistical
4 analysis that we did for the -- for the utilities and others
5 to look at. And then we're -- we're going to be looking for
6 responses regarding -- regarding if -- if the utilities and
7 others want to argue for different -- different levels for
8 things, we'd like -- we'd be looking for the same kind of
9 thing, we'd like statistical arguments for -- for the
10 reasons for that.

11 And it looks like we might have --

12 MS. BROOK: I just wanted you to clarify. You
13 said weather normalization. Is that required for the score?

14 MR. JENSEN: It is not. So we would like to have
15 that. We feel it makes the data better. If someone uploads
16 data with an interval longer than two months the score is
17 still provided but is not -- I'm not sure about the Energy
18 Star score. EUI is still provided but is not weather
19 normalized. So that's -- that's why we want monthly data.

20 MS. BROOK: So -- this is Martha.

21 We -- we can explore that a little bit more. So,
22 for example, just like we explored how the score varied
23 based on a randomization percent, we can explore with --
24 with U.S. EPA the relative importance of weather
25 normalization. Because if that -- if that helps us more than

1 it hurts us

2 we -- we'll definitely want to consider that.

3 MS. WADHWA: This is Abhi.

4 I think -- I think what --

5 MR. EVANS: Hey, Martha --

6 MS. WADHWA: -- Martha and Erik are touching upon
7 is --

8 MR. EVANS: -- this is Matt.

9 MS. WADHWA: -- and what we'd like to convey to
10 the utilities, there's a tradeoff. If you're just giving
11 the annual number to upload into Portfolio Manager, you're
12 not going to get the, softly speaking, masking that comes
13 out of weather normalization. If you provide the monthly
14 data it maintains the accuracy while at the same time
15 masking it to some extent through weather normalization. So
16 that's something to consider. And this is, you know, going
17 to the comment right before this, whether just asking for
18 annual data itself can strengthen confidentiality even more.

19 So something to think about. We'll explore it
20 further, like Martha said. But we would like to have -- to
21 see specific comments on that note, if you can docket them.

22 MR. EVANS: Okay. I looked at that a couple years
23 ago. I believe the weather normalization is really by zip
24 code. It doesn't really take into account any monthly
25 variation in energy usage. So whether you supply the annual

1 usage, you know, divided by 12 overall, 12 billing periods,
2 or you provided the actual usage for each month, the score
3 was the same.

4 MS. BROOK: Oh, that's interesting, because --

5 MR. EVANS: So unless something has changed, yeah.

6 MS. BROOK: Well, yeah. So we -- we understood
7 from U.S. EPA that it did matter. So we'll -- we'll
8 definitely follow up on that and get clarity. Thanks, Matt,
9 appreciate that.

10 MR. EVANS: Yeah. Yeah. Maybe something has
11 changed since I looked at it, but that's -- that's the way
12 it behaved when I reviewed this is a few years ago.

13 UNIDENTIFIED MALE: Martha, can you repeat what
14 you're going to be looking into?

15 MS. BROOK: Trying to figure out if we really need
16 monthly data. So for the integrity of the benchmarking
17 score, is annual sufficient or -- or do we need monthly.
18 And I think what Abhi was implying or trying or assert is
19 that it's -- if we want to disclose weather normalized EUI,
20 that's -- then we need to provide the data that allows us to
21 do that weather normalization. And I think the important
22 part there is that, again, that's not going to be actual
23 usage, and there's a benefit to that; right? It's
24 representative of the relative usage of the building but
25 it's not actual because it's been changed and -- and

1 modified based on like what it would be in an average
2 weather year. So certainly --

3 MR. WALSH: Am I live?

4 MS. BROOK: Pardon me?

5 MR. JENSEN: Yeah. Go ahead.

6 MR. WALSH: I'm sorry. I wanted to -- it's Randy.
7 I wanted to jump in.

8 On the Statement of Energy Performance the two
9 performance metrics, site energy use intensity and source
10 energy use intensity are simple math equations. And the --
11 the factors are in the -- in Portfolio Manager charts. So X
12 times 3.41 or 3.142 can get you the site and also the source
13 energy use intensity once you know the KWH for the property.

14 The normal weather normalized data is available,
15 but it's not part of the -- the typical reporting process.
16 It's -- it's a different metric that you have to pull out of
17 the -- out of the system. So weather normalization is not a
18 factor in any of the reports that we've been talking about.

19 And, Martha, just for reference, if you do a
20 Google search on Portfolio Manager, technical reference,
21 climate and weather, it will give you a breakdown here.

22 MS. BROOK: Great.

23 MR. WALSH: But -- so in actuality there is a
24 possibility that you just need one number for the whole-
25 building for -- for one time period.

1 MS. BROOK: Okay. Yeah. So this is -- this is
2 great. This is good progress and we'll keep going on this.
3 Thanks.

4 MR. JENSEN: Do we have anyone else on the phone
5 or WebEx who would like to make a comment?

6 MR. HOOPER: This is Barry Hooper. I'd just like
7 to comment to the last thread of discussion that is not --
8 the 1 to 100 score could not be accurately calculated
9 without monthly data.

10 MR. JENSEN: Okay. Thank you, Barry.

11 Do we have anyone else on the line?

12 Galen, I think the time has come.

13 MR. LEMEI: Or not.

14 MR. CHANGUS: Real quick, can I just ask one
15 clarifying question, because -- and to make sure I'm talking
16 apples to apples with our members, is the purpose in the
17 sole disclosure being made to the building owner in that
18 it's -- if it's -- if they're entering data into Energy Star
19 Portfolio Manager, is it possible for others to access that,
20 or is something that they still control as far as
21 understanding energy usage of their building? Is there
22 anyone else that's going to be able to access that once it's
23 uploaded into Portfolio Manager? Is it really something
24 we're trying to inform them about the energy use of their
25 building so that they can make decisions, not necessarily a

1 more public or comparative process?

2 MR. JENSEN: So -- so the owner has control over
3 who they -- who they share that -- that information with.
4 So it's -- unless they share it with someone it's just
5 visible to the -- to the building owner whose account it's
6 been uploaded into.

7 MR. CHANGUS: Has it -- and I apologize if I
8 missed this. Has there been talk about either a
9 nondisclosure agreement that goes along with that, so the
10 building owner has access to the data for their own purposes
11 but the NDA prevents them from sharing or using it in ways
12 that we might not --

13 MR. JENSEN: Not yet, there hasn't.

14 MR. CHANGUS: Have we had a conversation about
15 that piece potentially being added or not yet?

16 MR. JENSEN: No.

17 MR. CHANGUS: Okay.

18 MR. JENSEN: We have not.

19 Okay, Galen.

20 MR. WALSH: This is Randy again.

21 MR. JENSEN: Okay.

22 MR. WALSH: This is Randy.

23 Can I just give you the document name that I would
24 refer to, the Portfolio Manager Technical Reference for U.S.
25 Energy Use Intensity by Property Type.

1 MR. JENSEN: Great. Thanks a lot.

2 MR. WALSH: Sure.

3 MR. LEMEI: Just a minute. Okay. Sorry, I was
4 just making a note to address Jonathan's last -- last point.

5 So first of all, I just want to really thank --
6 thank everyone for -- for being here, for speaking to these
7 issues. I wouldn't normally necessarily speak up at a
8 workshop. It's just that in this workshop today there's
9 been an awful lot of talk about legal issues.

10 If anyone doesn't know, my name is Galen Lemei. I
11 am counsel to the Energy Commission and have been working on
12 the -- what we affectionately call the AB 1103 Program for a
13 very long time.

14 The purpose of the AB 1103 program, or
15 specifically Public Resources Code section 25402.10, is to
16 provide -- or we believe the purpose of this legislation is
17 to allow buyers, lessors and lenders, in the context of real
18 estate transactions, access to certain energy consumption
19 data, including specifically benchmarked data for the
20 buildings that they are buying or potentially leasing or
21 potentially financing a loan for.

22 To some extent I agree with what George Nesbitt
23 said, but only -- only to a point. He said that while you
24 can't have -- you can't have the disclosure while preserving
25 confidentiality. That's begs the question. That assumes

1 that -- that confidentiality is fundamentally inconsistent
2 with the legislative mandate.

3 I do believe that some stakeholders may have that
4 position. And if that's your position then that's a
5 conversation about whether AB 1103 is potentially preempted
6 by federal law or is unconstitutional or is otherwise
7 unlawful. But the Energy Commission is tasked with
8 implementing the statutory mandate, and that includes the --
9 the preservation of the confidentiality of the customer.
10 And we are seeking through our regulations to implement and
11 balance those considerations.

12 There has been a lot of talk today and recently
13 about tenant consent. And the position of many stakeholders
14 is -- or I understand the position of many stakeholders to
15 be that there really is no way to preserve the
16 confidentiality to the customer without -- without requiring
17 tenant consent.

18 Put differently, what the -- what that position
19 is, is that the AB 1103 statutory mandate only applies when
20 utility customers agree that it applies. That is not what
21 Public Resources Code 25402.10 says. We do not read Public
22 Resources Code 25402.10 to give individual customers veto
23 power over the statutory mandate. We think that's
24 inconsistent with the law. And one of the purposes of this
25 current regulatory exercise is to clarify that the -- that

1 this practice that some utilities have implemented is in
2 our -- is in our opinion not consistent with the core
3 statutory mandate.

4 The legislation does say that the confidentiality
5 of the customer will be preserved. I think the words of the
6 statute are "preserved in the manner of upload." Without
7 putting too fine a point on the syntax of the legislation,
8 we recognize that confidentiality is an important
9 consideration. Privacy concerns are important
10 considerations. And we have in our regulations this time
11 around sought to add protections to preserve the
12 confidentiality of the customer. We believe that is part of
13 our core mandate in implementing this program.

14 I'm just checking over my notes because I got a
15 little bit out of order.

16 There -- now there's been a lot of arguments,
17 suggestions that other confidentiality laws or other laws,
18 in addition to AB 1103, 25402.10 itself, may restrict or
19 govern utilities compliance with Public Resources Code
20 25402.10 or our regulations implementing Public Resources
21 Code 25402.10. It's not clear to me whether those arguments
22 are that certain utilities believe that the -- that the
23 mandate, the statutory mandate is inconsistent with law, or
24 if the argument is that our regulations should be written
25 differently to -- to preserve the confidentiality of the

1 customer.

2 But I will say that if the argument is that or the
3 position is that in order to preserve the confidentiality of
4 the customer we need to allow for tenant consent, again, we
5 don't believe that's consistent with the core statutory
6 mandate. We believe that distorts the statute.

7 A number of statutory provisions have been
8 referenced today. And we -- I am very familiar with all of
9 these. Just to name a few, Public Resources Code -- or, I'm
10 sorry, Public Utilities Code 8180 and 8181, the Information
11 Practices Act 1798.98 and 1798 itself, Government Code
12 6254.16 which is part of the Public Records Act. There are
13 a few other provisions that -- that would be potentially
14 relevant. I did not bring my -- my ream of files on the
15 spectrum of laws that govern confidentiality in various
16 contexts. But I will say this, we do not read any of those
17 other laws, other California provisions of law, to be
18 inconsistent with the AB 1103 mandate, with Public Resources
19 Code 25402.10.

20 If it is your position that Public Resources Code
21 25401.10 is inconsistent with those laws, that is an
22 argument that -- that you will need to make. Although I
23 would say that a basic cannon of statutory construction is
24 that where a general provision of law provides for
25 something, and then there's a more specific subsequent

1 enacted provision of law that provides something more
2 specific, generally the subsequently enacted more specific
3 provision governs. In this instance we do read Public
4 Resources Code 25402.10 to be a very specific statutory
5 provision that we are seeking to implement.

6 If you believe that our regulations in
7 implementing 25402.10 are not sufficient to preserve
8 confidentiality, don't meet the -- the mandate of 25402.10
9 itself, then we welcome and encourage you to -- to raise
10 those comments and explain why you don't believe the mandate
11 of 25402.10 is being met by our regulations.

12 If you believe that our regulations are perhaps
13 violating or are inconsistent with another provision of --
14 of state law or federal law then, respectfully, the burden
15 is on you to make the argument, the legal argument that our
16 regulations are inconsistent.

17 A couple of stakeholders have asked the Energy
18 Commission to essentially prove a negative, to prove, to
19 show that our regulations are not inconsistent with other
20 law. And as attorney for the Energy Commission and a
21 proponent of basic logic, that's not a task that I wish to
22 take on. But if you believe that our regulations are -- so
23 another -- put differently, simply identifying laws that
24 exist that are relevant in the confidentiality space is not
25 sufficient to make the analytical argument that our

1 regulations are inconsistent with these other laws.

2 I will say that I've read all these other laws and
3 I see them, all of them doing something specific in a
4 particular context. Many of them have exceptions, except as
5 otherwise required by law, which -- which we think is there
6 for the very purpose of provisions like AB 1103. But if you
7 have a different legal argument, please make that legal
8 argument -- please make the legal argument.

9 If your position is that AB 1103 is preempted by
10 federal law, please make that argument too. But the Energy
11 Commission is probably going to need to implement the
12 statutory mandate that it has until -- until a court advises
13 us that the -- that the statute is, in fact, void because
14 it's preempted. I am not aware of a federal law that
15 preempts the AB 1103 mandate. But again, please make those
16 arguments to us. Please make those arguments to us before
17 you make those arguments in court. And we do want to work
18 with you. But we -- but we need -- we need the legal
19 arguments so that we can consider and address them.

20 I want to respond to a few specific points.

21 Chris, I didn't get the last name, was -- Vera?
22 Chris Vera was speaking about the -- the granularity of
23 adding noise and was intrigued by the possibility but said
24 that, you know, at the end of the day customers -- utility
25 customers may not be comfortable with that. And utilities'

1 customers really may not -- their interests may not be
2 protected by anything other than allowing them the ability
3 to opt out of the statutory mandate.

4 Again, the premise of the statute is that
5 benchmarking data, which is information about energy
6 consumption, gets disclosed to counter parties in real
7 estate transactions. If to the extent that energy customer
8 are uncomfortable with that statutory mandate, the
9 appropriate place to raise that is not here, it's with the
10 legislature.

11 What is an interesting question is what measures
12 are appropriate to preserve confidentiality in dealing with
13 buildings that are -- have so few tenants that -- that
14 aggregation may not be sufficient to preserve
15 confidentiality, we have proposed the solution of, yes,
16 adding noise. And it is -- it's a new suggestion in this
17 forum. And we look forward to your comments on that -- on
18 that suggestion.

19 Mr. Hooper suggested that we -- that we reference
20 the CPUC decision. We very much appreciate that the
21 energy -- that the California Public Utilities Commission
22 recognized the Energy Commission's authority over Public
23 Resources Code 25402.10 which was added to the Warren
24 Alquist Act, our enabling statute. We do believe we would
25 have had that authority with or without the California

1 Public Utilities Commission's recognition of that authority.
2 But again, we're very appreciative.

3 And again, I already addressed Mr. Nesbitt's point
4 about reconciling confidentiality and privacy. We do
5 believe that these -- that these concerns can be reconciled.
6 That is the purpose of our -- of our regulatory proposal.

7 I think it was -- I think it was Southern
8 California Edison, I'm not sure, was mentioning --
9 suggesting building owners adding a clause about this
10 program to their leases. This is a practice that we would
11 certainly not discourage building owners to pursue.
12 Speaking as Attorney for this program, I'm not sure that the
13 Energy Commission has authority to require what is included
14 in leases on a forward-going basis in the -- in the
15 commercial space. But again, if that is a way that the
16 industry wishes to respond to these concerns, wishes to
17 protect themselves from liability that they feel like they
18 may be exposed to, that -- that could be a solution for --
19 for building owners to pursue.

20 And this gets back to another point in terms of
21 asking the Energy Commission for -- for legal advice on this
22 issue. You know, we -- we're not going to be able to
23 provide legal advice to -- to any stakeholder about -- about
24 liability they may have under -- under any particular law,
25 including -- including AB 1103 itself. That's just not the

1 role of the Energy Commission. We can only propose -- we
2 can only implement the program that we're tasked with
3 implementing and explain -- and improve our implementation
4 of that program, and then ultimately explain and defend our
5 implementation of that program. That's really the
6 limitation of our role.

7 On the -- on the inclusion of an NDA that Mr.
8 Changus raised at the very end, so Public Resources Code
9 25402.10 has two distinct disclosure requirements -- or two
10 distinct requirements. One is that the energy consumption
11 data go to the building owner through the Portfolio Manager
12 platform or a similar platform. And then second, that --
13 and that -- and then second, that the energy benchmarking
14 score is disclosed to the counter party in the real estate
15 transaction. We do believe we understand that the -- the
16 disclosure of information to the building owner is -- which
17 is -- which is part of the core statutory mandate, we --
18 this is not the Energy Commission added value. This is --
19 the core statutory mandate requires the energy consumption
20 data be provided to the building owner. We do believe that
21 that information is being provided for the purposes of
22 disclosure in this -- in this transaction, for the
23 transactional disclosure.

24 There are other laws that many of you are aware of
25 that may govern what the building owner or what -- yeah,

1 what the building owner can do with that information. We've
2 previously discussed 1798.98 as specifically potentially
3 relevant to -- to that building owner. Again, the inclusion
4 of an NDA, I'm not really prepared to speak on whether that
5 is -- whether that's an appropriate regulatory requirement
6 or not. If that's something that you want to comment on
7 we'd look forward to -- to reading about that in your
8 written comments. Please be mindful of the fact that we're
9 implementing a program and need to -- need to make sure that
10 any -- any additions that we make are consistent with the --
11 with the underlying statute that we're implementing.

12 So no question that -- that other laws that apply,
13 apply. To the extent that the addition of something like an
14 NDA is appropriate for our program, we look forward to your
15 comments on that.

16 I think -- I think that is everything I wanted to
17 address. And thanks for -- thanks for letting me -- letting
18 me reply.

19 MR. JENSEN: Thank you, Galen.

20 We've got one commenter here in the room. And
21 then we're going to go to the break. Go ahead.

22 MS. RASBERRY: Thank you. Tamara Rasberry from
23 the Sempra Energy Utilities, San Diego Gas and Electric, and
24 So Cal Gas.

25 And without having my counsel in the room, I know

1 she's on the phone, I just wanted to ask some questions,
2 Galen, to follow up from what you just said.

3 Will you be able to provide your -- the legal
4 written opinion of what you've just mentioned? Because you
5 threw out a lot of code sections here and my pen wasn't
6 working fast enough.

7 MR. LEMEI: I'm happy to repeat the code sections.
8 But my role is to explain and help the Energy Commission
9 explain its regulatory proposal. It is not to -- it is not
10 to put forth an argument right now that -- or going forward
11 that -- that AB 1103 or our implementation of that law
12 doesn't conflict with any other laws that might be out
13 there.

14 To the extent that we receive comments that raise
15 questions about or make -- or make assertions about an
16 inconsistency of AB 1103 itself or an inconsistency of our
17 implementation with those laws, then -- then my obligation
18 as the attorney for the Commission will be to help the
19 Commission respond to those comments but not to provide a
20 legal opinion about the consistency of AB 1103 or the
21 consistency of our implementation with confidentiality laws
22 generally.

23 Does that make sense?

24 MS. RASBERRY: Kind of. But then is this an
25 exercise in futility? Because the -- if -- where would the

1 final judgment come from if not from a court of law? I know
2 we've raised legal issues in our filings. And I don't think
3 they've been addressed directly, at least not any materials
4 that I've received. But then if there is a battle of the
5 wills when it comes to the law, then how -- then will that
6 be resolved --

7 MR. LEMEI: Well --

8 MS. RASBERRY: -- without going to court?

9 MR. LEMEI: Well, if -- if there's -- if
10 there's -- if a stakeholder has a position that our
11 regulations implementing AB 1103 are inconsistent with
12 another law that's out there, some other provision of law,
13 then that's -- that comment would need to be made. I would
14 ask that the comment not simply recognize the existence of
15 another law, but specifically show or specifically make the
16 argument that how our -- how our implementation, how our
17 implementing regulations are inconsistent with that law, or
18 25402.10 itself is inconsistent with that law, and then it
19 would be our responsibility to consider that comment, make
20 adjustments in response to that comment, or not make
21 adjustments to that comment and in either way explain our
22 reasoning.

23 Ultimately the courts are the -- are the forum in
24 which disputes about the lawfulness of agency conduct and
25 about the constitutionality and non-preemption of state laws

1 are adjudicated.

2 MS. RASBERRY: I don't think anyone wants to take
3 this issue to a court.

4 MS. WADHWA: OAL.

5 MR. LEMEI: OGA?

6 MS. WADHWA: OAL.

7 MR. LEMEI: Oh, right. Well, yeah, sure. There's
8 also -- or you mean OAL?

9 MS. WADHWA: Yeah. Yeah.

10 MR. LEMEI: Yeah. Yeah. The Office of
11 Administrative Law reviews our regulations and will consider
12 whether they have a very -- very specific areas they look
13 at. They consider whether our regulations are consistent
14 with our own statutory mandated authority. They consider
15 whether our regulations are clear. They consider whether
16 they are -- I don't have the list in front of me.

17 But -- but OAL's role is somewhat narrow.
18 Their -- their role is not to question the policy of an
19 agency. But -- but where -- where there are comments that
20 our -- that our approach is inconsistent with, with law,
21 that could potentially be within, I mean depending on how
22 the arguments are framed, could potentially be within the
23 scope of their -- of their consideration. And if we were
24 not to adequately respond to those -- to those comments and
25 address those concerns, it could -- it could potentially be

1 grounds for the Office of Administrative Law to disapprove
2 our regulations.

3 MS. RASBERRY: And I just checked and when AB 1103
4 was going through the legislature it never went to Judiciary
5 Committee. So there was never a legal analysis of -- of the
6 bill. So we don't have a historical record of the
7 argument -- any privacy arguments in the legislature. I was
8 looking through the Committee analyses from when it went
9 through and it wasn't raised in any of the analyses.

10 So, you know, I don't know -- and no one from the
11 legislature who worked on that bill is still in office, so
12 we don't have the privilege of, you know, asking the
13 legislature, well, in 2007, you know, what did you mean with
14 this? So short of getting any changes in the -- any
15 statutory changes made in the original 1103 bill, is it --
16 there was -- and I'm not a lawyer so I'm not going to say
17 this in the right legalize, but is it then the Energy
18 Commission to implement laws that -- without question their
19 viability or --

20 MR. LEMEY: It is -- it is not. It is the role of
21 the Energy Commission to implement the law as written in a
22 manner that is consistent with the law as written,
23 notwithstanding questions that we may have about the -- the
24 underlying policy rationales.

25 I mean, that said I think that we do -- I can only

1 speak for myself. I think that the AB 1103 statutory
2 mandate is -- it advances an important policy goal. But --
3 but at the end of the day the Energy Commission is tasked
4 with implementing the -- the regulation -- or the statute as
5 written. There is -- there is some flexibility in
6 interpreting. And I'm -- there's a lot of -- there's a lot
7 of case law on agencies' discretion in interpreting and
8 implementing the law and how far that discretion goes. And
9 it's -- it's -- that can require difficult legal analysis.

10 MS. RASBERRY: Uh-huh.

11 MR. LEMEI: But -- but it is clear that the agency
12 is required to implement the law as written.

13 MS. RASBERRY: Well, like I said before, I don't
14 have the copy of our -- I think we've filed two comments
15 from Sempra Utilities. I don't have them in front of me
16 now, but I know our legal concerns were raised. And if you
17 haven't seen those I would be happy to send you that
18 directly. And then, of course, we'll have a response given
19 this --

20 MR. LEMEI: I have -- I have read them, or at
21 least I should say I've read many comments. I've read
22 comments that were made here. I've read comments that were
23 made to the California Public Utilities Commission when it
24 was considering the decision that was ultimately referred to
25 by -- by Barry, yeah, by Barry -- Barry Hooper.

1 Up to this point I have not seen a legal argument
2 that convinces me that our implementation is contrary to any
3 other provision of law, or that AB 1103 itself is
4 unconstitutional or preempted by federal law.

5 MS. RASBERRY: Okay. Thank you.

6 MR. JENSEN: Tony? Tony, can I ask that -- we'd
7 like to go to break now. We're a little behind. And we'll
8 have a general comment period later. Thank you.

9 So, folks, that's all. We had a couple of hands
10 up, and we have people who want to respond here in the room
11 as well. We're a bit behind schedule. We're going to --
12 let's take a ten minute break. So by the clock on the wall
13 there, let's be back by quarter to 12:00, and we will
14 continue. Thanks very much.

15 MR. JENSEN: All right. So, okay, so moving on to
16 Section 1684, which is now Disclosures. And so, 1684(a) now
17 reads, "A building owner shall disclose the Portfolio
18 Manager Statement of Energy Performance or other disclosure
19 form approved by the Energy Commission for the building to:"

20 So, as we discussed earlier, the energy -- the
21 Statement of Energy Performance has less peer fields on it
22 and it doesn't include as many non-relevant fields as the
23 Data Verification Checklist does. And then we're leaving
24 flexibility here for Portfolio Manager to -- if they come up
25 with another form that's more appropriate, we can move over

1 to that, instead.

2 So, with sub -- the lists under this for
3 disclosures, 1684(a)(1) now reads, "A prospective buyer of
4 the building no later than three days after the signing of
5 the purchase and sales agreement".

6 So, the clarification that we made on the current
7 language is that execution of the sales contract refers to
8 the close of escrow. And we're now moving it up to three
9 days after the signing of the purchase and sales agreement.

10 So, we're having this happen sooner and so that
11 it -- in the hopes that it will be more likely to have an
12 impact on the sale.

13 Prospective lender, so -- so, no change to
14 disclosure to a lessee. And then, for (a)(3) is a
15 prospective lender financing the entire building no later
16 than final approval of the loan application. And this gives
17 the building owner more time to receive energy use data.

18 So, 1684(b) now reads, "After the building owner
19 has made the disclosure pursuant to Section 1684, the
20 building owner shall submit to the Energy Commission, via
21 the Portfolio Manager reporting link, provided on the
22 program website, information deemed necessary to determine
23 compliance".

24 So, there will be some subset of the information
25 that is provided on the Statement of Energy Performance that

1 we will ask to be submitted to the Energy Commission and
2 there will be a -- we'll create a mechanism for doing that.

3 It's yet to be determined exactly what information
4 that will be, that will be disclosed to the Energy
5 Commission. And I want to stress here that the purpose of
6 this -- of having anything come to the Energy Commission at
7 all is to just track compliance. Both, you know, overall
8 compliance rates and so we can see whether specific
9 transactions have complied or not.

10 1684(c) now reads, "Nothing in these regulations
11 permits an owner to use un-aggregated tenant energy use data
12 for purposes other than compliance of Public Resources Code
13 Section 25402.10."

14 So, we'll see -- so, if people have comments or
15 questions on this section, in the room, come on up. It
16 looks like we do not.

17 Let's go to the WebEx.

18 MR. VERA: Hi, everyone. This is Chris Vera from
19 SDG&E's Office of Customer Privacy. That's the section
20 where I believe, the last one that you presented on the un-
21 aggregated data, I think this is where we're going to need
22 some kind of definition of what it means to be aggregated so
23 that we can determine what is un-aggregated.

24 MR. JENSEN: Okay, great. Thank you, Chris, we'll
25 do that.

1 MR. VERA: Thank you.

2 MR. HOOPER: This is Barry Hooper, in San
3 Francisco. It would be helpful if this section was also
4 stated in a positive or affirmative way, clarifying that the
5 data can be shared for the purpose of energy management with
6 building owners and agents.

7 MR. JENSEN: Okay, thanks Barry.

8 MR. WILLIAMS: This is Rick Williams with
9 CommEnergy. In speaking with different realtors, I know
10 there's great confusion over when you're supposed to do
11 what. And the way it's -- it's two days after signing the
12 purchase and sales agreement. That would infer -- it could
13 infer that to be close of escrow, or the initial agreement,
14 or acceptance of the offer. We need better language because
15 those are -- they're just terribly written. They can't
16 understand it. And when you try to explain it to them, it's
17 challenging.

18 So, is this three days after the signing of the
19 acceptance, are they purchase order or a new lease order, or
20 is this after escrow?

21 MR. JENSEN: The first one is our intention.

22 MR. WILLIAMS: Okay. Well, we need some better
23 verbiage. I'll let you guys figure that one out as to what
24 the best verbiage is. But it needs to be very clear cut
25 that after you sign an agreement within three days you're

1 supposed to provide an energy benchmarking.

2 MR. JENSEN: Okay, great. So, Rick, I just want
3 to be clear. You mentioned you're talking, speaking to
4 brokers. Are you talking about the current regulations or
5 the proposed regulations?

6 MR. WILLIAMS: Well, I'm talking about the current
7 regulations and that's after consulting with the CEC I had
8 to redefine it for them as just to get it in before the
9 close of escrow. And that seemed appropriate, even though
10 the law didn't say it that way. So, here we say three days
11 after the signing of the purchase and sales agreement. In
12 other words, after the acceptance? The signing of the
13 purchase and sales agreement, that's like -- well, I don't
14 know, what's that mean?

15 MR. JENSEN: Okay, great. So, yeah, I understand
16 the question, now. Our intention is for it to be at the
17 beginning of the transaction and not the end, as it is now.
18 But we will certainly clarify this.

19 MR. WILLIAMS: Well, just I'm no lawyer, but if
20 you take a look at the standard commercial contracts,
21 there's a point there where they have to have certain
22 disclosures made, right. And the buyer has so many days to
23 do the work and come up with these acceptance of these
24 disclosures. If this was just another one of the
25 disclosures, like they have to do environmental, I think

1 they could line up with that.

2 MR. JENSEN: So, Rick, we will look at where this
3 falls relative to the standard due diligence period and we
4 will clarify. Thank you.

5 MR. WILLIAMS: Okay, yes. Thanks. And pardon me,
6 but these are just recommendations that you're going to make
7 to the legislative process; is that correct?

8 MR. JENSEN: These are -- hang on just a second
9 while we work on the noise.

10 These are proposed changes to the regulations to
11 implement a statute, which is already in place. So, this is
12 not -- we're not talking about changing legislation here.

13 MR. WILLIAMS: Okay. But the time frame in which
14 this would actually be effective would be when?

15 MR. JENSEN: So, the standard rulemaking process
16 is about a year. We're not yet in a rulemaking process.
17 This is a pre-rulemaking workshop. So, I don't have -- I
18 don't have a specific answer for you. It will not be
19 immediate.

20 MR. WILLIAMS: Okay. But you gave me the answer,
21 within -- after a year. I got it.

22 MR. JENSEN: Okay.

23 Do we have anyone else on the line?

24 MR. WALSH: This is Randy.

25 MR. JENSEN: Go ahead.

1 MR. WALSH: I'm sorry, I can't tell if I'm on. I
2 think what might help clear this up is under your rationale,
3 starting with the word "previously, the Energy Commission
4 interpreted execution of sales contract".

5 So, I want to raise a concern that even at this
6 point -- let me refer back to the language you used. It was
7 to impact the sale --

8 MR. JENSEN: Randy, I think we lost you. Okay.
9 Hang on just a second, folks.

10 Randy, are you still on? Okay. So, folks, in
11 case you can hear me, we're not able to hear any -- anyone
12 on the WebEx, here in the room, so we're just going to take
13 a few minutes and see if we can have it fixed.

14 MR. WALSH: Erik?

15 MR. JENSEN: Okay, there we go. Is that Randy?
16 Randy, are you on?

17 MR. WALSH: Hello, Erik?

18 MR. JENSEN: Yes, is this Randy?

19 MR. WALSH: Erik, this is Randy. I can't hear
20 anybody.

21 MR. JENSEN: Okay. Randy, can you hear me, now?

22 MR. WALSH: Yeah.

23 MR. JENSEN: Okay.

24 MR. WALSH: Okay, thanks.

25 MR. JENSEN: So, Randy, we lost you for a --

1 MR. WALSH: Could you --

2 MR. JENSEN: Hang on a second. So, we lost you
3 for a couple minutes. If you wouldn't mind starting over,
4 that would be great.

5 MR. WALSH: So, I'm speaking to slide 41.

6 MR. JENSEN: Okay.

7 MR. WALSH: All along my position has been the 24
8 hours prior to execution of the sales contract is too late
9 in the process. Even this adjustment that you're suggesting
10 I think is too late in the process.

11 If the spirit and intent of AB 1103 is to bring
12 transparency to the market so that buyers and sellers can
13 make decisions, I believe the information has to be released
14 much, much earlier in the process.

15 Your language said you want to impact the sale.
16 What sort of impact do you think this has? You think this
17 has impact because you're going to go into your due
18 diligence period and now it's going to be -- there's going
19 to be some considerations there, some comments there?

20 MR. JENSEN: Yes.

21 MR. WALSH: Okay. So, then at that point you're
22 down to two parties that are seeing this information.
23 There's nothing competitive about that and that's not
24 bringing any transparency into the marketplace. So, I think
25 that this needs to be reconsidered.

1 And another comment was, so I'm assuming that
2 the -- I'm sorry, slide 43. So, I assume you are trying to
3 use the share functionality in Portfolio Manager?

4 MR. JENSEN: Yes.

5 MR. WALSH: Okay. So that functionality is only
6 going to work if the account is active; correct?

7 MR. JENSEN: Which account are you referring to?

8 MR. WALSH: The building -- my building profile,
9 in my Portfolio Manager account.

10 MR. JENSEN: You're speaking from the perspective
11 of a building owner?

12 MR. WALSH: Well, so I'm the agent. So, I'm the
13 one that's collected the information and I'm the one that's
14 handling the reporting. So, the building profile is in my
15 company account. My company Portfolio Manager account.

16 So, I would have to share that building profile
17 with you. But if there's no use for this data, I'll be
18 closing down that account. I'm not going to have anything
19 coming into that account. There's no ongoing updates. So,
20 there's really no value in this. You only have information
21 until that account is -- until that building profile is
22 removed.

23 MR. JENSEN: Okay, so the purpose of this section
24 is for the Energy Commission. Just we only need to receive
25 one transmission once to verify compliance for a given

1 transaction. That's the purpose of this section. So, it
2 doesn't need to be ongoing.

3 MR. WALSH: Okay, understood. And the point of
4 reporting to the CEC -- so there's two issues there. One
5 is, understand it's going to close down, there will be no
6 more information coming in, and so there's no further
7 communication.

8 So, you're saying this is a one-time reporting to
9 you?

10 MR. JENSEN: Yes.

11 MR. WALSH: Okay. I still believe that when I
12 close that account, that link to you will be broken. So,
13 you will have -- so as I know, you will have no information
14 about the building profile that I created.

15 MR. JENSEN: So, once we've --

16 MR. WALSH: Is this true?

17 MR. JENSEN: Go ahead, sorry.

18 MR. WALSH: This goes to -- very, very quickly. I
19 like the idea of the expedited reporting, but I don't
20 think -- I don't think this is going to get you where you
21 want to go.

22 MR. JENSEN: Okay, are we talking about this
23 specific section or is that a more general comment?

24 MR. WALSH: Yes. I'm speaking right now to slide
25 43.

1 MR. JENSEN: Okay. Okay, well, we'll certainly
2 look at that. We have not done much testing with
3 this -- with the reporting link, and so we certainly will do
4 that.

5 MR. WALSH: Okay. Then the last is slide 45. In
6 talking to Abhi one time, she mentioned this as a possible
7 strategy to give us access to use information for a longer
8 period of time, or for other reasons.

9 If we're only getting aggregated data from a
10 utility company, is there a reason why we can't use that
11 data for other reasons? Do we need this restriction on
12 there? If we're only -- if we're dealing with, again,
13 confidentially transmitted data, aggregated data, is this
14 language even required?

15 MR. JENSEN: So, I don't want to -- I just want to
16 be careful about authorizing you to use information that is
17 gathered within the 1103 context for other purposes. I
18 don't want to -- I'm not qualified to tell you whether you
19 can or can't do that. But I certainly don't want to -- I'm
20 not authorized to tell you that you can.

21 MR. VERA: Yeah, this is Chris Vera from SDG&E.
22 And let me chime in here on that. Basic privacy principles
23 are what they call purpose specification. That's one of the
24 basic principles that comes out. And that's actually part
25 of the Smart Grid privacy proceeding.

1 And what purpose specification really means is
2 simply that. If we're going to tell a customer we are
3 collecting their data and using it for some purpose, that
4 should be the only purpose that we use it for.

5 And if we want to change that purpose later, if
6 we're going to do something different with that data, we
7 need to go back and notify that customer, and give them the
8 option to decide whether or not they want the data used for
9 that purpose, depending on the situation.

10 MR. JENSEN: Sure, that makes sense. Thank you,
11 Chris.

12 MR. WALSH: Yeah, that's helpful.

13 MR. EVANS: And this is Matt, from Edison. I
14 believe that would also apply to aggregated tenant usage
15 data, also. So, I would suggest going back, I guess, to the
16 original language and remove un-aggregated. It doesn't
17 matter if it's aggregated or not, basically. You're still
18 supposed to use the data for the purposes of AB 1103.

19 MR. JENSEN: Okay, thank you, Matt.

20 MR. WALSH: Matt, Chris, can I ask you a question?
21 So does that mean if I'm an owner and I want to -- I see my
22 score is low and I want to make some effort to try to get
23 that score higher, are you saying that now I have to go back
24 to the tenants and ask each individual tenant to give me
25 access to their information so that I can see how my

1 building is performing, outside of the compliance
2 requirements?

3 MR. EVANS: Yes.

4 MR. WALSH: Okay, thanks.

5 MR. VERA: Yeah, this is Chris Vera, yeah. I
6 think it's very important for purposes of, especially for
7 this very complicated set of legislation, to separate out
8 the compliance requirements necessary out of AB 1103 from,
9 let's be honest, the really good, important work that needs
10 to happen from an energy efficiency perspective.

11 I mean that's, fundamentally, what the whole
12 purpose of AB 1103 is trying to accomplish in terms of
13 raising awareness of what the energy efficiency of a
14 building is.

15 But those are two separate and distinct things, so
16 we do need to keep those separate.

17 MR. WALSH: So, let me ask you for further
18 verification. So, if I've gone to all of my tenants and
19 I've asked them to provide their authorization forms to me,
20 for me to collect the information and benchmark my building
21 two years ahead of time, and I continue to keep that
22 information updated can I use that data for compliance? Or
23 do I also have to undertake compliance?

24 MR. JENSEN: Would you mind repeating the
25 question, please, Randy?

1 MR. WALSH: If I'm understanding purpose
2 specifications, it would mean that if I go to the utility
3 and ask them for data, because I want to comply with AB
4 1103, that's doable and I can't use that data for anything
5 else.

6 So, if I also want to do performance project, and
7 I'm going to have to go to the tenants to get authorization
8 forms for all of them. And I'm collecting that information
9 and I'm using it for two years, can I use that data to
10 comply with AB 1103? Or, am I required to go back and make
11 the request to the utility company to population data in a
12 new building profile?

13 MR. JENSEN: So, if I'm understanding you --

14 MR. VERA: This is Chris Vera, that's --

15 MR. JENSEN: Go ahead, Chris. Sorry.

16 MR. VERA: I was going to say that's a great
17 question. And so, purpose specification, yes,
18 requires -- when the building owner goes to a tenant and
19 says, I would like to please have access to your energy
20 usage data for this purpose, and then they -- and the tenant
21 grants that permission, the utilities then are obligated to
22 look at that document and only provide the data to that
23 building owner that, A, the tenant required. And then the
24 building owner is obligated, then, if they want to use that
25 data for some other purpose, they need to go and get

1 permission from their customer for whatever other purpose
2 that they want.

3 But a good recommendation would be that they be
4 more explicit about here's the things that I need to -- you
5 know, here's the reasons why I'm collecting this usage data
6 from you and why I'd like to use it.

7 Now, utilities can't enforce that, right. If a
8 building owner gets an authorization form from a customer
9 and then goes and does -- you know, gives it to the local
10 newspaper and publishes it, you know, we can't stop that,
11 right. I mean that's -- there's nothing we can do legally.
12 That's between the tenant, of course, and the building owner
13 in terms of, hey, this is what we agreed to and you violated
14 that agreement.

15 But the utilities will simply do whatever --
16 whatever the customer has authorized to be shared with that
17 building owner is what we will share with them, and for the
18 length of time that the customer specified it was okay to do
19 that sharing.

20 MR. JENSEN: Okay, so --

21 MR. WALSH: So, as long as I -- as long as I have
22 an agreement in place up front, and I'm disclosing to the
23 tenants we're undertaking a performance project, and we may
24 also undertake a compliance project using the data that
25 you're providing to us, and they sign off, I'm covered.

1 MR. VERA: That's probably a good question for
2 your legal team. But generally speaking, that's the type of
3 scenario we have seen in the environment we have here, in
4 the utility is that a third party, whether it's a building
5 owner or any other third party, they get authorization from
6 the customer. They generally specify what the purpose of
7 that data collection is. And then they receive the data the
8 customer has authorized, for the period of time that the
9 customer allowed that to take place.

10 MR. WALSH: So, is that why SDG&E has language in
11 their web services agreement that says you're only using
12 this to collect data for AB 1103? Because there's no way to
13 differentiate between a compliance and a performance
14 project.

15 MR. VERA: I would have to check with the legal
16 team to be certain, but that may be a reason why they
17 implemented that language to be sure that there was purpose
18 specification. That purpose specification was spoken to in
19 the agreement.

20 MR. WALSH: Okay, thanks for that.

21 And Erik, will Galen be around at the final wrap
22 up?

23 MR. JENSEN: He might be. I don't know how hungry
24 he is, so we'll see. He's pretty hungry so --

25 MR. WALSH: Okay, great.

1 MR. JENSEN: Anyone else on the line?

2 So, we have a text question from Marika, asking
3 what's being done regarding enforcement. We are not
4 currently actively enforcing this program. We are focusing
5 all of our efforts on improving the program and trying to
6 help with compliance.

7 And so we're not, certainly not focusing on
8 enforcing compliance at this time. We will have, as part of
9 our -- certainly, as part of our regulation revision, we
10 will have a better thought out plan for doing so but, again,
11 it's not a focus at this time.

12 Anyone else on the line?

13 MR. WILLIAMS: This is Rick Williams with
14 CommEnergy. I would like to refer to the fact that the
15 title officers often no nothing and tell the people that
16 it's not required.

17 I've had several situations where, well, our title
18 officer said we didn't have to do it.

19 So, I realize you're not in the office of
20 enforcement. However, for the betterment of the whole
21 program, with the weight of Sacramento behind you, to reach
22 out to the different title agencies and to get the district
23 managers to work with the title officers. Now, this is not
24 under, how would I say, under their power. They don't have
25 to complete that as part of their escrow process. But they

1 are letting people get away with it, just saying, oh, no,
2 have a good day. And those processes are not being
3 completed as a result.

4 MR. JENSEN: Okay, thank you. Thank you, Rick.
5 And, certainly, if you would like to connect us with some of
6 those title offices, we'd be happy to talk with them and
7 provide education on this program.

8 MR. WILLIAMS: Okay.

9 MR. JENSEN: Anyone else on the line? Okay, let's
10 mute WebEx.

11 And now, 1685 is just one -- so, it's a new
12 section and it's just for this sentence here. "A building
13 that is scheduled to be completely demolished one year or
14 less from the date of signing of a purchase and sales
15 agreement, or a lease agreement, is exempt from disclosure
16 pursuant to these regulations."

17 We've received comments that -- that it's useless
18 to, you know, disclose the building, the energy use
19 information for a building that's going to be demolished in
20 the near future.

21 So, what you don't see here, what we'll need to
22 work out, there will be, of course, some way -- you know,
23 we'll need to be able to verify that the building is going
24 to be demolished. And so that could be, you know, a
25 demolition permit or, you know, some other way of doing

1 that. And so, that will be worked out.

2 So, are there any comments on this section?

3 MS. WADHWA: This is Abhi Wadhwa from Energy
4 Commission. Just to clarify what Erik is saying, that the
5 clarification of and verification that the building is going
6 through demolition would be part of our compliance process.

7 So, while we are not proposing it in the
8 regulation, when and if Energy Commission is focusing on the
9 compliance aspect of it, we may reach out to building owners
10 who have not submitted compliance documents to ask whether
11 this was because the building was demolished. And then we
12 would ask for paperwork related to that.

13 MR. JENSEN: Thanks, Abhi.

14 So let's go ahead and unmute and see if there's
15 anyone who wants to make a comment specific to this section,
16 before we go into the general comment period.

17 I don't think we do have anyone for this section.

18 Let us now go to the open comment period, and
19 we'll start in the room for comments or questions.

20 MR. ANDREONI: Hi, this is Tony Andreoni, again,
21 at CMUA. And I just wanted to follow up a comment that
22 Galen made earlier. I just want to get clarification.

23 You had mentioned that the CEC is going to follow
24 the legal aspect and make sure they follow the OAL process,
25 which I believe follows the Administrative Procedures Act,

1 primarily in making sure the process was following the
2 Administrative Agency on this rule development.

3 But I just want to get clarification that OAL will
4 not give any type of opinion related on other rules and laws
5 that you were comparing to earlier, before we had the break,
6 as part of their review process.

7 MR. LEMEY: I think the answer is probably not. I
8 don't -- I have not worked on a rulemaking before where
9 claims of laws that were outside the context of the law that
10 was being implemented were in play. It's not part of the
11 specified areas of the OAL, the Office of Administrative Law
12 considers when reviewing a proposed regulation.

13 So, the short answer is I don't know for certain.
14 But it would be potentially beyond the scope of their
15 inquiry.

16 MR. ANDREONI: Okay, and kind of going back to a
17 comment made earlier by San Diego Gas & Electric, none of
18 the discussion points that you've made today have actually
19 been provided as part of a record in a written form.

20 So, I understand we have, according to the
21 workshop notice, until September 8th to provide written
22 comments. And it would be good, since this is recorded,
23 that we have some type of written record that we can review
24 and talk with our legal folks based on the discussion today.

25 Is it possible that we will have a written record

1 before comments are actually due?

2 MR. JENSEN: I don't -- I don't know that we'll be
3 able to get the transcript to you prior to September 8th.
4 If we're not, there's no problem to extend the period for
5 submitting comments.

6 MR. ANDREONI: I think that would be helpful for
7 us, as we talk to our legal folks, because we really have no
8 written record of any response to any of the legal issues up
9 to this point.

10 I realize what Galen discussed today, we're not
11 here to try to dance around the legal issues. But we, at
12 least, want to have a better understanding as we provide any
13 additional information to the Energy Commission on this, in
14 these areas.

15 MR. JENSEN: Sure.

16 MR. LEMEY: Tony, let me flesh out my answer
17 slightly. The Office of Administrative Law does review, and
18 I can assure you they review very, very carefully, the
19 adequacy of the Commission's response to comments received
20 in the administrative record.

21 So, to the extent that comments are received that
22 raise legal arguments, the Energy Commission must adequately
23 respond to those comments and address those comments in the
24 context of our rulemaking.

25 Now, will OAL exercise its independent judgment

1 the way that a court would in assessing the validity of such
2 arguments? I don't -- I don't know. Maybe not.

3 But we would -- but the burden is absolutely on
4 the Energy Commission to respond to comments received up to
5 that point or during the administrative record.

6 I should also say in this -- I also had a side
7 conversation about this. That there have been a lot of
8 comments filed, both here at the Energy Commission and also
9 in the CPUS's proceeding, on confidentiality and privacy
10 issues. And in those forums, comments have certainly spoken
11 to the statutory provisions that I referred to, and possibly
12 some others.

13 But up to this point, the process that we, the
14 Energy Commission and Energy Commission staff, have been
15 going through is receiving comments, considering those
16 comments, and revising our proposal, and then workshopping,
17 and rinse and repeat a couple of times now.

18 What we haven't done is published a response to
19 comments, explaining -- I mean, we do have some response to
20 comments in the form of our kind of short -- shorthand
21 rationale for the purposes of discussion.

22 But you haven't seen a response to comments of the
23 sort that you would expect to see coming out of an
24 administrative record. And I can assure you that that would
25 be developed in the context of the administrative record.

1 It would need to be developed for the final statement of
2 reasons, for sure. Some of that content might go into the
3 initial statement of reasons, not necessarily.

4 MR. ANDREONI: So, I understand in the final
5 statement of reasons the Energy Commission has an obligation
6 to provide responses to all the comments that they received
7 in writing.

8 I understand, just for the record, today's
9 discussion is not going to be part of your final statement
10 of reasons because you're in the informal rulemaking stage.

11 My concern is making sure we have a clear
12 understanding so we can provide the information that you're
13 requesting from us, from the legal aspect.

14 Waiting for the final statement of reasons, of
15 responses, is actually fairly lengthy for us to wait to have
16 the discussion.

17 So, I would just encourage that information so we
18 could, you know, provide an update and information directly
19 to the Energy Commissioner sooner than later.

20 MR. LEMEI: Right. And I didn't mean to
21 discourage filing comments. We are still in rulemaking.
22 This is not part of the formal administrative record. This
23 is during the process -- this is the process during which we
24 are developing our regulatory proposal, not the process that
25 starts after we file the proposal with OAL, which initiates

1 the formal -- the formal rulemaking.

2 MR. ANDREONI: Okay, so we'll try to put together
3 what we can based on the transcript, because I think that's
4 what we'll need moving forward.

5 There's -- other than the data, I appreciate the
6 clarification on the comment date. There was a question or
7 a concern that we raised regarding the initial presentation
8 and the use of CEUS data. There was no date provided on
9 your graph and I do question, given how often CEUS data is
10 developed that there may be a possibility the data you're
11 using comes from 2004. It might be quite old. And I would
12 just encourage the Energy Commission to use more up-to-date,
13 current information.

14 But we'll look forward to getting more information
15 on the data you presented today. So, we appreciate working
16 with the Energy Commission on that. Thank you.

17 MR. JENSEN: It doesn't look like we have anyone
18 else in the room, so let's open up the lines.

19 So, we had a question in chat about what outreach
20 is planned. And we certainly are planning to expand that
21 significantly. We have outreach planned, in addition to the
22 groups we've already performed, we certainly want to include
23 the real estate industry to a greater extent than we already
24 have.

25 So, we have plans for doing that. I don't have

1 too much detail right now, but we're working on that we'll
2 certainly be doing that in the future.

3 So, are there people on the line with comments or
4 questions?

5 Thank you. Anyone else?

6 MR. WALSH: Erik, this is Randy.

7 MR. JENSEN: Go ahead, Randy.

8 MR. WALSH: Erik?

9 MR. JENSEN: Yeah.

10 MR. WALSH: So, is Galen still there? His blood
11 sugar's high enough for him to take a couple questions.

12 We know that there's difficulty getting this
13 information from the utilities now. You can hear the push
14 back again today.

15 The fact that you are outlining a different
16 confidentiality protocol in these suggested revisions, does
17 that basically admit that current procedures do not protect
18 the confidentiality of the meter holders?

19 So, essentially, what end -- what can I do today,
20 now?

21 MR. JENSEN: What are --

22 MR. WALSH: What can I expect from the utility
23 companies today?

24 MR. JENSEN: So, let me respond a little bit. So,
25 we received a specific request from PG&E to provide a

1 specific aggregation threshold with justification for that.
2 And so, we have provided a specific aggregation threshold.
3 We acknowledge that the analysis we're showing here, today,
4 is not entirely thorough. And so, we will be providing more
5 information to do so.

6 Your question seemed to be -- your question about
7 what you can expect from the utilities, I don't know if
8 that's a question for Galen. He can't -- I don't think he
9 can comment on how they're going to respond to that. I
10 don't know if he wants to add anything to that.

11 MR. LEMEI: Yeah, I --

12 MR. WALSH: It's his blood sugar.

13 MR. LEMEI: Yeah, Erik, I don't have a whole lot
14 to add to what Erik said. But to answer your question
15 crisply, no, I would not take the current proposal to
16 preserve confidentiality as suggesting that the current
17 regulations are inadequate in that regard.

18 This regulatory effort, which was initiated with
19 the order instituting an informational proceeding last July,
20 was initiated for the purposes of eliminating or reducing
21 barriers to compliance.

22 And as Erik pointed out, in that context a
23 specific request, and I don't know if it only came from PG&E
24 or if it was -- I certainly know that it was spoken about
25 amongst others, as well. Suggested an aggregation threshold

1 as furthering that goal by clarifying protections.

2 And that was the impetus for that proposal in our
3 current regulations.

4 MR. WALSH: Okay. So today, if I start a project,
5 I can simply reach out to the utility and say I'd like all
6 the data for building 4840, and I should expect that to come
7 to me aggregated and anonymized through Web Services?

8 MR. LEMEI: Well, the --

9 MR. JENSEN: So -- so, what we're talking about
10 today are proposed changes to the regulations. And as we've
11 covered, they're at least a year away from being
12 implemented. So, you can't expect anything, as a result of
13 the changes that we're discussing today.

14 And then your question about what the utility
15 would provide you would be a question -- I think would be a
16 question for the utility. I can't comment on what the
17 utility will or will not do.

18 MR. WALSH: I understand that this -- today we're
19 talking about what will be happening in the future. But we
20 have -- we have difficulty accomplishing these projects now.
21 So, if a utility is not cooperating today, in providing this
22 information what's my recourse? Do I sue the utility?

23 MR. LEMEI: Randy --

24 MR. WALSH: Do I --

25 MR. LEMEI: I know something that you don't know

1 and that is that Valerie is sitting at a desk, leaning
2 forward. And I think -- I think she might like to speak at
3 this time. So, I'm just going to give her an opportunity to
4 respond. And maybe I'll have more to add after that and
5 maybe I won't.

6 MS. WINN: Okay. Thanks, Galen. So --

7 MR. WALSH: Hi, Valerie.

8 MS. WINN: Hi, Randy. So, I did want to note
9 that, you know, even with all of the discussions that we
10 continue to have on AB 1103 implementation, you know, we're
11 kind of focused on the challenges here. But there have been
12 really a number of successes.

13

14 In PG&E's service territory, we've actually
15 benchmarked 13,000 buildings already.

16 So, I do want to note that we are meeting with
17 some -- you know, with some success in working very closely
18 with local governments on numerous benchmarking initiatives.

19 So, even though we face some challenges here,
20 there is a lot of good work that's being done out there and
21 I don't want to lose sight of that.

22 I would say that, you know, Randy, if you're
23 trying to benchmark some of your buildings and, you know,
24 you're running into hurdles with the utility, I -- you know,
25 if you're in PG&E's service territory, certainly reach out

1 to me and I can help track down what some of the obstacles
2 might be and what -- you know, how we might want to move
3 forward. Or, you know, how we might want to partner to
4 address those concerns.

5 But, you know, certainly one of the big challenges
6 is that throughout California we have many buildings that
7 are occupied by a single owner. And we also have
8 conflicting guidance from, you know, the utility -- or not
9 from the utilities, from the Public Utilities Commission,
10 and the Legislature, and a whole lot of other body of work
11 on protecting customer-specific information.

12 Now, I know the CEC's rules are different from the
13 CPUC. And the CPUC had set an aggregation standard of if
14 you have 15 customers, and no one customer is at least 15
15 percent of the load, then you can aggregate them and make
16 that information public.

17 And so what we had asked, knowing that the CEC doesn't
18 have to follow that same 15/15 standard, but we had asked
19 the CEC to make a finding and to produce information that
20 some level of aggregation that they could propose, which
21 could differ from the PUC, but to make that finding and
22 demonstrate that customer confidentiality would be
23 protected.

24 And so, today was the first time we've seen that
25 proposal for how it would be done. We do need to go back

1 and take a look at that, and determine whether we think that
2 that does appropriately address customer confidentiality and
3 protect -- you know, and provide the data privacy needed.

4 So, that's where we are today on that.

5 MR. WALSH: Well, I appreciate -- and I did hear
6 your offer of help and I appreciate that. But even if I'm
7 benchmarking in PG&E territory, right now I need to get
8 authorization forms from every account holder at that
9 building.

10 MS. WINN: That's -- that's true. And, certainly,
11 at this point PG&E, even if we were doing the aggregation,
12 we would need to get that customer consent as well.

13 And in fact, what we've seen, and I think at the
14 earlier workshop there was a lot of evidence presented, say
15 in Chicago, that if there were five or more tenants in a
16 building, then they could aggregate without getting customer
17 consent.

18 But if there were four tenants or fewer, then
19 customer consent was required.

20 So, I think, you know, you see a patchwork of
21 standards. But certainly that, you know, people are looking
22 to have more than two for a sufficient level of aggregation.

23 And there would still need to be some need for customer
24 consent, particularly where there's only one or two parties
25 in a building.

1 MR. WALSH: So, Galen, now, as a benchmarking
2 professional, I have a number of utilities that will not
3 provide data to me according to AB 1103. Where's -- where's
4 my complaint line? What's my leverage? Who do I go to?

5 MR. LEMEI: I think you're going to need to speak
6 with your attorney about your avenues for recourse.

7 The Energy Commission is working to implement this
8 program, make this program work.

9 What I said earlier about our interpretation of
10 the law and our belief that tenant consent is not an
11 appropriate measure for the preservation of confidentiality
12 in this program, that is my opinion both with respect to our
13 regulations going forward, it's also my personal opinion
14 about how the law -- how the law reads today.

15 But that said, there's a -- there is a difference
16 of opinion on that. And until -- unless and until our
17 regulations are in effect in that respect, that's not -- at
18 this point what we're talking about is proposed -- proposed
19 language going forward that could someday take regulatory
20 effect. That language is not in effect today.

21 MR. ANDREONI: So, this is Tony Andreoni --

22 MR. WALSH: I have another --

23 MR. ANDREONI: I'm sorry, just --

24 MR. WALSH: I'm sorry, could --

25 MR. ANDREONI: This is Tony Andreoni, from the

1 CMUA, and I just wanted to respond to your question, Randy,
2 similar to what PG&E has been saying.

3 We represent the municipalities so, you know, we
4 do have a number of members that have been moving forward
5 with the current rule as it stands. And, again, we are
6 working to make improvements and better understand the
7 requirements moving forward.

8 But as of today, we do have a number of members
9 that are providing information, either a one-of, or multiple
10 accounts, depending on the size of the utility and the
11 number of buildings that they service.

12 So, again, consent is still a concern.

13 MR. WALSH: So at this point, these members that
14 you're talking about will require authorization from the
15 individual account holders?

16 MR. ANDREONI: So, the data goes directly to the
17 owner of the data, which is the customer. So, yes, there
18 would be disclosure.

19 MR. WALSH: Right.

20 MR. ANDREONI: In some cases, one of our largest
21 members, SMUD has a different program in place that they've
22 developed.

23 MR. WALSH: So, I don't know when the conversation
24 started about this, it was '05 if I'm -- AB 1103 went into
25 effect 2007. And this is a significant number of years that

1 it appears that the same conversation is being had over and
2 over again.

3 Erik and Galen, I understand you guys are
4 proposing some changes here. But the program is suffering.
5 It's very, very difficult to do this. We have no leverage.
6 And Marika's comments about fines and penalties, you know, I
7 hate to -- I hate to be the one to advocate for that, but at
8 this point that would be the only way that we're going to
9 get attention on this.

10 So, if the CEC is committed to this being a
11 practical, reasonable and workable piece of legislation, I
12 think this needs to be written -- rewritten.

13 Another question -- I'm sorry, one more question
14 on this. Is there anything in this regulation that puts any
15 burden on tenants to provide the necessary occupancy
16 characteristics to the owner?

17 MR. JENSEN: No, there isn't. We are
18 intentionally not including requirements for tenants, for
19 compliance with the program. If the building owner does not
20 have -- if there's information the building owner doesn't
21 have, he's welcome to estimate and we provide a provision
22 for that in the regulation.

23 Let's -- do we have any other comments on the
24 line?

25 MR. LEMEI: Let me just say one more thing. And

1 that is that notwithstanding what I said earlier about the
2 impetus for this program being barriers to compliance, I do
3 want to recognize the progress that's been made.

4 I'm less familiar with that because my hat is --
5 puts me in a particular corner with respect to this program.
6 But I am aware that there has been great process. Even in
7 the last year, since this informational proceeding has been
8 underway, and improvements to the program in many different
9 service territories.

10 And I want to acknowledge and share my
11 appreciation. Thank you, Valerie, for mentioning that.

12 MS. WINN: Thank you. And I would note that the
13 CEC's been looking more broadly at the benchmarking issue as
14 part of the Integrated Energy Policy Report and the strategy
15 for existing buildings.

16 And, you know, Randy asked, you know, well, what
17 can people do? You know, some of the suggestions we made in
18 that proceeding were, you know, people can start voluntarily
19 implementing green leases now that would require or have the
20 customers give them consent going forward.

21 I think that's one of the best ways, you know,
22 from our perspective, to really get the customer engaged on
23 that topic and to give their consent in a way that, you
24 know, doesn't require the property owner or the building
25 owner to go back a number of times and wouldn't require the

1 utilities to go get that individual customer consent.

2 So, there are things that people can start doing
3 now to advance the program. It would take a while for every
4 building, you know, in California to have a -- you know,
5 those green lease provisions. But we've got to -- you know,
6 we can start somewhere.

7 MR. EVANS: And coupled with an affidavit would be
8 a big help, I think.

9 MR. JENSEN: Who's that talking, now?

10 MR. EVANS: This is Matt Evans, Southern
11 California Edison.

12 MR. WALSH: Go ahead, Matt.

13 MR. EVANS: Oh, I was done. I was just mentioning
14 the affidavit would help the industry quite a bit, coupled
15 with the green lease.

16 MR. JENSEN: Yeah, okay.

17 MR. WALSH: So, if I can jump back in and respond
18 to Valerie. There is no compelling business case for any
19 property owner to comply with AB 1103. None. The
20 information that you get is less than accurate, at a time in
21 a transaction when it has no impact on the energy efficiency
22 of the building. And those people that are voluntarily
23 complying with it today are incurring costs, which is
24 reducing the value of their property.

25 It really isn't reasonable, I don't think, for the

1 CEC to expect any cooperation with this regulation, the way
2 it's written with no levers, no compelling business case,
3 and no upside to the owners.

4 MR. LEMEI: Let me respond to that, even though
5 you addressed that to Valerie. This program, the
6 Nonresidential Energy Use Disclosure Program, is part of
7 a -- is part of a bigger picture, as Valerie mentioned.

8 Benchmarking disclosures is a broader
9 conversation. This is one aspect of that. And, you know, I
10 think the premise of this, of this proceeding is that trying
11 to take on this narrow piece, with the understanding and
12 acknowledgement that there is a bigger conversation, where
13 the conversations about that bigger picture are ongoing and
14 continue.

15 That said, this program, we're here today to
16 address a small piece of the puzzle. We are -- we're trying
17 to make this small piece work better and fit better into
18 that bigger picture.

19 And the concerns that you raise about the
20 incentives that building owners face are valid. That said,
21 at this point we are focusing our attention on making the
22 program more workable and -- and leaving to the next stage,
23 after we finish this exercise, the question of, you know,
24 other tools for promoting compliance with the program,
25 consistent with the statutory mandate.

1 MR. JENSEN: Great. Thank you, Galen.

2 Do we have anyone else on the line?

3 MR. WALSH: That's it.

4 MR. NESBITT: George Nesbitt.

5 MR. JENSEN: Go ahead, George.

6 MR. NESBITT: Yeah, I think for the purposes of AB
7 1103, since the building owner has a legal requirement to
8 disclose the information, any barrier to getting that
9 information has to be removed. It's -- that information
10 should be available by right.

11 You know, whether it's every meter or aggregated,
12 I care less about. But it should be easy to get.

13 Then I also think that that information does need
14 to be presented sooner, so the owner could use it as part
15 of, you know, selling the property. And the tenant or
16 purchaser should have that information, you know, before
17 signing a contract.

18 And I think in the broader -- the broader
19 discussion, I just want to make a comment on. Especially in
20 multi-family and in affordable housing there are
21 requirements, often, to do energy auditing. And the process
22 of getting every tenant to sign authorization forms and even
23 then to gather and get all that information is just far too
24 cumbersome.

25 Building owners, who have a legal need, should

1 have much better access to information. Even if, in some
2 cases, it is aggregated.

3 Whereas, I think on a smaller scale, an individual
4 giving permission to someone to use their information for
5 this or that is perhaps a lot more critical.

6 So, that's -- you know, yes, that's outside of AB
7 1103. But, you know, we have to make this work and we can't
8 have barriers. There's just no excuse.

9 And, honestly, I don't think the information is so
10 highly critical that it can't be disclosed. Although, you
11 know, how far and wide -- I mean, there's nothing wrong with
12 having some rules as to what information and how it can be
13 shared beyond. Anyway, that's it.

14 MR. JENSEN: Thank you, George.

15 MR. VERA: This is Chris Vera, with SDG&E. And I
16 have some customers that would disagree with that last
17 statement in terms of the privacy of their data not being
18 important.

19 But to Randy's earlier statement or question about
20 what utilities are doing, I mean in essence, utilities right
21 now are ready and willing to help within the limits of the
22 law.

23 We are not going to share data in a way that
24 would, and according to our legal department, would be in
25 violation of the law. So, we're absolutely doing our best

1 to try to work with the third parties, including building
2 owners, who have obligations of their own and pressures of
3 their own to produce usage data that demonstrates the
4 efficiencies of their building.

5 And we're trying to find creative ways to work
6 within the law in order to provide that information.

7 So, I definitely don't want -- one of the comments
8 Randy made was in terms of us being resistant. We're
9 definitely not resistant to the idea of building owners
10 having the information they need to do their job, but we
11 must do it within the limits of the law. And we must do it
12 in a way that protects our customers' privacy because they
13 also have rights, as well.

14 And so, I think that is this fine line that we're
15 trying to walk right now. And the importance of making sure
16 that we find good ways to do it.

17 MR. WALSH: Can I jump back in?

18 MR. JENSEN: Yeah, go ahead.

19 MR. WALSH: The issue of privacy is only coming up
20 because in order to use the Portfolio Manager tool you need
21 to complete building energy, whole-building energy use.
22 That's the only reason why these issues about privacy and
23 confidentiality are coming up.

24 Chris, have you read the user agreement, when you
25 try to connect to SDG&E Web Services.

1 MR. JENSEN: So, maybe, Randy, I can put you in
2 touch with Chris and Matt, and maybe we can have that
3 discussion offline.

4 Do we have anyone else who'd like to make a
5 comment or ask a question?

6 All right, so up on the screen here we -- hang on
7 just a second.

8 MS. WADHWA: Is Tony here? Hi, Tony. I pulled up
9 the California Commercial Saturation Survey. I had it off
10 the top of my head that it was a fairly recent survey. So,
11 the data that we have shown is probably less than a year
12 old. The report is dated July 2014.

13 And we can double check our notes because we got
14 the data directly from CPUC, and it could be more recent
15 since they get an annual data load from the utilities. But
16 I can at least assure you that it's fairly current. Thank
17 you.

18 MR. JENSEN: Thanks, Abhi.

19 So, up on the screen here, this is information on
20 submitting comments to the docket. Again, this -- we will
21 move the due date back and I will have an e-mail sent to the
22 Existing Buildings, 1103, and Efficiency mailing lists,
23 telling -- saying when the date is. I don't think we want
24 to decide at this time.

25 Again, we need a little longer here to provide our

1 data more thoroughly. We'll provide the transcript and I
2 think the utilities wanted a little -- probably want a
3 little more time to prepare their responses to what we send
4 them.

5 So, I'll send that to the mailing lists shortly.
6 Here's the information on submitting to the docket. It's
7 Docket 15-OAR-04.

8 My contact information and Laith's contact
9 information are up on the screen here. I have business
10 cards, also, for people who are in the room.

11 And that's -- with that, we are concluded. Thank
12 you.

13 MR. WALSH: Hey, thanks, Erik, good job.

14 MR. JENSEN: Thank you.

15 (Thereupon, the Workshop was adjourned at
16 12:52 p.m.)

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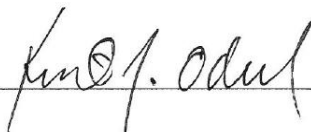
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REPORTER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of August, 2015.

A handwritten signature in black ink, appearing to read "Kent Odell", is written over a horizontal line.

Kent Odell
CER**00548

CERTIFICATE OF TRANSCRIBER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.



MARTHA L. NELSON, CERT**367

September 9, 2015