

BEFORE THE CALIFORNIA ENERGY COMMISSION

In the matter of:
Nonresidential Building Energy Use
Disclosure Program

Docket No. 14-EUDP-01

COMMENTS OF THE
LOCAL GOVERNMENT SUSTAINABLE ENERGY COALITION
ON EFFICACY OF THE NONRESIDENTIAL BUILDING ENERGY USE
DISCLOSURE PROGRAM

JODY S. LONDON
Jody London Consulting
P.O. Box 3629
Oakland, California 94609
Telephone: (510) 459-0667
E-mail: jody_london_consulting@earthlink.net

For THE LOCAL GOVERNMENT SUSTAINABLE
ENERGY COALITION

July 21, 2014

I. Introduction

The Local Government Sustainable Energy Coalition (“LGSEC”)¹ appreciates the opportunity to assist the California Energy Commission (“CEC” or “Commission”) in refining its building benchmarking program, undertaken in compliance with Assembly Bill 1103. The LGSEC concurs with the Commission that refining the program to facilitate participation in it, before applying the regulations to buildings 5,000 – 10,000 square feet, makes sense. For local governments, information about where energy usage is higher or lower in our communities, when usage occurs, and what types of fuels are being used, is critical to our ability to help enforce State and local building codes as well as develop and implement energy action and climate action plans, and similar programs that promote sustainability and reduce greenhouse gas emissions. Below the LGSEC describes the importance of energy usage data, and recommends actions the CEC should take to make them more readily available.

California critically needs an effective energy disclosure policy to achieve the State’s building energy goals. Many existing buildings will not be subject to comprehensive codes and standards for many years, if at all; and funding is simply not available in the amount necessary to create incentives for improvements in all these buildings. Disclosure is a relatively low-cost method of engaging this market segment and complements the existing codes and standards and incentive programs.

II. Energy Usage Data is Important for Local Governments

Local governments are actively pursuing strategies to reduce greenhouse gas emissions in our communities, helping California reach its goals under Assembly Bill (“AB”) 32. The LGSEC was pleased at the July 2 workshop to see information on what is happening in cities across the country brought in to the record. Cities across the country, working with their utility companies, are using aggregation thresholds between 2 and 5 accounts.² Experts anticipate that more jurisdictions will adopt benchmarking ordinances, and that compliance centers developed to help with benchmarking will take on additional responsibilities.

Data about energy usage in buildings can help local governments identify where state and local appliance and building codes are perhaps not being followed. The CEC’s own analysis from the California Commercial Energy Use Survey (“CEUS”) shows that in 2006:

- "Large Office Buildings" alone accounted for over 660 million square feet of the 4.9 billion square feet of total commercial floor stock .

¹ The LGSEC is a statewide membership organization of cities, counties, associations and councils of government, special districts, and non-profit organizations that support government entities. Each of these organizations may have different views on elements of these comments, which were approved by the LGSEC’s Board. A list of our members can be found at www.lgsec.org.

² Presentation of Andrew Burr, Institute of Market Transformation, July 2, 2014, CEC workshop.

- Total commercial electric consumption was 67,707 GWh annually and 1279 million therms per year.
- Large office buildings over 30,000 square feet consumed 17% of that electric consumption (or 11,510GWh, and far less on the therm side).³

The table below provides very rough estimates of energy savings if we only look at Large Commercial Office Building (>30,000 square feet) from the CEUS estimates. If this 660 million square feet of space (assuming every building was sold), would trigger AB 1103 and be benchmarked, the “result” would be 5% savings (based on Institute for Market Transformation estimates from benchmarking). Each row is a scenario for the 660 million square feet being multi-tenant at various percentages of multi-tenant occupancy. Obtaining a factor for the percentage of commercial property transactions per year would allow the CEC to plug in the actual number and get a more realistic number for AB 1103 impact on non-compliance.

% Multi-tenant	Floor Area Potential	Electric Energy Consumption (GWh)	5% savings (annual GWh)
20	132,000,000	2,302	115
40	264,000,000	4,604	230
60	396,000,000	6,906	345
80	528,000,000	9,208	460

Assumes total square feet of large office space is 660,000,000, and total electric consumption (GWh) is 11,510.

III. Recommendations Moving Forward

The CEC must take decisive action if there is going to be any useful energy usage disclosure. Below we outline our recommendations.

A. Establish Aggregation Threshold of Two Meters

The CEC should set an aggregation threshold of two meters, in line with best practices in cities where benchmarking programs are working well. There are examples from across the country of a workable threshold of two meters. The CEC should be clear that data will be accessible for benchmarking even when the building is not in a transaction.

B. Create a Central Data Repository

The CEC should standardize and centralize reporting of energy data. There was overwhelming support at the July 2 workshop for a central platform for energy usage data. From the perspective of local governments, there are significant economies of

³ See <http://www.energy.ca.gov/2006publications/CEC-400-2006-005/CEC-400-2006-005.PDF>

scale that we can realize if there is a central energy usage data platform. The CEC must establish a timeline for rolling out the reporting requirements, and stick to it.

Related, the CEC should use this opportunity to collect additional data that can aid sustainability research and program development. This is a great opportunity to create a centralized data hub for energy research so that the impact of the regulation and trends of energy consumption can be further understood to drive market action. The CEC should encourage innovative partnerships between community colleges, universities, industry organizations, and trade associations to assist with on-the-ground implementation of this regulation.

C. Mandate Use of Energy Portfolio

The CEC should direct municipal and investor-owned utilities that are not doing so already to provide monthly whole building energy consumption data by fuel type to ENERGY STAR Portfolio Manager for the purpose of benchmarking, energy management, motivating energy efficiency investments, and compliance with AB 1103, in that order. It was notable at the workshop that some of the utilities are using Portfolio Manager already. Again, this must occur on an aggressive timeline adopted by the Commission.

D. Establish a statewide help desk.

Similar to a central reporting platform, the need for assistance in navigating building energy usage reporting requirements and tools will occur across the state. Chicago and Boston relayed at the workshop the value that a help desk has provided in their cities in helping building owners and other stakeholders comply with their energy usage benchmarking policies.

E. Quantify Energy Savings and Opportunity Costs Associated with AB 1103

The CEC should determine the energy savings impact and opportunity cost of AB 1103 noncompliance and estimated compliance. During the July 2 workshop, the Institute for Market Transformation (“IMT”) referenced studies from the U.S. Environmental Protection Agency, California Public Utilities Commission, Resources for the Future, and Georgia Technical Institute that correlate benchmarking to energy savings. The current industry figure used by IMT is 5% savings from benchmarking alone. As part of this energy impact study, the CEC should explore what percent of covered buildings are in a multi-tenant scenario; what percent of floor area that constitutes; and what percent of energy consumption that reasonably represents. Based on this analysis, a target aggregation number for tenants can be identified that captures an acceptable number of buildings that utility provider aggregation can satisfy without defaulting to 15/15 rules, or individual tenant sign-off, as PG&E requires currently. For example, if 50% of buildings over 50,000 square feet have 4 or fewer tenants, 20%

have 5 or more tenants, and the rest have 1 tenant, it may make sense to structure the CEC aggregation specification in a way that captures the majority of the market.

F. Do Not Get Sidetracked by Privacy Arguments

The CEC has heard already from at least one utility that customer privacy concerns, particularly the potential for re-identification of customers, mean the CEC should adopt a much higher aggregation threshold, one that even the utility's own technical staff acknowledge will not provide useful information. The CEC should not allow itself to be sidetracked by this debate. The CEC must focus on ensuring that meaningful data about building energy usage is made available for purposes including benchmarking, energy management, motivating investments in energy efficiency, and complying with AB 1103. It is possible to preserve privacy and provide meaningful data, as is evidenced in other jurisdictions nationally.

G. Ensure AB 1103 Supports the Legislature's Goals

AB 1103 evinces the Legislature's intent to promote energy conservation and efficiency through the tools of building benchmarking and energy management. The LGSEC encourages the CEC to interpret AB 1103 to comport with these broad statutory goals. Stated differently, AB 1103 is not a bill about energy benchmarking for the sole purpose of facilitating the sale or lease of non-residential buildings. The Legislative Counsel's Digest, the Legislature's declarations and findings in Section 1, and the structure and text of Section 2 collectively demonstrate that California's Legislature intended for AB 1103 to be interpreted broadly. Accordingly, the CEC should ensure that its revised regulations comply with these broad statutory goals.

First, the *Legislative Counsel's Digest*, which precedes the bill's text, illustrates the broad legislative intent underlying AB 1103. It states:

AB 1103, Saldana. Energy: commercial buildings: consumption.
Existing law declares that electrical energy is essential to the health, safety, and welfare of the people and the economy of this state, and it is the state's policy to promote all feasible means of energy conservation.

Notably, the summary title of the bill refers to energy consumption in commercial buildings; it does not mention the word "transactions." A statute's title "can aid in resolving an ambiguity in the legislation's text." *INS v. National Center for Immigrants' Rights*, 502 U.S. 183, 189-90 (1991) (citing *Mead Corp. v. Tilley*, 490 U.S. 714, 723 (1989); and *FTC v. Mandel Bros., Inc.*, 359 U.S. 385, 388-89 (1959)). Next, the digest places AB 1103 in the context of existing laws, which link electrical energy to the wellness of Californians and the State generally. Lastly, the digest reiterates the State's policy to "promote all feasible means of energy conservation." Thus, the digest contextualizes AB 1103 within the scheme of existing law and policy – its purpose is to protect Californians and conserve energy.

Second, the **findings and declarations** in Section 1 explicitly illustrate the broad legislative intent of AB 1103:

SECTION 1. The Legislature finds and declares both of the following:

- (a) Facilitating a benchmarking system that provides energy consumption information for all nonresidential buildings in the state would allow building owners and operators to compare their building's performance to that of similar buildings and to manage their building's energy cost.
- (b) Benchmarking scores could motivate building operators to take actions to improve the building's energy profile and help to justify financial investments.

The Supreme Court has held that under the "plain meaning rule," if the statutory language is clear, it is unnecessary to delve into legislative history to determine the statute's meaning. Under the "plain meaning" of AB 1103's text, the Legislature intended that it: facilitate a building energy benchmarking system applicable to all nonresidential buildings in the state which would encourage comparative performance analyses amongst buildings; enable operators/owners to manage energy costs; and "motivate" them to improve their energy profiles. These broad goals align with the existing law referenced above in the Legislative Counsel's Digest.

Third, the **text and structure of Section 2** reveal the broad legislative intent of AB 1103. Subsection (a) provides:

- (a) On and after January 1, 2009, electric and gas utilities shall maintain records of the energy consumption data of *all nonresidential buildings* to which they provide service. This data shall be maintained, in a format compatible for uploading to the United States Environmental Protection Agency's Energy Star Portfolio Manager, for at least the most recent 12 months. (emphasis added)

The very first subsection of Section 2 directs electric and gas utilities to maintain energy consumption data records of all nonresidential buildings to which they provide service. Significantly, it does not cull out nonresidential buildings subject to transactions for purchase or lease. In fact, Subsection (a) does not even mention this subset of the population of nonresidential buildings in the state.

Next, subsection (b) directs utilities to provide energy consumption data to nonresidential building owners:

- (b) On and after January 1, 2009, upon the written authorization or secure electronic authorization of a nonresidential building owner or operator, an electric or gas utility shall upload all of the energy consumption data for the account specified for a building to the United States Environmental Protection

Agency's Energy Star Portfolio Manager in a manner that preserves the confidentiality of the customer.

Again, this subsection facilitates the provision of energy consumption data to nonresidential building owners irrespective of whether this request is motivated by a real estate transaction. As evidenced by the July 2, 2014 workshop, many building owners in jurisdictions around the country seek this data for purposes wholly unrelated to real estate transactions such as for energy management and climate action planning.

Lastly, Section 2 structurally focuses on energy benchmarking for all non-residential buildings. Subsection (a) places the onus of responsibility on the utilities to maintain energy consumption data on all nonresidential buildings. Subsection (b) enables any nonresidential building owner or operator to seek out this data. Subsection (c) authorizes the utilities to comply with (a) and (b) in a cost-effective and collaborative manor. Only subsections (d) and (e) focus on an owner or operator's energy data disclosure and other legal duties, respectively, in conjunction with the sale or lease of their properties. Sections (a)-(c) will always apply to all non-residential buildings in the state whereas sections (d) and (e) will only apply to a subset of buildings which are involved in real estate transactions. Accordingly, the structural composition of AB 1103 further supports its broad interpretation.

The LGSEC recommends that the CEC read the Legislative Digest, text, and structure of AB 1103 broadly to support the state's use of energy benchmarking and management to facilitate its goals of energy conservation and efficiency. While we acknowledge the dismal compliance with AB 1103 to date with regard to transactional disclosures, we also acknowledge that a number of non-residential building owners and operators in the state are ready and able to, or already have been, benchmarking their buildings. AB 1103 applies to all non-residential buildings in the state. The poor compliance record to which it applies certainly requires the CEC's attention. However, the letter and spirit of AB 1103 also require that the CEC continue to facilitate acquisition of energy consumption data for non-residential building owners and operators who are eager to comply with it.

IV. Conclusion

The CEC has an opportunity to rework AB 1103 to provide useful information across the state about energy use in buildings. The CEC should take decisive action to realize this opportunity.