March 21, 2025

Ms. Liane Randolph

Chair

California Air Resources Board

1001 I Street, Sacramento, CA 95814

**Re: EEI Response to Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: SB 253 and 261, as amended by SB 219 (“RFI”)**

Dear Chair Randolph,

On December 16, 2024, the California Air Resources Board (CARB) issued an “Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills 253 and 261, as amended by SB 219 (RFI).”[[1]](#footnote-1) The Edison Electric Institute (EEI) appreciates the opportunity to provide the comments and constructive feedback below to inform the implementation of the legislation.

EEI is the association that represents all U.S. investor-owned electric companies. Our members provide electricity to nearly 250 million Americans and operate in all 50 states and the District of Columbia. As a whole, the electric power industry supports more than 7 million jobs in communities across the United States. In addition to our U.S. members, EEI has more than 70 international electric companies as International Members, as well as hundreds of industry suppliers and related organizations as Associate Members. Organized in 1933, EEI provides public policy leadership, strategic business intelligence, and essential conferences and forums. Our input is based on our extensive experience in making climate-related disclosures under many of the existing reporting regimes.

Our members raised and invested more than $170 billion in capital expenditures in 2023 and more than $1 trillion over the past decade to make the U.S. energy grid smarter, stronger, cleaner, more dynamic, and more secure; to diversify the nation’s energy mix; and to integrate new technologies that benefit both customers and the environment. Consequently, preserving access to efficient and transparent capital markets—and ensuring that investors have the information that they need to make capital allocation decisions—are vitally important to EEI and our members. Through this investment, our industry is leading efforts to drive down emissions and to deploy clean energy resources that are helping to meet the rising demand for electricity as affordably as possible.

Across the nation, our members are facing unprecedented growth in demand for electricity while simultaneously leading an energy transformation that is making significant progress to reduce GHG emissions in our sector, while providing the backbone of the energy infrastructure for the U.S. economy. We are creating good-paying jobs in our pursuit of an equitable energy future.

Actions to address climate change, and climate-related reporting, are of high importance to our investors. This is why the electric power sector has been a leader in emissions and other sustainability and climate-related disclosures.[[2]](#footnote-2) More than seven years ago, EEI and its members, working with investors and other stakeholders, developed the first-ever ESG reporting template for electric and gas companies.[[3]](#footnote-3), [[4]](#footnote-4), [[5]](#footnote-5) In addition, EEI members routinely provide additional information through a myriad of voluntary frameworks and initiatives, such as the Carbon Disclosure Project, Global Reporting Initiative, Dow Jones Sustainability Index, Taskforce for Climate-related Financial Disclosure and the Sustainability Accounting Standards Board.

EEI and its members recognize the need for transparent disclosures providing information that is relevant, consistent, and comparable across companies so that investors and other stakeholders can make informed investment decisions. As CARB works to develop these rules, it is vital that the rules are practical, useful, and informative, and recognize the inherent difficulty of obtaining certain material climate-related information that is both accurate and timely.

Please find below detailed responses from EEI to selected aspects of the RFI.

# CARB Should Not Implement The Reporting Obligations In An Overly Broad Manner And Should Provide Additional Guidance on Applicability.

In the RFI, CARB seeks feedback on how to define the phrase “does business in California” as it pertains to entities that would be subject to the rules, including whether CARB should adopt the interpretation found in the California Revenue and Tax Code section 23101.[[6]](#footnote-6) The interpretation of “doing business in California” set by the California Revenue and Tax Code should not be adopted because the definition is too broad when applied to tracking, monitoring, and verifying company-related GHG emissions. Use of such a vague and overly broad definition could subject entities that do not actually do business or emit in the state of California to the reporting requirement.

1. **CARB Should Not Adopt the Interpretation Of “Doing Business In California” As Defined By The California Revenue And Tax Code.**

Under the California Revenue and Tax Code definition, an entity qualifies as “doing business in California” even if its sole contact with the state is through payroll or property taxes.[[7]](#footnote-7) While these two factors have a conceptual tie to the underlying purpose of the Revenue and Tax Code, an entity’s compensation to individuals within the state or property tax obligations to the state have, on their own, no bearing on whether the entity emits or has material emissions within the state.[[8]](#footnote-8)

For example, one EEI member is an electric company that owns and operates generation, transmission and distribution assets that are primarily outside of California, with one small exception. This member company is a partial owner of a substation just inside the California border. The company’s share of the equipment is less than $5 million but easily surpasses the Tax Code’s 2024 threshold for real and tangible personal property doing business in California. While this low threshold might make sense for attribution of taxes, it makes no sense for triggering environmental reporting requirements in California. All of the company’s direct GHG emissions occur in states outside of California’s borders. This asset has no direct GHG emissions, and even if indirect emissions were to be considered, it would represent an exceedingly small percentage of the company’s overall emissions profile. No company should be subjected to California law simply because it owns a small portion of an asset that has no direct emissions.

As another example, an electric company with generation, transmission, and distribution assets, as well as its retail sales, wholly outside the state of California may have employees who work remotely from California or may maintain an office or a corporate apartment in the state. Even though neither activity would meaningfully impact the entity’s emissions (or lack thereof) in California, these activities would subject the entity to the emissions reporting requirement if CARB adopted the California Review and Tax Code definition of “doing business in California.”

Generally, the incidental GHG emissions of employees working remotely or offsite do not have a significant impact on the entity’s overall emissions. Companies whose only potential ties to the state are through payroll or property tax would be more likely to decline to hire employees in California or maintain property in the state. Also, there is a potential that companies with smaller operations may consider leaving the state given overly burdensome reporting obligations and thereby decrease the state’s tax revenue, an unintended consequence of the disclosure.

Moreover, subjecting an entity that has no substantive physical or workforce presence in the state to these implementing regulations is not consistent with the legislative intent of SB 253 and 261. Section 23101 of the California Revenue and Taxation Code was enacted for wholly different reasons than were SB 253 and 261 and using the definition in Section 23101 runs the risk of sweeping companies into those bills’ purview who have de minimis business interests in the state. For example, some companies have remote employees in the state to whom they pay more than $50,000 in compensation, yet have no other operations, nor emissions in California. Such companies should not be included in the requirements of SB 253 or 261.

In fact, in their January 30, 2024, letter published in the Senate Journal,[[9]](#footnote-9) the lead sponsors of SB 253 and 261 explained that the legislative intent was not to include companies participating in the Western Energy Imbalance Market and the Extended Day Ahead Market within the scope of the reporting obligation. The letter further explains that the two bills “are not intended to include a business entity whose only activity within California consists of wholesale electricity transactions that occur in interstate commerce.” This specific explanation of legislative intent, as well as its implication that the reporting obligations should not be implemented in an overly broad manner, should be followed. Therefore, CARB should not adopt the interpretation of “doing business in California” found in the Revenue and Tax Code section 23101 for implementation of SB 253 and 261.

1. **CARB Should Provide Clearer, More Focused Guidance Regarding Applicability.**

CARB has clear regulatory authority over sources that emit within the state and should align the implementation of these rules with its authority over entities that directly emit within the state.[[10]](#footnote-10) As part of defining what it means to do business in California for the purposes of implementing SB 253 and 261, in addition to the revenue triggers contained in the rule,[[11]](#footnote-11) CARB should:

1. Limit the application of the rules to companies that have physical operations that directly produce GHG emissions in the state above a de minimis amount.
2. Include a de minimis exemption for companies not principally placed in California that have 1 percent or less of their employees whose primary residence is in California.
3. Include a specific exemption for an entity whose only activity within California consists of wholesale electricity transactions that occur in interstate commerce.

Other state laws in California have specific thresholds that are not relegated to California’s Revenue and Tax Code, such as the California Consumer Privacy Act, which requires extraterritorial obligations to apply when 50 percent or more of the annual revenue is made from California consumers.[[12]](#footnote-12) CARB should also provide clarification on the nature and scope of revenue measurement used as a trigger for reporting. For example, does the revenue measurement pertain to California-only generated revenues, U.S. generated revenues, or global revenues? For subsidiaries identified as 'doing business in California,' should revenue be measured on a consolidated basis for those entities, consolidated U.S. entities, or global group entities?

CARB’s definition of “doing business in California” similarly should be narrowly tailored and should not include entities that do not directly emit within the state or that have a tenuous connection to the state and/or GHG emissions within the state (e.g., entities that engage in simple marketing activities or the sale of Renewable Energy Certificates through a commodities brokerage which may or may not end up in the California REC market).

# CARB Should Allow the Use of GHG Emissions Information Submitted to Other Widely Recognized Reporting Programs.

In the RFI, CARB acknowledges that the implementing regulations for SB 253 and SB 261 will rely “on protocols and standards published by external and potentially non-governmental entities” and asks how it can ensure that reporting under these laws minimizes a duplication of effort for entities that are required to report GHG emissions or financial risks under other mandatory programs.[[13]](#footnote-13) CARB requires reporting entities to measure and report their GHG emissions in conformance with the World Resources Institute/World Business Council for Sustainable Development Greenhouse Gas Protocol (the “Protocol”).

The rules should allow for use of the GHG emissions information submitted to other widely recognized reporting programs, including the EPA Mandatory GHG Reporting Program under 40 CFR Part 98, other EPA emissions reporting programs under 40 CFR Part 60 and 40 CFR Part 75, and The Climate Registry. The information reported under these regimes is certified for compliance requirements at least annually. Further, since the Protocol allows the use of the EPA data for emissions accounting purposes, CARB should as well.

# CARB Should Limit Reporting of Scope 3 Emissions And Provide Guidance On Scope 2 And Scope 3 Reporting Where There Is Ambiguity.

CARB seeks feedback on whether there are specific aspects of Scope 1, Scope 2, or Scope 3 reporting it should consider standardizing, given the current directive to use the Protocol, and what those aspects should be.[[14]](#footnote-14) CARB should allow companies to report Scope 3 emissions based on the materiality and relevance of those emissions to the company’s operations, and should provide guidance on areas of Scope 2 and Scope 3 reporting where there is ambiguity.

# CARB Should Allow Companies to Report Scope 3 Categories Based on Materiality and Relevance To The Company’s Operations.

Scope 3 emissions data inherently contain uncertainties and reflect the interrelated nature of today’s upstream and downstream supply chains. A full scope 3 GHG emission inventory regardless of materiality and without defined boundaries would provide confusing and potentially misleading information, including information that is not relevant. Further, such an inventory would be impossible to obtain accurately given the inherent uncertainties within current Scope 3 emissions reporting and would involve significant effort to develop.

As a result, CARB should provide guidance on reporting boundaries for Scope 3 emissions data and only require companies to report either the emissions categories that are material to their overall GHG emissions or the Scope 3 emissions categories where the company has a specific reduction goal or target.

CARB should also limit the liability for reporting companies because of the inherent inconsistencies in scope 3 data and provide a safe harbor for the requirement, which protects companies from penalties for misstatements related to scope 3 disclosure made in good faith and with reasonable basis. This provision could be reevaluated when the rule is reviewed in 2030.

# Since CARB is Using A Voluntary GHG Emissions Reporting Standard Protocol Administered By An Outside Entity, It Should Provide Additional Guidance.

Since CARB is using the Protocol as the basis for reporting, it should provide interpretative guidance where there is ambiguity on scope 2 and scope 3 reporting, such as on T&D line loss, the materiality language for Scope 3 discussed in section III. A. above, or how far within a corporation the scope of reporting reaches. CARB should also ensure that the rulemaking includes the flexibilities currently allowed by the Protocol permitting a reporting entity to establish their own operational, financial, or control boundaries.

# CARB Should Set the Filing Date For Reporting All Emissions In The Fourth Quarter To Allow Time For The Preparation Of Accurate And Verifiable Emissions Data.

CARB seeks input on what timeframe within a reporting year is appropriate to ensure appropriate data is available and can meet the requirements for reporting Scope 1, Scope 2 and Scope 3 emissions under SB 261.[[15]](#footnote-15) The electric power industry typically takes two to three quarters to collect, finalize, and verify emissions inventories with a third party. Final raw data sets for most companies are not available until the second or third quarter. More time is needed after the final data collection to perform the necessary calculations, obtain verifications of data from the U.S. Environmental Protection Agency (EPA) and other agencies, and get data assurance by a third party.

In order to file the reports, the information must be gathered, reviewed, and assembled. It can be challenging to complete this process by the March 31 deadline. After the submission to EPA, the data then undergoes a third-party verification and assurance process, which can take time. Moreover, the annual emissions data is not finalized with EPA until it is publicly published in October.[[16]](#footnote-16) It is also worth noting that the required reporting scope under the CARB rules goes well beyond the data that is required to be reported to EPA. In addition, companies have varying year-end reconciliations, which further vary by calendar year versus fiscal year. As noted above, for entities that operate on a calendar- year schedule, unverified emissions data is generally available for reporting by the end of the second quarter for the previous calendar year. However, third party verified emissions data is generally unavailable until December 31st of the disclosing year and typically shared in the company’s disclosure in the following reporting year.

In addition to EPA reporting, several EEI members also comply with multiple existing CARB reporting deadlines in the second and third quarters. Examples include the June 2 deadline for the CARB Mandatory GHG Reporting Rule (MRR)[[17]](#footnote-17) and the California Energy Commission Power Source Disclosure Annual Reports, which were due July 29, 2024, and extended to August 30.[[18]](#footnote-18)

Given the above, moving the reporting deadline to the fourth quarter would allow reporting entities, particularly those in California, the necessary time to properly verify and have the data assured by a third party before reporting it to the state.

# CARB Should Include Flexibilities in The Reporting Timeline and How Entities Disclose Their Financial Risks Under SB 261.

Regarding SB 261, CARB seeks input on whether to require a standardized reporting year or allow reporting within a two-year period and on a series of questions related to the Final Report Recommendations of the Task Force on Climate-related Financial Disclosure (TCFD).[[19]](#footnote-19) As explained below, CARB should include flexibilities in both the reporting timeline and in how entities disclose their financial risks.

# CARB Should Include Flexibilities in The Reporting Timeline For Requirements Under SB 261.

Companies currently face a variety of jurisdictional and government agency reporting requirements that have varying deadlines; CARB should include flexibilities considering when the biennial report is due.

As outlined in section IV above, to provide the most accurate data in the most cost-efficient manner, the biennial report for climate-related financial risks and disclosure of adaptation and mitigation efforts should be due in the fourth quarter of an unstandardized reporting year to ensure all data is final, accurate, and verified. CARB should allow companies to report at any time within a two-year period to provide companies with enough time to perform a thorough materiality risk assessment and to prepare disclosures on their risk mitigation and adaptation efforts. CARB should also provide a transition process for an entity that needs to move into reporting for a partial reporting period.

# CARB Should Allow Flexibility In How Entities Disclose Their Climate Financial Risks Under SB 261 To Allow For Existing Approaches To Preparing Climate Financial Risk Disclosures.[[20]](#footnote-20)

Overall, the electric power sector is supportive of the Task Force on Climate-related Financial Disclosures (TCFD) framework. However, CARB should allow companies flexibility in how they disclose their climate risks in the biennial climate-related financial risk report.

The EEI ESG template described above provides a standardized way for members to report generation and emissions information material to the utility industry and to describe their emissions reduction goals and strategies. Investors and other stakeholders, including TCFD, have acclaimed the template as an example of how to translate TCFD guidance into a practical sustainability and climate-related report that provides the information investors need to assess climate risk in their investment decisions.

TCFD was fully incorporated into the International Sustainability Standards Board (ISSB) Standards in July 2023 and was subsequently disbanded in October 2023.[[21]](#footnote-21) While the electric power industry supports the use of the TCFD framework in reporting climate-related risks, the rules for SB 261 should not be merely relegated to the ISSB but instead should provide a flexible foundational framework based on the original TCFD principles. This would ensure that any changes in compliance would be subject to the mandated notice and comment period. Relegating the rules exclusively to ISSB could subject reporting entities to the new requirements regardless of practicality and materiality and without a mandated notice and comment period. This could lead to undue cost burdens and increased liability exposure.

# Other Considerations

CARB should exclude the assurance requirement where data has already been verified through compliance with other frameworks and programs, such as the EPA GHG Reporting Program or The Climate Registry. This will significantly reduce compliance costs. The “reasonable assurance” standard is appropriate for Scope 1 and 2 emissions. However, “limited assurance” standard is more appropriate for Scope 3 emissions, because reporters have no control over the source of these emissions, have limited capability to verify the methodologies used by others to calculate the emissions provided to them, and may need to rely on inaccurate or incomplete data to calculate certain Scope 3 emission categories.

The rulemaking timeline provided in the legislation is not enough time for CARB to develop a durable rule that is appropriate, reasonable, effective, and satisfies the legislative intent. CARB should seek legislative authority to extend the rulemaking period beyond the current July 1, 2025, deadline.

# Conclusion

EEI understands California’s drive to enhance climate-related disclosure and appreciates its efforts to solicit input from stakeholders on a range of key issues as it develops climate disclosure requirements. EEI also appreciates the opportunity to provide constructive feedback and offers the recommendations above as CARB works to develop durable rules that provide useful, accurate, and concise reporting. These recommendations include providing a clear and concise definition for “doing business in California” instead of relying on an existing tax code not enacted for purposes of this rule. CARB should also consider the reporting deadlines for both SB 253 and 261 and be mindful of the competing mandatory and voluntary federal and state disclosure requirements that already exist. CARB must also provide flexibility in the standards used to calculate Scope 1, Scope 2 and Scope 3 emissions. CARB also needs to provide clearer guidance on Scope 2 and Scope 3 reporting (including materiality), as well as on the many considerations that exist when relegating the reporting standard to an external entity. Lastly, EEI recommends that CARB seek legislative authority for an extension of the rulemaking process, as the current timeline is too short to provide rules that are durable and appropriate for the legislation’s intent and consider the many nuances of reporting emissions data.

With these improvements, the rule will better balance the burden it imposes with the benefits it provides to California by giving investors, consumers, and the public more reliable, comparable, and useful information for making informed decisions. Potentially affected businesses need clear direction on applicability, requirements, costs, and timelines for completing the new disclosure requirements. Providing certainty and clarity in the form of brightline exclusions, definitions and off-ramps will help to narrow the focus to those businesses whose operations are most applicable.

EEI would be happy to discuss any questions about our recommendations at CARB’s convenience.

Thank you for the opportunity to provide comments on the questions that you raised, and we look forward to continuing to provide feedback to CARB as it works to develop these rules.

Respectfully Submitted,

/s/

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Executive Director, Legal and Clean Energy Policy

Edison Electric Institute

1. <https://ww2.arb.ca.gov/sites/default/files/2025-01/ClimateDisclosureQs_Dec2024_v2.pdf> [↑](#footnote-ref-1)
2. See EEI ESG/Sustainability, <https://www.eei.org/issues-and-policy/esg-sustainability> [↑](#footnote-ref-2)
3. See EEI 2018 white paper describing the initiative, <https://www.eei.org/-/media/Project/EEI/Documents/Issues-and-Policy/Finance-And-Tax/EEI-ESG-White-Paper.pdf?la=en&hash=479E0EEA210720D15295607217FED498AD5A80F9> [↑](#footnote-ref-3)
4. See Introduction and qualitative section, <https://www.eei.org/-/media/Project/EEI/Documents/Issues-and-Policy/Finance-And-Tax/ESG_Template_Qualitative.pdf?la=en&hash=0D1672286A23D6835AFA554C97BBB99A4477D69C> [↑](#footnote-ref-4)
5. See Quantitative metrics and definitions, <https://www.eei.org/-/media/Project/EEI/Documents/Issues-and-Policy/Finance-And-Tax/ESG_Template_Quantitative.xlsx?la=en&hash=8308E65B32CF580FCD2E441638F2B1721755E381> [↑](#footnote-ref-5)
6. See *RFI*, Question 1, page 2. [↑](#footnote-ref-6)
7. Cal. Code Regs. tit. 18, § 23101. [↑](#footnote-ref-7)
8. Moreover, the thresholds for each are quite low, particularly considering the current minimum wage and property prices in California. [↑](#footnote-ref-8)
9. See *California Senate Journal*, January 30, 2024 at 3058-3059 (<https://leginfo.legislature.ca.gov/faces/pubSenDailyJrn2.xhtml?type=doc&sessionyear=20232024&pagenum=3057&sessionnum=0&fileid=996>) [↑](#footnote-ref-9)
10. In other contexts, the State of California has tailored the definition of what qualifies as a sufficient contact with the state to the specific subject matter (*see generally* Cal. Corp. Code § 191(a) (Deering 1975), where the state defines “transact[s] intrastate business” to mean a corporation “entering into repeated and successive transactions of its business in the state, other than interstate or foreign commerce.”). The definition of “doing business in California” in this proceeding similarly should be tailored to the legislative intent and should include only companies that actively produce GHG emissions in the state. [↑](#footnote-ref-10)
11. SB253 applies to entities with more than $1 billion in annual revenue doing business in California, and SB 261 applies to entities with more than $500 million in annual revenue doing business in California. [↑](#footnote-ref-11)
12. State of California Department of Justice. California Consumer Privacy Act (CCPA). <https://oag.ca.gov/privacy/ccpa#:~:text=Derive%2050%25%20or%20more%20of,selling%20California%20residents'%20personal%20information>. [↑](#footnote-ref-12)
13. See *RFI*, Question 3, page 2. [↑](#footnote-ref-13)
14. See *RFI*, Question 7, page 3. [↑](#footnote-ref-14)
15. See *RFI*, Question 10, page 4. [↑](#footnote-ref-15)
16. Environmental Protection Agency. See <https://www.epa.gov/ghgreporting/find-and-use-ghgrp-data>. [↑](#footnote-ref-16)
17. California Air Resources Board. (2025). *Mandatory GHG reporting - Key dates and activities*. The California Air Resources Board. <https://ww2.arb.ca.gov/mrr-key-dates> [↑](#footnote-ref-17)
18. California Energy Commission. (2024, July). *UPDATED Communication Regarding Power Source Disclosure Annual Report Deadline – Extended Postponement.* <https://efiling.energy.ca.gov/GetDocument.aspx?tn=258246&DocumentContentId=94224> [↑](#footnote-ref-18)
19. See *RFI*, Questions 11, page 4 [↑](#footnote-ref-19)
20. See *RFI*, Question 13, page 4. [↑](#footnote-ref-20)
21. International Financial Reporting Standards Foundation. *ISSB and TCFD*. <https://www.ifrs.org/sustainability/tcfd/> [↑](#footnote-ref-21)