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To Whom it May Concern:

NRG Energy, Inc. (NRG) appreciates the opportunity to respond to the California Air Resources Board (CARB) Information Solicitation to Inform Implementation of California Climate Disclosure Legislation. NRG is leading the way by expanding what's possible toward a smarter, cleaner, empowered future for people, homes, businesses, and communities across California and beyond. NRG has voluntarily collected and disclosed its greenhouse gas (GHG) emissions for several years, demonstrating a commitment to transparency and sustainability. With this experience, NRG is well-positioned to provide real-world examples of effective climate disclosure practices as well as insights into the ongoing challenges that entities may face in meeting evolving reporting standards.

Introductory Comments

NRG provides its recommendations in response to the specific questions set out below and additional broad comments at the end of the document. NRG looks forward to partnering with CARB to develop a simple, effective rule under which companies can be flexible in their reporting as this area of law and policy develops across the United States and the globe.

Overall, NRG believes that the rule should focus on 1) simplicity; 2) avoidance of duplication across jurisdictions; and 3) flexibility in choice of reporting methodologies. NRG provides more detail on these policy goals in response to the questions below.

We also strongly suggest that California consider a phased-in approach to reporting. As seen during the legislative process, some companies, such as those already engaging in voluntary reporting or complying with European Union rules, supported a disclosure mechanism in California. A phased-in approach would allow those companies to collect and submit, and for the public and the agency to process that data before smaller companies begin to submit. A phase-in could be crafted that still meets the statute's original goal of all covered entities fully reporting Scope 1 through 3 by 2030, at which time CARB can reconsider the reporting deadlines as outlined in the statute. The legislature could carefully craft a phase-in that allows for a reduction in administrative burdens and allows CARB and covered entities to learn and grow as this process evolves.

We look forward to working with you as the rulemaking progresses and are happy to provide any additional information.

Responses to Questions

General Applicability

1. SB 253 and 261 both require an entity that "does business in California" to provide specified information to CARB. This terminology is not defined in the statutes.

a. Should CARB adopt the interpretation of "doing business in California" found in the Revenue and Tax Code section 23101?

NRG does not have a recommendation for a specific definition at this time. However, it agrees with CARB that the term being left undefined may bring in parties that were not intended by the authors of the legislation to be covered by the law. CARB should provide clarity in the regulatory process to ensure that "doing business in California" does not include parties that are not providing goods or services to California residents or businesses. For example, for entities that solely participate in the California Independent System Operator Corporation's energy markets or were likely not within the intended scope of the laws. Including these entities could have unintended impacts on those energy and carbon markets. See also the January 20, 2024 Letter to Secretary Contreras about Legislative Intent-SB 253 and SB 261.

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

NRG does not have a response to this question.

c. Should SB 253 and 261 cover entities that are owned in part or wholly owned by a foreign government?

NRG does not have a response to this question.

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?

See the response to question 1 above.

2. What are your recommendations on a cost-effective manner to identify all businesses covered by the laws (i.e., that exceed the annual revenue thresholds in the statutes and do business in California)?

NRG does not have a response to this question.

a. For private companies, what databases or datasets should CARB rely on to identify reporting entities? What is the frequency by which these data are updated and how is it verified?

NRG does not have a response to this question.

b. In what way(s) should CARB track parent/subsidiary relationships to assure companies doing business in California that report under a parent are clearly identified and included in any reporting requirements?

NRG does not have a response to this question.

General: Standards in Regulation

3. CARB is tasked with implementing both SB 253 and 261 in ways that would rely on protocols or standards published by external and potentially non-governmental entities.

a. How do we ensure that CARB's regulations address California-specific needs and are also kept current and stay in alignment with standards incorporated into the statute as these external standards and protocols evolve?

Significant issues can arise when relying on outside standards and protocols. Namely, neither CARB nor the California legislature have control or influence over how those standards are adopted, implemented, or amended over time. Entities such as the World Resources Institute, which publishes the Greenhouse Gas Protocol referenced in the statute, are becoming more "political" in their own right. World Resources Institute (WRI) (responsible for publication of the Greenhouse Gas Protocol) for example, actively tracks and advocates for incorporation of its protocol into law. And the standards are subject to revision at any time. To this point, within WRI's current revision of several issues, the market-based accounting that California has already settled in other regulatory proceedings is currently under debate as will be discussed later in this document. This makes reliance on an evolving standard problematic, at best.

With respect to the Climate Corporate Data Accountability Act, the statute directs that emissions disclosure be made "in conformance with" the Greenhouse Gas Protocol standards and guidance. (HSC Sec. 38532(c)(2)(A)(ii). The statute is silent on a definition. Elsewhere, the statute also tasks CARB with structuring reporting in a manner that "minimizes duplication of effort and allows a reporting entity to submit . . . reports prepared to meet other national and international reporting requirements, including any reports required by the federal government, as long as those reports satisfy all of the requirements of this section." HSC Sec. 38532(c)(2)(D). Consistent with the statute and the reasoning below, CARB should not mandate a particular methodology. If it believes it must, it should designate the version of the Greenhouse Gas Protocol in effect as of the passage of the statute (more on this below).

Maintaining flexibility to use alternative standards is important to reduce economic burdens. With respect to other national and international reporting requirements, at least seven (7) international jurisdictions and four (4) US states have already enacted or are considering climate disclosure rules. CARB should maintain enough flexibility to ensure that their reporting methodology allows for the use of these alternate disclosure reports to satisfy the California requirements, consistent with the statute's intent.

As described above, according to the statute, CARB need not solely dictate the GHG Protocol but should instead provide options to ensure that parties can use the GHG Protocol or other jurisdictional reporting. However, to the extent that CARB believes it must select a specific, already enacted methodology, it should select one that is not subject to continual change and pressure from outside influences and should specify which guidance to the methodology is and is not applicable.

The "Greenhouse Gas Protocol" currently in effect consists of three specific documents: the current version of the "Greenhouse Gas Protocol Corporate Standard" (2004), the "GHG Protocol Scope 2 Guidance" (2015), and the "Corporate Value Chain Reporting (Scope 3) Accounting and Reporting Standard" (2011). If CARB specifically designates the GHG Protocol as the appropriate methodology, it should only incorporate these current documents. This is necessary because the GHG Protocol is currently undergoing a significant revision of each of the three included documents estimated to be completed in 2027.

The Technical Working Groups of the WRI are currently deliberating on new methodologies, including how to consider and allow for market-based accounting in how emissions are disclosed.[1] These are issues California visited

[1] Attached are slides with the latest information from the Scope 2 Technical Working Group on their discussions on Location-Based and Market-Based Accounting. These are issues that California faced 15 years ago when developing its climate policies

and developed consensus around fifteen (15) years ago in developing its own cap-and-trade system. CARB should not dictate the incorporation of a standard that could discount its landmark emissions reduction program.

It is highly possible that the GHG Protocol revisions may be finalized in a way that neither CARB nor the California legislature would agree with. As such, NRG would caution CARB against drafting a rule that requires strict alignment with any specific methodology. Specifically, with respect to the GHG Protocol, if CARB were to adopt this methodology, it should ensure that entities are not automatically subject to amendments beyond the current version.

To achieve the statute's goals while minimizing regulatory burdens on companies already collecting and reporting across multiple jurisdictions or voluntarily, CARB should ensure that its final rule prioritizes disclosure requirements that are in alignment with the principles of the statute's referenced methodologies (the GHG Protocol, currently enacted national and international standards, and California's cap-and-trade emissions reporting), rather than mandating a specific methodology. By focusing on disclosure rather than a single standard, CARB can maintain alignment with the statute while minimizing compliance burdens for companies reporting across multiple jurisdictions. This approach would also promote transparency, facilitate meaningful comparisons among companies, and reduce the need for frequent adjustments in response to changes in external standards.

GHG Protocol-Specific Comments

If CARB believes it must specify only one methodology, CARB should specifically point to the current version of the Greenhouse Gas Protocol. NRG would further suggest that it would be inappropriate for CARB to review steps in the current "Greenhouse Gas Protocol Corporate Standard" or accompanying documents and choose methods within it for all reporting entities to follow; rather, it should incorporate the entire document by reference. The different "methods" included in the standard are not wholesale changes in methodology. Instead, each "method" is there to accommodate different types of operations and provide flexibility for differences in how calculations must be done depending upon those operational differences. One example is as follows:

Different industries have fundamentally different ways of consuming and sourcing electricity, which affects their **Scope 2 emissions accounting**:

1) Industries with High Electricity Demand (e.g., Data Centers, Manufacturing, Heavy Industry)
    a) Market-Based Accounting: These industries often purchase Renewable Energy Certificates (RECs) or Power Purchase Agreements (PPAs) to reduce reported emissions.
    b) Location-Based Accounting: If they are in regions where electricity grids rely on fossil fuels, their reported emissions will be much higher.
2) Industries with Decentralized or Variable Energy Use (e.g., Retail, Hospitality, Real Estate)
    a) Market-Based Accounting: A large retailer with stores across multiple regions can claim green energy purchases even if local grids are carbon-intensive.
    b) Location-Based Accounting: This could show widely different results across locations, complicating corporate-wide emissions reduction strategies.
3) Main Point of the Above Examples

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and could impact California markets if still-evolving accounting rules under development by an external body become embedded in California rules. CARB does not need to repeat this exercise and should not tether its current regulatory requirements to a future set of accounting standards.

a) Choosing the wrong approach for a given industry (market- vs. location-based) can dramatically impact reported emissions, investor confidence, and regulatory compliance.
b) Regulatory environments differ: Some jurisdictions (like the EU) favor location-based reporting, while others accept market-based claims.
c) Implications for Net Zero Goals: If a company relies on RECs (market-based) but operates in a high-emissions grid, stakeholders may see a disconnect between actual reductions and reported emissions.

This difference is critical for industries with large electricity footprints because it can affect carbon reduction strategies, sustainability reporting, and investment decisions.

b. How could CARB ensure reporting under the laws minimizes a duplication of effort for entities that are required to report GHG emissions or financial risk under other mandatory programs and under SB 253 or 261 reporting requirements?
See response to Question 3a above.

With respect to other reporting obligations, some sectors are reporting GHG emissions under various US EPA reporting programs on a quarterly and annual basis. As noted above, reporting has also begun internationally under the EU Corporate Sustainability Reporting Directive and others. In addition, many entities covered by this rule are already reporting their Scope 1 emissions pursuant to California's cap-and-trade rules.

With respect to ease of reporting, CARB should simplify disclosure and storage of data by allowing entities to provide a web link to already-public data or to simply report their 3 numerical Scope 1, 2, & 3 emissions. This would reduce California's administrative burdens but still meet the goals of transparency.

c. To the extent the standards and protocols incorporated into the statute provide flexibility in reporting methods, should reporting entities be required to pick a specific reporting method and consistently use it year-to-year?

No. See NRG's Questions 3a and b above.

General: Data Reporting
4. To inform CARB's regulatory processes, are there any public datasets that identify the costs for voluntary reporting already being submitted by companies? What factors affect the cost or anticipated cost for entities to comply with either legislation? What data should CARB rely on when assessing the fiscal impacts of either regulation?

Factors that influence the cost of compliance include the following:
1) This is early market work, and external accounting companies are just beginning to develop expertise in carbon emissions accounting. This can result in widely varying costs.

2) In 2022, Ceres and Persefoni jointly commissioned ERM to produce a report, "Costs and Benefits of Climate-Related Disclosure Activities by Corporate Issuers and Institutional Investors" (May 2022). The report was based on a survey of 39 corporate issuers with a combined market capitalization of more than $3.8 trillion (specific

respondents' market capitalization ranged from less than $1 billion to over $200 billion, and employee counts ranged from less than 1,000 to over 250,000), and 35 institutional investors with a combined $7.2 trillion in assets under management. ERM submitted the report to the comment file for the federal Securities & Exchange (SEC)'s climate-related disclosure rule on June 16, 2022. The survey found that, on average, issuers were spending $533,000 annually on climate-related disclosure. This assessment of average annual issuer costs was similar to the SEC's preliminary estimate in its 2022 proposed rule of $530,000 in annual issuer costs after the first year of implementation ($150,000 for internal costs and $380,000 for outside professional costs; see p. 373). Meanwhile, the ERM survey found that institutional investor respondents were spending an average of $1.4 million annually to collect, analyze, and report climate data to inform their investment decisions. There has been extensive focus on the compliance costs associated with mandatory climate disclosure for corporate issuers, but less attention on the costs investors bear to navigate a fragmented, inconsistent information landscape.

3) The complexity of the supply chain can mean smaller suppliers are disproportionately impacted by the rule. The cost to prepare those reports is then passed up the chain to the reporting entities. The nature of international commerce can also make it burdensome and complicated to obtain supply chain data in a manner to allows for a fair comparison between companies.

5. Should the state require reporting directly to CARB or contract out to an "emissions" and/or "climate" reporting organization?

As suggested above, CARB should provide for disclosure via a link to a publicly available document to minimize administrative burdens. Alternatively, it could simply require the disclosure of numerical Scope 1, 2, & 3 amounts. This would simplify reporting, allow for ease of comparison amongst companies, and reduce overall costs.

6. If contracting out for reporting services, are there non-profits or private companies that already provide these services?

NRG does not have a response to this question.

SB 253: Climate Corporate Data Accountability Act

7. Entities must measure and report their emissions of greenhouse gases in conformance with the GHG Protocol,[1] which allows for flexibility in some areas (i.e., boundary setting, apportioning emissions in multiple ownerships, GHGs subject to reporting, reporting by sector vs business unit, or others). Are there specific aspects of scopes 1, 2, or 3 reporting that CARB should consider standardizing?

No, there needs to be flexibility due to the needs of multiple entities. See response to Question 3 above.

8. SB 253 requires that reporting entities obtain "assurance providers." An assurance provider is required to be third-party, independent, and have significant experience in measuring, analyzing, reporting, or attesting in accordance with professional standards and applicable legal and regulatory requirements.

a. For entities required to report under SB 253, what options exist for third-party verification or assurance for scope 3 emissions?

Companies are beginning to develop expertise in this new market, and many new market entries are coming online. However, this is a significant portion of the expense of producing a report. CARB should ensure that the intent of the statute-transparency with flexibility in reporting is met before additional assurance is required. The higher the level of third-party assurance, the higher the cost of compliance.

This high cost and uncertainty of assurance remains, especially because some data, such as that in Scope 3, is still uncertain due to the lack of control that companies have over the data that is provided from their supply chain and customers.

b. For purposes of implementing SB 253, what standards should be used to define limited assurance and reasonable level of assurance? Should the existing definition for "reasonable assurance"[2] in MRR be utilized, and if not why?

The current GHG Protocol "Corporate Accounting and Reporting Standard" contains provisions for materiality and verification. Here are some facts from the standard:

- A material discrepancy is "an error (for example, from an oversight, omission or miscalculation) that results in a reported quantity or statement being significantly different to the true value or meaning."[2]
- "As a rule of thumb, an error is considered to be materially misleading if its value exceeds 5% of the total inventory for the part of the organization being verified." [3]
- Requirements for limited assurance and reasonable level of assurance for Scope 3, in conformance with the GHG Protocol's documented materially misleading margin of error should be the basis for CARB's "level of significance" for error. NRG suggests 1-5 % obtain an accurate limited and reasonable level of assurance in conformance with the GHG Protocol's 5% margin of error for the total inventory of the organization being verified.[4]
- In terms of achieving an overall target, "The verifier needs to assess an error or omission in the full context within which information is presented. For example, if a 2% error prevents a company from achieving its corporate target, then this would most likely be considered material. Understanding how verifiers apply a materiality threshold will enable companies to more readily establish whether the omissions of an individual source or activity from their inventory is likely to raise questions of materiality.[5]
- However, due to the risk of material discrepancy, the percentage error can be much higher, particularly for the supply chain. The company and the verifiers work together to consider a number of factors, including the following:
    - The structure of the organization and the approach used to assign responsibility for monitoring and reporting GHG emissions
    - The approach and commitment of management to GHG monitoring and reporting
    - Development and implementation of policies and processes for monitoring and reporting (including documented methods explaining how data is generated and evaluated)
    - Processes used to check and review calculation methodologies

[2] "GHG Protocol, Revised," p. 69.
[3] Ibid, p.70.
[4] Ibid.
[5] Ibid.

- Complexity and nature of operations
- Complexity of the computer information system used to process the information
- The state of calibration and maintenance of meters used, and the types of meters used
- Reliability and availability of input data
- Assumptions and estimations applied
- Aggregation of data from different sources
- Other assurance processes to which the systems and data are subjected (e.g., internal audit, external reviews, and certifications).

Due to this additional risk of material discrepancy, the 5% threshold can be higher for more complex and larger companies. For limited and reasonable assurance to be accurately applied in conformance with the Corporate Accounting Standard's requirements for materiality, this 5% threshold is the level of significance with which a smaller company must comply in order to be able to reach assurance. For a larger company, with proof, the level of significance should be higher as shown by their documentation.

9. How should voluntary emissions reporting inform CARB's approach to implementing SB 253 requirements? For those parties currently reporting scopes 1 and 2 emissions on a voluntary basis:

See NRG's response to questions 3 & 5 above.

c. What frequency (annual or other) and time period (1 year or more) are currently used for reporting?

Until the rule is fully implemented and reconsidered in 2029, CARB should consider a non-annual reporting schedule for Scopes 1-3 unless the entity's business has changed substantially.

d. When are data available from the prior year to support reporting? What software systems are commonly used for voluntary reporting?

CARB should allow flexibility in the reporting year so that entities can gather the prior year's data, September is an appropriate date for the prior year's data.

SB 261: Climate Related Financial Risk Disclosure

10. For SB 261, if the data needed to develop each biennial report are the prior year's data, what is the appropriate timeframe within a reporting year to ensure data are available, reporting is complete, and the necessary assurance review is completed?

CARB should allow flexibility in the reporting year so that entities can gather the prior year's data, September is an appropriate date for the prior year's data.

11. Should CARB require a standardized reporting year (i.e., 2027, 2029, 2031, etc.), or allow for reporting any time in a two-year period (2026-2027, 2028-2029, etc.)? During a goal year?

CARB should allow flexibility in reporting year so that entities can align their reporting with other global obligations so that they do not duplicate efforts.

12. SB 261 requires entities to prepare a climate-related financial risk report biennially. What, if any, disclosures should be required by an entity that qualifies as a reporting entity (because it exceeds the revenue threshold) for the first time during the two years before a reporting year?

NRG has no response to this question.

13. Many entities that are potentially subject to reporting requirements under SB 261 are already providing other types of climate financial risk disclosures.

f. What other types of existing climate financial risk disclosures are entities already preparing?

NRG does not have a response to this question.

g. For covered entities that already report climate related financial risk, what approaches do entities use?

NRG does not have a response to this question.

h. In what areas, if any, is current reporting typically different than the guidance provided by the Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures?

NRG does not have a response to this question.

i. If not consistent with the Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures, are there other laws, regulations, or listing requirements issued by any regulated exchange, national government, or other governmental entity that is guiding the development of these reports? Respondents may also provide any additional information they feel is important to inform staff's work to implement the statutes.

NRG has no response to this question.

Additional Comments:

It is important to note that the first few years of disclosures will be a learning curve for all stakeholders to understand what the disclosed numbers actually mean and to ensure that data can be compared between and amongst all covered entities. To achieve the stated goal of the authors— to prevent companies from "greenwashing" their environmental achievements—the disclosures must be simple, flexible, and comparable between companies. The collection of Scope 3 data in particular is complex and often of a global nature. In addition, enforcement of the rules will likely prove challenging, and this rulemaking process is a short one without a lot of time for stakeholder input before the statute's July 1 deadline.

In light of these factors, we strongly suggest that CARB should consider a phased-in approach to reporting. NRG does not have a particular recommendation at this time as to which entities should be in which phase of reporting.

However, a phased-in approach whereby companies that are already voluntarily reporting (for example) could submit first and allow for a system to be developed and errors/difficulties in the process identified early on could lessen legal and practical challenges to any final rule. CARB could, consistent with its discretion under the statute, create a phase-in approach that still results in all entities reporting Phase 1-3 by 2029, the time at which CARB is to reconsider the rule.

This rule will be the first in the US, and it is important that it not inadvertently impact other areas of the economy or provide the public with misleading data to compare the emissions of California companies. A phased-in approach may allow CARB to learn from any mistakes or errors in the process, still provide a system for disclosure, and allow companies to learn from each other as the market for emissions disclosure practices evolves.

Conclusion

NRG appreciates the opportunity to provide comments. As described above, we believe that CARB should focus on simplicity and flexibility in reporting, allowing for companies to adapt as different jurisdictions enact their own reporting requirements. This will reduce administrative burdens and keep costs as low as possible.

Finally, we reiterate that California could consider a phased-in approach. This would allow for an iterative process where companies already collecting and submitting in other jurisdictions or otherwise voluntarily reporting can pave the way for a smoother process for all entities while still meeting the state's overall goals of disclosure.

We look forward to working with the legislature and CARB staff as the rulemaking progresses and are happy to provide additional information on request.

Sincerely,

Lynda Clemmons

Lynda Clemmons

Senior Vice President Sustainability and Head of Strategy

Attachment