

**Comments of the Western Power Trading Forum
to the California Air Resources Board
on Climate-Disclosure Regulations under
Senate Bills 253 and 261, as amended by SB 219**

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The Western Power Trading Forum¹ (WPTF) appreciates the opportunity to provide input to the California Air Resources Board (CARB) to inform its implementation of the Climate Disclosure Legislation under SB253 and 261, as amended by SB219. WPTF believes that Climate Disclosure requirements have the potential to impose significant costs on covered entities. For this reason, our comments below encourage CARB to provide flexibility to entities in how they report and to consider options to reduce reporting obligations for smaller entities.

Specifically, we support CARB's consideration of existing reporting frameworks and standards, such as what has been developed by the International Sustainability Standards Board (ISSB), and we urge CARB to leverage reporting under these standards into forthcoming regulation. SB 261 appears to anticipate and provide for interoperability with existing standards and references both ISSB and the Task Force on Climate-related Financial Disclosures (TCFD); SB 253 stipulates the use of the Greenhouse Gas Protocol (GHG Protocol). The ISSB's IFRS Sustainability Disclosure Standards incorporate both in their latest recommendations.

CARB should also recognize good faith efforts by companies to disclose climate-related financial risks through existing reporting mechanisms, such as Form 10-K and Form 10-Q reports submitted to the U.S. Securities and Exchange Commission or jurisdictional reporting that complies with ISSB frameworks. CARB should ensure that the implementing regulations recognize that submittal of reports under California's Mandatory Reporting Rule (MRR) and other state regulations, as well as required EPA reporting under the various industry-specific subparts of the Clean Air Act regulations may also fulfil requirements set by SB 261.

Additionally, we urge CARB to exempt entities whose only business activities in the state are electricity imports under the markets operated by the California Independent System Operators. Applying the Climate Disclosure Requirements to these entities could make achievement of the state's greenhouse gas targets and clean energy goals more difficult.

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.***

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

WPTF offers no comment on the appropriateness of using the definition in section 23101 of the Revenue and Tax Code. However, we are concerned that the revenue thresholds for reporting in SB 253 (\$1 billion annually) and SB 261 (\$500 million annually) will capture mid-sized companies, some of which may conduct very little business in California. SB 253/261 will impose real costs on mid-sized entities that are not currently doing Climate Disclosure reporting to other jurisdictions, or to support voluntary goals. For this reason, we suggest that CARB consider ways to limit applicability for certain entities. For instance, CARB could exempt or reduce the reporting extent or frequency for entities whose primary business activities are subject to mandatory GHG reporting regulations in California or elsewhere, or below some emission threshold.

¹ WPTF is a diverse organization comprising power marketers, generators, investment banks, public utilities and energy service providers, whose common interest is the development of competitive electricity markets in the West. WPTF has over 80 members participating in power markets within California and elsewhere across the United States.

Additionally, CARB should develop provisions that would exempt entities whose business activities in California occurred for a short period of time (e.g. 1 year) and provisions to enable entities to cease reporting if they have not conducted business in California for a period of time.

- a. ***Should federal and state government entities that generate revenue be included in the definition of a “business entity” that “does business in California?”***

No comment.

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

No comment.

- c. ***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?***

Entities that participate in the CAISO’s Energy Imbalance Market or Extended Day Ahead Market but that are not deemed to deliver electricity into California should not be subject to climate disclosure reporting rules.

Electricity transactions that occur in these markets and are deemed delivered to California are considered imports under the cap-and-trade program, and thus arguably the associated importers would be considered to be doing business in California. However, we are extremely concerned that subjecting such importers to the Climate Disclosure requirements could undermine achievement of California’s GHG goals.

All imports to California via the CAISO markets are specified source imports attributable to a specific resource. Because of the carbon compliance costs imposed by the cap-and-trade program and the economics of generator dispatch within the CAISO markets, the bulk of these imports are non-emitting imports that help both California load-serving entities and the state achieve clean energy goals.

For many entities that import clean electricity through the CAISO markets, such imports are their only business activity in California. Although these imports are subject to the MRR, the administrative costs of complying with the MRR are far lower than the costs of compliance with the Climate Disclosure requirements would be. To avoid being subject to the Climate Disclosure, these entities could simply choose not to make their clean electricity available to California. That outcome would not support achievement of the state’s GHG goals. For this version, we urge CARB to exempt entities whose only business activities are imports via the CAISO markets from the Climate Disclosure requirements.

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)?**

No comment.

- 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?***

No comment.

- 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?***

WPTF recommends that CARB rely on self-identification by reporting entities of parent/subsidiary relationships. CARB should not attempt to determine and verify these relationships.

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?***

As discussed in the response to question 3b below, WPTF recommends that CARB allow entities flexibility in the choice of reporting standard. Rather than incorporate any particular external standard into the regulations, CARB should instead recognize the suite of external regulations and voluntary standards out there and additionally encourage entities to use the most recent guideline/protocol available for whichever standard they use. This approach would ensure that any changes in external standards and protocols, such as the current revision of the WRI/WBCSD Corporate GHG Reporting Protocol, would not necessitate a change to CARB's regulations.

With respect to California's specific needs in relation to GHG reporting, WPTF recommends that entities that are subject to the Mandatory Reporting Rule (MRR) or other state GHG reporting programs be allowed to submit those reports in that format for the relevant portion of SB 253. For instance, utilities and energy service providers should be able to use any load-based emissions accounting and reports related to their SB350 GHG planning targets, Power Source Disclosure or other load-based accounting mechanism in lieu of providing a separate scope 3 report for emissions for electricity purchases associated with serving retail load. The Climate Disclosure regulations should also clearly establish that emissions reported under SB253 need not be consistent with emissions reported under other state regulatory programs. Lastly, we also recommend that CARB recognize EPA reporting under the Clean Air Act as meeting California Climate Disclosure requirements.

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

We advise CARB to minimize duplication of effort in financial risk reporting by enabling covered entities with flexibility in how entities report. Regarding 253, WPTF note the flexibility inherent in the

GHG Protocols of the World Resources Institute (WRI) and World Business Council on Sustainable Development (WBCSD). CARB should not attempt to limit this flexibility in any way.

With respect to 261, CARB should not impose a single reporting standard. Where an entity is already providing climate disclosure in some form, whether to another jurisdiction, or voluntarily to support corporate goals, that climate disclosure should be considered to conform to California's requirements. This flexibility is a key principle of 'interoperability' inherent in many of the evolving Climate Disclosure Standards. The International Sustainability Standards Board (ISSB) climate reporting standards are one example of newer financial risk standards that draw upon both the WRI/WBCSD GHG Protocols for the GHG reporting component, as well as the recommendations of Task Force on Climate-related Financial Disclosures.

CARB should ensure that the implementing regulations recognize that submittal of reports under California's Mandatory Reporting Rule (MRR) and other state regulations, as well as required EPA reporting under the various industry-specific subparts of the Clean Air Act regulations may also fulfill requirements set by SB 261.

- 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?***

With respect to GHG emissions reporting, to our knowledge, all the existing standards address methodological consistency over time. Thus, we see no need to establish this in the regulations.

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?***

While we are aware of various estimates and surveys that put the cost of annual reporting in the range of \$500k to over a million annually, we are not aware of any databases that collect and publish this information. The scale and scope of an entity's operations seems to be the biggest driver of the costs. Costs of collecting and compiling on emissions and climate risk would be commensurately higher for large, multinational companies with different types of business activities and subsidiaries than for small, local, single activity organizations.

CARB should develop regulations that ensure companies already reporting GHG emissions and/or disclosing climate-related risks are able to provide a copy of that report to fulfill compliance obligations under the California rules, thus ensuring the incremental cost will be negligible. If CARB were to impose its own different reporting standard or format, the costs to comply would be substantial but provide no added benefit.

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

Any reporting should be done directly to CARB to ensure appropriate procedures for

maintaining reported information and preventing inappropriate use of that information.

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

WPTF does not support contracting out these functions.

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. Because the Climate Disclosure requirements are not intended to support any regulatory GHG reduction or clean energy program, reported information does not need to meet the same level of standardization or quality as data reported under the MRR or similar programs. Further, attempting to standardize these requirements beyond what is included in the GHG Protocol would impose additional, unnecessary costs on both CARB and on reporting entities, many of whom would have to modify internal data collection procedures.

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?***

WPTF provides no comment on options. However, as with reporting, CARB’s rules should provide flexibility to companies to use an assurance provider of their choice.

- 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 assurance²” in MRR be utilized, and if not why?***

WPTF does not support adoption of the assurance definition within the MRR standard. The MRR is intended to support compliance with the cap-and-trade program. It must therefore ensure a much higher standard of accuracy than is needed for the Climate Disclosure requirements. Instead, we recommend that the CARB explicitly recognize any assurance provider that uses existing assurance standards (e.g. ISO 14064 and ISAE 3000). We understand that many large firms already completing some form of climate disclosure rely on providers who use these standards for their assurance letters.

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

reporting?

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

No comment.

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?*

WPTF suggests a reporting deadline of September 30 of the year following the reporting biennium.

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.)?*

If, as WPTF advocates, CARB does not adopt an inflexible standard for financial risk disclosure under 261, we would not see any benefit to adopting a standardized reporting year for the biennial reports. Rather, because these disclosures will vary across entity according to the entity's current disclosure practices (if any), CARB should also allow each entity to report using the time period that it considers appropriate.

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?*

An entity that exceeds the revenue threshold for the first time during the two years prior to the reporting year should not be required to report until at least three years after the year in which the revenue threshold is exceeded.

13. *Many entities that are potentially subject to reporting requirements under SB 261 are already providing other types of climate financial risk disclosures.*
- a. *What other types of existing climate financial risk disclosures are entities already preparing?*
 - b. *For covered entities that already report climate related financial risk, what approaches do entities use?*
 - c. *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?*
 - d. *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?*

Rather than seeking to incorporate existing standards into the implementing regulations, CARB should instead enable entities to leverage existing reporting to meet compliance obligations. CARB

could also provide references to the leading standards for entities that are new to climate disclosure reporting.