

26 August 2014

Office of Administrative Law (OAL)
Emergency Rulemaking Number: 2014-0821-05E
300 Capital Mall, Suite 120
Sacramento, California 95814

Docket Unit
California Energy Commission
Docket No. 14-EUDP-EMY-01
1516 9th Street, MS-4
Sacramento, California 95814

California Energy Commission

DOCKETED

14-EUDP EMY-01

TN 73711

AUG 26 2014

Via Email: staff@oal.ca.gov

Via Email: DOCKET@energy.ca.gov

Regarding: Notice of Emergency Rulemaking Action, Amendment to Nonresidential Building Energy Use Disclosure Program Compliance Schedule (Title 20, Section 1682(c)), California Energy Commission, Docket No. 14-EDUP-EMY-01, August 11, 2014

To Whom It May Concern:

Thank you for the opportunity to submit the following comments for consideration as emergency rulemaking action to Nonresidential Building Energy Use Disclosure Program (AB 1103) is contemplated. In my opinion, grounds and justification for emergency rulemaking are inadequate and unnecessary and I encourage the Office of Administrative Law to reject the approved recommendation of the California Energy Commission to postpone the implementation date of the 5,000 square foot compliance threshold.

In my opinion, after the many implementation stops and starts to date, postponing the schedule yet again will further undermine the credibility of the CEC and erode the public's confidence in this regulation. The perception in the market of a lack of seriousness on the part of CEC is hurting my ability as a consultant to convince buildings owners to comply with AB 1103. Based on my direct experience, the program isn't working as planned and it is time to regroup and reconsider the legislation. However, using the 5,000 square foot implementation date as a trigger to begin the evaluation process is unnecessary and not advised. A review process can begin while the legislation is fully implemented. Leaving the implementation schedule as currently written will not harm the market or the industry nor cause any additional market confusion that doesn't already exist.

During the July 2, 2014 staff workshop, the CEC heard presentations from two large and reputable real estate organization: Kilroy and Majestic Realty. Both companies outlined the difficulties and excessive and unexpected costs associated with attempts to comply with AB 1103 – due to uncooperative tenants and uncooperative energy service providers. These two organizations would represent primarily the 50,000 square foot and above qualifying threshold. These are very sophisticated real estate organizations with both expertise and capacity to comply with AB 1103 and don't represent the entire spectrum of real estate properties or ownership configurations.

If the CEC has determined that the level of difficulty and expense associated with AB 1103 compliance by the larger and better resourced companies is so extreme to justify postponement of the 5,000 square feet compliance threshold until systemic impediments can be resolved, then that same logic should result in postponement of the entire implementation schedule in place for those buildings over 10,000 square feet. In my opinion, all things being equal right now, the smaller properties will probably find it easier and less expensive to comply with AB 1103 than the larger buildings for a variety of reasons and don't need any intercession on their behalf. The CEC should focus attention and resources on removing the large-scale structural impediments experienced by all properties in order to increase the compliance rate – and for the benefit of buildings of all sizes.

At the same workshop, the CEC heard from several large and small energy services providers – none of which are in strict and complete compliance with the AB 1103 language that requires aggregation of whole-building energy use data. This lack of preparedness and cooperation by the energy services providers is one of the main barriers to larger market adoption of AB 1103 – by any size building. This directive has been a battle for years and if the CEC is unable to adequately carry out their regulations and require whole-building energy data aggregation to the degree that it will simply the compliance process and lower the cost to all buildings regardless of size – then the CEC should postpone the entire regulation until this matter can be resolved as this is a key enabler to robust compliance.

Additionally, the statistical analysis presented by CEC Staff member, Daniel Johnson, at the Workshop and representing an AB 1103 compliance rate since the initial enforcement (not implementation) date of January 1, 2014 is based on incomplete information. While the CEC is tracking an estimated 17% compliance rate to date, the transactional metrics sourced from LoopNet and used to develop the ratio, does not include the number of eligible lease transactions. As a result, the 17% compliance rate is most likely too optimistic. While it is possible that a much larger number of eligible buildings can fall between 5-10k square feet that now have to comply with AB 1103, it is unlikely that the overall participation rate at this level will exceed the estimated and optimistic 17% until the structural impediments are resolved for all buildings.

A review of the Findings published July 22, 2014 in support of emergency ruling are anecdotal, speculative and misrepresents the actual sequence of events over the past two years as AB 1103 implementation started and stopped several times:

- AB 1103 has been on the horizon for many years. The utility companies have had sufficient time to prepare for compliance. With my help, the CEC was tracking the preparedness of the energy service providers for more than a year and was apprised of the level of



cooperation and preparedness by the same providers as of Fall 2014 – months before the final threshold implementation date of July 1, 2014.

- The delayed roll-out of Energy Star Portfolio Manager was a concern and had impact but the entire system, including Web Services was completely operational last fall. There isn't a backlog of compliance projects that need to be addressed as of July 1, 2014. Since the overall AB 1103 compliance rate is so low, the energy service providers won't experience a significant or unexpected burden on their systems or personnel by leaving the 5,000 square foot threshold implementation schedule in place.
- Aspects of the regulations have been unclear since initial launch – and may be impeding greater compliance. If the regulations are so unclear that intercession is required on behalf of the smaller properties, then intercession should be considered for the larger properties as well – especially those that are already struggling with compliance processes and costs.
- The outreach provided by CEC is sufficient – but limited. The quantity of presentations or the number of support queries answered is not the problem. Recitation of the text of the legislation by CEC staff does not adequately address questions raised by real world commercial real estate owners and practitioners. As energy use data is now a material fact in specified real estate transactions, CEC staff are – and should be - limited in the scope of advice and guidance they can offer before stepping into the role of real estate attorney, lender, escrow agent or broker – all of which are licensed and regulated by the State of California.
- Any time a new piece of legislation rolls out, there is always a possibility of market confusion. The roll-out of AB 1103 has not gone well, but this is not the time for the CEC to back away or show any hesitation. It is time to confidently, capably and quickly resolve the structural impediments, clarify the language and devote additional resources to full, complete and robust implementation of AB 1103.

Please know that in this letter I have outlined what I consider to be a “working disagreement” with the California Energy Commission, submitted in the spirit of full and complete implementation and compliance of AB 1103 throughout the State of California. Regardless of the outcome of this process, San Diego Energy Desk will remain at the forefront of AB 1103 implementation and will continue to work closely with all stakeholders to refine and enhance the legislation at every opportunity. It is also important to note that San Diego Energy Desk has crafted a successful business model for thorough, accurate and complete compliance with AB 1103 regulations as they exist today – despite the imperfections in the language of the legislation or the impediments to adoption in the marketplace.

Thank you for your consideration of these comments.

Sincerely,



Randy J. Walsh, CCIM, LEED AP
Chief Efficiency Optimizer