INTERNATIONAL ENERGY CREDIT ASSOCIATION

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California Air Resources Board
1001 I Street
Sacramento, CA 95814

Filed Electronically at Comments Portal: https://ww2.arb.ca.gov/public-comments/public-comments-california-climate-disclosure-information-solicitation

Re: Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation

To Whom It May Concern:

The International Energy Credit Association ("**IECA**") appreciates the opportunity to provide feedback in response to the California Air Resources Board ("**CARB**"), December 16, 2024**,** Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills 253 and 261, as amended by SB 219.

Background about the IECA

The IECA is an association of over 1,400 credit, risk management, legal and finance professionals that is dedicated to promoting the education and understanding of credit and other risk management-related issues in the energy industry. For the last 100 years, IECA members have actively promoted the development of best practices that reflect the unique needs and concerns of the energy industry.

The IECA seeks to protect the rights and advance the interests of a broad range of domestic and foreign energy market participants, representatives of which make up the IECA's membership. These entities finance, produce, sell, and/or purchase for resale substantial quantities of various physical energy commodities, including electricity, natural gas, oil, refined products, hydrogen, ammonia, renewable energy certificates, voluntary carbon credits, and numerous other energy-related physical commodities (both tangible and intangible) necessary for the healthy functioning of the energy markets and the "real economy."

Comments to CARB

The IECA has the following answers to CARB's numbered questions:

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?

No. When SB253/261 were enacted, the US Securities and Exchange Commission ("SEC") had pending highly prescriptive proposed rules for GHG reporting, next to which the California laws represented minor incremental costs for public companies. The final SEC rules are far less prescriptive, do not require the Scope 3 reporting of SB253/261, and cover a much narrower subset of public companies—meaning that the SB253/261 costs are now not mere incremental costs, but rather themselves the sole source of GHG reporting costs and expense for affected companies. Therefore, when SB253/261 were written, the benefits to a company of avoiding doing business in California versus SB253/261 compliance costs was small. Now with the likely demise of the SEC's rules, SB253/261 threaten to be a much more direct cost to companies for doing business in California. Companies will respond by either not doing business in California, creating market scarcity and driving up prices, or doing business and passing on the costs to Californians. There is no off-setting benefit for Californians for absorbing those additional costs, as there is no evidence for the proposition that mandatory corporate reporting of GHG emissions, *by companies not already interested in mitigating them*, leads such companies to reduce their GHG emissions.[1] Accordingly, SB253/261 offers the perverse incentive that, for a company of any given size and complexity, the costs of compliance with SB253/261 would be roughly the same whether or not it is interested in mitigating GHG emissions.

RTC §23101(b)(4): "The amount paid in this state by the taxpayer for compensation, as defined in subdivision (c) of Section 25120, exceeds the lesser of fifty thousand dollars ($50,000) or 25 percent of the total compensation paid by the taxpayer." Adopting the RTC definition could lead a big company that primarily operates outside of California to fire its remote workers resident in California, to avoid being caught up by SB253/261. This is a bad outcome for Californians. The fired in-state remote workers, previously not driving to work, will need to find new jobs, which may require commuting, and as such, adopting RTC §23101(b)(4) is more likely to increase GHG emissions than not. Any threshold adopted should not be from the RTC, but rather be a newly established threshold be measured in millions of dollars.

RTC §23101(a): "'Doing business' means actively engaging in any transaction for the purpose of financial or pecuniary gain or profit." This includes home reconstruction in areas hit by wildfires, and if subjecting companies to SB253/261 expense, would drive up costs for materials and contractors rebuilding these homes. It would also expose Californians to unjustifiable added wildfire risks. For example, out of state companies would think twice before sending emergency aid, like scooper planes, if doing so opted-in to SB253/261. The interests of Californians for protection against and suppression of wildfire, including those of victims of wildfire and other natural disasters to rebuild homes, outweighs the value of the mere reporting of GHG emissions, which does not itself decrease GHG emissions. Therefore, CARB should provide:

> "Doing business in California" for purposes of SB253/261 does not include any activity related to fire mitigation, fire suppression, fire avoidance, selling materials used to build homes, the financing of homebuilding, or homebuilding of any kind or nature, [anywhere in California][in Los Angeles County until 2031, or in any other county that is experiencing or has experienced a wildfire, earthquake or other natural disaster that has destroyed more than fifty homes, until six years have passed since such wildfire, earthquake or other natural disaster].

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[1] E.g., Ahmad K, Irshad Younas Z, Manzoor W, Safdar N. Greenhouse gas emissions and corporate social responsibility in USA: A comprehensive study using dynamic panel model. Heliyon. 2023 Feb 22;9(3):e13979. doi: 10.1016/j.heliyon.2023.e13979; World Resources Institute, What Are Greenhouse Gas Accounting and Corporate Climate Disclosures? 6 Questions Answered (Mar. 7, 2024) https://www.wri.org/insights/ghg-accounting-corporate-climate-disclosures-explained (makes clear that reductions could correlate for companies *already interested* in reducing emissions).

Lending to or investing in California businesses should also be excluded from "doing business in California." The SEC's proposed climate reporting rule contemplated "financed emissions" rules,[2] requiring banks to report the emissions of recipients of their deployed capital. This meant *borrowers*, including government borrowers, no matter how small, would have to perform expensive GHG inventories to get capital. This would increase the cost of money and reduce available lenders for every California company and for every county, city, housing authority, and road improvement district, increasing costs and taxes for all Californians.

Packaging, sales and issuances of asset backed-securities ("ABS") should also be exempted from "doing business in California." ABS securitizations are essential for home mortgages and car loans. Adding friction to ABS issuance would add unjustifiable costs and delays to home and car purchases for Californians.

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

No. Government entities, government-related entities, and their subdivisions (e.g., a political subdivision of a state) should not be included, whether or not they generate revenue. Such entities have an existence based in sovereignty, providing for the public welfare, or similar bases—not a business existence. Each such entity is not a "business entity" based upon the plain meaning of that phrase. To cover such entities that are out of state governments is probably outside the power of California and could invite harmful retaliation. CARB litigating with objecting entities would waste funds and put California and its efforts to mitigate global warming in a bad light, all while failing to provide useful information concerning GHG emissions or mitigating climate change.

Every dollar a state agency spends on GHG reporting is a dollar it does not have available for services, including emergency services. Budget cuts affecting emergency services need better justification than GHG reporting; any future shortfall in emergency service response could be blamed on municipal GHG reporting, putting GHG mitigation efforts in a bad light,[3] especially given lack of evidence that GHG reporting by companies not already inclined to reduce emissions mitigates climate change.[4]

Even the Biden Administration recognized that the increased costs were not worth the added expense of the GHG reporting when it dropped the Federal Acquisition Regulations proposal to require large federal contractors to report their GHG emissions.[5]

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

The question is unclear. Exempting entities with one share of stock owned by a foreign government

[2] 87 Fed. Reg. at 21376 n. 423; 87 Fed. Reg. at 21380; 87 Fed. Reg. at 21387; 87 Fed. Reg. at 21442.
[3] See, e.g., David Zahniser, Did Mayor Karen Bass really cut the fire department budget? The answer gets tricky, Los Angeles Times, Jan. 10, 2025, https://www.latimes.com/california/story/2025-01-10/how-much-did-the-l-a-fire-department-really-cut-its-budget; Shaun Harper, The L.A. Fires Have Nothing to Do With DEI, Time Magazine, Jan. 13, 2025, https://time.com/7206543/the-los-angeles-fires-have-nothing-to-do-with-dei/.
[4] See fn. 1.
[5] DoD, GSA, NASA, *Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk, Proposed rule; withdrawal*, 90 Fed. Reg. 2663 (Jan. 13, 2025).

would exempt all publicly traded corporations. Does CARB mean to set a minimum level of foreign ownership, e.g., entities like Air France-KLM? Or to exempt commercial arms of a foreign government, like Powerex? All such exemptions would mitigate costs to Californians from SB253/261.

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?

Absolutely not. SB253/261 should not be a suicide pact. It would be foolhardy for California, which suffers power shortages every hot summer, to implement any measure of any kind that discourages in any respect any entity from providing energy to California. Senators Stern and Wiener, the authors of the statutes, filed a letter with the Senate Daily Journal stating that "[i]t was not our legislative intent to include such energy transactions within the scope of this reporting obligation, and we are therefore providing clarification … to the California Air Resources Board."[6] Similarly, injections into natural gas pipelines out of state for delivery into California should be exempt.

California already has a GHG reporting regime for energy through AB32. EIM "deemed imports" through GHG factor bidding, at interconnection points physically hundreds or even a thousand miles from California should not be considered a sale into California, as doing so would decrease use of EIM and EDAM, defeating the substantial energy cost savings they provide. AB32 already provides a GHG compliance structure through EIM and EDAM, which unlike SB253/261, assesses a cost on and actually could reduce GHG emissions.

CARB rulemaking with perceived extraterritorial effects would likely be met with counteractions by the Trump Administration and Republican-dominated states that would be expensive and wasteful for CARB to defend, and risk putting California's GHG programs in a bad light.

Neither REC sales nor carbon credit sales should constitute "do[ing] business in California", as such transactions mitigate emissions of GHG and therefore should be encouraged and not discouraged in any way.

Bilateral sales of energy or other energy-related products that occur in interstate commerce should not constitute "do[ing] business in California." Such transactions constitute another type of wholesale electricity transactions, and the letter of Senators Stern and Wiener (as discussed above) stated that SB253/261 are "not intended to include a business entity whose only activity within California consists of wholesale electricity transactions that occur in interstate commerce."

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)?

Certainly not from the Franchise Tax Board or State Board of Equalization. The returns are confidential, privileged, and protected from disclosure for other purposes.[7]

CARB should avoid imposing costs on entities that are not actually covered by SB253/261 by requiring

[6] Wiener, Stern, re Legislative Intent- SB 253 and SB 251, Jan. 29, 2024, https://www.politico.com/f/?id=0000018d-5c5b-da8e-a3ed-fefb3b570000.

[7] RTC §§ 19542, 7056; *Sav-On Drugs v. Sup. Ct.*, 15 Cal.3d 1, 6 (1975).

them to provide information to CARB that CARB just uses to verify that they are not covered.

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?

CARB should avoid a regime that requires all entities to report all corporate associations, and not implement the complex and intrusive Corporate Associations and Structure Disclosure Form that it applies pursuant to Sections 95830 and 95833 of the Cap-and-Trade Regulation.[8] Rather, CARB should rely on voluntary reporting to avoid making an expensive compliance cost even more expensive, and imposing costs on entities that are not actually covered by SB253/261 that are just reporting corporate associations for CARB to verify that they are not.

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?

The rules should not mandate exclusive use of the GHG Institute/WRI GHG Protocol but rather should allow reporters to choose any protocols and standards that satisfy the SEC final GHG reporting rules,[9] or another less restrictive standard set by CARB. Mandating a particular private non-profit's protocol delegates regulation to a private body. This is especially important for California, as it is an open not-so-secret that the GHG Institute intends to change the GHG Protocol to eliminate or hobble the use of RECs and offsets,[10] which market instruments are built into California's RPS and AB32. Requiring use of the GHG Institute protocols would put reporters at odds with California RPS and AB32 rules and be counter to achievements required and encouraged under the RPS and AB32.

For example, when the GHG Institute changes its rules to require Scope 2 reporting only on the basis of location and prohibits or hobbles use of market instruments, reporting entities would use the averages of their locations. Since they would know that any action taken individually would not change that average, and therefore they would not be incentivized to take any lone action for renewable energy development, in their location or, since they would get no credit for it, elsewhere. In the absence of instruments like RECs and offsets that reward actions, actions should not be expected. The GHG Institute/WRI was approached for a response to this proposition,[11] to include in responsive comments, and no answer has been received, which indicates WRI does not have one. Allowing California entities to follow protocols other than the GHG Institute/WRI GHG Protocols is better for climate action by allowing the market incentives to function, including the market incentives built into AB32 and the RPS.

[8] https://ww2.arb.ca.gov/sites/default/files/2020-08/Form_3_Corporate_Associations_Disclosures_Aug2020.xlsx.
[9] *E.g.,* 89 Fed. Reg. 21735.
[10] *E.g.,* Financial Times, *How Big Tech is quietly trying to [mitigate the risk of changes to the GHG Protocol]* (Aug. 14, 2024) https://web.archive.org/web/20240814060801/https://www.ft.com/content/2d6fc319-2165-42fb-8de1-0edf1d765be3.
[11] Weinstein Feb. 26, 2025, email to, Michael X Macrae, PhD, "Director of Scope 2 and Senior Advisor on Impact Accounting - Leading WRI's initiative to update the GHG Protocol Scope 2 standards and updated guidance for inventory and project accounting methodologies" (quote from *LinkedIn* profile).

Despite some headlines over a very few bad actors, the voluntary offset market has long gravitated toward robust structures. Carbon offsets that are validated pursuant to good rules, such as CARB's, are completely valid. These should not be obviated by requiring adherence to the GHG Institute/WRI GHG Protocols, given the GHG Institute's apparent plans to do away with them.

Additionally, if given such delegation of function and, therefore, power over California, the GHG Institute could stray from a core function of GHG emissions reporting to requiring from companies other information concerning WRI's views of "environmental justice," "diversity," or employee personal information, the costs of which would then be imposed on all Californians buying goods and services from companies doing business in California.

Moreover, CARB should respect the use by voluntary reporters of existing respected protocols, and not punish such early adopters by forcing a change away from any reputable or robust reporting protocol or methodology.

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?

CARB should not require reporting under SB 253/261 of any GHG emissions or any activity concerning GHG emissions that are covered by reports under AB32. AB32 reporting should be "substituted compliance."

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. CARB should apply the same requirements of the SEC in its final rules.

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?

The SEC published costs datasets in its proposed and final rulemakings, e.g.:[12]

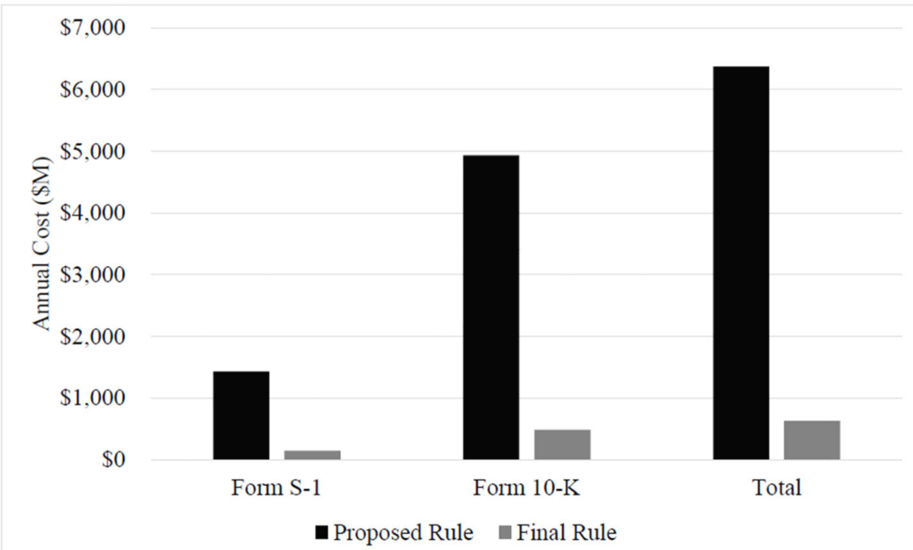
> Seventy-three percent of survey participants responded that their compliance costs under the proposed rules would exceed the Commission's estimates in the Proposing Release, with 41 percent of respondents stating that the compliance costs would exceed $1 million on an ongoing basis.[2973] Another commenter, a biotechnology trade association, surveyed its members and found that 56 percent of respondents expected that the proposed rules would be more expensive than the Commission's estimates, with 40 percent indicating it would cost between $0.5 and $1.0 million.[2974] Additionally, a survey of corporate executives indicated that 61 percent of respondents expect that the proposed rules would impose $750,000 or more in first year compliance costs.[2975]

[12] 89 Fed. Reg. 21871 (footnote texts omitted).

The SEC "estimate[d] that approximately 1,980 [public companies] meet the $1 billion revenue threshold for Climate Corporate Data Accountability Act and approximately 2,520 [public companies] meet the $500 million revenue threshold for the Climate-Related Financial Risk Act."[13]

Tables at the back of the SEC's final rules also contain cost estimates. A useful analysis of compliance costs is in the Congressional testimony of Professor Joshua White of Vanderbilt University,[14] from which the following graph is excerpted:

Figure 1. Annual Cumulative External Cost Burden Estimates by the SEC



SB253/261 cost scope is closer to the higher, black bars, since the SEC's proposed rule included Scope 3 reporting, which the SEC's final rule does not, and the SEC's rules are limited to public corporations, while the California rules are not. Given the likely demise of the SEC's final rule,[15] California's rules represent all of the, rather than minor incremental, cost. CARB should expect 100% of compliance costs to be passed on to California consumers.

The SEC's estimates do not include non-public companies, so they significantly understate the number of companies that would be covered and the costs of compliance.

Further costs that CARB should consider are those on businesses in California that are not required to report under SB253/261, but that feed mandatory Scope 3 reporting of reporting entities. Scope 3 reporting by covered entities requires covered entities to get information from uncovered vendors and customers. Scope 3 reporting has the potential to be highly intrusive, expensive, and impactful to companies that are not directly regulated. Scope 3 reporting rules especially present risks of damaging small businesses, already failing in huge numbers due to losses and post-pandemic business pattern changes. The SEC said of its proposed rules for Scope 3 GHG reporting that companies should, as a Sope 3 emissions control strategy, change vendors and

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[13] 89 Fed. Reg. 21833.
[14] https://docs.house.gov/meetings/BA/BA00/20240410/117092/HHRG-118-BA00-Wstate-WhiteJ-20240410.pdf.
[15] E.g., Jessica Corso, *Republican-Led SEC Pauses Climate Regulation Litigation*, Law360 (Feb. 11, 2025).

suppliers.[16] California should not take out small businesses that can't afford to provide information to the covered entities for their Scope 3 reporting. The EU recently reformed its Scope 3 reporting to provide that covered entities need only obtain data for their Scope 3 reporting from other entities that are already required to report their GHG emissions, and otherwise could use lookup tables.[17] CARB could provide lookup tables or guidance in the nature of that which would have been provided by the EPA under the proposed SCOPE Act sponsored by then-Representative, now Senator, Adam Schiff.[18]

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

Reporting should be direct to CARB, as the information is confidential. Third parties in receipt of such information could go bankrupt, leading to loss of control of the collected information, and suffer data leaks; collection of this information through private companies is also an invitation to corruption.

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

There are for-profit companies that provide services. As reported by Politico:

> CAMPAIGN DISCLOSED: A carbon accounting firm that championed Sen. Scott Wiener's landmark emissions-disclosure law has established a campaign committee to help Wiener's 2024 all-but-certain reelection bid, according to state records.
>
> Persefoni, a leading supporter of SB253, formed a campaign committee to help the progressive Democrat win his San Francisco seat for a third term. The carbon accounting industry stands to benefit from the law, which requires large corporations operating in the state to disclose and verify their carbon footprint.[19]

7. Entities must measure and report their emissions of greenhouse gases in conformance with the GHG Protocol,[20] 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?

Please see our answer to Queston 3.a. above.

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:

CARB should respect the use by voluntary reporters of existing respected protocols and not punish

[16] 87 Fed. Reg. at 21435 col. 1.
[17] Ropes & Gray, Boarding the Omnibus – An In-depth Look at the Leaked Draft Directive Viewpoints (Feb. 24, 2025) https://www.ropesgray.com/en/insights/viewpoints/102k19w/boarding-the-omnibus-an-in-depth-look-at-the-leaked-draft-directive.
[18] https://www.congress.gov/bill/118th-congress/house-bill/9319/text.
[19] Politico, *Top of the Day* (Sept. 13, 2024) https://www.politico.com/newsletters/california-climate/2024/09/13/7-questions-for-cottie-petrie-norris-00179183
[20] https://ghgprotocol.org/

such early adopters by forcing a change away from them.

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

Data collection and verification processes for GHG reporting take time. Entities that publish inventories conduct inventory on a fiscal year basis, typically collect data in timeframe of up to three months (e.g., Jun.-Aug.), do an internal peer review, and then third party audit verification by the January timeframe. Then they publish to a registry, e.g., The Climate Registry, for final validation. The reporting entity has no control over the registry's timeline. GHG reporting information is typically finalized and published in March/April for the prior fiscal year. If California requires reporting on a different cadence or does not allow for fiscal year reporting from entities that publish on a fiscal year basis, it would be a huge concern for such entities' processes.

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.)?

Reporting any time in a two-year period would be helpful, as it would provide more flexibility.

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?

CARB should allow reporting concurrent with covered entity fiscal year reporting periods.

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?

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?

Our understanding is that TCFD has been sunset and is being replaced by the International Sustainability Standards Board (ISSB) standards.

CONCLUSION

The IECA appreciates the opportunity to submit these comments to CARB. We welcome the opportunity to discuss these comments further should you require any additional information.

Yours truly,
INTERNATIONAL ENERGY CREDIT ASSOCIATION

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