

JOINT COMMITTEE WORKSHOP  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
 )  
2008 Rule Making of the )  
Nonresidential Building Energy )  
Performance Rating System: )  
California Public Resource Code, )  
Section 25402.10. )  
\_\_\_\_\_ )

Docket No.  
09-AB 1103-01

<b>DOCKET</b>	
<b>09-AB 1103-1</b>	
DATE	<u>AUG 13 2009</u>
RECD	<u>SEP 21 2009</u>

EFFICIENCY COMMITTEE WORKSHOP

TO DISCUSS DRAFT REGULATIONS TO IMPLEMENT AB1103:

NONRESIDENTIAL BUILDING ENERGY PERFORMANCE

RATING SYSTEM

CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

AUGUST 13, 2009

9:00 A.M.

 ORIGINAL

Reported by:  
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Contract No.

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COMMISSIONERS PRESENT

Julia Levine

ADVISORS and STAFF PRESENT

Debbie Eden, Advisor to Commissioner Rosenfeld

Robin Mayer

Martha Brook

Amy Barr

ALSO PRESENT

Joe Derhake, Partner Engineering

Matthew Hargrove, California Business Properties Assoc.

John Cullum, Semptra Energy

Erik Emblem, 3E International

Peter W. Turnbull, PG&E

Bradford L. Packer, Department of Water and Power

Elizabeth Gavric, California Association of Realtors

Matthew Evans, Southern California Edison

Robert Levine, Southern California Edison

Patrick L. Splitt, App-Tech, Inc.

Shawn Thompson, City of Irvine

Bill Roberts

Nancy Cleveland

Ryan Fulcher, ASHRE

Rich Bluth, Irvine Company

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PARTIAL PROCEEDINGS

1 MS. BROOK: -- going to be leased, or refinanced,  
2 or sold, and it's relatively new, it has less than 12 months  
3 of building data?

4 MS. BROMMET: Oh, it doesn't have to be new.

5 MS. BROOK: Oh, are you saying --

6 MS. BROMMET: I talked about a new building but,  
7 for example, an existing building that decides to do  
8 efficiency upgrades which, of course, is the point --

9 MS. BROOK: Right.

10 MS. BROMMET: -- to help pull the market towards  
11 efficiency upgrades.

12 MS. BROOK: Right.

13 MS. BROMMET: So if those upgrades happen within  
14 the 11-month timeframe of the utility bills, so that they're  
15 not fully captured by the historical utility bill what's the  
16 idea for how that would be handled and included in the  
17 picture.

18 MS. BROOK: So that's an excellent point. And one  
19 of the things we've thought about that wasn't really  
20 communicated today was there could be some part on the form.  
21 And in fact, ASHRA has a good example of this in their  
22 disclosure certificate, where you have a place of disclosing  
23 recent retrofit activity. So that could -- I think that's  
24 an excellent point and thank you for bringing it up, and we

1 should consider having someplace on our disclosure that  
2 allows that information to be provided.

3           Because, I mean, I would hope that anyone in the  
4 financial transaction, decision making process, would want  
5 to know that information.

6           But we haven't really figured out how we would  
7 actually modify the rating to account for a recent retrofit,  
8 we haven't done that, yet.

9           MS. MAYER: And the statute is pretty clear that  
10 it's the previous 12 months worth of data, but there's  
11 nothing to stop an owner from voluntarily benchmarking, and  
12 presumably updating, and giving out that information in  
13 terms of the rating.

14           MS. BROMMET: Okay, thanks.

15           COMMISSIONER LEVINE: Other comments or questions  
16 on the phone or in the room?

17           MR. BLUTH: This is Rich Bluth, with the Irvine  
18 Company, and I wanted to go back to the discussion on the  
19 NDA.

20           I guess part one is I would -- in the overview it  
21 was touched upon, but I'd like to understand a little bit  
22 more about how the NDA process is envisioned.

23           And then I guess my second part of this is so. Cal  
24 Edison's been pretty clear that that's not working for them.  
25 And as a property owner, who has property in all three IOU

1 territories, I find it a concern that there's not alignment  
2 with utilities on how they're even going to respond to this  
3 process.

4 And I think that's a real key concern on my part.

5 COMMISSIONER LEVINE: There isn't anyone here from  
6 the Public Utilities Commission; is there? I guess not. I  
7 don't know if they have -- have they been involved in this  
8 discussion?

9 MS. BROOK: There has been some -- some  
10 participation from the Public Utility Commission on our  
11 working group, mostly passive as far as just paying  
12 attention to what we're doing, not actively making, you  
13 know, legal decisions or opinions.

14 MS. MAYER: AB 531 abandoned these -- its own  
15 solution because of these conflicts. So it's in our wrap to  
16 deal with it.

17 And a regulation, obviously, has to apply  
18 statewide, and that's why we're seeking to craft a solution  
19 that will make as many people happy as possible, and  
20 certainly not going to make everybody happy.

21 Peter, do you want to --

22 COMMISSIONER LEVINE: The utilities in the room are  
23 caucusing.

24 MS. MAYER: Yeah, I had --

25 MR. TURNBILL: This is Peter Turnbull, from PG&E,

1 we had some informal off the -- not off the record, but  
2 informal discussions with the CPUC on this issue and on, you  
3 know, a if this, if this, if this basis they were open to  
4 this concept of the nondisclosure.

5           So we did -- we've gone through and drafted some  
6 documents, and so on and so forth. So that's -- our view is  
7 that was a good way to proceed and one way or another  
8 something of this nature would be operationally necessary.

9           So that's what we've done. We had some preliminary  
10 discussions. We've encouraged the CEC and the CPUC to get  
11 together on this issue and, you know, discuss what -- what  
12 the framework might be. So that will be --

13           COMMISSIONER LEVINE: So then I'd just ask a  
14 question of Robin, and Martha, and Amy, given that a number  
15 of people have commented on, expressed concerns, have  
16 questions about the nondisclosure agreement and it doesn't  
17 seem like the three IOUs are in exactly the same place on  
18 it; how can we try to bring closure to this issue in a way  
19 that meets the concerns, is appropriate the three IOUs, and  
20 the builders, and owners? I'm not sure how we do that in  
21 this context; what do you recommend?

22           MS. MAYER: Well, I'd like to keep working with  
23 them and see if we can arrive at a solution. One of the  
24 written comments that we received before the workshop  
25 suggested that there actually is a way to anonymously

1 control the data, and that was the first I've heard of it.

2 And it potentially would be a technical fix.

3           You know, personally, I don't want to go forward  
4 without something.

5           COMMISSIONER LEVINE: Uh-hum.

6           MS. MAYER: I just don't think statutory  
7 construction alone is enough and I don't think getting  
8 third-party consent is very practical. So we need to -- you  
9 know, that's all I can say is we need to keep working with  
10 IOUs to come up with a practical solution.

11           COMMISSIONER LEVINE: I hate to suggest a roomful  
12 of lawyers, as a lawyer myself, but I think this is  
13 something it sounds like there need to be some very quick,  
14 offline discussion with the key players, not just the  
15 utilities, but the owners and buildings, Association of  
16 Realtors, and others who are all impacted by it and try to  
17 figure out what the right balance of interests of practical  
18 implementation are here, because this seems to be coming up  
19 with a lot of speakers.

20           And I don't know how to do that quickly, but I  
21 really encourage all of you to sit down together quickly.

22           MS. MAYER: Yes. And I will say the NDAs have been  
23 really the only solution that I've heard.

24           COMMISSIONER LEVINE: Yeah, and be solution  
25 oriented, all of you.

1           So please?

2           MR. CULLUM:   Again, this is John Cullum from Sempra  
3 Energy.

4           We have, the IOU staff have had offline discussions  
5 amongst ourselves about nondisclosure, we've had numerous  
6 meetings trying to come up with a solution for nondisclosure  
7 or a solution to solving confidentiality.

8           To Martha's point, though, I know Sempra is very  
9 concerned about masking of data, functionality within our  
10 systems is very costly and we have not addressed any costs  
11 to cover any changes within our systems.

12           All IOUs have very different building systems and  
13 ways of getting their information to the EPA, so to mandate  
14 a solution by masking data, or hiding data, or -- we'd have  
15 to have a lot of discussions around what our systems are  
16 capable of doing, because each IOU is very different in that  
17 regard.   So that's a concern of ours.

18           But we are working towards working through a  
19 solution to have all IOUs on the same page, hopefully, we'll  
20 get there.

21           COMMISSIONER LEVINE:   And that's a page that meets  
22 the needs of the industry, the building owners, and tenants,  
23 and their concerns about confidentiality?   That's a  
24 question.

25           MR. CULLUM:   That's -- I'm sorry.   That's the hope

1 is that we're trying to be -- obviously, seamlessness is  
2 part of the goal for energy efficiency, that across the  
3 State all the IOUs have the same programs. And we strive  
4 towards that at least, hopefully, we'll achieve that goal in  
5 this process.

6 COMMISSIONER LEVINE: Okay, thank you.

7 MS. MAYER: And I don't think aggregate of data is  
8 the only solution, I wish it was. There's just a lot of  
9 small buildings, with few tenants, and there just may not be  
10 enough. But it's certainly a good approach.

11 COMMISSIONER LEVINE: Okay. Mr. Hargrove, you've  
12 been very patient.

13 MR. HARGROVE: I'm specifically on this issue. And  
14 again, I want to make sure that the room knows we're  
15 supportive of this benchmarking law. I mean, we worked on  
16 this legislation, we're supportive of this.

17 So we're not here to throw bombs, we're here  
18 because we support this. We think it's the only way we can  
19 get to some of our AB 32 market-based solutions is through a  
20 statewide benchmarking law.

21 But there are issues in implementing this,  
22 specifically on the NDA. And I hate to point back to the  
23 bill, but subsection B of the bill does say that it's the  
24 responsibility of the utilities to provide the information  
25 on energy to the building owners, who need to -- who need to

1 benchmark these.

2           And this has been a point of issue with this all  
3 along is how do you get these third-party folks or a master  
4 meter to do this?

5           And there's been some discussion about having  
6 building owners write that into our leases as we move  
7 forward. I mean, the first issue with that is that it would  
8 take years to implement, putting them into the leases,  
9 because you have some long-term leases, and so we would have  
10 concern for that reason.

11           But we would also have concern because we're  
12 basically a third party to that energy information, it's  
13 between the business, who's master metered, and the local  
14 utility.

15           So something that we've suggested is look at when  
16 you sign up for service, or as the service contracts roll  
17 over to start putting it in that way.

18           And I know that that's something that some of the  
19 utilities have considered and there's some difficulties with  
20 that, but we think that might be the most efficacious way to  
21 get companies to sign onto this is, in order to get your  
22 service you need to say, we understand that under 1103 this  
23 information is going to be used for benchmarking purposes.

24           COMMISSIONER LEVINE: Thank you.

25           MR. HARGROVE: Okay.

1           COMMISSIONER LEVINE: More on this issue or I think  
2 you're all way smarter, more knowledgeable than I, and can  
3 resolve this, hopefully, offline.

4           Mr. Hargrove did you -- I think you wanted to make  
5 other comments, as well, if you want to take this time.

6           Yes?

7           MS. GAVRIC: This is Elizabeth Gavric with the  
8 California Association of Realtors. And I realize this  
9 isn't the appropriate forum by which for us to debate the  
10 intent and the scope of AB 1103 or even AB 531. But  
11 primarily, AB 1103.

12           And I have it in front of me now and I know that  
13 we're going to differ immensely on our interpretation of the  
14 language.

15           So I would like to request that perhaps the Office  
16 of Administrative Law, or you get some third party to do a  
17 legal interpretation of the scope and intent of AB 1103.

18           And we're not looking to stop what we've agreed  
19 upon in the Energy Star Benchmarking Program, and the  
20 working group, and we're fine with that. But it's the part  
21 that the California is going to develop its own benchmarking  
22 program that gives us a little bit of concern and we just  
23 want to see if that's actually authorized statutorily.

24 Thank you.

25           COMMISSIONER LEVINE: We will consider that request

1 and get back to you.

2 Are there other comments, besides the scope of AB  
3 1103, at this point?

4 Mr. Hargrove, please? You have earned more time on  
5 the podium.

6 MR. HARGROVE: Matthew Hargrove, California  
7 Business Property Association, I'll be really quick with  
8 this one.

9 One thing that -- and again, all these comments  
10 that we've been talking, Robin, one thing we see, think that  
11 needs to be addressed in the rates, itself, is some sort of  
12 boiler plate that says that if for some reason the building  
13 owner cannot get this information, whether it's an issue  
14 with the utility or, you know, something, that it doesn't  
15 hold up the real estate transaction.

16 There's nothing -- there's disclosures that are  
17 required in this but -- and we want to provide the  
18 information, but there are instances where something might  
19 happen, where the information is unavailable. We've had  
20 database crashes and things like that.

21 And actually, in the next document, the 80-pager  
22 that implements these regulations, there is some language in  
23 there that says if a good faith effort is put forward and  
24 for some reason the information can't be received, then the  
25 building owner shall be deemed in compliance with this, we

1 think that needs to be actually reflected in the regs.

2           We don't think that's something that will be used  
3 often, but there are pickups, as we all know, with  
4 technology, and want to make sure that that gets reflected  
5 somehow. Thank you.

6           COMMISSIONER LEVINE: I'm just curious whether that  
7 sort of provision provides to earthquake safety, fire  
8 safety, other disclosures, and how narrowly or broadly those  
9 exceptions would apply in other areas; are there other  
10 examples you can point to?

11           MS. GAVRIC: Elizabeth Gavric, with the California  
12 Association of Realtors.

13           When it comes to disclosing information, typically,  
14 about earthquakes, floods, hazardous waste sites, or  
15 anything else that you might want to include in your  
16 disclosure, those are typically generated by maps and so  
17 they go out to a third party that you hire, a natural hazard  
18 disclosure.

19           You just type in an address, they compile it using  
20 GIS systems, all this different data that's available, so it  
21 doesn't require any actual information to come from a  
22 tenant, or any -- the tenant doesn't actually have to give  
23 any specific information because that's all map-based, so  
24 they should be --

25           COMMISSIONER LEVINE: And one of the example you

1 gave was with the computer crash, that could happen even  
2 with the map database?

3 MS. GAVRIC: Yes.

4 COMMISSIONER LEVINE: I'm just trying to figure  
5 out, if this is something we're going to pursue, you know,  
6 how narrowly or broadly you're suggesting we craft it. Good  
7 faith is a very vague term, it's an important one and it's  
8 certainly used in many places in the law and regulations,  
9 but it would be great if we could be a little more specific  
10 about the kind of situations you could foresee or justify  
11 not disclosing this.

12 MR. HARGROVE: And we agree, and this is where we'd  
13 hope that the Department of Real Estate, or Consumer Affairs  
14 would be more involved in this process.

15 Again, this is more than just about energy, this is  
16 also -- you know, they have a huge regulatory piece on this,  
17 too, and up to this point have not been involved in this  
18 process. But we do ask.

19 COMMISSIONER LEVINE: Can we ask your help in  
20 getting them involved?

21 MS. BROOK: We've invited them, but so if you could  
22 help, that would be great.

23 COMMISSIONER LEVINE: Yes, sir?

24 MR. EMBLEM: Good morning, I'm Erik Emblem, I work  
25 for 3E International, and I'm a consultant working for

1 California SMACCNA, the Sheetmetal and Air Conditioning  
2 Contractors National Association, and the California Local  
3 Unions of the Sheetmetal Workers International Association.

4           And I just want to comment on one piece where there  
5 seems to be some discussion on the Energy Star database, and  
6 portfolio manager, and the concept of having our own  
7 database in California.

8           Having been in Washington for ten years, and  
9 running the National Energy Management Institute, and I  
10 would consider the ten years I was there were probably the  
11 dark years, or the darkest years for Energy Star. Lack of  
12 funding, lack of support, and having knowledge of that  
13 database, and the people that work there do a great job, but  
14 the database, the information is dated and limited. And it  
15 is the best thing that's out there.

16           But I think that for California building owners,  
17 who have had buildings and been under the Title 24, building  
18 and energy efficiency regulations for quite some time, it  
19 may be more advantageous to be comparing your building to  
20 California buildings, than to that database.

21           So I think the Energy Commission staff is correct  
22 in at least putting this forward and moving with it, and I  
23 think it's going to be better for all the building owners in  
24 the State; just my two cents.

25           COMMISSIONER LEVINE: Thank you, sir.

1           Any other comments and questions, or Martha, or  
2 Robin, or Amy, do any of you want to make any closing  
3 clarifications or statements?

4           I'm sorry, Debbie has a comment. Would you please  
5 introduce yourself?

6           MS. EDEN: Yeah, I'm Debbie Eden, Advisor to  
7 Commissioner Rosenfeld.

8           And I have a question that the legislation does say  
9 utility service companies and that, I assume, includes POU's?  
10 And I haven't heard, if you could maybe just summarize their  
11 part in this and how -- if they've been participating and if  
12 they've expressed concerns about disclosure and other  
13 things?

14          MS. BROOK: They've been invited, they were  
15 explicitly invited to be part of our working group and we  
16 haven't had their participation yet, today.

17          So we were hoping, actually, that the beginning of  
18 a rule making would bring them and get them interested in  
19 what we're trying to accomplish, because they do have  
20 obligations under the law, but we haven't had their  
21 participation, yet.

22          COMMISSIONER LEVINE: So maybe we should try  
23 and --

24          MS. MAYER: Debbie, I don't know if you were here  
25 when I was presented, but the public utilities have this

1 exception where they can turn over data to other government  
2 agencies under the Government Code, so they don't have the  
3 same problem.

4 MS. BROOK: But SMUD has been very active in our  
5 working group and I apologize for not --

6 MS. MAYER: And very helpful.

7 MS. BROOK: And they have set up an automated  
8 system, so they can do automated benchmarking through  
9 Portfolio Manager, but we haven't had any other  
10 participation from public-owned utilities.

11 So I just wanted to -- if there's -- I just wanted  
12 to mention one thing, that this is not something that's been  
13 supported by the working group, it's my opinion, so I just  
14 wanted to lay it out here because I think it's important  
15 when we think about the bigger picture of ratings, and  
16 rating approaches in California.

17 And all of this problem that we're having with  
18 nondisclosure agreements and data confidentiality, it's all  
19 because we're trying to force this model of an operational  
20 rating for a whole building, where there's tenant lease  
21 spaces that are separately metered.

22 And if we took a different approach and used more  
23 of an asset rating approach, like they do in the European  
24 Union for this specific application, we wouldn't have to  
25 have these problems.

1           So one -- one approach could be that if we can't  
2 get all this stuff worked out that we say, for tenant lease  
3 spaces where they're separately metered, we wait until we  
4 have an asset rating system and then those buildings would  
5 be implemented in a different way, their ratings would be  
6 applied in a different way, so that's an option that we  
7 have.

8           COMMISSIONER LEVINE: Thank you. I would just like  
9 to thank you all. I think probably everyone, or nearly  
10 everyone in the room has put a lot of time and effort into  
11 this proposed rule making and into AB 1103, and AB 531 -- is  
12 that the number? We have so many bills and, of course, they  
13 go on all the time.

14           And that's like the acronyms; it becomes one big  
15 soup of numbers and letters.

16           We really appreciate the comments, especially  
17 specific suggestions about how to deal with specific  
18 concerns that you have is extremely helpful. And I know  
19 staff are really trying to make this workable.

20           We do feel that under current law, both AB32 and AB  
21 1103, that we need to move forward, that energy efficiency  
22 for buildings is a critical part of reducing our greenhouse  
23 gas emissions in California and saving consumers money.

24           But we absolutely do not want to impact real estate  
25 transactions. We don't believe that this process needs to,



**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 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\_11th day of September, 2009.

A handwritten signature in cursive script, reading "Barbara Little", is written over a horizontal line.

Barbara Little