



Department of Energy

Bonneville Power Administration
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Filed Via Web Portal: <https://ww2.arb.ca.gov/public-comments/public-comments-california-climate-disclosure-information-solicitation>

To: California Air Resources Board

Re: Comments in response to CARB's Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills 253 and 261

The Bonneville Power Administration (BPA) appreciates the opportunity to respond to the California Air Resources Board's (CARB) December 16, 2024 "Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills 253 and 261, as amended by SB 21." Specifically, BPA provides responses to CARB questions 1(b) and 1(d).

Question 1(b). Should federal and state government entities that generate revenue be included in the definition of a "business entity" that "does business in California?"

The definition of a "business entity" that "does business in California," as those terms are used in SB 253 and 261, should not be defined or construed to encompass federal government entities because such entities are not subject to state regulatory jurisdiction absent a waiver of sovereign immunity that has been "unequivocally expressed in statutory text." *Lane v. Pena*, 518 U.S. 187, 192 (1996). BPA does not believe that sovereign immunity has been waived with respect to SB 253 and 261, thereby precluding their application to federal government entities.

Question 1(d). Should entities that sell energy, or other goods and services, into California through a separate market, like the energy imbalance market or extended day ahead market, be covered?

The rules should not cover entities that participate in wholesale electricity markets, including entities that supply resource adequacy and other electricity products to California through bilateral wholesale electricity markets and organized markets such as the California Independent System Operator's (CAISO) Energy Imbalance Market (EIM) or Extended Day ahead Market (EDAM).

BPA calls to CARB's attention the letter of January 30, 2024, from the authors of SB 253 and SB 261 to the Secretary of the Senate. Senators Weiner and Stern clarified that it was not their intent to include as covered entities electric utilities whose only activity in California is wholesale electricity transactions. Specifically, the letter addresses the definitions of "reporting entity" and "covered entity" and says that if the business's "only activity within California consists of wholesale electricity transactions" then the SB 253 and SB 261 reporting rules do not apply to such a business. The letter states:

The definitions of a 'reporting entity' in SB 253 (now Section 38532 (b)(2) of the Health and Safety Code) and of a 'covered entity' in SB 261 (now Section 38533 (a)(4) of the Health and Safety Code) are not intended to include a business entity whose only activity within California consists of wholesale electricity transactions that occur in interstate commerce.

Wholesale electricity suppliers already comply with CARB's Mandatory Reporting Requirements (MRR) by reporting GHG emissions associated with electricity imported into California and in-state gas-insulated equipment. Subjecting wholesale electricity suppliers to SB 253 and SB 261's additional, rigorous reporting requirements could disincentivize energy suppliers from selling electricity products to California utilities and participating in California markets, resulting in higher costs for California ratepayers. This occurs at a time when Western electric utilities are considering participation in the CAISO's EDAM. If CARB's rules required additional reporting and disclosure requirements from participants in California-administered electricity markets, it would introduce new complexities and costs for supplying electricity for California electricity demand. BPA urges CARB to act consistently with the intent of the bill sponsors and not include wholesale electricity suppliers in the scope of the proposed reporting requirements.

BPA declines to respond to the remaining questions given it is BPA's position that the federal government is not subject to the requirements of SB 253 and SB 261.

If you have any questions, please contact Alisa Kaseweter at 503.312.6816 or Doug Marker at 971-533-0852.

Sincerely,

Rachel Dibble
Vice President, Bulk Marketing