

**CALIFORNIA ENERGY COMMISSION**

1516 Ninth Street  
Sacramento, California 95814

Main website: [www.energy.ca.gov](http://www.energy.ca.gov)



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

Notice of an Efficiency Committee Workshop  
Regarding Nonresidential Building Energy  
Performance Rating System

## **Notice of an Efficiency Committee Workshop To Discuss Draft Regulations to Implement AB 1103: Nonresidential Building Energy Performance Rating System**

The Efficiency Committee of the California Energy Commission is conducting a workshop to receive public input regarding draft regulations to implement the energy performance rating disclosure requirements for nonresidential buildings specified in Assembly Bill 1103 (Saldaña, Chapter 533, Statutes of 2007). Commissioner Arthur Rosenfeld is the Presiding Member, and Commissioner Julia Levin is the Associate Member of the Efficiency Committee.

**THURSDAY, August 13, 2009**

9 a.m.

**CALIFORNIA ENERGY COMMISSION**

1516 Ninth Street  
First Floor, Hearing Room A  
Sacramento, California  
(Wheelchair Accessible)

Documents can be obtained online at:

[www.energy.ca.gov/ab1103/](http://www.energy.ca.gov/ab1103/)

### **Remote Attendance**

**Web Conferencing** - Presentations and audio from the meeting will be broadcast via our WebEx web conferencing system. For details on how to participate via WebEx, please see the "Participation through WebEx" section at the end of this notice.

## **Purpose**

At this workshop the Efficiency Committee and Energy Commission staff will present and facilitate discussion of draft language to implement the benchmarking requirements for nonresidential buildings specified in Assembly Bill 1103 (AB 1103). This draft has been developed in advance of the formal rule making process to provide a foundation for discussion. Comments on this draft, either in writing or at the workshop will be used to improve the ultimate proposal.

## **Background**

AB 1103 added the following requirements to the Public Resources Code (section 25420.10):

- (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.
- (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.
- (c) On January 1, 2010, an owner or operator of a nonresidential building owner or operator shall disclose the United States Environmental Protection Agency's Energy Star Portfolio Manager benchmarking data and ratings, for the most recent 12-month period, to a prospective buyer, lessee of the entire building, or lender that would finance the entire building.

In January 2009, the Efficiency Committee requested that a working group of affected stakeholders be established to draft a set of requirements for the implementation of AB 1103. This working group has been meeting since March 2009 and will present its findings at the public workshop on August 13, 2009. This will be the first public meeting in a process that will culminate in Energy Commission adoption of regulations.

## **Written Comments**

The AB 1103 Working Group has identified issues that need to be addressed in the draft regulations. These issues are discussed in Attachment A. Staff will be posting draft regulations on the Nonresidential Building Energy Performance Rating System website ([www.energy.ca.gov/ab1103/](http://www.energy.ca.gov/ab1103/)) in advance of the workshop. Participants in the workshop will be able to review the draft regulations once they are posted. Workshop participants are requested to provide written comments on the issue identified and the draft regulation in advance of the workshop.

Written comments on the workshop topics or the draft regulations should be submitted by 5:00 p.m. on August 10, 2009. Please indicate "AB 1103 Pre-rulemaking Proceeding" in the subject line or first paragraph of your comments. All written materials relating to this workshop must be filed with the Dockets Office and become part of the public record in this proceeding:

California Energy Commission  
Dockets Office, MS-4  
Re: AB1103 Pre-rulemaking Proceeding  
1516 Ninth Street  
Sacramento, CA 95814-5512

The Energy Commission encourages comments by e-mail. Please include your name or organization's in the name of the file. Those submitting comments by electronic mail should provide them in either Microsoft Word format or as a Portable Document (PDF) to [\[docket@energy.state.ca.us\]](mailto:docket@energy.state.ca.us). **One paper copy** must also be sent to the Docket Office at the above address. If written comments are not provided by e-mail, please hand deliver or mail an original plus 10 paper copies to the Dockets Office at the above address.

## Public Participation

The Energy Commission's Public Adviser's Office provides the public assistance in participating in Energy Commission activities. If you want information on how to participate in this workshop, please contact the Public Adviser's Office at (916) 654-4489 or toll free at (800) 822-6228, by FAX at (916) 654-4493, or by e-mail at [\[PublicAdviser@energy.state.ca.us\]](mailto:PublicAdviser@energy.state.ca.us). If you have a disability and require assistance to participate, please contact Lou Quiroz at (916) 654-5146 at least five days in advance of the workshop.

Please direct all news media inquiries to the Media and Public Communications Office at (916) 654-4989, or by e-mail at [\[mediaoffice@energy.state.ca.us\]](mailto:mediaoffice@energy.state.ca.us). For technical questions on the subject matter, please call Joseph M. Loyer, Associate Mechanical Engineer, (916) 654-4811 or email at [\[jimloyer@energy.state.ca.us\]](mailto:jimloyer@energy.state.ca.us).

## Participation through WebEx, the Energy Commission's on-line meeting service

### COMPUTER LOGON WITH A DIRECT PHONE NUMBER:

1. Please go to [\[https://energy.webex.com\]](https://energy.webex.com) and enter the unique meeting number:  
928 013 496
2. When prompted, enter your information and the following meeting password:  
ab1103!!
3. After you login, a prompt will appear on-screen for you to provide your phone number. In the Number box, type your area code and phone number and click OK to receive a call back on your phone for the audio of the meeting. International callers can use the "Country/Region" button to help make their connection.

### COMPUTER LOGON FOR CALLERS WITH AN EXTENSION PHONE NUMBER:

1. and 2. Same as 1. and 2. above
3. After you login, a prompt will ask for your phone number. **CLICK CANCEL.**
4. Instead call 1-866-469-3239 (toll-free in the U.S. and Canada). When prompted, enter the meeting number above and your unique Attendee ID number which is listed in the

top left area of your screen after you login. International callers can dial in using the "Show all global call-in numbers" link (also in the top left area).

**TELEPHONE ONLY (NO COMPUTER ACCESS):**

Call 1-866-469-3239 (toll-free in the U.S. and Canada) and when prompted enter the unique meeting number above. International callers can select their number from [\[https://energy.webex.com/energy/globalcallin.php\]](https://energy.webex.com/energy/globalcallin.php).

If you have difficulty joining the meeting, please call the WebEx Technical Support number at 1-866-229-3239. Please be aware that the meeting's WebEx audio and on-screen activity may be recorded.

*/Signed/*

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**ARTHUR H. ROSENFELD**  
Commissioner and Presiding Member  
Efficiency Committee

*/Signed/*

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**JULIA LEVIN**  
Commissioner and Associate Member  
Efficiency Committee

Mail Lists: 50, 52, 53, 100 and 480

Note: California Energy Commission's formal name is State Energy Resources Conservation and Development Commission.

## **Issues Identified by the AB 1103 Working Group**

### **Disclosure Process**

AB 1103 requires that disclosure of nonresidential building energy performance information occur at the time of lease, lending or sale in California. The implementation of these new disclosure requirements must integrate with existing building industry practices during these financial transactions. Energy consumption data disclosure should not impede these transactions. Energy Commission staff are working with the United States Environmental Protection Agency (U.S. EPA) to develop an approach based on the use of Energy Star Portfolio Manager data and rating reporting to carry out California's new energy use disclosure policies and minimize the burden to nonresidential building owners or their agents.

The U.S. EPA's Energy Star Portfolio Manager System requires a building owner or operator to establish an on-line account, which includes entering information about the building and its operational characteristics. The building owner or operator must also enter a minimum of twelve months of electricity and natural gas billing data into the Portfolio Manager system, or authorize his energy utility to upload the electronic billing data to the system. The U.S. EPA has established an Automatic Benchmarking System that includes a specific data exchange to facilitate electronic billing data uploads from energy utilities.

The timing of the energy performance disclosure is important. To facilitate the valuation of energy performance in the real estate market, the energy consumption information needs to be available to parties considering a nonresidential property for lease or purchase. The earlier in the transaction that the performance information is disclosed, the more likely that it will provide benefit to the decisions made in the transaction.

### **Tenant Leased Spaces**

The state's new energy performance disclosure laws apply only to entire buildings, not spaces within buildings. Many nonresidential buildings have tenant leased spaces that are separately metered and have individual utility accounts. A building owner may have difficulty acquiring the tenant's permission to release their utility data. In these cases, the building owner will not have access to the energy consumption data that is required to be disclosed under this new state law. The regulations should address how meaningful building performance data can be obtained and disclosed for tenant leased spaces.

### **The Need for State Energy Performance Ratings**

For all buildings less than 5,000 square feet and also for buildings that cannot be categorized into types that are rated by the Portfolio Manager system, an Energy Star rating will not be available. In fact, the majority of nonresidential buildings in California will not be ratable by the national tool. The Energy Commission has developed a simple benchmarking tool based on California nonresidential building energy characteristics data that will provide a California performance rating for all nonresidential buildings in the state. Energy Commission staff recommends that both a national and a state energy performance rating should be disclosed for AB 1103 when possible.

## Use of Defaults

The Portfolio Manager system allows the use of default building operational characteristics in the determination of an Energy Star rating. Actual building square footage and monthly energy usage for the building is required. Hours of operation, occupancy rates and numbers of specific energy consuming equipment and systems are examples of the operational characteristics that can be defaulted. These parameters significantly impact the energy performance rating and the data used should reflect the actual building operations. It will be important for the disclosure form to provide for inclusion of the operational characteristics data and to highlight whether or not default data was used to generate the performance rating.

## Compliance and Enforcement

The regulations to be established by the Energy Commission should address compliance and enforcement of the California's energy performance disclosure laws. A successful disclosure program will need the cooperation of many building industry professionals. The first step will be to educate the building industry on the existence of California's new disclosure law. The Energy Commission will develop an accompanying compliance manual for the regulations that will include explanations of the disclosure processes and include example disclosure forms. In the development of the regulations and compliance manual, the Energy Commission plans to reach out to the following agencies for advice and cooperation:

California Department of Real Estate	California Building Properties Association
California Association of Realtors	California Retailers Association
California Escrow Association	California Manufacturers and Technology Association
California Bankers Association	Grocery Manufacturers Association
California Chamber of Commerce	California Independent Grocers Association
Building Owners and Managers Association	

## Phase In Schedule

The Energy Commission has the responsibility of setting the schedule for the implementation of AB 1103 through a second proposed bill AB 531. This will allow the new disclosure law to be phased in over time. The Working Group recommends that the initial implementation be limited to the largest buildings (generally 50,000 square feet or above) of the types that can be rated in the Energy Star Portfolio Manager system. The disclosure requirements would then extend to smaller buildings and additional building types over time. This phase-in schedule will allow the Energy Commission to evaluate compliance, identify issues and refine the disclosure processes before extending the requirements to all affected nonresidential buildings in the state. The Working Group also recommends that there be some lower building size limit below which the energy performance disclosure laws should not apply. The Energy Commission expects to establish exceptions to the disclosure requirements within the regulations.