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STATE OF CALIFORNIA - THE RESOURCES AGENCY
BEFORE THE
CALIFORNIA ENERGY COMMISSION (CEC)

In the matter of,)
) Docket No. 12-AB1103-1
)
Public Comment Hearing)
for AB1103)

Commercial Building Energy Use Disclosure Program

Public Comment Hearing

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

MONDAY, APRIL 9, 2012
1:00 P.M.

Reported by:
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COMMISSIONER

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Martha Brook

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Bill Pennington

Also Present (* Via WebEx)

Public Comment

Claire Halbrook, PG&E

Matt Evans, Southern California Edison

Daniel Considine, Boone Energy

*Randy Walsh, San Diego

*Addison Delk, Lord Green Strategies

Barry Hooper, City and County of San Francisco

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1

P R O C E E D I N G S

1
2 APRIL 9, 2012

1:16 P.M.

3 MR. REGNIER: Minutes, Commissioner Douglas has
4 been delayed and so apologies for that.

5 My name is Justin Regnier, I'm a staff
6 mechanical engineer and project manager for the AB1103
7 rulemaking process.

8 Just a few housekeeping items before we begin.
9 I'd like to let everybody know that this conference is
10 being recorded.

11 For those of you who are not familiar with this
12 building, the closest restrooms are located out the
13 double doors and to the left.

14 There is a snack bar on the second floor, under
15 the white awning.

16 Lastly, in the event of an emergency and in the
17 event the building is evacuated, please follow our
18 employees to the appropriate exits. We will reconvene
19 at Roosevelt Park, located diagonally, across the street
20 from this building.

21 Please proceed calmly and quickly, again
22 following the employees with whom you are meeting, to
23 safely exit the meeting. Thank you.

24 Today's agenda should be up on your screen at
25 this point. If you are here in person, Martha Brook,

1 who's raising her hand now, will be taking the blue
2 cards, if you'd like to speak.

3 We ask that you please identify yourself and
4 your organization before asking a question or making
5 commentary.

6 And just as a protocol, we'll keep the remote
7 callers muted in order to avoid excess of background
8 noise. We're going to hold all the questions until the
9 end; we've got a reasonably short presentation today,
10 anyway. And we appreciate your cooperation.

11 MS. BROOK: One more thing before Justin gets
12 going. When you do come up to speak, if you could bring
13 a business card to you and hand it to our court
14 reporter, that way he won't have to try and figure out
15 how to spell your name that would be great.

16 MR. REGNIER: Thanks, Martha.

17 We'll start off with a discussion of the
18 background and the process, what's gotten us to this
19 point.

20 The findings in the statute read "The
21 facilitating of benchmarking system that provides energy
22 consumption information for all nonresidential buildings
23 in the State would allow building owners and operators
24 to compare their building's performance to that of
25 similar buildings and to manage their building's energy

1 costs, as well as benchmarking scores could motivate
2 building operators to take actions to improve the
3 building's energy profile and help to justify financial
4 investments."

5 These statutory findings were put up just
6 because they got to the rationale for the statute and
7 why we are here today.

8 In order to address these findings the
9 Legislature enacted AB1103 in the 2007 session and
10 further enacted 531 in 2009 to specify that the CEC has
11 the authority to set the schedule for implementation of
12 AB1103.

13 The Energy Star Portfolio Manager is specified
14 specifically as the means of compliance within the
15 statute.

16 And the disclosure between the counter parties
17 is required at the time of the sale, lease or financing
18 of a nonresidential building.

19 This is a transactional requirement, it's not
20 based on a calendar or any other criteria.

21 A few details on what the disclosure details,
22 the disclosure of energy use is required to be made to
23 the counter party from the owner. There is no public
24 disclosure. This disclosure is limited to strictly
25 between the two parties involved in the transaction.

1 While other laws limit the use and disclosure of
2 the energy use data, we're further not aware of anything
3 that prevents the parties involved from entering into a
4 nondisclosure agreement, if they would decide to.

5 This disclosure occurs when the entire building
6 is sold, leased or finance, and that's the consequence
7 of the Energy Star Portfolio Manager being a whole
8 building tool.

9 The disclosure takes three forms. The first is
10 an electronic submission of data to the CEC within the
11 Energy Start Portfolio Manager.

12 The second, there are a set of three standard
13 reports that are generated from the Energy Star
14 Portfolio Manager.

15 And the third is a disclosure summary sheet,
16 which is just a cover sheet over the standard reports
17 from the Energy Star Portfolio Manager detailing what
18 the contents are and why they're relevant.

19 We have set up a staged implementation schedule,
20 which is given on this slide. And the reason that we
21 did this is to enable a smooth transition in the
22 marketplace. It's assume that larger buildings are more
23 likely to be familiar with the techniques and tools
24 involved in the benchmarking, and be able to ramp up
25 quickly to meet the new requirement.

1 In the course of our developing the regulations
2 for AB1103 the Commission's focus has been to cast the
3 widest net possible and to try to hear from all parties
4 affected.

5 To that end we convened a stakeholder group
6 comprised of utility representatives, commercial
7 building owner advocates, and local government officials
8 to inform our pre-rulemaking.

9 We've put out several sets of draft regulations
10 and received comments on them.

11 And we have hosted webinars and presentations
12 for interested groups, as appropriate.

13 At present we have the following schedule for
14 the process of the AB1103 rulemaking. The first item
15 has already occurred, the second item we are in the
16 midst of. If we have no 15-day language, we're looking
17 to adopt the regulations on May 9th of this year.

18 If we do issue 15-day language, it's like to
19 come on May 7th of this year, with an adoption on June
20 13, following.

21 And in any case, the effective date of the
22 regulation is anticipated to be January 1, of 2013.

23 This timeline has been selected in part to
24 assure that we can provide certainty to the
25 nonresidential building sector about when they will be

1 required to apply.

2 So, we're looking to have this be a solid date
3 moving forward.

4 Quickly, I'll go into a summary of
5 responsibilities. All of these responsibilities are
6 covered in more detail and more explicitly in the
7 regulations, themselves, but I think it makes sense just
8 to go over them quickly so we've got kind of a game
9 plan.

10 There are generally three parties that are
11 involved in a commercial building energy use disclosure.
12 The first is the building owner. The second is the
13 counter party to whatever the triggering transaction is.
14 And the third is the utility.

15 The counter party's role is simply to receive
16 the disclosure. And a summary of the owner and utility
17 responsibilities will be given in just a moment.

18 If you want to see a step-by-step, screen shot-
19 by-screen shot example of how this disclosure is going
20 to be achieved, that's given on the following link and
21 the slides will be posted up onto our website after this
22 presentation.

23 So the sequence of responsibilities, the first
24 thing that has to happen is the owner has to establish
25 an Energy Star Portfolio Manager account, unless they

1 have already established one.

2 Then the owner will accurately enter the
3 property information into their account. And within
4 their account they'll select their service provider and
5 request that that service provider upload energy use
6 data for the previous 12 months.

7 The service provider will then upload the data.
8 Once that data is resident in the owner's Energy Star
9 Portfolio Manager account they will access the
10 California Energy Commission website, download the
11 disclosure summary sheet which, again, is just a cover
12 sheet over the standard disclosures that are given from
13 Energy Star Portfolio Manager, and use a link to access
14 the Compliance Verification Report.

15 That link will take the owner to Energy Star
16 Portfolio Manager, where they go ahead and submit the
17 compliance verification report and download the
18 disclosure -- excuse me, the disclosure documents, the
19 reports that will be presented.

20 And, finally, at or before the time of the
21 transaction the owner will present the disclosure
22 summary sheet, the statement of energy performance, a
23 facility summary, and the data checklist to the counter
24 party in the transaction.

25 I'm going to go through the proposed

1 regulations, these have been posted up on the web. And
2 I'm not going to go through them line by line, I'll
3 spare you that. But, hopefully, we can go through the
4 high points and address any questions or concerns at the
5 end.

6 Section 1680 is the purpose. This is a legally
7 required section that references the statute.

8 1681 is the scope. It just gives very clearly
9 the scope of the regulations, also defined by statute.

10 1682 gives the definitions. Again, I'm going to
11 spare you the reading of all of these one at a time, but
12 please feel free to make a comment or a question at the
13 end, if any of these are provoking questions or comments
14 from you.

15 So, 1683 goes to the schedule of implementation,
16 which we discussed earlier. On or after January 1, of
17 2013 any building with a total floor area of over 50,000
18 square feet will have to present a disclosure at the
19 time of a triggering transaction.

20 Six months later any building within 10,000
21 square feet to the 50,000 square foot range will be
22 included.

23 And, finally, on January 1, 2014 we'll have all
24 buildings greater than 5,000 square feet. The 5,000
25 square foot limit was something we are choosing at this

1 point to exempt any buildings smaller than 5,000 square
2 feet, just based on the Energy Star Portfolio Manager
3 technical limitations.

4 So, 1684 references the schedule that we've
5 established just now in 1683. It outlines the documents
6 that are required, the parties that are involved, and
7 the timing of the presentation.

8 The intent on this was to allow the maximum time
9 for the counter party to review in a way that didn't
10 delay the transaction.

11 Continuing with 1684, subsection (b) is "may"
12 language. It does not hold any of the parties
13 responsible to take any action, but recognizes that
14 there are other metrics that may be useful besides those
15 that are strictly required by the regulations.

16 1685 lays out in detail the responsibilities of
17 the parties that were summarized earlier, giving
18 specifics of information and time frames for providing
19 such information.

20 Section A is detailing the responsibility -- or,
21 I'm sorry, subsection (a) is detailing the
22 responsibilities of the owner.

23 The top, we're continuing the owner
24 responsibilities, subsection (b) is the responsibilities
25 of the utility company.

1 And subsection (c) covers the owner's
2 requirements, once the utility has fulfilled their
3 requirement by uploading the data to the Energy Star
4 Portfolio Manager account.

5 Finally, subsection (d) details the Energy
6 Commission's role. And subsection (e) was input to
7 allow for circumstances that were beyond the owner's
8 control, such as a meter failing, and the exact amount
9 of the information not being available, but a very close
10 approximation being available to the owner.

11 With that, we'll take any questions or
12 comments.

13 MS. BROOK: Are there any other blue cards?

14 COMMISSIONER DOUGLAS: All right, well, thank
15 you, Justin and thanks to everyone who's here.

16 Let me ask Claire, since you filled out a card,
17 if you can come forward.

18 Is there anyone else who would like to make a
19 comment, in the room?

20 I'll just -- I'll let you speak in a second,
21 I'll just do quick introductions. I'm Commissioner
22 Karen Douglas, the Lead Commissioner for Efficiency, and
23 so I'm joined on the dais by David Hungerford on my
24 left, Jennifer Nelson on my immediate right and Galen
25 Lemei to her right.

1 Go ahead, Claire.

2 MS. HALBROOK: Hi there, Claire Halbrook from
3 PG&E. So, PG&E has reviewed the customer data
4 disclosure requirements included in the current draft
5 language and we believe that it is much improved from
6 previous drafts, and may address some of our concerns
7 about the appropriate protection of customer data.

8 Ultimately, PG&E and other customer -- investor-
9 owned utilities must comply with the CPUC's data privacy
10 requirements.

11 And we respectfully suggest that prior to the
12 adoption of the regulation the CEC and CPUC work
13 together to ensure the language in the proposed
14 regulation is properly aligned with CPUC data privacy
15 requirements.

16 Only once the CPUC's data privacy requirements
17 are met will PG&E be able to provide the information
18 required under the regulation.

19 We appreciate your attention to this issue.
20 Thank you.

21 COMMISSIONER DOUGLAS: Thank you. Other
22 comments in the room? Please come forward.

23 MR. EVANS: Hi, I'm Matt Evans from Southern
24 California Edison. And I'd just like to note that we
25 support our colleague from PG&E. We feel there are

1 issues with the way the statutes are currently written
2 regarding data privacy.

3 And we would look forward to working with the
4 attorneys from the IOUs, the CEC, and the CPUC to make
5 sure that we're following the proper procedures for the
6 release of confidential customer data.

7 COMMISSIONER DOUGLAS: Okay, thank you. Other
8 comments?

9 All right, anybody on the phone or WebEx? No?
10 Okay, no comments on the phone or WebEx.

11 So, thank you very much. You know, obviously
12 commercial building energy benchmarking is a really
13 important area, it's a place where there's a lot of
14 potential for incentivizing people to make buildings
15 more efficient and improving the overall score, and the
16 overall performance of buildings in the State.

17 So, I want to thank staff, you know, Justin and
18 others for bringing this forward. I know it's been a
19 lot of work and, hopefully -- hopefully, as you continue
20 to --

21 (WebEx interference)

22 COMMISSIONER DOUGLAS: Hopefully, as you
23 continue to work with the IOUs -- boy, it seems to only
24 happen when I talk. Definitely a theory.

25 All right, so anyway, hopefully, as you work

1 with the IOUs you can find ways to deal with or help
2 them deal with the customer privacy concerns. I mean,
3 obviously, that's been one of the major efforts to --
4 major issues to try to balance in this initiative.

5 So, if there are no more questions or -- oh,
6 there is another question. Go ahead, come on up, come
7 on forward.

8 All right, so we've got one comment in the room
9 and then possibly one on the phone.

10 MR. CONSIDINE: Hello, my name's Daniel
11 Considine from Boone Energy. We do energy benchmarking
12 for commercial customers.

13 My only comment is regarding interacting with
14 the utilities. It would be helpful if the utilities
15 would increase their staffing to help us help our
16 customers get the data.

17 During the recent compliance for April 1st, in
18 San Francisco, we noted that the folks at the automated
19 benchmarking system team at PG&E were very overloaded.

20 And so I would suggest that other utilities take
21 this into consideration with the deadlines that are
22 being proposed. Thank you.

23 COMMISSIONER DOUGLAS: Thank you. All right,
24 very good. Are there any comments on the phone, is
25 there anyone on the phone who would like to speak?

1 MR. REGNIER: I think we've got a couple.

2 COMMISSIONER DOUGLAS: Yes, go ahead.

3 MR. WALSH: This is Randy Walsh, down in San
4 Diego.

5 COMMISSIONER DOUGLAS: All right.

6 MR. WALSH: I have a couple questions. We just
7 had a situation where there was a transfer of ownership
8 of a building that we were benchmarking and the new
9 owner requested access to the historical energy use. We
10 have an amiable relationship so we were able to work
11 this out.

12 But going forward what is the expectation that a
13 new owner would have in terms of access to energy use
14 data for the period of time that they did not own the
15 building?

16 MR. REGNIER: The disclosure is at the time of
17 the transaction and covers the previous 12 months.

18 MR. WALSH: Okay, so then a new owner, six
19 months in, who wants to sell his building will only have
20 access to six months of data?

21 MR. REGNIER: Any new triggering transaction
22 would require a new disclosure, which would cover the 12
23 months previous to that time.

24 MR. WALSH: Okay, so down here in SDG&E
25 territory, with them aggregating data based on the

1 actual property, the meter will trump the account; is
2 that correct?

3 MR. REGNIER: I'm not sure what you mean, Randy.

4 MR. WALSH: Right now SDG&E will only upload
5 data through the ABS system for open accounts; they
6 won't upload that for closed accounts.

7 So it sounds like the aggregation will be
8 irrespective of the account holder name, but rather the
9 energy use from that particular meter.

10 MR. REGNIER: In the example that you just
11 cited, the documents, the disclosures would presumably
12 be available from the prior transaction and those
13 historic, aggregated energy levels would be available
14 for the subsequent transaction.

15 (WebEx interference)

16 MR. REGNIER: We're getting a bunch of noise
17 there, Randy.

18 MR. WALSH: I'm sorry. I heard you. So then it
19 would just be a matter of turning -- so say we have six
20 months between a buy and a sell, so they would just be
21 getting the paperwork from their closing to the new
22 owners. There's no way for the new owner to go back and
23 collect 12 months of data, I guess is really my
24 question.

25 And it sounds like the answer is yes, they're

1 not able to do that.

2 MS. MAYER: This is Robin Mayer, Staff Counsel
3 on the project. Under the statute, itself, the utility
4 is required to give the previous 12 months -- at least
5 the previous 12 months of data.

6 So without going too much into the intricacies
7 of the example, I would say the utilities do have a
8 responsibility to supply the data.

9 Excuse me, someone needs to put their phone on
10 mute. Thank you.

11 MR. WALSH: Okay, so that's clarifying. So
12 that's regardless of who the account holder was or when
13 they --

14 MS. MAYER: That would be correct.

15 MR. REGNIER: That would be correct.

16 MR. WALSH: Yeah, okay.

17 MS. MAYER: In the unlikely event of two sales
18 in a year.

19 MR. WALSH: Okay. Just a couple comments on the
20 language, the energy -- if you're looking for a rating,
21 which I'm using primarily with multi-tenant office
22 buildings, if you're dealing with the performance
23 rating, the national energy performance rating,
24 implementation of energy conservation measures will take
25 a period of time before they have a positive impact on

1 your score, or even on your energy -- I think even on
2 your energy use intensity calculations.

3 The reading of the language doesn't speak to
4 the -- my reading of the language doesn't speak to this
5 at all. What you seem to be saying, often in this
6 document, is that if you benchmark your building you are
7 eligible for this increase in sales price.

8 I think some clarification needs to be in there.
9 It's not the simple act of benchmarking that's going to
10 increase the value, it's this process of benchmarking
11 and implementing conservation measures over a period of
12 time that are going to give you a more efficient
13 building, and that is what's more valuable in the
14 marketplace.

15 MR. REGNIER: You're correct that the -- the
16 disclosure is a point in time, it doesn't reflect the
17 changes that you have just made or are about to make,
18 that is correct.

19 MS. BROOK: This Martha Brook --

20 MR. WALSH: Then there is a --

21 MS. BROOK: Just a second, this is Martha Brook
22 from CEC staff. The --

23 MR. WALSH: Hi.

24 MS. BROOK: Hi. So this is a regulation
25 specific to energy use disclosure, so we're not

1 requiring or -- yeah, basically requiring any disclosure
2 of the other information that might add value to the
3 transaction. But certainly, voluntarily, if people know
4 that they've made recent energy efficiency improvements
5 could voluntarily disclose that information to the other
6 party in the transaction.

7 (WebEx interference)

8 MR. WALSH: Understood. But again, if you're
9 looking at getting a rating for the buildings and a lot
10 of buildings are eligible for the rating, the national
11 energy performance rating, it could take you up to 12
12 months to see the full impact of your energy
13 conservation measures.

14 If this regulation goes into effect as of
15 January 1st, and owners believe that all they have to do
16 is benchmark their building in order to see an increase
17 in value, they're mistaken. They need to understand
18 that this is a part of the process.

19 MS. BROOK: And we can make that clear in our --
20 yeah, in our guideline information we can make that
21 clear. It's certainly not going to affect the language
22 that you see before you for the regulation, but we can
23 make that clear in the guideline information.

24 MR. WALSH: Great, great, great.

25 And then I have a piece on the Energy Star. The

1 people requiring the data checklist, I'm assuming with
2 this aggregation of data down here, in SDG&E territory,
3 that that data checklist will just print out as overall
4 building -- building use, whereas right now they print
5 out each individual energy meter's use.

6 Is that your understanding, that we'll just have
7 one aggregated monthly report, monthly chart?

8 MR. REGNIER: I think we'll be working with the
9 utilities to make sure that whatever comes out is
10 sufficient to protect the privacy of the data. I can't
11 speak to what form each utility will be taken.

12 MR. WALSH: Well, I'm actually looking at the
13 Energy Star Data Checklist, so they have particular
14 parameters there. So, it would be the utilities are
15 going to need to be mindful of that.

16 On that same item, Energy Star data input within
17 a multi-tenant building, again thinking of an office
18 building, depending on if it's a multi-use building
19 and/or if there's a difference of operating hours, these
20 all need to be broken out into the data input.

21 I believe that will also be printing out on the
22 data checklist, the breakdown of the spaces, which may
23 or may not get into any privacy issues, but that is a
24 little bit more revealing. I just think it's something
25 to be aware of.

1 And is there a -- I don't see anything in the
2 language that says you need to comply with Energy Star
3 data input. It just says use Energy Star Portfolio
4 Manager. Do you feel like you need to go a little
5 farther and say comply with Energy Star guidelines, data
6 input guidelines?

7 MR. REGNIER: I don't think that you can get
8 energy use and ratings data from Energy Star without
9 explicitly putting in the data that's required for that.

10 I'm not sure if I understand your question
11 properly.

12 MR. WALSH: Well, there's basic data on the size
13 of the building, the square footage of the building. On
14 a multi-tenant building you could have completely
15 different uses within that space that fall under
16 different space type categories and those need to be
17 broken out.

18 So there is some complexity to Energy Star.
19 It's not simply a matter of opening up an account and
20 putting in the size of your building, and connecting
21 with the ABF system.

22 I'm wondering what sort of compliance
23 requirements will there be and how will -- how do you
24 determine the integrity of that data when you're going
25 into a transaction?

1 MS. BROOK: This is Martha Brook, again. So, we
2 do intend to have a guideline document that will go
3 through, you know, best practice Energy Star Portfolio
4 Manager data input. It will go through every screen and
5 what somebody should expect to enter for every screen of
6 the Energy Star Portfolio Manager process, so it would
7 get to the type of information you were just talking
8 about.

9 And the other reason that we were asking for
10 some of those more detailed reports out of Energy Star
11 was so we could get adequate disclosure. And so that
12 the market can begin to understand that that detail is
13 part of the transaction, and part of the energy use
14 disclosure, and expect to see that detail.

15 And so if somebody else disclosed and had a very
16 high level disclosure, and didn't include that space
17 level detail, for example, then the market could begin
18 to discern between adequate and inadequate disclosures.

19 But we're not making all of those -- all we're
20 doing is specifying specific reports from Energy Star
21 Portfolio Manager that need to be disclosed. And we're
22 not going so far as to judge the quality of every single
23 person's input, that's beyond the scope of this
24 regulation.

25 MR. WALSH: Thanks. Is there any sort of a

1 particular release form that will be created on the
2 State level or would each party create their own
3 acknowledgement of receipt of these documents?

4 MS. MAYER: Hi, this Robin Mayer, Staff Counsel.
5 I think what you're getting at is the enforcement
6 question and there's various laws in the Civil Code that
7 protect real estate transactions, in general, against
8 fraud.

9 There's also our regulatory complaint process,
10 if someone has a complaint, as well as our quite strong
11 data collection statutes.

12 So when you report to us the transaction there's
13 protections against willful false statements in that, as
14 well.

15 So there's actually a lot of protections in
16 other sources of law for the buyer.

17 MR. WALSH: This is really helpful. I would
18 agree with the first two or three people that the
19 language is much better.

20 And we've already been benchmarking and
21 increasing our energy efficiency, so we're looking
22 forward to taking this portfolio-wide.

23 MS. BROOK: That's great, thank you.

24 MR. REGNIER: That's great. Thank you for your
25 comments, glad to hear you're benchmarking.

1 MR. WALSH: Thank you. Yeah, I'm sorry, I'm
2 with the Third-Party Commercial Property Management
3 Firm. Thanks a lot for all your help.

4 MR. REGNIER: Thank you, Randy.

5 Okay, so we have one -- the first comment is
6 from Addison Delk, with Lord Green Strategies. And the
7 comment is that "AB1103 requires whole building data to
8 be reported. However, often in industrial settings the
9 various tenants have a wide range of uses with large
10 variances and energy demands.

11 For example, in an industrial building one
12 tenant may be utilizing space as a refrigerating
13 warehouse, another performing light manufacturing, and
14 yet a third simply using space for storage.

15 The industrial space types in Portfolio Manager
16 presently only cover warehouse refrigerated and
17 unrefrigerated.

18 How will reporting be able to accommodate the
19 resulting skewed energy metrics?

20 Also, with the report account for the similarly
21 skewed metrics in whole building reporting of a retail
22 strip center, where it's commonly found to have a
23 grocery anchor, restaurants and retail store use in one
24 whole building?"

25 So, excuse me for having to read the

1 transcription, we're just getting a lot of noise over
2 the phone. Ah, there we are.

3 MS. BROOK: So we -- this is Martha Brook. We
4 understand the limitations of Energy Star Portfolio
5 Manager in terms of looking at similar building types
6 that have much different energy use, you know, process
7 related energy use going on in those building types.

8 The only thing that we can recommend and we'll
9 be recommending in our guideline document is that,
10 again, voluntary disclosure can go a long way to
11 clarifying why someone's Energy Star rating is what it
12 is.

13 So, if you've got an Energy Star rating as a
14 warehouse and you think it's a very high -- a very low
15 rating and a lot of energy use, then you can add
16 voluntary disclosure to explain why that rating is the
17 way it is.

18 And you could also do the same, if it's a very
19 good rating you could explain what you've done to make
20 your building a good rating, or why you think it's good
21 only because you don't use the building very often.

22 So, that type of voluntary disclosure is
23 encouraged, but it's not part of the regulation.

24 MR. REGNIER: Okay, the next comment is from
25 Mike Hackett, and it's actually a question. It says,

1 "Does a separately owned portion of a mixed use property
2 larger than 50,000 square feet have to comply with
3 AB1103?"

4 And the answer is that AB1103 applies to full
5 building transactions, so if that separately owned
6 portion is a part of a whole building transaction then,
7 yes, it would, but otherwise it would not.

8 MR. REGNIER: And we have also got Barry Hooper
9 on the phone and Joe's going to unmute them.

10 MR. HOOPER: Thanks, Justin. Can you hear me?

11 MR. REGNIER: We can. Thank you.

12 MR. HOOPER: Super. This is Barry Hooper with
13 the City and County of San Francisco, and I'd just like
14 to comment the Energy Commission for the progress in
15 implementing this law and offer a few observations in
16 implementing a related piece of legislation in San
17 Francisco, which requires a much more limited, but
18 public, energy performance disclosure on an annual
19 basis.

20 And, you know, one of the biggest common threads
21 is the necessary step to take to comply with the
22 ordinance. San Francisco is a benchmark with Portfolio
23 Manager of the entire building and the acquisition of --
24 by the owner of information about the entire building is
25 necessary for that process.

1 And I would really support the comments that
2 PG&E and Southern California Edison have made that there
3 would be extraordinary value in directly engaging with
4 them and with, in particular, CPUC to fully clarify how
5 the owner would obtain the information and get
6 confirmation from the utilities that they would provide
7 that information on a whole building basis, in terms of
8 monthly information, including for former tenants and
9 former owners during that 12-month period.

10 During the initial period of implementation -- I
11 do take the staff's point that once the disclosure
12 regime has been in operation for several years that the
13 disclosure from one owner to the next would provide
14 enough information to then benchmark the same building,
15 if the building were sold again in less than 12 months.

16 However, it is certainly common in retail to
17 have tenants that are seasonal, maybe only be there for
18 a few months, and so if the owner didn't capture that
19 energy usage situation or release for that energy usage
20 information during that period it would be very
21 difficult to obtain it if there wasn't clarity among the
22 State regulators about how that information would be
23 obtained from their relevant utility.

24 And, you know, what I think this really speaks
25 to is that there would be a great value among those four

1 parties, the investor-owned utilities, the CPUC, and the
2 CEC, three parties, I suppose, to explicitly discuss
3 what -- the relative sensitivity of information, that
4 there is clearly great public interest in recognizing
5 great sensitivity in high-resolution information, such
6 as is delivered by interval meters, which can tell a lot
7 about the, you know, moment-by-moment functioning of a
8 facility.

9 But monthly data is fundamentally different and
10 when that information's rolled up into an aggregate
11 information for the year, that is just a fundamentally
12 different level of privacy, and a data resolution that
13 has different implications.

14 And then, second, if we were to weigh that, that
15 actual energy usage information on a monthly basis,
16 against the current process whereby the owner needs to
17 obtain written consent from each separately metered
18 tenant.

19 And in the course of obtaining written consent
20 they need to obtain, in PG&E's case, the service ID
21 number. So, a relatively sensitive account related
22 number, not the account number, but still a number that
23 is held confidential by the tenant, in order to confirm
24 that they should have access to that information.

25 And there would actually be, in my opinion,

1 significantly less exposure of sensitive customer
2 information by making -- having a clearer process just
3 to show the monthly data in a manner that the owner
4 didn't have to request a service ID number, an account
5 number, or similar information that could -- then the
6 reason for that is that those account numbers, ID
7 numbers, can then be related, potentially, in various
8 ways to, you know, further information that the customer
9 may want to keep confidential, such as their
10 identification, and their Social Security Number and
11 other -- you know, other public -- other information
12 that's not public, but is put to public uses that is
13 sensitive, if there's excess availability of that
14 information.

15 And then two final points to really encourage --
16 and perhaps in the guidelines clarifying the procedure
17 to reasonably estimate missing data.

18 NYSERDA does have some examples for how they've
19 treated that process and that's been used with, I think,
20 significant success in New York City.

21 It certainly is much better to provide a process
22 where the data is, to the maximum extent, is not
23 missing, that it's as easy as possible to obtain it.
24 But it seems to me it should be a little clearly exactly
25 how you'd estimate missing data.

1 And then last, you know, in implementation
2 timing I'm not -- I don't -- among the things that I
3 just do not know is how the CEC would track the
4 transactions that are affected and, therefore, be able
5 to enforce the requirement.

6 But the engaging with every transaction of these
7 three types throughout the State does require
8 substantial communication and resources behind it to
9 really succeed at that.

10 And, you know, it's something that we've been
11 quite challenged at in implementing, again a local
12 ordinance that has a very -- that has a lot of
13 similarity and intent.

14 And I just would encourage and ask for some
15 clarity about how you'd be able to -- you know, how you
16 plan to successfully engage with the entirety of these
17 transactions, even based on the implementation timeline
18 provided.

19 I'm sorry, one last thing. Is there a penalty
20 for noncompliance other than the potential for
21 disagreement among the parties to the transaction?

22 MR. REGNIER: Okay. So, what I've got is a
23 request for a clarifying procedure for estimating
24 missing data, and very much appreciate that comment and
25 we'll take it under consideration and tracking

1 compliance, and penalty for not complying.

2 We will be receiving a copy of the data that is
3 sent in to -- or a copy of the data that is used to
4 generate the disclosure. That copy is sent to the
5 Energy Star Portfolio Manager account that the Energy
6 Commission has at the time that the disclosure is
7 generated, so we'll be able to look that up from that
8 end.

9 In terms of a penalty for not complying, I'm
10 going to turn it over to the Staff Counsel. We're not,
11 at this point, planning to cross-check our records in
12 the Energy Star Portfolio Manager against all
13 transactional records that we can find because the -- as
14 I understand it, the contract law has some pretty steep
15 penalties and provisions for not providing a disclosure
16 that's required for a transaction.

17 MS. MAYER: Hi, it's Robin Mayer, Staff Counsel.
18 Yeah, to reiterate a little bit, there's other sources
19 of law that protect -- protect the buyer. Chiefly,
20 there's the Civil Code, which protects all real estate
21 transactions.

22 There's some case law, also, that specifically
23 applies to fraudulent concerns in nonresidential
24 building transactions that makes them the equivalent
25 of -- whenever you buy a house, yourself, you enjoy

1 these protections in the law.

2 We also have, specific to the Energy Commission,
3 within Title 20, Regulations 1231(a) -- 1230(a)
4 sequence, we have a complaint process. So, if somebody
5 has a problem with what's going on they can come and
6 complain; anyone can launch a complaint. And we
7 will -- we are obligated to investigate the complaint
8 and give some kind of answer within fairly tight
9 timeframes.

10 Additionally, if someone were to make a false
11 statement and, you know, I guess ordinarily we would
12 think of it as being willful, but it could also be a
13 willful omission, to us, when they report their -- when
14 they give us a copy of the report electronically, we
15 have data collection statutes that are quite powerful,
16 that allow us to impose civil penalties, et cetera.

17 So, there's actually a lot of protections
18 already, they're just not spelled out in the regulations
19 because the statute, itself, 25402.10, doesn't prescribe
20 any specific penalties.

21 MR. REGNIER: I'm sorry, Barry, can I double
22 check and make sure we've gotten to all of your
23 questions? Sorry if I missed any of them.

24 MR. HOOPER: Yes. Yep, it's just the making it
25 easy to comply is my main comment.

1 MR. REGNIER: Great. Well, thank you.

2 We've got one other follow up coming in from
3 Addison Delk, with Lord Green Strategies.

4 The question is, "Will buildings be required to
5 enter into Energy Star Portfolio Manager actual
6 operating characteristics for each and every tenant or
7 be able to use defaults?"

8 And that goes, you know, squarely to what Barry
9 was saying in terms of clarifying the procedure for
10 estimating missing data.

11 So, they're required to do everything they can
12 to find what the proper detailed information is and
13 that's why we've got subsection (e) in 1685.

14 "If the owner has made a reasonable effort to
15 ascertain the missing information, the owner may use an
16 approximation of the information provided that the
17 approximation is identified as such, is reasonable, is
18 based on the best information available to the owner,
19 and is not used for the purpose of circumventing or
20 evading this article."

21 Are there any more comments for online?

22 Well, we're not seeing any more come up. Are
23 there any more comments in the room?

24 COMMISSIONER DOUGLAS: All right, well, if there
25 are no more comments, I'll thank the participants in

1 this hearing, both on the phone and in the room.

2 And we will -- we will go on from here, so thank
3 you very much.

4 And let me just ask, written comments, have
5 those -- were these due today or are there -- is there a
6 date in the future when written comments are due?

7 MR. REGNIER: No, it's a date in the future. It
8 can be sent to dockets, I believe it's May 9, if we
9 don't do 15-day language.

10 MR. PENNINGTON: So, ideally, this is Bill
11 Pennington, Commission staff, ideally we get those
12 comments within a week so we could process them. So,
13 we'd encourage people not to wait and submit them at the
14 end of the 45-day period.

15 COMMISSIONER DOUGLAS: Right. So, obviously,
16 the sooner you provide your comments the more time staff
17 will have to think about them and consider them. Of
18 course, all comments submitted before the deadline will
19 be considered, but we always encourage people to get
20 their comments in a bit early, so within a week if you
21 can.

22 Thank you very much and we'll go on from here.

23 MR. REGNIER: Thank you.

24 COMMISSIONER DOUGLAS: Thank you and we're
25 adjourned.

1 (Thereupon, the Public Hearing was adjourned at
2 2:02 p.m.)

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